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CRIME AND JUSTICE IN INDIA

Edited by
N. PRABHA UNNITHAN



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“ Crime in India is a wide-ranging and multi-faceted phenomenon affecting the elite and the masses, government officials and ordinary citizens, rich and poor, private corporations and public organizations, and rural and urban areas alike. How does an age-old civilization that is also a modernizing democracy with a booming economy but riven with divisions of religion, language, region, while stratified by class, caste, gender, and privilege, deal with its crime problems? This edited volume was conceived to answer this question. ”

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Criminology and criminal justice is in its infancy in India. This book attempts to examine India's crime problem in detail and document if and how its criminal justice system has responded to emerging challenges and opportunities. The objective is to move beyond mere observations and opinions and make contributions that are the next steps in the development of an empirical (or evidence-based) criminology and criminal justice on this vast and diverse country—by focusing on research that is both balanced and precise.

This book brings together a diverse set of 32 academics from India, the US, and the UK who have authored 19 chapters on many aspects of crime and justice in India.

The organizational components or sectors of the criminal justice system are the police, the courts, and corrections. The studies collected here provide balanced coverage of the entire criminal justice system and not just one component. The first section of this book consists of overviews of several major issues that affect the entire criminal justice system. Section Two relates to the gateway of the criminal justice system, policing. Section Three takes up the operational problems of criminal law and courts and Section Four deals with the difficult question of punishment and correction—the last part of the criminal justice system.

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To M. Z. Khan

His personal example of commitment and leadership to the
development of criminology and criminal justice in India
inspires all who have followed.

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Foreword

As the authors of each and every chapter note or imply, their contributions to this volume are but a small drop in the vast, diverse ocean of India's cultures, laws, taboos, family structures and relationships, local governments, state and federal bureaucracies that make up the "improbable democracy" as great writers have called the India that emerged after the end of British rule. Yet many of the chapters, no matter what the topic—rape, death squads, abuse of women and children, punishment and corrections, police abuse of power, political corruption, even the dreadful treatment of the untouchable castes—is traced back to the colonial rule of the British. In many chapters, the police appear to bear the main brunt of criticisms, even though, as the editor points out, authors with a policing background predominate among the contributors. More telling of the contributors is that there are only three whom I would count as actually living and working in India, only two in the once-Great Britain, and the rest expatriates living and working in the US along with a sprinkling of Americans.

Is British Rule still responsible for "police encounters" (also known as death squads) of today, the retention of the death penalty (the UK abolished its own death penalty several decades ago), the appalling conditions of Indian prisons and jails (though the UK could be responsible for the origin of prison as a mass punishment throughout the world, but that is another story), and the violent abuse of women and children?

I urge the reader to look behind the cloak of colonialism to see what lies beneath. There we find the most amazing country on this planet, flourishing because of the gift given it by the British: a parliamentary democracy. When the British left, it would have been so easy for the country to devolve into one of the military style "democracies" or dictatorships that followed (and ruined) many of Britain's former colonies. One may argue (as the authors of Chapter 19 imply) that it was the caste system and the Hindu culture based on *dharma* that saved the democracy because it provided the structure for order during the transition. Whatever the reason, the gifts of colonial rule were not all in and of themselves bad (and I speak as one who grew up in Australia that remains a colony to this day, technically speaking). It is also worth noting that the US was also a colony of the once-Great Britain and

that, among other things, its criminal law and procedure owes its structure to the common law of England—deliberately chosen by the Founding Fathers, even going against Jeremy Bentham's campaign to get them to invent their own (well, use his) system of law.

The British did some terrible things during their 200 years rule of India, no doubt about it. But they left a lot behind that could be developed and fashioned to help India become the country it is today. Well, almost. It is unfortunate that India's democracy was hijacked for too long a time—most of the second half of the 20th century by socialist/Marxist ideology that denied India the opportunity to join and participate in the prosperity that comes with open markets. That veil has been lifted, and India has begun in this century to prosper and to change dramatically as any casual visitor to India cannot help but notice. The contrasts between rich and poor are, of course, now even more stark, even deeply disturbing to the visitor. But change is afoot, and already many, many more people are coalescing into a real Indian middle class which reaches for continuing affluence. As can be seen throughout the developing or emerging countries of the world, it is open markets and capitalism that have raised the standard of living of everyone, including the poor. Hong Kong, Singapore, Taiwan, and South Korea are shining examples.

I provide this glowing account of India's prosperity as a counterpoint to many of the chapters in this book which tend towards the negative, sometimes close to hysterical criticisms of the inadequacies of many aspects of India's criminal justice institutions. Such criticisms are easy to make. But as we read of them, it is worth keeping in mind that many of the shortcomings are but extreme examples of common problems that befuddle even the most developed countries and democracies. A few of these are:

- The complicated and ambivalent role of police in any society. They are the pivot between freedom and control. Their job is always easier in a dictatorship, preferably headed by police. Their job is next to impossible: the temptations to adopt the "Dirty Harry" solution to policing are constant.
- How to train, educate, or select police. A number of contributors address this issue for India. Will having better educated police make better police? They conclude, maybe. But one could make an argument that on balance, the Indian police, especially the upper ranks, are in some ways better educated than their US counterparts.
- How to punish offenders. Locking offenders up for serious crimes is by far the universal solution to crime in every country of the world, rich

or poor, developed or undeveloped. The conditions in Indian prisons may be as terrible as described in this book. But there is also the possibility that the conditions are as good as or better than scrounging a living in a rubbish dump in the Mumbai slums. All the same, being imprisoned is a horrible punishment no matter where and no matter what the conditions.

- How to protect the vulnerable from violence and exploitation. No country, rich or poor, has solved this problem with any degree of satisfaction. Sex trafficking, for example, remains a growing problem, often exacerbated by developed countries that provide a ready market.
- How to eradicate political corruption and bribery. Contributors have noted in their chapters that India lies somewhere in the middle in the ranking of countries on the corruption index. Yet reading some of the chapters it seems as if India should be somewhere near the worst when it comes to bribery and corruption.

This is a welcome book, and hopefully marks the beginning of many more. Criminology and criminal justice is in its infancy in India, and here I depart from my own thesis. Its development in India has been hampered by the education system bequeathed to it by once-Great Britain. This is because criminology and criminal justice began in the UK as a topic of academic study mostly inside or affiliated with law schools. Thus, it did not develop as an empirical science as it has in the US, and still remains a backwater (with a few important exceptions) where the likes of Foucault and post-modernism continue to be worshipped. No doubt this is why most of the contributors to this volume are US educated and affiliated with US universities. I congratulate all the contributors and the editor for bringing these papers together. Let's hope that they are already planning the next volume.

Graeme R. Newman
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Preface

India is home to a rich and diverse cultural heritage derived from some of the earliest historical civilizations. It is a vast and populous nation with a 2011 Census population of 1,210,193,422, sharing with China the distinction of having a population of more than a billion people. In addition to being male-dominated (the 2011 sex ratio was 940 females for every 1,000 males) and with relatively high levels of illiteracy (26%), it is also densely populated (382 people per square kilometer). Further, it is a multi-religious (80.5% Hindu; 13.4% Muslim; 2.3% Christian; 1.9% Sikh; 0.8% Buddhist) and polyglot (23 "official" languages) society. India, despite its advances as a major global information technology and service hub, continues to be a relatively poor and agricultural nation.

In recent times, India has come to be seen as an emerging international superpower with a strong economy whose competitive prowess has moved it to the position of fourth largest in the world and is seen as competing with Japan for the third position. With some exceptions, it has enjoyed a stable and representative democratic government. Major scientific, military, and nuclear capabilities and achievements have been associated with the country. At the same time, India is also wracked by a host of intractable and unyielding social, economic, and political problems ranging from poverty and unemployment to corruption, pollution, and separatism. These problems fester and continue to hobble its progress. These contrasts led the distinguished economist and a former US Ambassador to India, John Kenneth Galbraith, to famously label it as a "functioning anarchy."

This contradiction or enduring duality of hope and despair has been noticed and commented on by many observers when contemplating various features of Indian society (French, 2011). In the areas of crime and criminal justice, consider the following news items, all of which were widely reported on between 2010 and 2012 by the media in India.

- The Central Bureau of Investigation (CBI), the major investigative arm of India's government in New Delhi, issued a report that appeared to implicate a father, Rajesh Talwar, in the murders of Aarushi (his teen-aged daughter), and the family's servant, Hemraj. The CBI had been

called in after local police had bungled the preservation of evidence from the crime scene during their early investigation. While naming the suspect, the CBI claimed it could not charge him due to evidentiary gaps. Public and media pressure foreshadowed an eventual Supreme Court decision that the father and the mother, Nupur Talwar, would stand trial for the murders.

- A now-retired police official, S. P. S Rathore, of the elite national Indian Police Service (IPS), was convicted of molesting another teenager, Ruchika Girhotra, nearly two decades ago. The young woman's family had been threatened and harassed using subordinate members of the police force at Rathore's direction eventually leading to her suicide. His conviction in 2010 came after the unrelenting efforts of friends and the family of the deceased. He was sentenced to six months in jail and ₹1,000 fine. The sentence was suspended pending appeal.
- A. Raja, the cabinet minister in charge of telecommunications at the national level, resigned after revelations of graft and corruption involving the allocation of telecommunications spectrum to various private companies in 2008. The irregularities deprived the government of an estimated US\$40 billion in license fees, according to the Comptroller and Auditor General of India. He was arrested, interrogated, and charged and now awaits trial. In 2011, *Time* magazine referred to this scandal as second (to US President Richard Nixon's Watergate affair) among its list of Top 10 Abuses of Power.
- Binayak Sen, a physician who was also a major civil liberties activist, was charged and found guilty of sedition by a court in the state of Chhattisgarh. He was convicted of being associated with a Maoist-inspired terrorist insurrection in the remote rural areas of the state where Sen had settled to treat members of poor tribal groups. After public protests, he was later released on bail by the Supreme Court of India pending appeal of the verdict to a higher court.
- And in what some have called "the mother of all scams," large amounts of subsidized fuel and food grains meant to be sold to the poor at below open market rates or distributed as part of public welfare programs (e.g., lunches for underprivileged schoolchildren) were stolen and redirected by government officials in the state of Uttar Pradesh who sold the goods on the open market for higher prices. So many people were involved in this huge theft (consisting of an estimated 50,000 cases) that the CBI wished to withdraw from the investigation due to a lack of personnel to process the resulting investigations. Many of

the poor live in rural areas where these subsidized food and fuel may have been their only means of subsistence.

As the examples above make clear, crime in India is a wide-ranging and multi-faceted phenomenon affecting the elite and the masses, government officials and ordinary citizens, rich and poor, private corporations and public organizations, rural and urban areas alike. How does an age-old civilization that is also a modernizing democracy with a booming economy but also riven with divisions (Unnithan, 1995) of religion, language, region, while stratified by class, caste, gender, and privilege deal with its crime problems? This edited volume was conceived to answer this main question with two inter-related objectives in mind. First, we wish to examine India's crime problem in detail and document if and how its criminal justice system has responded to emerging challenges and opportunities. Related to this is the question of whether these changes have resulted in greater cooperation and collaboration among sectors of the criminal justice system. Second, given that academic criminology and criminal justice in India has not expanded to the same degree or pace experienced elsewhere (Khan and Unnithan, 1984), we wish to move beyond mere observations and thoughtful opinions on the state of crime and criminal justice of India.

Indeed, our goal is make contributions that are the next steps in the development of an empirical (or evidence-based) criminology and criminal justice on this vast and diverse country. Taken together, these twin objectives direct us to focus on research that is both balanced and precise. This book brings together a diverse set of 32 academics from India, the US, and the UK who have authored 19 chapters on many aspects of crime and justice in India.

The organizational components or sectors of the criminal justice system are the police, the courts, and corrections. Generally the police enforce criminal law, the courts hear the case against an individual accused of crime and sentence him or her, while corrections holds, punishes, and treats those convicted of a crime. The studies collected and published here provide balanced coverage of the entire criminal justice system and not just one component of it. The first section of this book consists of overviews of several major issues that affect the entire criminal justice system. Section Two considers topics related to the gateway of the criminal justice system, policing. Section Three takes up the operational problems of criminal law and courts and Section Four deals with the difficult question of punishment and correction, the last part of the criminal justice system.

The contributions deal with substantive research questions that are of constant interest to larger academic disciplines (e.g., the historical and

contemporary pervasiveness of public corruption; utilizing religion in anti-terrorism strategies; why some countries persist with the death penalty but only use it sparingly; does more education make for better police officers; rehabilitational efforts targeting sex workers) and others that have not been as extensively studied (e.g., the effects of the introduction of private security agencies on public confidence; the consequences of adopting plea bargaining in a justice system that has resisted it; the recognition of adolescents as needing comprehensive care and protection where, for many, their status as juveniles is barely acknowledged). The empirical methods utilized by the contributors are diverse and creative (as befits a creative and diverse nation) and include surveys, "event catalogs," content analysis, questionnaire-based interviews, intensive interviews, case studies, Delphi techniques, and secondary analysis of official records.

Two limitations must also be noted. Most of the chapters in this book deal with urban, mostly metropolitan areas such as Delhi, Mumbai, and Chennai. Thinking of crime as only an urban problem is not specific to any particular country. However, rural India, where more than 70 percent of the population lives, confronts crime problems of its own (e.g., the food and fuel diversion scandal in Uttar Pradesh mentioned above). Unfortunately, their plight has been only minimally touched in this collection. Second, the reader will note the pervasive presence of India's police in the contributions, even in chapters that ostensibly are not about them. Why the police loom so large in Indian criminal justice is an issue that will be examined further in our conclusion.

All of the contributors have also taken pains to spell out research possibilities and the policy implications that flow from their findings. The work published here should spur both future research efforts and administrative initiatives in these arenas in India. As a group, we hope that the resulting systematic study and evaluation of India's crime and criminal justice issues will help decrease the despair and sustain the hope of responding to those difficult challenges. A book of the kind we have assembled is the result of the toil and efforts of many individuals. As editor, it is my privilege to have worked together with 32 outstanding scholars in conceiving and completing this book. Many of us have met each other, become acquaintances, colleagues, and friends during our lives and careers in India, the US, and elsewhere. All of us were motivated by wanting to contribute something tangible and substantive to India through the learning and discipline that we have picked up along the way, both in India and elsewhere. It is no exaggeration, therefore, to say that this project has been a labor of love.

My most important personal acknowledgment is to my mentor and guru, M. Z. Khan, whom I first met in the mid-1970s when I was a Master's student and he was a faculty member in the Department of Criminology and Forensic Science at the University of Saugar (now the H. S. Gour University). Then, as now, Dr Khan's devotion to systematic research and empirical analysis in criminology and criminal justice has been exemplary and inspiring. This book is dedicated to him for the countless hours of discussion and debate we have engaged in and for nearly four decades of unstinting personal support. Graeme Newman, eminent scholar and long-time faculty member in the School of Criminal Justice at the State University of New York-Albany, whose work and contributions have been instrumental in the development of a vibrant international and comparative criminology and criminal justice, honored us by agreeing to write the Foreword to this book.

The origins of this book lie in the enthusiasm of Chris Eskridge of the School of Criminology and Criminal Justice at the University of Nebraska-Omaha, Editor of the *Journal of Contemporary Criminal Justice*, for devoting a special issue (Volume 25, No. 2, May 2009) of the journal to India. Sessa Kethineni of the Department of Criminal Justice Sciences at Illinois State University, Mahesh Nalla of the School of Criminal Justice at Michigan State University, and Arvind Verma of the Department of Criminal Justice at Indiana University encouraged me to work on compiling this book. They also backed up their words with action by contributing (with their research collaborators) two chapters each. Thomas Mankowshi and Catherine Rossbache helped this project move forward by connecting me with SAGE India. The SAGE team in New Delhi has been a joy to work with even as we struggled to complete this book; so my gratitude goes to Sugata Ghosh, Rudra Narayan Sharma, Aniruddha De, Rekha Natarajan, and Reena Patras for their patience and enthusiasm for this undertaking.

Finally, I am grateful to my wife, Shashikala, and our daughters, Rachna and Ranjana. Although busy with their own academic and career pursuits, the three of them have given me love, support, and most importantly, respite when needed, from the rigors of undertaking and completing this long project.

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SECTION ONE

Overviews of Crime and Justice in India

Introduction

India has a socio-legal tradition that defines proper human behavior and sanctions against violations of these expectations that can be dated to the ancient civilizations that occupied various parts of the subcontinent centuries before the birth of Christ. The *Smritis* (Hopkins, 1971), Hindu texts believed to have been composed around 500 BC, promulgated customary norms for governing individual and group behavior. The early (from around 300 BC) text, *Arthashastra*, by Kautilya, prescribes a detailed set of rules for law enforcement and response to crime with appropriate punishments that a sovereign should follow (Shastri, 1967). The Mughal Empire, which ruled much of India from the 16th through the mid-19th centuries, also developed an elaborate criminal justice system (Sangara, 1998). During the British rule, which lasted nearly two centuries, stability, uniformity, and centralization were introduced and maintained, thereby designing the contours of a national structure of policing, criminal laws and courts, and penal sanctions. Thus, when India became independent in 1947, its criminal justice practices displayed the accumulation of centuries of cultural tradition overlaid with a formal system that was essentially colonial in structure, functioning, and outlook.

India is a parliamentary democracy that is a Union of 28 states and seven territories that are administered by the central government in New Delhi. It is common in an Indian context to speak of the "central government" when

referring to what in the US and other countries might be called the "federal government." It is governed by a Constitution adopted in 1950 that is highly detailed (consisting of 12 schedules) and which has been amended 94 times. The Constitution defines areas that come under the jurisdiction of the central government and those that belong to the states. Residual powers remain with the central government, specifically the Union Parliament. The importance of this separation of powers lies in the fact that it has a direct bearing on the functioning of the criminal justice system. Law and order is an area where both the central and state governments may promulgate legislation. However, in responding to offenses and offenders, the police, courts, and correctional sectors do not make distinctions based on the source or origin of a particular criminal law. At the same time, most criminal justice functions such as law enforcement, order maintenance, prosecution, sentencing, and punishment are the responsibility of state governments and territorial administrations.

When India became independent from Britain in 1947 it inherited a colonial criminal justice system that was based on English Common Law that followed the adversarial approach. Both these elements persist. The system was, and continues to be, centrally controlled by the government in New Delhi. However, the central government allows various state governments a degree of autonomy in running the police, courts, and corrections sectors within their borders. Both the central government and the various state governments possess legislative powers, although law enforcement makes no distinction as to the source of various laws. The Indian Penal Code (IPC) is enforced throughout the country and divides crime into two broad categories (see Rao, 1991). Those offenses that are "serious" and in which the police may intervene at their own discretion are termed "cognisable offences." These include offenses against persons (such as murder, kidnapping, robbery, and rape) and offenses against property (such as burglary, theft, and cheating). Less serious offenses are referred to as "non-cognisable offences." These, in turn are further divided into those taken directly from the IPC and others that infringe on "special and local" laws at the state level.

The six chapters in this section provide overviews of important continuing concerns and emerging issues for India's system of criminal justice in its entirety. First, Arvind Verma provides a rather despairing view of governance in India as observed through how criminal justice policies are formulated and how they are abusively implemented on the ground in the state of Bihar. He notes that while India's commitment to democratic governance and periodic free elections stands unquestioned, the policies and tactics of political parties while in power have often crossed over into the use of coercive power. This is due to, among other reasons, the criminalization of politics and the

politicization of the police. Second, T. K. Vinod Kumar focuses attention on the state of public order in one city in the state of Kerala, where the police contend with a strong civic tradition of public protests. His findings suggest that social, cultural, and election-related events do not have violence associated with them. However, increasing levels of violence are connected to labor, political, government, administrative, student-related, and communal events. This relates to who uses the order maintenance functions of government and for what purpose. The seepage of partisan and coercive politics into many (if not most, but with the notable exception of elections) arenas of Indian public life that Verma decries is clearly illustrated in Vinod Kumar's analysis.

In Chapter 3, Gilbert Geis (who passed away recently) analyzes the content of well-known works of fiction in English focusing on India. He describes thematically how corruption has been depicted in them. Geis points out that although India ranks in the middle among nations on international indices of corruption, the perception that corruption is widespread and pervasive creates its own consequences. Regardless of this variance between perception and ranking, criminal justice officials are often implicated in acts of graft and corruption. This chapter confirms that government officials and the police (who are representatives of the government most visible to the public) are depicted in the pieces of fiction as being among the most corrupt. Fourth, the cross-national research team of Sudershan Pasupuleti, Eric G. Lambert, Shanhe Jiang, Jagadish V. Bhimarasetty, and K. Jaishankar compares public opinion (here, samples of college students) in India and the US. Perceptions regarding the seriousness of the crime problem and harsher treatment of criminals are relatively higher among Indian students compared to their US counterparts. In some ways this may be the result of feelings that people, often those in high places, are perceived as "getting away" with crimes including corruption and coercion.

The last two chapters in this section focus on possible directions for moving India's responses to crime forward. One ubiquitous solution to various problems that bedevil criminal justice everywhere is the promotion of professional job training for system personnel and topical education for those who may become researchers or academics in the field. Continuing with the comparative approach, in the fifth chapter of this section, N. Prabha Unnithan pieces together the state of criminology and criminal justice education in India and the US. He finds that while such education has a larger infrastructure and reach in the US, the crucial influence of the national government in fostering such development can be seen in both countries. The direct entry of India's central government into criminal justice education therefore shows potential, but must be tempered by the concern

regarding political partisanship mentioned in the other chapters. The sixth and final chapter by Raghu Naath Singh and Dharam Pal Singh considers how secularism may be useful in responding to and preventing terrorism. Using Delphi techniques they identify various dimensions of secularism and show how these may help respond to those who promote terrorism utilizing discourse and rationale drawn from religion. India's diversity coupled with its long experience of religious-based terrorism often shakes its commitment to secularism, and this chapter is a welcome reminder of why that underpinning continues to be important and relevant.

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Governance and Coercion in India

Arvind Verma

Abstract

At the dawn of independence, Jawaharlal Nehru, India's first Prime Minister, in his "tryst with destiny" speech beckoned national leaders to

... serve the millions who suffer, end the poverty and ignorance and disease and inequality of opportunity; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman. (Nehru, 1992)

Unfortunately, successive governments have followed policies that cause fissures and conflicts within India. This chapter examines the application of coercive power in the country since independence in dealing with political dissent and opposition to economic policies of the government. I make two arguments: first, the police have continued its colonial heritage of suppressing the people; and second, in the competitive democratic polity of the country, political parties have pursued narrow partisan interests, sectarian divisions, and confrontations that have promoted the use of coercive force. I present examples from the state of Bihar and particular applications of coercive force in handling order maintenance problems. I also discuss policy implications for democratic functioning in India and the role of police.

Introduction

For Jawaharlal Nehru India's independence was a "tryst with destiny" and a promise to end poverty and ignorance and ensure justice and fullness of life to everyone. Unfortunately, the reality of modern India has been otherwise. Instead of upholding the highest principles of humanity and universality, successive governments have been indifferent to the weak and vulnerable sections of the society and have followed policies that cause fissures and conflict within the nation. To be fair to Nehru, he did help create important institutions such as the parliamentary system of governance, the Election Commission, a non-political bureaucracy, an independent judiciary, and a free press. The adoption of a keenly debated, conceived, and widely accepted Constitution in 1950, empowering every citizen to vote irrespective of gender, ethnic, or caste differences set the country on an extraordinary adventure in social engineering. By all accounts, the early years did live up to the promise made on that fateful night when the "world sleeps and India awakes" (Nehru, 1992). There was zeal and determination to forge a new society. The political and ruling class appeared guided by high moral principles while senior civil servants were clean and eager to participate in nation building.

Yet, the challenges of meeting rising expectations and molding a modern nation over the edifice of a colonized, feudal, and deeply religious society proved formidable. Within a few years, the Nehru government enacted the first Preventive Detention Act to deal with violence instigated by the Communist Party of India. The restlessness in Kashmir was similarly dealt with by putting their leader, Sheikh Abdullah, in detention. The first freely elected communist government in Kerala was dismissed by application of extraordinary powers of the Parliament on questionable grounds. Nehru consented to the reorganization of states on linguistic basis, but after riots and bloodletting took their toll. The coercive face of the Indian state was thus beginning to pierce the mask dramatically worn at the stroke of midnight in 1947.

Coercion is a common characteristic of all states, including democratic ones, for it is necessary to suppress challenges to the authority of the state. However, the exercise of coercive power erodes the legitimacy of a democratic state that has a different nature than a state beholden to a dictator or founded by force. "The state's activity in the maintenance of order in society can be best understood as a coercive-legitimation process" (Mathur, 1992, p. 338). All states attempt to minimize the use of force and operate from the acceptance of legitimacy of their powers and functions. However, this is difficult

in a society like India which is marked by deep historical divisions and serious social, economic, and political inequalities. This is also compounded by some sections of the society refusing to accept the legitimacy of elected government on ideological grounds. Further, the rapid transformation from a feudal, colonial system to an industrial, capitalist society creates its own set of problems. First, it leaves behind a large number of its citizens who belong to the hitherto exploited sections. Second, it is unable to meet the rising expectations of people who demand an immediate change in their lives. The post-independence period has therefore witnessed a constant struggle to balance coercion with efforts to involve the citizens in the democratic process.

To be fair, the democratization of society and governance has proceeded remarkably well in many spheres. For example, regular elections through adult franchise have been very successful in bringing hitherto neglected sections into the political process. A free, vociferous media and independent, activist judiciary have kept the executive under check and thus strengthened the democratic credentials of the government. Further, increasing economic and educational opportunities have helped establish legitimacy amongst a large proportion of the people. Many specific steps like the criminalization of untouchability, positive discrimination through reservation in government jobs and institutions including elected bodies, legal recognition of minimum wages for all jobs including agriculture-based labor have also helped consolidate the legitimacy of the new government. The system of oversight and independent operations of important democratic institutions such as the Election Commission, the Comptroller and Auditor General, the system of *Panchayati Raj* have done well to move Indian society toward a modern democratic nation. In the years since independence, India has been able to hold regular elections and enable smooth transfers of power, except for the small period of 1975–1977 when the then Prime Minister Indira Gandhi declared a state of Emergency and suspended most of the rights of citizens. The country has moved toward greater cohesion and acceptance of its multicultural, multireligious, and multiethnic identity and this is highlighted by the nature of government during its 60th year of independence in 2007. A Muslim occupied the highest office of President, a Sikh became the Prime Minister, and the most powerful person wielding power in the country was a Catholic lady of Italian heritage. Despite all the chants and violence of *Hindutva* (Hindu supremacy) in the 1990s, India appears to have rebuked the forces tearing at its basic fabric. The legitimacy of the Indian state and its democratic nature, independent institutions, and belief in its own destiny have been demonstrated.

The coercive nature of the state, however, has not been discarded. It lurks behind and extends its long arm periodically to overcome challenges to its authority and many times to the party in power. This becomes apparent when we examine the nature of these coercive powers in terms of the prevailing form of police and criminal justice system. I provide two forms of evidence here—first, through an examination of the basic design and nature of criminal justice apparatus and second, emanating from how the government and political parties have dealt with the multifarious problems facing the nascent democracy.

The colonial model of governance has continued despite independence in 1947. The Nehru government took a deliberate policy decision of not severing links with the coercive apparatus created by the British. The police, judiciary, and the prison system inherited from the British were allowed to continue unchanged. Sardar Vallabhbhai Patel, as the first Home Minister, played an important role in forcing this decision upon many reluctant members of the new government who were advocating more radical change. Patel argued that the bureaucratic machinery led by members of the Indian Civil Service (ICS) and the Indian Police (IP) must be retained, as it would serve the new government as efficiently as it served the British rulers. Further, with the "Indianization" of the service, its members would be faithful to the new political leadership and help forge a new nation. It was largely the persistence and arguments of Patel that made the Congress government adopt the British-designed institutions without further examination of their characteristics and suitability to the new democratic order.

This appears to have been a mistake, for the colonial bureaucracy has proven incompatible with the democratic needs of the country. The basic reason is that the Indian police are in sharp contrast to the British Bobby who is a celebrated symbol of democratic policing throughout the world. The London Metropolitan Police was created in 1829 with *moderation* as the hallmark of the new system. The system's design was geared toward removing the deep distrust of police in society, a fear that the police would curtail the freedom of citizens and would metamorphose into a "continental spy system." Further, as the first modern police in a society with representative government, the police established and utilized voluntary compliance to their authority with the understanding that the power of police was legitimate. On the other hand, the primary objectives of the British-designed colonial police for India were to control the vast lands and subjugate the people. The slightest challenge to any official decree, like singing patriotic songs or displaying native flags, was taken seriously. The British Raj in India, though backed by a powerful force, was still symbolic, based upon an implied authority and

total submission of the people. The Raj was established upon the strength and terror of police administration (Gupta, 1979) and the British kept direct control. It did not make officers accountable to the people as was done in London. A people's police in India would have made the British Raj redundant. Such a police model was unlikely to serve the needs of a democratic order as has become evident in the last six decades and more of independence. We now examine the basic characteristics of this model to understand the reasons for its incompatibility with democratic ethos.

The Coercive Nature of Policing in India

The present criminal justice and administrative system in India was designed after the British almost lost their colonial empire in the first war of independence in 1857. The imperative need then was a coercive system that would brook no further challenge to the task of ruling the people of India and keeping a strict surveillance over subversive activities. The creation of new legal codes defined by the Indian Penal Code (IPC), 1860; Criminal Procedure Code (CrPC), 1861 and revised in 1972; Evidence Act, 1872; and the Police Act, 1861 shaped the coercive criminal justice model for the country. The British introduced hitherto unknown legal concepts that deterred resistance against the colonial state. These provided a mechanism to force the acquiescence and compliance of the people to provisions protecting the colonial rule. Indeed, the Indian Penal Code is a classic example of a legal instrument of hegemony. The Code consists of 23 chapters of which two chapters are devoted to offenses against the body and property and 10 chapters are devoted to maintaining order and protecting the (colonial) state. The Criminal Procedure Code and other legal provisions provided the police with powers to intrude into the private domains of citizens and watch for any dissidence.

Allowing the colonial model to continue without major changes after independence meant that the police remain the sinews of coercion in governing the country. Not surprisingly, at present the police system serves as an important instrument of dominance and utilizes advancements in the mechanisms of public control and disciplining of society. The police are organized through a strategic distribution of units and personnel for surveillance and control that command space and time with a high degree of efficiency. For instance, the Police Act, 1861, has set up an organizational structure in the shape of a province-district administration model where the

District Magistrate, and Collector, and the Superintendent of Police form the core of administration to rule by force. Significantly, little escapes the notice of these district functionaries and the local population has very much been under their control ever since the beginning. The Police Act, 1861, is the legal backbone of a coercive system and the primary function of the police remains that of order maintenance, crime control, and surveillance. In this system, there is no involvement of the people in policing their community. It assists in the important function of a political society (Gramsci, 1971) to monitor and react in the event of dissent and opposition.

The division of geographical areas into well-defined smaller spaces is another mechanism to help control the people. This form of division of administrative units into provinces, districts, subdivisions, and police station areas provide well-manageable cells to operate. There is an administrative mechanism for the collection and rapid flow of information from the police stations to the subdivisions, the district, the range, and the capital of the province. There is also a mechanism for reverse flow of orders and commands from higher formations. The division of space into cells where "slightest movements are supervised, in which all events are recorded, in which an uninterrupted work of writing links the center and periphery, in which power is exercised without division, according to a continuous hierarchical figure" constitutes a compact model of mechanism for surveillance and control of the people (Foucault, 1977, p. 197).

Article 4 of the Police Act, 1861, has created an organizational hierarchy with the state government, the Inspector General of Police, and a Superintendent of Police at the district level. This article has refined the mechanism for control of the large jurisdiction and subjects through the administrative machinery. A single aspect of this article of the Act is that it spells out the higher organization of police in the state and district units. Equally important is the fact that it fails to spell out the lower/subordinate formation, especially the station-level functionaries. The explicit recognition of higher organization, and the investing of all administrative powers in this part of the organization, serves the purpose of a centralized police organization with the center of gravity of command, control, and decision-making at the top. The little executive powers delegated to the junior supervisory levels are kept under constant supervision through administrative measures such as inspections and visits. A major component of this centralized power system is the complete absence of local accountability of the criminal justice personnel. There is no provision to involve citizens in policing their community and all complaints against police officers are dealt internally by senior officers who remain generally unapproachable (Kumar and Verma, 2008).

Consequently, the police have not only become a terror to the society but the officers too have functioned with impunity. Justice Mullah, perhaps a little harshly castigated the police, calling it the "biggest organized goonda (goon) force" in India!¹

At the lower geographical and organizational level of districts, official institutions too have been organized for surveillance, quick reaction capacity, and an overt display of power. It is in a way the central tower of the panopticon. For example, the location of official buildings in the district of South Malabar in the erstwhile Madras Province provides evidence for this planning. Malabar was one of the districts that saw recurrent rebellions from the Moplahs, a Muslim community who are descendents of Arab traders. The Moplahs rebelled against the British rule throughout the latter part of the 19th century, but a major revolt occurred in 1922, when it was decisively crushed by the administration. To deal better with the revolts Malabar was further divided into South and North Malabar. Calicut was made the district headquarters of the South Malabar region and the police stations were strategically distributed throughout the district covering smaller geographic units. With increasing rebellion of the Moplahs, an armed police unit called the Malabar Special Police was raised and tactically located in camps throughout the district, especially in the areas that had a majority Moplah population. The offices of the District Magistrate and the Superintendent of Police were located on the side of an open ground and water reservoir that was at the center of Calicut town. The ground was not only the geographic center of town but was also the center of social life for centuries. It had been the courtyard of the erstwhile Zamorin rulers of Malabar. It was adjacent to the main commercial center, near the important temples of the town and was the open public space where social transaction took place. The British situated their two important offices of administration at this central location. They used the ground for military and police parades, and every day the arrival and departure of senior officers were hailed by the presenting of arms by ceremonial guards. Moreover, the senior officers when seen in public were associated with symbols of power and authority through flag cars, armed escorts, and armed police lining the route. They also situated the civil and criminal courts, the church, and the Malabar Christian College and School, and factories around this area. The army cantonment was established on the elevated part of the town where the residences of the District Magistrate and Collector, and the Superintendent of Police were also located (Kumar and Verma 2008).

¹ *State of Uttar Pradesh v. Mohd. Naim*, AIR 1964 SC 703.

The transformation of the landscape and architecture of the public space changes the nature of public discourse in any small district town. The administration virtually takes center stage of the public space, establishes its dominance, and helps maintain control of the area. In every district the location of government offices, police lines, armory, and "civil lines neighborhoods" for officials and cantonments for stationing army units are located strategically to present dominant symbols of authority to the citizens. Further, almost all the official residences and important government buildings retain the bungalow-style, imposing structures in Victorian architecture that have been constructed and maintained not only for providing efficient service to the people but to keep them at a distance. All police buildings, for example, are situated in a large compound with a curving path to the gate manned by an armed sentry. The intention remains to create among the people a sense of awe in the police, to demonstrate an aura of grandiose and superiority in an important institution of the state. Even in new districts created after independence, the design and layout developed during the colonial administration remains unchanged. Thus, new districts like Begusarai, Hajipur, Aurangabad, and Gopalganj in Bihar have followed the old colonial structures and designs. All government officials reside in special colonies, situated separate and away from the general populated areas. The buildings present an aura of dominance and power rather than consideration for the ordinary citizens running to bureaucrats for their grievances.

As expected, the coercive power of the police and courts were used to discipline groups that withdrew consent and resisted as in the case of the Moplah rebellion or the Santhal uprising, and later the members of the Indian National Congress. This said, the criminal justice system had clear characteristics of the political society. It reacted with force when there was open dissent and revolt as was witnessed in the response to the Moplah Rebellion and the Jallianwala massacre. In modern India, similar characteristics of the political society remain unambiguous despite democratization of the society. The resistance by the landless protesting against their exploitation in central Bihar, or the resistance to forcible displacement for construction of large dams in the Narmada valley, or even the demands to repeal the hated Armed Forces (Special Powers) Act (AFSPA), 1958, in the northeastern states have all been met by coercion and large-scale application of force by the police authorities. Without any meaningful transformation, the bureaucracy and the police, in particular, continue to serve the rulers rather than the people similar to the situation during the British Raj.

Another notable feature of the police model is its capability in penetrating society, monitoring the people, and if necessary punishing them in the

event of resistance. The extensive system of surveillance, spies, and informers helps keep a firm grip over the society and literally nothing escapes the eyes of the police apparatus. Further, the surveillance of subjects and collection of intelligence are important functions of the police from its very inception. This is best demonstrated by the repressive Criminal Tribes Act, 1871 that provided for strong measures against almost 13 million people dubbed as "born criminals." The Act empowered the police to register the members of these tribes, maintain surveillance, and keep control over their movement. The regulations also gave powers to the police to inspect an offender's house for any stolen property, and if any member was found outside the limits of a prescribed area of movement, to apprehend that individual without warrant. "[T]he creation of the Criminal Investigation Department in 1906, further contributed to the expansion and the increasing specialization of the criminal surveillance and intelligence" (Arnold, 1986, p. 138). Although the Criminal Tribes Act was abolished after independence, the police practices of surveillance and intrusion continue. Moreover, with time the Criminal Investigation Department (CID) has expanded its surveillance from crime to other matters, including playing a supportive role in the political objectives of the rulers (Arnold, 1986). The police play a major role in planting informers and keeping the opposition party functionaries under surveillance, just as they did for the British by maintaining surveillance over Gandhi, Nehru, and other Congress party leaders.

The police further interfere in the functions of political parties by selectively targeting dissident factions. The British policy of "divide and rule" was implemented by police and civil officials and it was no secret that communal riots between Hindus and Muslims were selectively handled by British authorities to further their hold on India (Wolpert, 2006). This administrative design helped prevent organized resistance against the British Raj even though the number of British officials ruling the country remained small. In 1946, a year prior to their departure the number of senior IP officers controlling the vast colonial police administrative machinery in the entire Indian subcontinent numbered just 640 (Griffiths, 1971). Nothing else explains the coercive system of governance better than this simple statistic. It is unfortunate that even after the departure of British from India the democratic governments of India, despite more than six decades of independence, have retained this coercive system intact and with no noticeable changes.

Perhaps Patel and Nehru genuinely believed that the colonial bureaucracy would change and provide efficient administration, but at present there are obvious reasons for politicians continuing with the coercive and powerful apparatus of police developed by the British. For them police escorts and

uniformed officers not only provide glamour and publicity but their power is also used for deviant exercise of political authority. Control over the police department provides a means for harassing political opponents through intimidation, arrests, and even threats to their supporters (Verma, 2000). Further, this control also facilitates in giving a free hand to antisocial elements aligned to the ruling party, who are useful in "capturing" election booths and in serving as demonstrators and frenzied supporters during political rallies (Verma, 2005). Police is also used for gathering political intelligence that becomes useful in countering the strategies of the opposition parties (Raman 2002; *Seminar*, 1977). The police continues to serve the politicians ruling the country just as it was serving the British rulers.

Law and Coercive Powers

Despite the formidable policing system and the draconian powers of even the lowest constable, the rulers of India have remained apprehensive about challenges to their authority. In addition to the continuation of the coercive police instrument, successive governments have also been adding greater repressive powers to deal with emerging threats to their authority. The first preventive detention law in India was enacted as early as 1793. The Bengal State Prisoner's Regulation Act, dubbed the "Regulation III of 1818," provided for "reasons of State" indefinite confinement of individuals against whom there was no "sufficient ground to institute any judicial proceeding." Subsequently, a variety of legislations enhanced the coercive powers through the Newspapers (Incitement to Offences) Act, 1908; the Explosive Substances Act, 1908; the Vernacular Press Act, 1878; the Prevention of Seditious Meetings Act, 1911; and the Official Secrets Act, 1923. These were followed by the notorious Rowlatt Act, 1919, that provided for the expeditious trial of seditious crimes by a three-judge tribunal. More significantly, the accused were not to have the benefit of either preliminary commitment proceedings or the right of appeal, and the rules under which evidence could be obtained and used were relaxed. Other preventive measures included detention without the levying of charges and searches without warrants.

Not only were most of these pieces of legislation retained after independence but before the euphoria of freedom had paled, the government enacted the Punjab Disturbed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act, and Madras Suppression of Disturbance Act in 1947-1948. These laws targeted antisocial elements deemed likely to

settle scores and commit mayhem in the name of religion. These were the reasons most commonly cited for the retention of these provisions both in the Constitution of India (Article 22) and legislation of the first Preventive Detention Act in 1950. The first threat of organized violence posed by the Communist Party of India led to the passage of the preventive detention bill. In the words of Patel, the government sought additional powers against those "whose avowed object is to create disruption, dislocation and tamper with communications, to suborn loyalty and make it impossible for normal government based on law to function" (Bayley, 1962, p. 12). Preventive detention was justified through several arguments that are repeated today. First, India is an infant democracy where democratic habits and procedures have neither been widely learned nor understood. Second, these powers deter potential provocateurs, black-marketers, dacoits (robbers), and other criminals. Third, there are parties in the country that have vowed to overthrow a legitimate government by any means. Finally, Indian democracy demands a consensual approach but society is divided by antagonistic loyalties. Such social instability may destroy democracy unless checked in time by preventive actions (Bayley, 1962, p. 22). Once the Parliament accepted these arguments, it did not take long to create additional preventive detention measures. The AFSPA was enacted in 1958 to control the growing Naga unrest in the northeast. The Maintenance of Internal Security Act (MISA) and other preventive detention laws like the Disturbed Areas Act and the National Security Act followed. The infamous Terrorist and Disruptive Activities (Prevention) Act (TADA) was enacted to control violent militancy and insurgency in Punjab. The Essential Services Maintenance Act (ESMA), 1981 was passed to deal with the threat of organized labor in the country. The democratic government of India has retained not only a strong coercive police apparatus but also strengthened its powers through special legislations. Clearly, the intention has been to govern through coercion.

Coercion Rather than Governance

Equipped with the extraordinary apparatus of coercion in the form of the police and draconian laws the modern Indian state has *not* hesitated in applying these instruments to crush any challenge to its authority. The colonial practices have continued even after independence with no change in the ethos of the police system for democratic India. The functioning of the police remains unaccountable to local citizens while the personnel continue

to operate as the strong arm of the ruling class. An organizational culture that seeks to threaten citizens into submission continues unabated. The guard of honor for VIPs and ubiquitous presence of khaki in public events follow the practices introduced by the British. During Independence Day and Republic Day celebrations, the police and other paramilitary units display their muscles reminding citizens about the power of the state. Not surprisingly, there is considerable application of coercive force in the country seen in the form of police firing, arrest, short-term detention, and restriction on movement of citizens. The following data, in Tables 1.1 and 1.2, from the National Crime Records Bureau (2011) supports this assertion:

Table 1.1 Arrests by Police under IPC and Special Laws

<i>Arrests</i>	<i>2005</i>	<i>2006</i>	<i>2010</i>
For IPC crimes	2,621,547	2,653,683	2,947,122
Under special laws	3,487,899	3,554,222	4,842,815

Source: National Crime Records Bureau (2011).

Table 1.2 Persons Killed or Injured in Police Firing during 2010

<i>Events</i>	<i>Number of Incidents of Police Firing</i>	<i>Civilians</i>		<i>Police</i>	
		<i>Killed</i>	<i>Injured</i>	<i>Killed</i>	<i>Injured</i>
Riots	722	623	2	33	24
Anti-dacoity operations	94	37	6	1	15
Anti-terrorist operations	172	48	38	147	60
Other operations	433	57	46	16	73

Source: National Crime Records Bureau (2011).

Significantly, in 2010, there were 25 cases of custodial deaths in various situations for which a total of 15 criminal cases were registered against police officers. Nevertheless, only one police officer was charged in these crimes.

Many other forms of exercise of coercive powers by the police are not reported by their own department. For instance, the police have powers to serve a notice under Section 107 of CrPC upon citizens to restrict a particular activity alleged to be detrimental to the maintenance of order. Literally, thousands of such restrictions are placed by the police, which are generally considered administrative measures and thus freely exercised. Similarly, many other official procedures force citizens to suffer the coercive action of the police department. Any government job requires a certification of good conduct and non-involvement in criminal behavior from the local police authorities. The issuance of a passport too is similarly dependent upon police

verification of the antecedents of an applicant. In most large urban areas, and particularly the metropolitan regions, the police have been given a variety of licensing powers. In all such instances, the coercive nature of governance is experienced by citizens on a routine basis.

Bihar: Coercion over Governance

One would expect that once democratic processes took root, elected governments would seek conciliation and cooperation rather than coercion to establish their legitimacy. However, in their pursuit of power, political parties have made alliances with sectarian groups and have pitted one section against the other to maintain their hold over power. In this combative democracy, police and other coercive apparatus have been used blatantly to serve partisan interests and weaken the opposition. Here we examine a case study of Bihar, where the relationship between governance and coercion is perhaps most apparent. Bihar has been a backward state despite considerable mineral and agricultural wealth. By almost any measure the state is at the bottom of the ladder in terms of development. The low levels of life expectancy, literacy, school enrollment, industrialization, roads, and energy consumption go hand in hand with extreme poverty and insecurity. Caste is deeply entrenched in social relationships and despite six decades and more of independence the feudal system of "*begar*" (literally bonded labor) continues unchecked. Even though Bihar sends a large number of members to Parliament and is represented in every central cabinet by ministers, the situation of the people and the state remains unchanged.

The best illustration of coercive governance may be seen in terms of the efforts to end feudal landholdings and redistribute land among the poor. Bihar was the first state to pass a comprehensive Bihar Land Reforms Act in 1950, placing a ceiling upon landholdings so that surplus land could be distributed amongst the poor. While in principle the ruling elite accepted the idea of undoing the system of permanent settlement and bringing progressive land reforms, in reality none of them supported its enactment. The bureaucracy was controlled, forced, and made a partner in negating any efforts to enforce this Act. Consequently, land reforms were just not carried out and a variety of mechanisms were found to thwart the efforts to take land from big *zamindars* (landlords). Records were destroyed or manipulated, and to avoid the provisions of this legislation many landlords transferred or fragmented their holdings and had it registered in *benami* (illegal) names, some

even those of their dogs, horses, and fictitious ones. Despite an imposition of ceiling upon landholdings, the upper castes managed to use legal loopholes to avoid losing their possessions.

Furthermore, the government and ruling party, consisting mostly of upper caste politicians, remained apathetic toward the implementation of this Act and did not use state power to ensure that the landless gained the fruits of the legislation. For instance, the Ceiling Act came in force on April 19, 1962, but the notices to show cause for seizure of their land were not served on landlords even as late as 1970. In fact no more than 9,700 acres of an estimated 100,000 to 150,000 acres of surplus land could be collected by the government (Misra, 1987). When the landless attempted to organize and challenge these frauds, they were attacked and even killed in a gruesome manner to snuff out any resistance to the landlords' authority. The fact that most landlords were upper caste people, Brahmins, Bhumiyars, and Rajputs, while the landless belonged to the backward and scheduled castes, introduced a vicious caste friction in this conflict. The political and bureaucratic elites remained loyal to their caste interests and did not hesitate to use force to ensure their hegemony.

Similar was the situation in terms of other laws made by the government in name of equity, fairness, and attempts to remove the economic inequality from the state. The Minimum Wages Act, 1948; the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956; the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950); and the Bihar Money Lenders Act, 1974, were all enacted with good intentions but no serious attempt was made to implement their provisions. Most of the laws were inadequately drafted and left several loopholes for the landed gentry to take advantage in the courts. There was a clear nexus between the politicians, government agents, and the landed who all saw to the lackluster implementation of these laws. The National Commission on Agriculture stated that by their abysmal failure to implement the laws, the authorities in Bihar had reduced the whole package of land reform measures to a sour joke (*Mainstream*, 1980). The failures and indifference of successive governments emboldened the landowning class to treat the entire issue of agrarian reforms with utter contempt. These landowners openly defied the police and civil administration and considered themselves beyond the purview of law.

The efforts of agricultural laborers to agitate for higher wages and to obtain land for self-cultivation were brutally met by armed gangs of the landlords who would attack them at the slightest hint of rebellion. These gangs would often surround laborers' hamlets, set them ablaze, loot their property, molest women, and even kill prominent leaders or force them

to flee from the village. The carnage at Parasbigha in 1980 saw the killing of many lower caste people by the upper castes. Another incident at Pipra involved the killing of 13 people—old, women, and children—some burnt to death by the upper caste landlords. The list of their atrocities against the poor, landless people is long (Sinha, 1991). The Maoists and other ultra-left extremist groups have taken advantage of this exploitation and indifference of the government toward the plight of the lower caste and landless people. Consequently, these groups have gravitated toward extremism that has further polarized caste identities and the fight has become one of lower castes against the upper castes. Bihar had become the site for killing fields with considerable violence on either side (Singh, 1999).

The role of state in this emerging class and caste conflict was not to act as an honest broker but to side with the entrenched landowning sections. The police openly supported the upper caste landlords in teaching the lower castes a stern lesson. Senior administrators advocated policies of crushing the resistance through staged killings and mass arrests. The Bihar police treated the resistance by the poor as a Naxal problem and used extensive force to deal with them. Perhaps the best illustration of this biased action and mindless application of coercive powers comes from the case at Arwal, Jehanabad. A petty land dispute ended in a massacre of 23 people in 1986. In violation of the sub-divisional magistrate's order, a landlord forcibly occupied a small plot of land and constructed a boundary wall to ensure his ownership. A group of peasants gathered under the leadership of a peasant movement called Majdoor Kisan Sangharsh Sangathan (MKSS) to protest against the action of this landlord. Instead of handling this protest through legal channels, the police indulged in indiscriminate firing to drive away the protestors. Many false cases against the participants and the MKSS leadership were instituted, including mass arrests of affected people. The Human Rights Commission (cited in Nedumpara, 2004) declared this firing to be indiscriminate, unnecessary, and unjustified; yet no action was taken against the officers involved.

The government also launched special police operations to "drive" away the Naxalites. "Operation Thunder" in the 1970s and "Operation Task Force" in the 1980s were well-publicized actions taken by the state police forces. Moreover, the government and the police also supported formation of armed *senas* or resistance groups by the landlords to combat the Naxal menace. Heavily armed groups such as the Bhoomi Sena, Lorik Sena, Brahmarshi Sena, Shoshit Dalit Samajvadi Sena, and Shoshit Mukti Sena gained considerable notoriety (Bhelari, 1997) when they carried out mass murders of lower caste people to break their resistance. Among the most notorious of these *senas* have been the Bhoomi Sena and Ranbir Sena that have killed more than

200 people, 38 in one carnage at Poonpoon village. Here they set more than 300 houses ablaze and caused more than 100 families to flee from the village. They have also not spared their caste brethren, extorting massive levies in name of protection, forcing them to provide shelter, food, liquor, and even women. Table 1.3 lists the various massacres ascribed to the forward-caste goons against alleged suspects of Maoist groups in this part of Bihar:

Table 1.3 Massacres of Communist Sympathizers

<i>Site</i>	<i>Date</i>	<i>Number Killed</i>
Bathe	December 1, 1997	59
Shankar-Bigha	January 25, 1999	23
Narainpur	February 11, 1999	11

Source: Baweja and Jha (1999).

The Naxal groups also retaliated and chose similar soft targets, indulging in mass senseless killings. The communist gangs targeted upper caste people, for example in the villages of Paras and Jaitun Bigha, where not even young children and women were spared. In one instance they selected an isolated village called Senari and massacred 34 upper caste men by slitting their throats on March 3, 1999 (Baweja & Jha, 1999).

For the past several decades, the rule of law and the state of Bihar have been the most mismatched entities of Indian democracy. Bihar is home to anarchy, strife, mismanagement, corruption, and the killing fields. The change in government in 2005 brought some semblance of order and control over the predatory actions of its rulers. The government of Chief Minister Nitish Kumar has taken action against many politicians with criminal records and strengthened the police capabilities. Yet, the governance is hardly democratic or one that is making the police accountable to the people. He has made changes in the Police Act, 1861, to provide even greater political control over the police and prevent direct accountability to the citizens (Verma, 2011).

Crime Control Policies

While Bihar appears to be an aberration in the country, the situation in many other spheres of governance has not been different. Perhaps the most telling instance of coercion over governance may be seen in the way that the state has been maintaining law and order and ensuring safety of the citizens in the society. The administration of criminal justice is disgraceful to say the least.

In many instances the state has simply abdicated its responsibilities and even given up the pretense of governance. As this discussion illustrates, the police system was meant to be coercive and for the objectives of maintaining the British Raj. When democratic governance becomes contentious, the ugly face of policing becomes apparent. Misuse of force, brutality, and staged killings have remained a part of Indian Police and the system does not permit any accountability to citizens. Consequently, police officers have acted with impunity and indulged in corruption. The police terrorize citizens and have a poor reputation. Citizens hesitate to approach the police station for help and do not cooperate in crime-control measures. The police-citizen relations have remained fragile and generally antagonistic despite democracy, rule of law, and governmental accountability being the norms of the modern Indian state.

The demand to reform the police and criminal justice system has been a constant theme after independence. However, the recommendations of the National Police Commission to bring substantial structural changes have been refused by successive governments. There is considerable evidence to suggest that Indian politicians find the police and bureaucratic system a convenient tool for exercising power without accountability. It is well known that police officers wield considerable discretion in their work. Politicians threaten to transfer them to undesirable locations to take advantage of their decisions that are invariably guided by political considerations. The politicization of the Indian Police has therefore become a serious problem.

The politicization of police was first vividly highlighted by the Shah Commission appointed to look into the atrocities committed during the Emergency period of 1975-1977. Despite the strong recommendations of the National Police Commission, political control over the police has not been reduced but has increased substantially. The growing day-to-day political interference in the work of police officers is well documented. The police officers are brazenly used for political objectives and they are unable to discharge their duties properly because politicians do not let them function fairly, impartially, and in the best interests of the people (Verma, 2000). Independent officers are summarily transferred, while important positions are created on the basis of political considerations. Police chiefs are helpless at operating their departments and are unable to discipline officers who are politically connected (Kumar, 2000). The police in India now really do affect political developments and the politicians remain interested in controlling this important public institution. The police have become a useful instrument in political battles too. Thus, Charan Singh, as the Home Minister in the Janata Party government of 1977, used his powers to order the arrest of Indira Gandhi without any evidence (Singh, 1996). A few years ago,

J. Jayalalithaa as the Chief Minister of the state of Tamil Nadu did the same act by ordering the police to arrest Muthuvel Karunanidhi, her opponent and former chief minister on trumped-up charges. Police are now brazenly used by ruling politicians to settle scores and harass opponents. The nature of political order in the country affects policing (Reiner, 1992) and in India, politicization of the police is an outcome of the politics of the country.

The public discourse too is vitiating with combative democratic functioning, where political parties are wooing university students and lumpen elements and using them to further their agenda. University elections, for example, are bitterly contested by youth wings of political parties and seem no different than general elections. Almost every party maintains a large body of cadre trained to create mayhem and challenge official authority. Criminal behavior is now a rite of passage to political career and nothing illustrates this better than the ubiquitous criminalization of politics in the country. Politicians approach criminals for muscle power to intimidate opponents and to fight election battles. The criminals in return seek protection from law enforcement agencies through the intervention of politicians. The two have formed an alliance, and a politician named Kapil Deo Singh even confessed on the floor of the Bihar Assembly that he patronized and would continue to patronize gangsters and criminals to fight and win elections as long as the existing system of fighting elections is not changed (Government of India, 1980, chap. XV, sec. 15.5). It did not take long for the criminals to realize that instead of relying upon politicians, they could become politicians themselves by aligning directly with political bosses. A large number of criminals have made a transition from the underworld to the political arena. Some even became ministers, wielding power over the officers investigating and prosecuting their cases. At present, there are reportedly 153 elected members in the Parliament who have criminal background (Henderson, 2009). The Vohra Committee, appointed to look into this phenomenon, reported a strong nexus between the politicians and criminals and that "all over India, crime syndicates have become a law unto themselves" (cited in Kashyap, 2007). This "criminalization of politics" is perhaps the most dangerous trend seen in India in the past three decades (Tharoor, 1997).

The political parties in their quest for political power have been paying little attention to the rule of law and accountability for their governance. Political patronage to criminals and organized crime syndicates has made it impossible for police to operate against known offenders. The ability of the offenders to strike at will and get away with their illegal actions is making many areas almost impossible to live. The rural areas of Bihar, Uttar Pradesh, Andhra Pradesh, and Madhya Pradesh are extremely insecure and witnessing

a flight of people to safer urban settlements. Organized criminal gangs have terrorized the film industry in Mumbai and extortion, smuggling, and hired killings have further eroded the legitimacy of the state in maintaining safety in the society.

A dangerous consequence of police inability to function within the law is the growing tendency of using means not sanctioned by the law. Using their coercive powers the police have acted in ways to terrorize people, with the hope of deterring offenders. The most blatant form was the deliberate blinding of suspects in Bhagalpur district of Bihar where the police resorted to this form of action to send a message and deter the offenders. The police have also not hesitated in using "encounters" or staged killings to murder suspects rather than taking them to the courts for legal punishment. "Police encounters are a peculiar feature of Indian policing. An encounter is a spontaneous, unplanned 'shoot-out' between the police and alleged criminals, in which the criminal is usually killed, with few or no police injuries" (Belur, 2007; see also Chapter 10 in this volume). The term "encounter" is not just police jargon, but part of everyday discourse in India where it is used by police officers, the media, and the public to refer to use of deadly force by the police in circumstances described by one newspaper report (*The Indian Express*, 2001) as follows:

"Mumbai Police pats itself as encounter deaths double." The Mumbai police call it "proactive policing." In everyday parlance, it is referred to as an "encounter" between policemen and gangsters that always results in the death of these gangsters. That these encounters do not have a surprise element, instead are planned, to a large extent, by the police, no longer raises eyebrows. But even by their own standards, Mumbai police have been far too "proactive" in 2001 compared to the past few years. ... In 2000, the total number of alleged gangsters killed in encounters was 49, and the year before that it was 60. The quantum leap to 94 has certainly sent shockwaves through the underworld. Extremely pleased at this leap, Police Commissioner MN Singh said: "Organized crime is well under check. This is the final blow."

Encounters are present almost everywhere in the country and particularly so in areas facing serious challenges from Naxalites, organized gangs, dacoits, and separatist groups or terrorists. Gossman (2002) describes types of "death squads" that operate in various parts of India, differentiating between out-of-uniform police officers who form death squads in insurgency-ridden Punjab; security forces (army, paramilitary forces, and the police) operating in Kashmir and in Assam, threatening and assassinating militant leaders and other opposition figures; and special police squads operating in

Naxal-infested areas such as Bihar, Chattisgarh, Andhra Pradesh, parts of Orissa, Maharashtra, Madhya Pradesh, and Uttar Pradesh. In these states, especially Andhra Pradesh, special police squads have executed suspected militants and prominent activists in custody and "claim that they have been killed in armed 'encounters'; for most of these routine killings, no elaborate cover-up was considered necessary" (Gossman, 2002, p. 262).

Another pattern of encounter killings was well established in Punjab (during the days of insurgency in the 1980s and early 1990s) where the "victim" was detained and tortured for several days before being killed. Gossman (2002, p. 268) suggests that the, "government practice of providing cash rewards for police who eliminated wanted militants encouraged the police to engage in extrajudicial killings." Killing suspected Naxalites through such "encounters" in Andhra Pradesh, West Bengal, and elsewhere have been a common practice. Encounters may be considered by the police to be natural fallout of routine policing in these "difficult" areas. However, "encounters are used more as a deliberate, short cut method to bypass the delays and uncertainties of processing 'criminals' through the criminal justice system rather than being spontaneous shootouts between organized criminals and the police" (Belur, 2007). Police organizations support such acts on part of their personnel and reward them with promotions, medals, and gallantry awards. An occupational subculture has developed within the police which is supportive of coercive action over following the law in dealing with crime and order maintenance. There is formal emphasis on the rule of law and due process, but these are viewed by police officers more as obstacles to be overcome in the ultimate quest to tackle crime and law and order problems. The organization eulogizes those who display their "toughness" in acting beyond the boundaries of law and considers as "heroes" those who eliminate the offenders rather than process them through legal channels. These directives are rarely articulated explicitly or conveyed in writing but are disseminated in subtle ways or verbally.

Unfortunately, the growing insecurity and slow processing by the courts have also drawn citizens and business groups in being "tough" on criminals. There is considerable social approval and eminent citizens have publicly congratulated police officers for removing dreaded criminals and prevented them from harming the citizens. Even after reports of the police blinding suspects, and although the alleged perpetrators were greeted with revulsion in most parts of the country, in Bhagalpur, the citizens came out and supported their actions. Rarely has there been public outcry against encounter killings and few police officers have been charged for committing murder.

Combative democratic politics, economic, and developmental policies that ignore the poor are other factors where coercion over governance is clearly visible. Political parties do not hesitate in pursuing issues that increase confrontation among various groups. For example, the issue of reservation (preferential quotas for groups that have been discriminated against) in government jobs and educational institutions has created serious law and order problems where thousands of students have come out on the streets to protest. The sudden implementation of Mandal Commission report by V. P. Singh was a deliberate attempt to steal the thunder from the Bharatiya Janata Party (BJP) that itself was stoking communal fires by pursuing the Babri Mosque issue. "India today witnesses the politics of violence, which means resort to physical violence to promote a political objective as well as the violence of politics, which denotes violence built into the institutionalized structure of politics" (Subramanian, 2007, p. 35). The anti-Sikh riots of 1984 in New Delhi, the communal riots in Mumbai in 1992–1993, and the state-sponsored killings of Muslims in Gujarat in 2002 are examples of political violence where the party in power used the police to settle scores against targeted sections of the people.

Conclusion

The failure to provide social and economic equality and suppressing citizens' grievances through coercion than by better-crafted governmental action is an unfortunate situation after 65 years of independence. The struggles of the rural poor to organize and raise their voice against unfair wages, usurious money lending, unfavorable terms of sharecropping, bonded and child labor, and the continuing practice of untouchability have been met with state-supported violence. One would expect the government to examine the reasons for its failure in enforcement of laws governing these issues but instead, the attempts to organize the poor are met with vigilante actions by landlords and the rural mafia, assisted by agents of the state, namely the police, which intervenes in the name of law and order (Kannabiran, 2004). Landlords in rural India control the village *panchayats* (governing bodies at the rural, local level), the cooperatives, and exercise influence over lower government officials who are entrusted with implementing development programs. Consequently, barely a small fraction of development grants reach the poor and the needy and when they protest, their leaders are denounced as Naxals and pursued by the police. A large part of rural violence and lack of

development in most parts of the country is a consequence of this situation where the ruling elites have found it convenient to thwart good governance and use the police as their tools of oppression. On the other hand, electoral politics pursued by ruling political formations in India lead to linguistic, communal, and caste violence and to the persistence of violence against the rural poor and the impoverished in urban areas.

The declining credibility and legitimacy of political parties ruling different parts of the country has led to a situation where people may be losing faith in governance, due process of law, and democratic values. Often people have taken the law into their own hands leading to violence. Often, road rage has led to gruesome murders of errant drivers. Suspected thieves and robbers have been lynched by mobs fed up with the slow process of law and courts. There has been a rush to obtain licensed firearms and more street demonstrations and protests. Perhaps nothing illustrates this best than the incidence of 67,571 riots in the country in 2010 (National Crime Records Bureau, 2011). The rulers need to examine the relationship between governance and coercion and begin taking steps to turn the tide before a real crisis of governability emerges in the country.

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Public Order in India: An Empirical Study

T. K. Vinod Kumar

Abstract

The nature of public order varies across societies and across time. Analysis of public order and social control of disorder requires an understanding of the nature of public order in society. This chapter analyzes public events that occurred in a city in the state of Kerala, India, during a period of one year. Through empirical examination of each event, a system of classification of public events and quantifying disorder is proposed. Based on these aspects, the contours of public order in India are defined.

Introduction

Maintenance of public order and social control of disorder have challenged democratic societies across the world. The degree of public order in society has great implications on its stability and growth. While public order is a desired norm, methods of order maintenance are circumscribed by democratic rights of freedom of speech, expression, and action. The challenge before a modern democratic society is to strike the right balance between formal social control mechanisms for public order and democratic rights in a free society.

India as a vibrant democracy also faces these challenges. However, these challenges are more acute due to the amorphous norms of public activity, levels of social conflict, and poverty. An understanding of public disorder

and social response in the Indian context would require detailed analysis of public events, delineating the nature of public order, and thereafter identifying appropriate mechanisms of social control. This framework of analysis would be apposite for understanding the challenges of public disorder and the social response.

This chapter attempts to define the contours of public order in India through an empirical study of public events and disorder that occurred in a city in southern India during a period of one year. It conducts a detailed analysis of all public events that came to the notice of the police and creates a system of classification of public events. Various types of public events are analyzed along with other characteristics of public events such as severity of violence associated with an event to understand the nature of public disorder in India.

Public Disorder

"In its broadest social sense, disorder is incivility, boorish and threatening behavior that disturbs life, especially urban life" (Kelling & Coles, 1996, p. 14). The nature of public events and public disorder varies across societies and time (Tilly, 1979). Though there are variations in the nature of events and severity in public disorder, there are common characteristics that assist analysis of events in and across place and time.

Public disorder occurs within every society, developed or underdeveloped (Porta & Reiter, 1998). Public disorder ranges from individual-level public events to group-level public activities. Day-to-day individual-level public disorders in Western societies include drunken disorderly conduct, prostitution on the street, individual-level violence, homeless people sleeping in public areas, beggars soliciting funds, and graffiti. Wilson and Kelling's (1982) broken windows theory attempts to explain the occurrences of community-level public disorder and crime.

On the other hand, group-level events include public protest marches, political conflict, industrial strikes, and communal and religious conflicts. Urban riots in the US such as the race riots in the 1960s and the Los Angeles riots in 1962, football hooliganism in England, and the riots of 2006 in France are examples of large-scale disorder in the Western world. Whatever the nature of the public disorder it leads to fear in the community and increasing levels of crime (Kelling & Coles, 1996).

There have been attempts to classify public protests, understand the reason for their occurrence, and analyze police response (Porta & Reiter, 1998; Waddington, 1992, 2007). There is a necessity for a wider "understanding of why disorder erupts at all and with what consequences" (Waddington, 2003, p. 394). There are many theories explaining the occurrence of public disorder. Smelser's (1962) theory of collective behavior, Hundley's (1968) model of the dynamics of ghetto riots in American cities, Spiegel's (1969) stage theory of the riot process, Waddington's flashpoint model of public disorder, and the Elaborated Social Identity Model (ESIM) provide theoretical frameworks for the analysis of public disorders.

Most of these analyses have been done in the context of Western societies. These models will be of assistance, albeit to a limited extent, in the study of order maintenance problems in India. In the Indian context, Bayley classifies public disorder into three broad categories—violence of remonstrance, violence of confrontation, and violence of frustration (Bayley, 1969, p. 253). Violence of remonstrance occurs when there is an effort by participants to "bring a point of view to the attention of 'the authorities', in most cases government or some agency of government." Violence of confrontation occurs when there is "confrontation between two groups of private citizens brought into enmity over some issue" (Bayley, 1969, p. 259). The third form of disorder is the result of frustration. "It involves the seemingly senseless hitting out of individuals at anything at hand. The target is circumstances" (Bayley, 1969, p. 260).

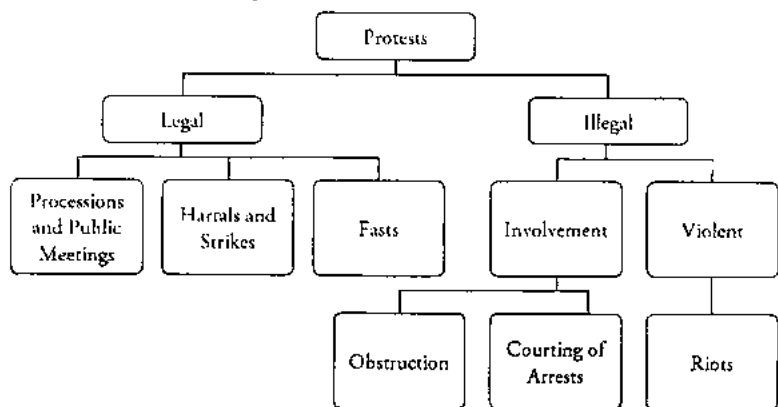
Taking into account research over the years, in the Indian context, both individual-level and group-level public disorder can be classified into three broad groups: (a) individual-level disorder, such as public drunkenness or individual unruly behavior which is dealt with by the police through legal action or by providing assistance; (b) organized public protests involving organizations and groups; and (c) clashes along ethnic lines such as religion, caste, language, etc.

The first category of events involving minor offenses generally exemplifies public disorder in most societies. However, there has been little detailed research done on the nature of this type of public events in India, and most information available is from police records. This form of quantification suffers from the fact that it reflects police behavior more than the levels of occurrence of the events in society. For the police in India, unlike in many countries, this type of public events does not form a major workload or central concern. These cases are dealt with through fines imposed by the police or in the lowest courts. They are important for the police to prevent

a general feeling of lawlessness in the populace, and prevent victimization of an offender, or further offending by the offender. These tasks are attended to by the police in their regular patrols—foot or vehicle—and through calls to the police control room or police stations by concerned citizens.

The second category of organized public meetings and protests involve various organizations and groups. Coercive public protests are a feature of Indian public life. This is analogous to Bayley's category of the violence of remonstrance. Within this type of public events Bayley identifies six primary forms of public protests: (a) processions and public meetings, (b) *harrals* (stoppage of all work by employees), (c) fasts, (d) obstruction, (e) courting of arrests, and (f) riots. Bayley classifies these six forms of public protests on the basis of whether they are legal or illegal (see Figure 2.1).¹

Figure 2.1 A Thematic Representation of Public Protest in India



Source: Adapted from Bayley (1969, p. 256).

This form of public event has implications on larger society. "On any given day there are hundreds of such protests throughout India, most of which proceed peaceably, but each of which carries the potential of violence. The tempo of violence has increased yearly in India" (Hardgrave & Kochanek, 2008, p. 242). This should be a cause for concern for several

¹ Since the classification in 1969, there have been changes in forms of protest, for example *bandhs* have been made illegal by court decisions. Hardgrave and Kochanek (2008) provide detailed explanation of the different types of protest in India.

reasons. Coercive public protests impose an economic burden on the nation, undermine the ability of the government in its fundamental obligation of maintaining law and order, and could result in derogation of the democratic will of the majority. Coercive public protests if allowed to continue unrestricted will be widely imitated and rival peaceful change through democratic process. Moreover, pervasive public disorder thrives in a systemic environment, which ignores the fact that democracy demands a considerable measure of social discipline in order to be successful.

In contrast to organized public protests, the third form of public disorder that is of grave concern to Indian society has been ethnic violence, chiefly along the lines of religion, called communal riots in the Indian context. Groups formed on the basis of ascriptive identities obtained at birth are defined as ethnic groups (Horowitz, 1985). "So conceived, ethnicity easily embraces groups differentiated by color, language, and religion; it covers 'tribes', 'races', 'nationalities', and castes" (Horowitz, 1985, p. 53). There is the possibility of social conflict between such groups in society. Ethnic conflicts have been explained on the basis of theories of essentialism, instrumentalism, constructivism, and institutionalism.² Though all ethnic conflicts need not result in violence, ethnic violence when it occurs has a devastating effect on life, property, and the social fabric.

There have been competing explanations of communal violence in the Indian context. Brass (2003, 2004) explains communal violence through the "institutional systems of riot production." Brass states that communal riots in India are generally explained by two key arguments (*a*) that riots are spontaneous occurrences arising from petty quarrels, and (*b*) that riots arise from existing prejudices and hostilities between religious groups. Brass (2003) contends that both these explanations are not satisfactory and that riots are preplanned and organized. He argues that riots are engineered by the Institutionalized Riot System (IRS) for political gains. "Far from being spontaneous occurrences, the production of such riots involves calculated and deliberate actions by key individuals, the conveying of messages, recruitment of participants, and other specific types of activities, especially provocative ones, that are part of a performative repertoire" (Brass, 2004, p. 4839). He identifies stages in the process of riot production as preparation and rehearsal of riots, activation/enactment, and finally displacement of blame through explanation and interpretation of the events.

Varshney (2003) theorizes that the presence of interconnected networks of engagements between communities is crucial to the prevention of communal

² See Horowitz (1985) and Varshney (2003) for detailed explanations of these theories.

violence. Varshney (2003, p. 4) locates intercommunal networks in civil society, which he defines as follows:

[P]art of our life that exists between the state on one hand and the families on the other, that allows people to come together for a whole variety of public activities, and that is relatively independent of the state. Civil society is not a non political but a non-state space of collective life.

These studies aid in explaining the cause of communal violence in society.

An evaluation of the research on public disorder in India reveals that Bayley (1969) has had an abiding influence and relevance in explaining the nature of public order and police response in India. This has been due to the immense richness of the work and also unfortunately due to the limited research of that scale on public order and policing in India since then. However Bayley's classification has its limitations. Public disorder goes beyond just violence and may include threats of violence and public inconvenience. It is therefore necessary to include these nuances and create a classification system that has more precision and comprehensiveness. Similarly, the classification suggested on the basis of research since then on public disorder is too broad and requires more precision.

A precise classification system can be conceptualized by closer analysis of events and creating appropriate variables to define multiple facets of public events. These variables should include classification according to the cause of an event, the levels of violence associated with an event, structure of the event, and temporal and spatial aspects of the event. This study examines public events in a city and proposes a classification system of public disorder. The chapter, however, only focuses on two main characteristics: the type of event and the level of violence in an event.

Data

This study has depended on police data on public order events in a city in the southern state of Kerala in India. The study covers all events recorded by the police in a year from June 2003 to May 2004. The events covered in the study are those that occurred within the jurisdiction of the city police, which spread over an area of 440 sq. km. The records provide details of most important public events that took place in the city and the police response to each event. These observations of public events are not related to whether the line-level police functionaries have responded to an event or

not. Therefore, the records include not only events that were attended to by the police, but also those that were not important enough for detailed attention by the police. It is, therefore, a comprehensive view of all public events that took place in the city.

These details of events available on a daily basis include description of the event, individuals and organizations involved, location of events, number of participants, time period of event, structure of event, occurrence and severity of violence, and other details. In the event of police intervention the characteristics of the intervention such as the number of police personnel deployed, nature of police action, type of force used, whether crime case was registered, whether arrests were made, and whether personnel were injured during the intervention are available. The dataset for the study is created from this array of information.

The study covers 2,178 separate public events that occurred in the city during the period under consideration. The study has not restricted itself to only events involving public disorder, but has included in its domain all public events that have come to the notice of the police. It includes both events that did not have public disorder, and events that witnessed public disorder. However being events that have come to the notice of the police, the sample includes events that have characteristics that require police attention and sometimes response. These events range from serious criminal public violence to street corner public meetings. This dataset is an event catalog. "An event catalog is a set of descriptions of multiple social interactions collected from a delimited set of sources according to relatively uniform procedures" (Tilly, 2002, p. 249). This event catalogue is used to analyze the events and their characteristics.

This data has been numerically coded on the basis of certain rules and guidelines. This data entry protocol has been arrived at on the basis of empirical examination of events, observed categories of each variable, and existing theory and research on public events and police response. The main variables created from the data are location of event, type of event, structure of event, severity of violence in event, number of participants, and time and duration of event. In creating these variables, a classification system is developed that is comprehensive and mutually exclusive.

Characteristics of Events

Each event has diverse characteristics. However, this study focuses mainly on two aspects: the type of event and the level of violence associated with

the event. Despite this specific focus there are three other variables that are important in explaining the nature of events. They are location, time period, and levels of participation in the event.

The individual locations of all events are available in the data. The data provides exact locations like the intersection, road, or marketplace where the event took place. These exact locations are useful and provide a spatial dimension to the events. However to link the events to the administrative structure of the police and police response, these locations of events have been aggregated to reflect the jurisdictions of the police stations in the city. This aggregation of locations to police station level provides avenues to discern commonalities in events within a police station area, and also to explore relations between events within a police station and police response from the local police station.

Temporal factors have an impact on public events. Each public event occurs at a time conducive for its occurrence and different types of events have different durations. If the event is just individual-level violence without any ideological basis, such as unprovoked violence against an individual or vandalism, it requires stealth and tends to occur in the absence of a guardian (Felson, 2002) and occurs quickly. Moreover, time and place have an impact on such behavior. "Everyday stimuli can entice offenders to commit a criminal act at a particular time or place, or might push them away from such offenses" (Felson, 2002, p. 40). Spatial and temporal factors therefore impact the occurrence of such forms of public disorder.

Similarly organized public events have a dramaturgical aspect to express collective sentiments or influence public opinion. Chaffee (1993, p. 113) says:

Public demonstrations should be understood, one, as a particular event which articulates specific issues with a structured dramatic ritual and, two, as a process. Each demonstration should be seen as one event in a process, a "show" designed to influence public opinion, represent group interests, and struggle over who sets the street tone and the context of the debate. Attention is thus placed to the contextual factors of peaceful demonstrations, their structural properties such as their core component groups, the sites, rhythms, rituals, and choreography, and their possible systematic impact.

Therefore, even for organized events, time and place would be important for the desired outcome of the public event.

There is a relationship between average number of participants and the nature of public events. Levels of participation vary across different types of events. It is important to discern the patterns of variation to understand the reason for the variation. It is also seen that large crowds, violent or otherwise, have a greater impact in disturbing the status quo in the public space. They

prove to be a challenge to organizers and police to maintain order. This study will explore the relationship between the nature of event and levels of participation.

The variation of these three important factors will be utilized to understand the type of event and the levels of violence associated with the event.

Types of Event

The variable of type of event reflects the rationale or causal factor behind the event. Events have been examined closely to ascertain the goals of the event, the main organizations involved, and actions of participants to determine under which category the event should be classified. On the basis of this close empirical examination events are coded into eight categories. They are as follows:

1. social, cultural, and media-related events
2. government or administration-related events
3. election-related events
4. labor-related events
5. student or education-related events
6. political events
7. communal events
8. a last category of "other" events

Social, cultural, and media-related events are those events that reflect purely social and cultural aspects of society. These may include events such as those related to fine arts, traditional festivals, and religious rituals. These events reflect the social and cultural commonalities and contrast in society and their manifestation in the public space. Though there are a few conflict-oriented events such as caste and gender-based events that reflect the inequity and strains in society, social-cultural events do not generally form a threat to public order, and reflect the richness and vibrancy in society. These events attract large numbers of people and require police assistance for traffic management, public assistance, and for emergency response.

Government or administration-related events are those that are organized by government and conducted in the public space for furthering its goals and programs. These events occur often in India where the government plays a prominent role in diverse areas such as education, health, social welfare,

justice, industries, and transport. Government activities in these areas require conducting of public events such as official inauguration of public roads, bridges and buildings, conduct of public events for sensitizing public regarding government programs, and conflict resolution through negotiations and other means in the event of conflict and tensions between individuals and groups. Government-related public events may also occur when government officials carry out their mandated duties such as enforcing laws, carrying out court orders, etc. This may result in disorder when they are obstructed by individuals or groups. Though government-related events should normally be expected to be peaceful, there are violent events due to obstruction or opposition of such events by political and other groups.

The third category of type of event is election-related events. India is the world's largest democracy. Since India's independence in 1947, values associated with democracy have percolated to all levels of Indian society. Elections are an integral part of a functioning democracy and have therefore become a central part of politics in India. Elections have law and order implications and result in tensions and conflicts on the basis of political groups, and sometimes religion and caste. Wilkinson (2004) argues that electoral politics are related to ethnic violence in India. Elections lead to heightened activity in the public space, with public meetings, street corner meetings, processions, graffiti, and victory celebrations. Any event that is connected with the conduct of elections to parliament, state legislature, local government body, or public cooperative bodies has been coded into the category of election-related event.

Events that are related to mobilization of workers, disputes between employers and employees, and issues between different labor unions are categorized as labor-related events. India in general and Kerala in particular has a vibrant and sometimes militant labor movement.³ There is organization of labor at different levels—in the government and the private sector, in the organized and unorganized sector, and in large and small-scale enterprises. Government employees are organized in associations that act as pressure groups and engage in collective bargaining to protect their interests. They are organized on the basis of departments such as teachers' associations, and bank employees' associations, and also according to rank as gazetted officers' and non-gazetted officers' associations.

³ The right to strike in the Indian context draws its legal sustenance from Article 19(1)(c) of the Constitution of India which guarantees a fundamental right to all citizens to form associations and unions, and from Trade Union Act, 1926, and the Industrial Disputes Act, 1947. It has been further developed through landmark judgments by the Supreme Court of India in *Kameshwar Prasad v. State of Bihar* (1961), *B. R. Singh v. Union of India* (1989), and *T. K. Rangarajan v. Government of Tamil Nadu and Others* (2003).

In the organization of labor outside government, Kerala presents a picture of contrast from the national labor movement. Heller (1996, p. 1060) says:

In contrast to the fragmented character of the national labor movement, the labor movement in Kerala is more broad based and organizationally coherent. Its historical formation was largely the work of the Communist Party which organized unions primarily as instruments of class struggles, giving "political" unionism the upper hand over trade unionism. Struggles were defined in general, encompassing terms, linking workers in urban and rural sectors in a unified effort to secure the protection of the state against the prerogatives of capital. Moreover, precisely because the terms of conflict were class-based, the labor movement in Kerala did not become dependent on the bureaucratic and pluralistic framework of Indian industrial relations. Conflicts between labor and management became the object of open struggles and hard bargaining rather than patronage.

Another unique aspect of organization of labor in Kerala is mobilization of workers in the unorganized sector. According to Heller (1996, pp. 1058-1059):

While workers outside the factory sector in most developing societies enjoy few legal protections and have little capacity for collective action, the efforts of unions and state agencies in Kerala have combined to effectively penetrate the unorganized or informal economy, drawing traditionally disenfranchised workers within the purview of the law and the protection of the social-welfare state.

This has resulted in unions of agricultural workers, tailors, barbers, and of other generally unorganized labor. With high levels of labor union activity, Kerala has a history of disruptive forms of labor militancy. Despite a decline in labor militancy over the years (Heller, 1996), protests, strikes, and lockouts are still tools used for mobilizing and bargaining by labor unions.

Any public event that involved student-organized events such as meetings, demonstrations, protests, and agitations has been coded as student-related events. These events are generally related to activities originating from college campuses. Student mobilization in colleges and sometimes schools is common. This is a part of the larger trend in India, but is accentuated in Kerala. In the words of Bayley (1969, p. 329):

The problem of "student indiscipline" as it is popularly referred to in India, has plagued authorities and worried educators for many years. The phrase "student indiscipline" refers to collective and public acts of defiance and disorder.

It involves strikes, mass obstruction of offices or streets, public demonstration, riotous behavior, intimidation of shopkeepers, and clashes with the police.

Student-related public events address issues ranging from administrative matters related to academics to political issues agitating the larger society. As Bayley (1969, p. 307) further says:

They are conscious of being part of a unique social stratum; they are also conscious that students in the recent past, especially during struggles for national independence, played a conspicuous part in practical politics. They demand rights commensurate with their conception of their potential importance and they seek to act as the intellectual, at least idealistic conscious.

There has been active involvement of students in politics and political parties in student activities. This is reflected in political parties having affiliations with student unions, and supporting and directing their activities.⁴ This has led to the notion of students unions being feeder organizations for political parties and colleges and schools being training grounds for future political activists. This has raised concerns of the negative effects on academic activities and on the society at large, even leading to court rulings on the matter.⁵ While the structure of student unions and politics may explain the numbers and characteristics of student-related events, they can also be explained by the attitudinal predisposition associated with age and the ease of mobilization and agitation in campuses.

The next class comprises of events involving political activity. Events organized by political parties or their affiliated organizations or supporters for propagating the political goals of the party are coded as political events. The last 60 years have seen the consolidation of democratic ethos in India and electoral politics has played an important part in this development. According to Khilnani (1998, p. 17): "[T]he democratic idea has penetrated the Indian political imagination and has begun to corrode the authority of the social order and of a paternalistic state. Democracy as a manner of seeing and acting upon the world is changing the relation of Indians to themselves." The most visible manifestation of vibrant democracy in India is seen in the

⁴ Most political parties are affiliated to student unions. The Congress is affiliated with the Kerala Students Union (KSU), the CPI (M)'s student union is the Students Federation of India (SFI), BJP's student wing is the Akhil Bharatiya Vidyarthi Parishad (ABVP), and Indian Union Muslim League (IUMML) is associated with the Muslims Students Federation (MSF).

⁵ Kerala High Court judgment ordered banning of political activity in schools.

proliferation of political activity in the public sphere. These developments are very visible in Kerala, which has a very politically aware populace. Public political activity and mobilization takes the form of public meetings, rallies, processions, and forms of protests such as *dharnas* and strikes. The effect of political mobilization is evident in the high rate of polling in the state elections—both to the national and state legislative assemblies.⁶

Communal events are manifestations of strained relationships between religious groups. Ethnic conflict in India could involve different groups like Hindus, Muslims, Christians, Sikhs, and even tribal groups with their unique religious traditions. Communal events in India can be quantified in terms of number of communal riots (as done by Varshney [2003]) or as communal incidents. Communal riots are events involving violence by one or more religious groups, with differences in religion being the defining factor of the two groups. Communal incidents on the other hand are a larger set of events of which communal riots are a minor subset. Communal incidents could be defined as events in which religious differences are used as the defining factor for creating or increasing social cleavages and mobilizing religious groups for economic, political, or social benefits. Communal incidents do not include purely religious public events. These incidents need not be violent, but could gradually lead to irreconcilable differences between groups, which may lead to violence. Communal incidents are therefore an encompassing class of events that may involve one or more religions, are divisive in nature, but need not be violent. Examples of communal incidents include violent riots, physical fights between members of different religious groups, desecration or damage of symbols associated with a religious group, posters or graffiti raising divisive religious issues, public meetings in which speakers highlight sectarian tendencies based on religious identities, or public marches demonstrating strength and numbers of a religious group. Communal incidents in general reflect values that are in conflict with the secular ethos of modern India.

The last class of public events is classified as "other." This class comprises of events that cannot be placed in any of the other classes, because from the analysis of the events it is not possible to determine the exact rationale behind them. These events are generally characterized by a high degree of violence and relatively low number of participants and time taken per event. This class of public events includes anonymous bomb threats, assault of individuals in public space, damage of buses involved in accidents by irate crowds, attack

⁶ The polling percentage in Kerala for the Lok Sabha elections in 2004 was 71.45% and for the State Legislative Assembly in 2006 was 72.38%. Data Source: http://eci.nic.in/eci_main/index.aspx (accessed on February 19, 2012).

on the police due to anger at police response to an event, abandoned weapons found in public space, etc. Some of these events are those regarding which the police have not been able to ascertain the exact cause of the event, such as abandoned weapons found in public space. However, many of these events are those reflecting unruly and disorderly behavior in public space leading to what Bayley called violence of frustration. In Bayley's words (1969, p. 260):

The third major form of violence is the result of frustration. It involves the seemingly senseless hitting out of individuals at anything at hand. The target is circumstances. The catalyst is usually an impersonal occurrence ... but the impersonal event is perceived as an unendurable irritant and the result is a spontaneous eruption of passion.

Findings

Distribution of Types of Events

In this study, 2,178 separate events have been studied and the following classification system has been arrived at. At the aggregate level, these events have a mean level of public participation of 354 persons, and average female participation level of 81. While 24.1% of the events are structured as public meetings, 23.3% of the events are demonstrations, and 20.8% of the events are violent events. The mean duration of these events is 2 hours and 20 minutes.

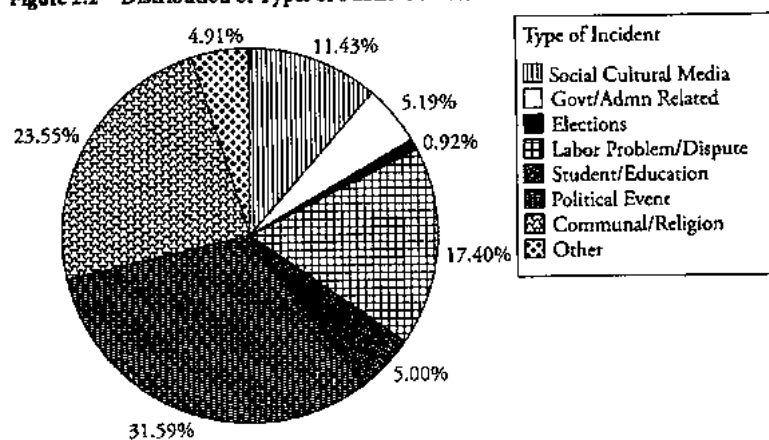
On the basis of detailed examination of each event it is possible to comprehensively classify all events into one of the different classes of events. The general distribution of the events is as given in Table 2.1 and represented in Figure 2.2.

The largest share of public events in the city is that of political events with 31.59% of the total events and 688 individual events. On an average each event lasted approximately two hours. The mean number of persons participating in these events is 370. Though there is a high level of public participation in these events, the average number of females participating in public political events is lower at 177 persons. The large number of events, duration of such events, and levels of public participation reflect a high level of political activity in the public space. Another important characteristic of this type of event is the structure of the events. Of the political public events, 34.9% were public meetings followed by demonstrations at 32.1%. This

Table 2.1 Frequency Distribution of Type of Events

Type of Event	Frequency	Percent	Cumulative Percentage
Social, cultural/media	249	11.4	11.4
Government/administration-related	113	5.2	16.6
Elections	20	.9	17.5
Labor-related	379	17.4	34.9
Student/education	109	5.0	39.9
Political	688	31.6	71.5
Communal	513	23.6	95.1
Other	107	4.9	100.0
Total	2178	100.0	

Source: Police data on public order events in a city in the southern state of Kerala.

Figure 2.2 Distribution of Types of Public Order Events

Source: Police data on public order events in a city in Kerala.

indicates the general form of the political public activity, which is oriented toward the goals of political mobilization. However, 10.8% of the events were associated with public violence, revealing the levels of public disorder and underlining the necessity for monitoring of these events by police and other forms of social control.

Communal events form 23.6% of the total events with 513 individual events. This large proportion of communal events is not the norm in Indian cities. This high percentage can be explained by the occurrence of a major communal conflict during the period under study that had the impact of increasing communal public events in the city.

Communal events had a mean duration of 1 hour and 51 minutes. The average number of participants in these events is 178,⁷ and the mean level of participation of women in these events is only 49. In comparison with average characteristics of public events and political events, the duration of events and the levels of public participation in communal events are lower. Another feature of communal events is that there is a greater disparity in the levels of female participation in comparison with the average levels of participation. This has its impact on the nature of communal events especially the levels of violence.

The structure of these events also provides insight into the nature of these events. Approximately 40% of communal events are associated with violence, reflecting the grave levels of public disorder caused by such events. At the same time, 21.1% of communal events are structured as public meetings and 16% as demonstrations, indicating a facet of ethnic conflict or communal mobilization and social agitation necessary for maintaining and furthering social divide. The nature of these events underlines the necessity of a state response to put in place measures to monitor and control such divisive tendencies that have serious consequences on social stability, peace, and security.

Labor-related events constitute 17.4% of the total public events with 379 events. Labor events can mainly be divided into four classes:

- government-related labor events
- private enterprise-related labor events
- agricultural labor events, and
- other labor events

Government-related labor events are mainly organized by government employees or other employees, mainly in the unorganized sector, making demands from the government. They constitute the largest part of labor events with 59.9% of the events, followed by private sector labor events, other labor events, and agricultural labor events.

On an average, labor-related events had a duration of 3 hours and 17 minutes. The mean number of participants in this class of events is 173, and the average number of female participants is 40. Compared to the average characteristics of public events such as political and communal events, labor-related events have longer durations but lower number of participants. The longer time duration of the event is due to the fact that the participants

⁷ Two large events with number of participants of 50,000 and 60,000 were excluded, as they are outliers and do not reflect the general levels of participation.

generally stay away from work and conduct the event, and the period of the demonstration is influenced by the working hours of the establishment or government institutions before which they protest. The lower level of participation in this form of public event is due to the fact that participation is largely restricted to the members of labor unions or employees of an establishment. Similarly in keeping with the objectives of placing the demands of labor before the government or employers, most of the labor-related events are structured as *dharnas*⁸ (54.9%) and demonstrations (20.8%). The number of events associated with violence is low at 2.9% of the total labor-related events. This indicates that though there were a large number of labor-related events, they were goal oriented in placing their demands before their employers or other authorities, and were not very violent.

During the year, 249 events occurred that are classified as social-cultural events forming 11.4% of all public events. After removing three events, which are outliers with number of participants above 15,000, the mean number of participants is 291 and the average number of female participants is 71. The average time duration of this type of event is 2 hours and 35 minutes. As regards the structure, 40.6% of these events were public meetings and 30.5% were demonstrations. The number of social, cultural events associated with violence is low at 2.4%. The central tendencies of social, cultural events are similar to the average characteristics of all public events. However the level of violence associated with this type of event is low. This indicates that the police interest in this type of event is largely due to the high levels of participation and the requirements of regulation and control of crowd.

Government-related events have a mean level of number of participants of 56. These events have a mean duration of 1 hour and 51 minutes. While 35.4% of the events are structured as public meetings, 27.4% of the events are associated with violence. While these facts reveal that a large number of such events are arranged as public meetings to elicit public participation there are low numbers of participants compared to public events in general. Government-related events also reveal higher levels of incidence of violence. Incidence of violence is mostly due to political opposition to government programs or resistance by individuals or groups to enforcement of laws or carrying out of mandated duties by government agencies.

⁸ *Dharnas* are a type of public event that is unique to India. The *Merriam-Webster Dictionary* defines the word *dharna* as "a fast held at the door of the offender in India as an appeal for justice." The origin of the word *dharna* can be traced to the Sanskrit word *dhri*, which means to hold or to hold out (Bondurant, 1988). "Dharna consisted of sitting and fasting at the door of one's adversary to force settlement of a dispute" (Cohr, 1961, p. 615).

Student-related events have a mean level of participants of 100. The average duration of these events were 2 hours and 26 minutes. Of these events, 39.4% are demonstrations and 22% are associated with violence. The low number of participants in student-related events compared to the average levels of participation in public events is due to the fact that these events are limited to participation by students only. On the other hand, the higher levels of incidence of violence reveal the degree of public disorder associated with this type of event. Events categorized as "other" have a very low average number of participants of 19, and have a lower mean duration of time of 1 hour when compared to other public events. However this class of event is marked by the fact that 92.5% of them are associated with violence. This class of event therefore has a severe adverse impact on public order in society.

As only 20 election-related events were observed during the study period, no general conclusions can be drawn regarding this type of event.

Severity of Violence in Events

The distribution of different types of public events and their characteristics provide an insight into the nature of public events and public disorder in the city. The frequency of occurrence of violent events is an index of the impact of a type of event on public disorder. It is however not an indicator of the magnitude of disorder. To analyze the levels of violence an ordinal scale of violence is constructed and each event is assigned a level on the basis of examination of the contents of the event.

Though public events disturb the status quo in the public space, only some events tend to be violent. Here a limited definition of violence is adopted, as use of force causing injury to body and/or damage to property. The variable reflecting the different levels of violence has been coded on a scale ranging from one to six, with level one representing no violence, level two representing public inconvenience, level three representing threat of injury to individual or damage to property, level four reflecting damage to property, level five indicating injury to individual, and level six representing damage to property and injury to individual.

The distribution of the levels of violence is as shown in Table 2.2 and Figure 2.3.

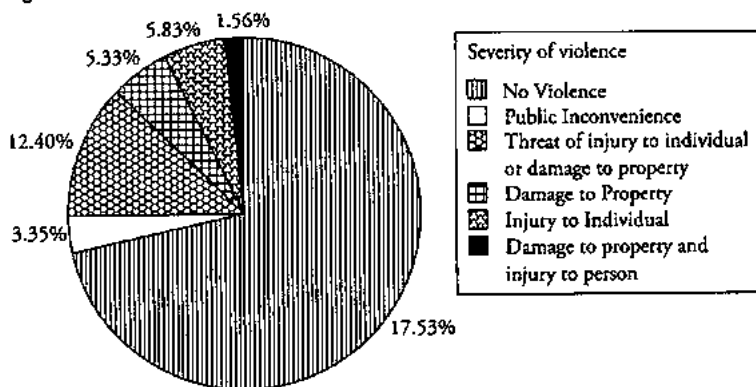
From Table 2.2, it is seen that 71.5% of the total public events that come to the notice of the police are not violence. This shows that a majority of public events are without violence. On the other extreme it is seen that 12.7% of the public events result in damage to property or injury to individual,

Table 2.2 Distribution of Levels of Violence across Public Events

	Frequency	Percent	Cumulative Percentage
No violence	1558	71.5	71.5
Public inconvenience	73	3.4	74.9
Threat of injury to individual or damage to property	270	12.4	87.3
Damage to property	116	5.3	92.6
Injury to individual	127	5.8	98.4
Damage to property and injury to person	34	1.6	100.0
Total	2178	100.0	

Source: Police data on public order events in a city in the southern state of Kerala.

Figure 2.3 Distribution of Levels of Violence across Public Events



Source: Police data on public order events in a city in Kerala.

or both. Though the data provides an insight into the levels of violence in public events, it would be prudent to consider the differing levels of precision in enumerating the number of events across categories of violence. From the nature of police work and mandated duties of order maintenance and crime control, police recognize and react to events with violence with more responsiveness than to events without violence. It is, therefore, possible that higher proportions of events with greater levels of violence enter into police records than events without violence. Therefore, this data would provide a more accurate indication of the actual number of violent events, and provide a good sample of public events without violence.

The 1,558 events without violence include all types of events—social, cultural, government-related, student-related, political, elections, labor-related,

communal, and other. This reflects a high level of civil-social intercourse in the public space. Events with the next level of severity are those that cause inconvenience to the public. These events, which may or may not violate the law, cause inconvenience to the public. This inconvenience may be due to the nature of protest, location of protest, timing of protest, etc. Examples of such events include protests and slogan shouting near schools, libraries, hospital, and public offices, protests involving burning of effigies, processions on narrow streets causing traffic blocks, agitations blocking roads, pathways, and entrances, etc. There were 73 events that were coded as events causing public inconvenience, forming 3.4% of the total events.

A higher level of severity of violence is witnessed in events where there was a threat of possible injury to individual or damage to property. These are events that do not involve the actual use of force. However they do convey antagonistic intent, or the possibility of the event leading to violence. These are events that require intervention of a third party or withdrawal of one party to avoid violence. Examples of such events include threat conveyed by words, physical expression of displeasure and intent for action by forming conflicting groups or altercation between individuals, anonymous bomb threats conveyed to police control room, etc. In most of these events the protests convey the intent to be violent, but do not cross the threshold, or the actions of the participants fall short of actual use of violence to destroy property or injure an individual. There are a total of 270 events with this class of severity, forming 12.4% of all events. This high number is due to the occurrence of a communal riot in the city during the period of study. Of the total of 270 events under this category, communal events in the police station limit where the riot took place accounted for 154 events. The occurrence of a communal riot adversely impacted relations between Hindus and Muslims in the area, resulting in frequent occurrence of threats and counter-threats of violence in their public interactions. This is also evidence of how public events are impacted by relationships between groups in society, and how social conflicts could lead to threats of violence and violence.

The next level of severity of violence is seen in events that involve damage to property. In these events, participants willfully use force to destroy property. These events include damaging public transport buses, cases of arson of vehicles or houses, attacks on offices, polluting of wells providing drinking water, attack on print media office, etc. A total of 116 such events took place during the period of study forming 5.3% of the total events. It is seen that communal events account for 33.6% and political events account for 24.1% of events of this level of violence, followed by "other" events

accounting for 22.4% of the events. This indicates the levels of severity in communal and political violence in the city (see Table 2.3).

There are also public events in which people suffer injuries. Examples of this type of events include random acts of violence resulting in injury to individuals, members of a community physically attacking members of another community, members of a political party attacking members of another political party, and clashes between students. During the period of study, 127 such events took place, accounting for 5.8% of the total events. It is seen that events under the class of "other," mostly consisting of random anonymous acts, accounted for 27.6% of events leading to injury to individuals. Another aspect of this distribution of public events leading to injury to individuals is that 22.8% of such incidents are accounted for by political events and 20.5% by communal events (see Table 2.4). This is a reflection of the high levels of violence and public disorder associated with political and communal events.

The highest levels of violence are witnessed in public events that lead to both damage to property and injury to individuals. This level of violence is generally seen in communal riots, political clashes, violent labor protests, and events involving individual enmity. There are 34 events with this degree of violence accounting for 1.6% of the total events. From the distribution of this level of violence across different classes of events, it is seen that political events with 41.2% and communal events with 35.3% accounted for a total of 76.5% of the events with this level of violence (see Table 2.5). This is in congruence with the earlier findings of association of political and communal events with high levels of violence.

From the aforementioned analysis it is seen that of all public events, violent events account for approximately 25% of the events, and of these communal events, political events, and events under the category of "other" account for 80% of events associated with violence. The occurrence of nearly 547 events with violence during the year entailed that the police keep a close watch of public events and take measures to control violence and disorder in the public space.

Cross-variable Analysis

Varying levels of violence indicate distinct levels of disorder associated with different types of public events. From the examination of data so far it is clear that types of events such as political events, communal events, and events categorized as "other" have a higher degree of violence. This variation in

Table 2.3 Distribution of Types of Events with Violence Involving Damage to Property

	Type of Incident						Total
	Social, Cultural/ Media	Government/ Administration- related	Labor Problem/ Dispute	Student/ Education	Political	Communal	
Severity of violence	1 0.9%	4 3.4%	12 10.3%	6 5.2%	28 24.1%	39 33.6%	26 22.4%
Damage to property							116 100.0%

Source: Police data on public order events in a city in Kerala.

Table 2.4 Distribution of Events with Injury to Individuals across Different Types of Public Events

	Type of Incident						Total
	Social, Cultural/ Media	Government/ Administration- related	Labor Problem/ Dispute	Student/ Education	Political	Communal	
Severity of injury	3 2.4%	14 11.0%	4 3.1%	16 12.6%	29 22.8%	26 20.5%	35 27.6%
Count							127 100.0%
Injury to individuals							

Source: Police data on public order events in a city in Kerala.

Table 2.5 Distribution of Events with Injury to Individuals and Damage to Property across Different Types of Public Events

	<i>Type of Incidents</i>						<i>Total</i>
	<i>Government/ Administration-related</i>	<i>Labor Problems/ Dispute</i>	<i>Student/ Education</i>	<i>Political</i>	<i>Communal</i>	<i>Other</i>	
Severity of violence and injury to person	1 2.9%	2 5.9%	1 2.9%	14 41.2%	12 35.3%	4 11.8%	34 100.0%

Source: Police data on public order events in a city in Kerala.

levels of severity of violence across different types of events can be conclusively established by cross-tabulation of the type of incidents and the levels of violence and computing the chi-square statistic (see Tables 2.6 and 2.7).

From the contingency table it is seen that most social, cultural and election-related events do not have violence. However, there are increasing levels of violence associated with labor, political, government-related, student-related, communal, and other events. Higher numbers and proportions of violent incidents with damage to property, injury to individual, or both occur in political, communal or "other" events. This variation in levels of violence associated with different types of events is confirmed by a significant chi-square statistic of 827.761 (Sig = 0.00). This indicates the different levels of public disorder associated with different types of events. These findings validate the robustness of the classification of different types of events and unique characteristics in the levels of violence and disorder of each type of event. This has great implications for the analysis of public events and the policy of control of public disorder.

Conclusions

This chapter has empirically examined a large number of public events that occurred within a city in Kerala, India, and classified the events into different types according to their characteristics. This taxonomy created is based on existing research and empirical examination of events. While drawing from existing works on public events and disorder such as Tilly (1979), Waddington (1992, 2007), Kelling and Coles (1996), Brass (2003), and Varshney (2003), the classification system develops on the seminal and enduring work of Bayley (1969) on public order in the Indian context. This chapter examines two important characteristics of the proposed classification system, which are the type of event and the levels of violence associated with the event. The study proposes a system of classification that is able to comprehensively classify all public events that occurred during the period under study into different categories according to its causal reason.

The present study quantifies the levels of violence associated with different events. The degree of violence provides an index of the levels of disorder associated with a public event. The analysis of the relationship between the two variables of type of event and levels of violence indicates a statistically significant level of variation in levels of violence across different types of

Table 2.6 Cross Tabulation of Type of Incident and Severity of Violence

Severity of Violence	Type of Incident										Total
	Cultural Media	Government/ Administration- related	Elections	Problem/ Dispute	Students/ Education	Political	Communal	Other	Total		
No violence	238 95.6%	79 69.9%	20 100.0%	321 84.7%	57 52.3%	577 83.9%	264 51.5%	2	1558 71.5%		
Public inconvenience	3 1.2%	1 .9%	0 .0%	28 7.4%	15 13.8%	18 2.6%	8 1.6%	0	73 3.4%		
Threat of injury to individual or damage to property	4 1.6%	14 12.4%	0 .0%	12 3.2%	14 12.8%	22 3.2%	164 32.0%	40	270 12.4%		
Damage to property	1 .4%	4 3.5%	0 .0%	12 3.2%	6 5.5%	28 4.1%	39 7.6%	26	116 5.3%		
Injury to individual	3 1.2%	14 12.4%	0 .0%	4 1.1%	16 14.7%	29 4.2%	26 5.1%	35	127 5.8%		
Damage to property and injury to person	0 .0%	1 .9%	0 .0%	2 .5%	1 .9%	14 2.0%	12 2.3%	4	34 1.6%		
Total	249 100.0%	113 100.0%	20 100.0%	379 100.0%	109 100.0%	688 100.0%	513 100.0%	107 100.0%	2178 100.0%		

Source: Police data on public order events in a city in Kerala.

Table 2.7 Chi-square Statistic of Relationship between Type of Event and Levels of Violence

	Value	Degree of Freedom	Asymptotic Significance (2-sided)
Pearson Chi-square	827.761	35	.000
Number of valid cases	2178		

Source: Police data on public order events in a city in Kerala.

Notes: (i) Number of valid cases = 2,178.

(ii) 12 cells (25%) have expected count less than 5. The minimum expected count is .31.

events. This demonstrates the differing levels of disorder associated with different types of events.

The classification of types of events and the quantification of indices of disorder provide a context for analyzing public disorder and assessing police response to public disorder in India. The unique nature of different types of events provides guidelines for formulating appropriate responses of the state and the police to address its task of maintaining public order. It also demonstrates the necessity for the police to devise differing and appropriate responses to address different categories of public events. The breaking down of the complex phenomena of public disorder into manageable variables also provides a basis for stage-wise analysis of public disorder and responses to it, and assists in scientifically determining the nature of the event and the appropriateness of the response.

There is need for further analysis for delineating other important characteristics of public events and disorder, such as structure of events and its impact on society. Further research is also required into the response of the state and especially the police. The organizational mechanism for responding to public disorder, the levels of intervention by the police on the occurrence of an event, the degree of force used, the manner of application of law, and arrests made are factors that would elucidate this dynamics. The relationship between the type of event and the nature of response are aspects that would illuminate the working of the society, state, and the criminal justice system.

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The Depiction of Corruption in English-Language Indian Fiction

Gilbert Geis

Abstract

India, stereotypically, is regarded as a country riddled with corruption, although international surveys indicate that it ranks in about the middle of the world's nations in terms of corruption. The article surveys novels and short stories by more than two dozen writers, primarily native Indians, to discover how they depict episodes of corruption. It determines that they focus particularly on miscreant behavior in politics and the government, the police, petty officials, the postal service, transportation, and on smuggling. The writers flesh out and make more vivid information that is presented in criminological writing about corruption in India.

Introduction

Derogatory stereotypes typically exaggerate and caricature reality. Ethnic, racial, gender, nationality, and religious stereotypes are among the most notorious insults, but it should be appreciated that unless they possess some relation to reality, however remote and distorted that relationship may be, only the most credulous will pay heed to them. The view that India is a society riddled with corruption and almost terminally crippled by it is a stereotype that the country shares with a host of Asian and Third World countries. But it is important to appreciate that perceptions of corruption are mediated by a

person's ideas about what is appropriate behavior. A synod of saints is likely to perceive as deviance aberrations from norms that the less saintly would regard as perfectly acceptable actions.

Evidence of the perception—and the stereotype—of corruption in their country appeared in comments by two Indian Supreme Court justices during a 2007 bail hearing for a former state chief minister who had been sentenced for violating the Prevention of Corruption Act, 1988 (Chitkara, 1998, pp. 4, 72, 73). "The only way to rid the country of corruption is to hang a few of them from the lamp post," the justices declared, adding: "Everywhere, we have corruption. Nothing is free from corruption. Everybody wants to loot the country" (Dhamija, 2010, pp. 3–4). Equally telling is a sarcastic commentary on the same case that noted that the convicted minister had been promoted to a major position in the central government, that corruption was a national pastime in India, and that the only check on it was that there were not that many national ministries that could, if they existed, provide venues for further corruption (Satiricus, 2007, p. 8). Another writer observed: "Corruption in India is so endemic that its occurrence is viewed with cynical forbearance" (Chitkara, 1998, p. 1).

Stereotypes aside, India appears to be marked by a level of corruption that puts it somewhere near the middle of the world's nations. In its report, released in December 2007, Transparency International, a Berlin-based organization that has been rating the level of corruption throughout the world each year since 1995, places India in 72nd place out of the 180 countries that are ranked. India received the same score—3.5 on a 10.0 scale—as Brazil, China, Mexico, Peru, Morocco, and Suriname. This is the highest rating India has received in a decade. A score below 5.0 is regarded as an indication that a country has a serious corruption problem. Finland, Denmark, and New Zealand shared first place and Myanmar and Somalia brought up the rear (Transparency International, 2007).

Transparency International defines corruption as the abuse of public office for private gain. It relies on an array of public opinion and leadership polls as the basis for its ratings, a procedure that obviously involves a considerable subjective element. Nonetheless, it may be argued that what people deem to be real is for them reality and, more generally, that the polls undoubtedly approximate to a considerable extent what would be learned if there were a reliable empirical method for objectively measuring corruption.

The branch of Transparency International in India offers further details concerning the 2007 report. It notes that 1,069 persons were surveyed in India and that 76% reported that the worst corruption problems could be found in the political realm. Police corruption was a close second, named by

72% of the respondents, followed by the judiciary (36%), parliament and the legislature (33%), and registry and permit services (34%). The military was regarded as the cleanest section. It was deemed to be corrupt by only 1.8% of the respondents.

In terms of respondents' personal experiences, the most common reported corruption episode involved a bribe to the police (45%). Asked why they paid bribes, Indians most often indicated that they did so to avoid problems, with their second justification being that they were seeking a service to which they were entitled. Three-fourths believed that the government's efforts to deal with corruption were ineffective, or that it was making no such effort, or that in fact the government encouraged corruption. More than 90% expected an increase in corruption in India in the future (Transparency International India, 2007).

Depictions of Corruption

This chapter looks at depictions of corruption by writers of English-language novels that are set in India. I have read carefully each of the 33 works of fiction about India recommended online by the Baltimore County Public Library (2008). Most were by Indian writers, although to very large extent the authors either now lived in the US, Canada, or England and/or had spent considerable time in one or more of these countries. The action in four of the books, such as V. S. Naipaul's *A Bend in the River*, set in Africa, takes place wholly outside India so that those books were eliminated from the sample. Whether there is a significant difference between fiction written in English and that using regional dialects is, as a pair of writers has remarked: "a debate that has been going on endlessly" (Pandey and Rao, 1993, p. xiii). For the present article, no resolution of that question is necessary; we need only indicate that what we consider is the product of a particular group of writers who represent an important segment of the Indian literary world.

There were in our sample three classic works by Englishmen, a trio of authors whose collective writings on India are regarded as significant enough to constitute the total subject matter of a book (Bose, 1990), an article (Shahane, 1982), and a doctoral dissertation (McBratney, 1987). The books are Rudyard Kipling's *Kim*, E. M. Forster's *A Passage to India*, and Paul Scott's *The Jewel in the Crown*.

The cosmopolitan experiences of the writers whose works were read are undoubtedly particularly important for an understanding of what they say

about corruption in India. Corruption readily can come to be understood by a person who has never ventured beyond India's borders, but it may be regarded as a normal and unremarkable element of the society. In some cases, in fact, corruption may be viewed as essential to the well-being of underpaid persons with heavy family financial obligations who, absent opportunities for corruption, would suffer severely. In this regard corruption can be viewed as a progressive rather than a regressive tax since its burden most heavily will fall on those who are better off.

The novelists we read largely aim their work at overseas English-language readers so that they are prone to present vignettes regarding interesting and different mores than those experienced by their non-Indian audience. India has a reputation as an exotic place and the novelists surveyed for this article, who mostly were women, devote a great amount of attention to Indian food and its preparation and to distinctive clothing, often describing at great length sari materials and decorations. In this regard, episodes involving corruption can serve the same purpose as anthropological data that concentrates on goings-on that are seen as interesting and distinctive rather than as common in the culture of targeted readers.

The Classic British Novelists: Kipling, Forster, and Scott

We will look at the way this trio of Englishmen depicted corruption in India apart from the other writers for several reasons. Except for M. M. Kaye, they are the only non-Indian authors in the sample. Foreign writers, as Bhullar points out "are naturally 'distanced' from an alien society; and if they can muster the necessary 'passion' they are in a better position to clearly observe, understand, and depict the reality of that society" (Bhullar, 1985, p. 144). Another Indian literary critic observes that "foreign writers can help one in understanding the reality of one's own country" because they are alert to things that might appear to native writers as too mundane for mention (Rubin, 1986, p. 14).

Rudyard Kipling (1865-1936)

George Orwell (1965, pp. 74-75), who admired him greatly, notes: "Kipling is a jingo imperialist; he is morally insensitive and aesthetically disgusting.

It is better to start by admitting that," adding, "and then to try to find out why it is that he survives while the refined people who have sniggered at him seem to wear so badly." Orwell believes that Kipling was at heart disenchanted with the moral sensibilities of the British who ruled India and that he made himself painfully aware of the pressures that contributed heavily to the seamy side of Indian behavior in regard to such matters as corruption.

Kipling, who won the Nobel Prize in Literature in 1907, extolled the virtues of the civilization that he claimed his countrymen had selflessly brought to the Indians, a position exemplified by the 1899 poem "The White Man's Burden" in which he advised the Americans to assume the same role in the Philippines as Britain had in India (Kipling, 1940, pp. 321-323). But Kipling also had a sympathetic understanding of what it meant to Indians to be subjugated and occupied by an alien people.

Kim, published in 1911, has been said by Nirad D. Chaudhuri, the dean of Bengali letters, to be "the finest novel in the English language with an Indian theme" as well as "great by any standard that ever obtained in any age of English literature" (Chaudhuri 1972, pp. 34-35). It is the story of a young man born in India to an aristocratic English couple, who is raised lovingly by an ayah after his parents die, and then is educated at military school in England, and returns to India as an army officer who performs underground service as a spy. Thus, Kim is able to observe the biases and bigotries of his countrymen and at the same time to (almost) empathize with the Indians with whom he shares common roots.

This duality of comprehension in regard to corrupt practices figures in a vignette Kipling (1987, p. 75) describes in which Kim purchases a train ticket for the lama he has befriended:

Kim asked and paid for a ticket to Umballa. A sleepy clerk grunted and flung out a ticket to the next station, just six miles distant.

"Nay," said Kim, scanning it with a grin. "This may serve for farmers, but I live in the city of Lahore. It was cleverly done, Babu. Now give me the ticket to Umballa."

The Babu snorted and dealt the proper ticket.

An Indian literary scholar, commenting on this passage, testifies to its tie to verisimilitude. He notes that Kipling's fictional railroad booking clerk is as "corrupt like many of his class" (Bhullar, 1985, p. 20). Another critic does not attend to the corruption but rather to the ability of an insider to protect himself against a scam: "[H]e is not to be cheated ... he knows the tricks" (Lohman, Jr., 1990, p. 265).

Interestingly, Kim returns the change from the purchase price to the lama, but keeps one *anna* for each rupee of the price of the ticket—"the immemorial commission of Asia" (Kipling, 1987, p. 75). This is Kim's Indian side. Kipling would not have portrayed an Englishman doing the same thing.

Elsewhere in *Kim*, Kipling echoes the common critiques that "the police are thieves and extortioners" (Kipling, 1987, p. 105) and that "native policemen mean extortion to the native all India over" (Kipling, 1987, p. 255). And he offers something of a Keystone cop tale involving a man charged with stealing jewelry. "I ran from Mhow by night, bribing the police, who had been bribed to hand me over without question to my enemies in the South" (Kipling, 1987, p. 248). A short paragraph provides a story of presumed Indian perfidy and British righteousness. It tells of a con artist who took a label from a bottle of *belaiter-pari* [soda water] and affixed it to a bridge, collecting taxes for a month from those who passed, saying that he was acting on the Sirkar's orders. Kipling adds: "Then came an Englishman and broke his head" (1987, p. 109).

E. M. Forster (1879-1970)

Foster's *A Passage to India* was published a quarter of a century after *Kim*. It reflects the periods in 1912-1913 and 1921 that Forster spent in India. For Forster the key ingredient of Indian life was, as Lionel Trilling (1965, p. 138) has expressed it: "the sad confusion of a nation torn between two cultures." Forster presents the views of Ronny Heaslop, a British magistrate in the fictional city of Chandrapore (actually Bankipore, a small town in northeast India), who mouths the bigotry of Anglo-Indians working in the subcontinent. For Heaslop, Indians provide particularly malignant examples of corruption and duplicity (Forster, 1924, pp. 50-51):

Each day [the city magistrate] worked hard in the court trying to decide which of two untrue accounts was the less untrue, trying to dispense justice fearlessly, to protect the weak against the less weak, the incoherent against the plausible, surrounded by lies and flattery. That morning he convicted a railway clerk of overcharging pilgrims for their tickets and a Pathan for attempted rape. ... [B]oth clerk and Pathan might appeal, bribe their witnesses more effectually in the interval and get their sentences reversed.

Heaslop exemplifies for Forster what he regarded as the chief argument against imperialism, the barricade it erects against personal relationships between the rulers and the ruled (Hawkins, 1983). That barricade is seen to

inevitably produce an "unfriendly bigotry" (Forster, 1924, p. 54). Rather than a mark against the Indians, the "catalog of self-justifications" by Heaslop, as one commentator has noted, is "an indictment of both the man and the task" (Herz, 1985, p. 61). The corruption that the British found endemic in their dealings with Indians was for Forster the result of their failure to allow the indigenous population neither dignity nor legitimate avenues to a satisfactory livelihood.

Paul Scott (1920–1978)

Paul Scott had served as an army officer for three years in India during the Second World War. *The Jewel in the Crown*, the first of four books known collectively as *The Raj Quartet*, is set in an India on the verge of partition (Spurling, 1991). The novels have drawn extraordinary praise for their understanding of India and Indians. "Let me say at the outset of my discussion of Scott's Indian novels," one literary critic has written, "that they are far and away the best fiction dealing with Anglo-Indian relations not only since Independence but since the very beginning of such fiction" (Rubin, 1986, p. 103).

Corruption is first mentioned by Scott not as an act of an Indian but in regard to a Scotsman who had operated in Raj times, a man who "spoke the language of the greased palm" (Scott, 1966, p. 140) and who had built a stately house "with money, it is rumoured, got from bribes" (Scott, 1966, p. 68).

Scott dwells briefly on profiteering from the hoarding of food so that it can be sold at exorbitant prices in times of want, a practice that has been the subject of reformers from the biblical prophets onward and was outlawed in England under laws forbidding acts that were labeled forestalling, engrossing, and regrating (Geis, 2006, pp.49–75; Illingworth, 1830). As Scott (1966, p. 99) tells it:

The rains have really set in now down here after a late start that set everyone in Mayapore hoarding foodstuffs in case of famine. ... Jack Poulson says it's the curse of India, the way the middle-class and well-to-do Indians swoop into the stores the moment a crisis even threatens. But that apparently is nothing to the corruption that goes on in higher circles where bulk foodstuffs are handled.

Later in the book, Scott (1966, p. 233) affixes a biting addendum to the matter of hoarding in a cascade of criticism of corruption in Indian mercantile practices:

This is the India you won't read about in your pig-sticking books. This is acquisitive middle-class merchant India of money under the floorboards, and wheat and rice hoarded up until there is a famine somewhere and you can offload it at a handsome profit, even if most of it has gone bad. Then you sell it to the Government and bribe the Government agent not to notice that it's full of weevils. Or you can sell it to the Government while it is still in good condition and there's no famine and the Government can let it go bad—until of course it's stolen from their warehouse and bought up cheap and stored until a Government officer can be bribed to buy it all over again.

Scott also portrays a sub-inspector of the police as a man "who took bribes and stole watches from the men he arrested" (Scott, 1966, p. 131) and observes that a young lower-level English administrative clerk "is a fool" because he refuses a gift "because he had been taught that any gift from an Indian is a bribe" (Scott, 1966, p. 203).

Portrayals of Corruption

Themes of corruption suffuse the novels I studied. That this reflects the reality of life in India is suggested by Morris-Jones (1971, p. 62), who writes: "Corruption—the act itself—even more important the talk about it—occupies a great place in Indian politics". Corruption is believed to be so omnipresent that those who avoid it sometimes wonder whether they are being pointless martyrs to meaningless morality. The lure of ill-gotten gains is noted by a writer who has one of his characters say: "Oh how often I have seen my colleagues succumb to corruption" (Mehta, 1993, p. 268). Then there is an estate overseer who is described as "a lazy man who wanted nothing better than to take his bribes in peace" (Seth, 1993, p. 235).

A depiction of student gatherings indicates that unsavory deeds of exploiters is a major topic of conversation. The person described in the following quotation from Mishra (2001, p. 97) is a radical campus leader:

Invariably, the students who hung around at all times of the day recognized him and within minutes a small crowd would gather around him to discuss the latest gossip, corruption, and sleaze scandals; the size of a politician's wealth, the imaginative ways the development agency had been conned, the bridges that existed only on paper, and the dual-carriage highways that had never been built.

This picture is reinforced in the same book by the observation that beyond the library gate, where the protagonist eats lunch, "there were the usual hangers-on with their talk of large bribes and dowries" (Mishra, 2001, p. 156).

One novelist comments cynically on the "glossy white towers [in Bombay] built with black market money" (Forbes, 1998, p. 6) and observes: "many people in India suffered from the altitude sickness of corruption when they climbed" (Forbes, 1998, p. 76). The same author indicates that corruption is common in the Indian film world and supplies specifics: "But the jerry-built [film] set was genuinely lethal. ... The Code of Safety for Bombay must not be so much lax as laxative: this set would have loosened the bowels of any European inspector" (Forbes, 1998, p. 50), the presumption being that the Indian inspectors had been bribed to overlook dangerous deficiencies. Another writer observes that in the Calcutta bazaar the merchants offered for sale "fish smeared with goat blood to simulate freshness" (Gupta, 1992, p. 8).

Then we have the man who compulsively dispatches letters to newspapers. In one he comments on a news report that trained birds were being imported into India from Singapore. "It is my humble opinion," he writes, "that we, the citizens of this country, might be better served if these birds were to replace our politicians, corporate thugs, the mafia who run police stations and other assorted crooks" (Badami, 2001, p. 150).

In one novel (Divakaruni 2001, 77), a woman seeking a hotel room succeeds only by bribing the clerk. The scene unfolds in this fashion:

[S]he digs into the waistband of her sari and comes up with a handful of rupee notes which she lays on the counter. The clerk rocks back and forth on his heels, torn between avarice and superstition. Then his hand darts out and covers the notes. "We are having a small-small room on top of hotel," he says.

Government and Politicians

Not unusual in the books studied is the diatribe against corruption in government, as in the following words from Desai's book (2001, pp. 20-21):

Mr. Chawla read out from his newspaper as was his custom. "What did I tell you?" he said, delighted. "Another corrupt politician! They are opening more Swiss bank accounts than they have Gandhi caps to distract us with. Not one truthful politician in the country. Yes, our parliament is made up of thieves, each one answerable to the prime minister, who is the biggest thief of them all. Look how well he is doing. With each new photograph he is fatter than before.

The writer of letters-to-the-editor pens a missive deploring "corruption in the government" (Badami, 2001, p. 9) and in the same novel there appears this observation: "These politician crooks become rich by stealing from the poor and helpless" (p. 232), while a young man tells his father in regard to the government: "They are all thieves, lining their own nests" (p. 230). Similarly, we are informed of "young men gathered to curse the corruption of political leaders" (Divakaruni, 2001, p. 266). In *The Romantics*, a character is said to be "certain that the Nehru-Gandhi family had caused great damage to India" because "Gandhi wasn't tough enough on corruption" (Mishra, 2001, p. 31). There also is a world-weary acknowledgment of corruption in India that ends with an upbeat note: "We have corruption, power shortages, and bad roads, all of which hold us back," a character in *Sharmila's Book* proclaims, and then adds: "But we also have some good minds" (Kirchner, 1999, p. 167).

A schoolteacher disheartened by the failure of Indian rulers to eliminate corruption after the departure of the Raj tells a high government official about his discontent. He complains of corruption in the rationing system and inveighs against contracts that have been awarded as a result of "a rapacity that surpassed anything he had known under the British" (Seth, 1993, p. 323). The minister listens, then responds with a smile and cynical humor: "Politics is like the coal trade," the minister says. "How can you blame people if their hands and faces become a little black?" (Seth, 1993, p. 323).

A rare attempt to analyze the roots of corruption as a process rather than to depict individual instances is offered by a fictional member of the Congress Party in Seth's book (1993, p. 1284):

More and more money is required to fight elections and politicians will be forced to demand more and more money from businessmen. Then, being corrupt themselves, they won't be able to wipe out corruption in the civil service. They won't even want to. Sooner or later the appointments of judges, election commissioners, the top civil servants and policemen, will be decided by the same corrupt men, and all our institutions will give way.

Petty Officials

A recently divorced Indian who had migrated to the US where he teaches economics visits his parents in Calcutta during his summer break and comments that "it was a stroke of good luck that the Admiral [his father] had been successful in his application [for an apartment]—without bribes or pulling strings" (Chaudhuri, 2000, p. 59). Less fortunate is a veteran actor

who notes in Forbes' book (1998, p. 129) that gangsters have permeated the real estate business:

Everyone is selling out to hoodlums who give penthouse suites as bribes to the former house owner. ... Even street people have to give five hundred rupees to secure their piece of pavement from the former owner. And then another thirty rupees a month in bribes to stop hoodlums tearing down their shack.

One novelist, Mistry (1997, 144) offers details on how elections are rigged:

The election official [the person supposed to monitor the process] was presented with gifts and led away to enjoy the day with food and drink. The door opened and the voters filed through. "Put out your fingers," said an attendant monitoring the queue. The voter complies. The clerk at the desk uncapped a little bottle and marked each extended finger with indelible black ink, to prevent cheating.

"Now put your thumbprints over here," said the clerk.

They placed their thumbprints on the register to say they had voted, and departed. Then the blank ballots were filled out by the landlords' men. The election officer often returned at closing time to supervise the removal of ballot boxes to the counting station, to testify that voting had proceeded in a fair and democratic manner.

A journalist seeking information in the city morgue has to deal with a low-level public official: "He continued to wave the papers at me until I handed over my BBC pass with fifty rupees tucked underneath" (Forbes, 1998, pp. 17, 34). A man seeking to visit a friend in jail tells the constable that he is a nephew of the man being held:

The constable squinted suspiciously. "A nephew isn't enough. If you were a son that would be different."

Sondal pulled out ten rupees from his pocket.

The constable laughed. "Ten rupees won't turn a nephew into a son."

Twenty did. (Nigam, 1999, p. 165)

A shirt manufacturer informs a visitor who inquires about a large order being filled for shirts that they "are for bribes. Ordered by someone running a by-election. ... The candidate is going to distribute them to certain important people in his constituency" (Mistry, 1997, p. 157). Later, the purchaser claims that the shirts are not satisfactory, and the manufacturer takes his grievance to the police. The purchaser has him arrested: "With the right

influence and a little cash sending a person to jail is very easy" (Mistry, 1997, p. 295). More generally, the same author has a character observe: "Money is a problem for everyone ... unless you are a politician or a black marketer" (Mistry, 1997, p. 162).

Police

David Bayley, a leading scholar of policing throughout the world, has noted that "in India corruption in the police has become a byword" (Bayley, 1969, p. 283). "Dishonesty is readily associated with the police," he adds, "and colors the image of the police in striking hues" (Bayley, 1969, pp. 287-288). Almost four decades later, Arvind Verma (2005, pp. 157-158) makes a similar, even stronger allegation: "The police in India have an unsavory reputation for extortion and, at present, corruption is perhaps even more widespread and brazen than ever before," and maintains: "Corrupt practices are now part of the Indian police system and are found in every department, in every rank and in every police institution including training colleges."

One novel suggests that omnipresent bribery has grown apace among the police since the separation of India from the Raj. "The police used to take little bribes then," a character in *A Suitable Boy* pronounces, "now they are big ones" (Seth, 1993, p. 673). The English-language fiction writers portray numerous episodes of police corruption, focusing on the need to bribe law enforcers in order to escape from real or arbitrary difficulties. In preparation for a wedding, the brother of the bride who will be paying for the ceremony declares that there will be no liquor for the guests because "the prohibition police are everywhere, you bribe one and ten show up for their share" (Mistry, 1997, p. 37).

When one of the characters in the novel by Badami (2001, p. 277) seeks to retrieve his motorcycle in a crowded area, a policeman questions his ownership of the vehicle:

You give me some proof and you can go, otherwise I will have to deal with you. He poked him in the chest with his baton. Understand? You give me proof and everything will be fine. He rubbed his index finger and thumb together and grinned, his teeth gleaming dimly in the darkness of the street. It took Sripathi a few moments to realize what the man was trying to tell him. He drew out his wallet and removed a ten-rupee note.

The policeman is not satisfied and points out that his son had been failed in school because he had not given a satisfactory present to his teacher on the

Deepavali holiday. Another twenty rupees are added to the original offer. This author, as do many of the others, provides details on the technique used to accept the bribe: "With a quick movement of his hand, the policeman plucked the money and slid it into his pocket" (Badami, 2001, p. 277).

An informative dialogue takes place in one novel between an outsider deploring the dishonesty of the police and a citizen seeking to put the matter into a more excusable context. The outsider says that he has been told that the largest market for smuggled goods is run under the noses of the Bombay police headquarters, and not far from the Customs House. One police officer, he observes, was reported to have built 38 stalls in the bazaar and let them out on payment of a ten-thousand-rupee kickback. The indignant local says that the blame actually lies with the British, that because of them the police have come to be viewed as puppets of alien powers, from the Mughals onward. "Now our constable is distrusted by the law, disliked by the people, and classed as a scavenger in respect of his poorly paid position ... having to live in worse conditions than all but the poorest criminal." The outsider gets the last word: "The police in Britain aren't that well-paid either," he says, "but they seem to do all right" (Forbes, 1998, p. 216).

Several references to police corruption are found in *A Fine Balance* by the Parsi author Rohinton Mistry (see generally Dodiya, 1998). They include an interchange in a slum setting where a resident asks an old-timer on the site about its operation. The city owns the site, he is told, but those who collect the rent "bribe the municipality, police, water inspector, electricity officer" (Mistry, 1997, p. 163). Even the people who sleep on the streets are said to bribe the police for permission (Mistry, 1997, p. 296). Nor does that arrangement tell the whole story: the police are said to deliberately allow beggars and the homeless to bed down in strategic business areas so that merchants will make a "lucrative removal request" to roust the intruders (Mistry, 1997, p. 317). To avoid such harassment the street people pay off a "Beggarmaster" who will bribe the police not to harass the mendicants (Mistry, 1997, p. 320).

A lengthy vignette (Mistry, 1997, p. 189) provides details about an episode of bribery that follows the collision of a bicycle and a car:

The chauffeur ... emerged boldly from the car ... "You have eyes or marbles?" he screams. "Can't you see where you're going? Causing trouble to other people's property!"

A policeman arrived and checked most solicitously on the passengers in the car. "Everybody all right, sahib?" Om [the bicyclist] looked on a bit dazed, and frightened.

A man in an ochre-colored suit snuggled in the back of the car fished out his wallet. He passed the policeman some money; then beckoned the chauffeur to the window. The chauffeur put something in Om's hand. "Now go! And be more careful or you'll kill somebody."

Om looked down at what was in his shaking hand: fifty rupees.

The policeman waves the car onward with a VIP salute, while Om is informed by an onlooker that he had gotten up much too quickly after the car hit his bicycle. He should have moaned and groaned, cried for a doctor and an ambulance, and screamed and shouted. Such a performance would yield at least two hundred rupees, the bystander proclaimed (Mistry, 1997, p. 189).

The same author notes how a pharmacist resolved matters after he had made a fatal error in filling a prescription. When the police came to investigate, they and the manager discussed the situation: "Manager offered money, police took money, and everybody was happy" (Mistry, 1997, p. 303). Presumably, that is, everybody but the victim's friends and family.

The Postal Service

Postal workers are portrayed as petty thieves. One person in a novel expresses surprise that "the bright Canadian stamps [on a letter he received from overseas] unbelievably had not been stolen by rapacious postal workers who supplemented their wages by selling stolen stamps to hobby shops and collectors" (Badami, 2001, p. 108). Similar is the depiction of a man who "mailed the letter himself at the post office, making sure that the clerk cancelled the stamps in front of him ... so that nobody would take them off for reuse" (Suri, 2002, p. 209). That this situation is hardly a recent development can be seen from a 1890s short story by Rabindranath Tagore (1994, p. 72) in which an author sends a copy of his book "by registered mail. ... He was afraid that otherwise it would be stolen by the postman."

In a short story, a woman asks her son to send a telegram. But the message does not reach its destination. "Maybe it had gone to the wrong address," she thinks. "Maybe it hadn't gone at all. Maybe the postal employee only pretended to send it and pocketed the money" (Divakaruni, 2001, p. 258). Theft by postal employees also figures in the mailing of a dozen mangoes: "When the parcel had arrived, apart from the three squashed mangoes on the top, there were only stones underneath. Clearly someone in the Post Office had intercepted them" (Seth, 1993, p. 480).

Finally, another writer notes of the interaction between a postal worker and a customer that "it had taken fifteen minutes and fifty rupees to overcome the clerk's scruples, and the telegram had been sent" (Kaye, 1970, p. 551).

Customs Officials

The manner in which bribery plays its part in the inspection of imported goods is conveyed in a novel by Bharti Kirchner (1999, p. 3):

The customs officer, a man with blurry eyeglasses and a stony expression, orders the Indian woman ahead of me to open all her suitcases. I hear him saying, "Ten watches! Four cameras! Three alarm clocks!"

"Coming home after five years," she says, opening her palm to expose a crumpled hundred-dollar bill. "All those nephews, nieces, cousins, you know." Without appearing to look down, the officer relieves her of the money. "Very well." He waves her through.

Transportation

Bribery for advantages on public transportation is depicted in a story that tells of a grandfather who "bribed the conductor to give me a bed on the uppermost tier" (Balasubramanyam 2000, 51). Similarly, Kaye, portraying the protagonist in *The Far Pavilions* who desires to travel on the same train as his horse, notes that "it did not look as if he would be able to leave Ahmadabad within the next ten or fifteen days. And that would entail a judicious amount of bribery and corruption" (Kaye, 1970, p. 542). In another novel, an observer who observes a large wedding party with choice berths on a train declares that they must have bribed the guard (Mahindra, 1995, p. 12).

Smuggled Goods

The existence of a flourishing black market appears to be a taken-for-granted phenomenon. One character relates that she purchased several ballpoint pens for presents from "the smuggled goods market" (Badami, 2001, p. 151). Elsewhere readers are told that the highest-earning smugglers contribute heavily to political campaigns (Forbes, 1998, p. 121). The same writer has a character say that India could not run without smugglers. "We have two

economies here; the white and the black, and even European residents have no color prejudice against the black one." Without smugglers, it is said, "there'd be no drinkable gin, no edible marmalade or biscuits" (Forbes, 1998, pp. 120, 121).

We also are informed about a protagonist's mother who stores her valuables in a trunk, including "the Taiwanese acrylics smuggled across the Nepali border" (Gupta, 1992, p. 27). And in *The Far Pavilions*, Kaye (1970, p. 565) has a team seeking to rescue a junior *rani* taking advantage of a pathway discovered by an ally who had used it "for the purpose of smuggling stolen goods in and out of the Rana's territory."

In *The End Play*, a character goes to the Kohi fish district in Bombay where, readers are told: "I was startled by a scruffy character sidling up to me to ask if I was looking for foreign cigarettes, perfumes, cosmetics, VCRs, transistors—anything I wanted he could get in ten minutes" (Mahindra, 1995, p. 108).

Conclusion

The major interpretative maxim regarding corruption in the English-speaking world is that expressed by Lord Acton in a 1887 letter to a friend: "Power tends to corrupt, and absolute power corrupts absolutely" (Creighton, 1904, vol. 1, p. 372). In India, it is the words of Gandhi spoken in 1939 during a time of political tawdriness that are often invoked in discussions of corruption: "I would go to the length of giving the whole Congress a decent burial rather than put up with corruption that is rampant" (Krishna & Kumar, 2005, p. 498).

I have, of course, only sampled the vast output of English-language literature that is concerned with India. Brian K. Gupta's (1973) bibliography on the subject, for instance, lists more than 2,200 titles published by 1970. Nonetheless, it appears reasonable to conclude that a larger, random sampling would result in much the same extent and kind of representations of corruption in India as those I have inventoried. The novelists and short story writers read for this article obviously reflect popular feelings in India regarding corruption. The former director of the country's National Human Rights Commission has inveighed against corruption as an "epidemic which is wrecking the country's moral, social, and political fabric" and that it is "the most dangerous of all crimes," regarded by the common man as more threatening than terrorism, poverty, and HIV/AIDS (Kaarthikeyan, 2005, p. vi).

Notable, however, is the absence in the literary depictions of corruption of any sense of the suggestion by some social scientists that corruption, especially bribery, might have an enabling function in a country saturated with poverty and riddled with bureaucracy (see, e.g., Bardhan, 1997; Leff, 1964). The need to bribe the police shows up with particular prominence in the material we have surveyed, and its verisimilitude is verified by a sample of vignettes offered during interviews with citizens about their own experiences (Rao & Basha, 2005, pp. 201–202). It is interesting too how a number of writers take particular notice of the sly manner in which the police solicit and pocket illicit proceeds.

The survey reported here offers vivid illustrations of the nature of corruption in India and in this regard serves as an adjunct to empirical attempts, still in their infancy if not in a prenatal state, to document its types and their ingredients. In this regard the material fleshes out and highlights what otherwise can prove to be a somewhat sterile and emotionally insensitive numerical police statistics and aggregate tallies of victimization surveys.

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Crime, Criminals, Treatment, and Punishment: An Exploratory Study of Views among College Students in India and the US

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Abstract

Views about crime, criminals, punishment, and treatment are shaped by social forces that differ across nations. Most research in this area has been conducted among citizens of Western nations, yet crime and responses to it are a worldwide occurrence. This study, which compared the views of Indian and US college students, found that there were significant differences between Indian and US respondents in their views toward crime, criminals, punishment, and treatment. There were mixed views on punishment and rehabilitation among both groups of students. In a multivariate analysis that controlled for gender, age, academic level, and religious saliency, the respondent's nationality was the best predictor for these views. The differences in views were attributed partly to the cultural differences between the two nations.

Introduction

Crime is a worldwide problem. While crime is universal, the views toward crime, criminals, and how to respond to them are not. There is a rich and growing body of literature on views of crime; however, much of this literature has focused on the views of people within a single Western nation, the US. According to Mayhew and van Kesteren (2002, p. 63), "with a few exceptions—researchers have explored public opinion within, rather than across, jurisdictions." For both theoretical and practical reasons, it is important to compare and contrast views of people across the globe toward crime. A better overall understanding will be gained from using a cross-cultural perspective. As Jowell (1998, p. 168) pointed out:

[T]he importance and utility to social science of rigorous cross-national measures is incontestable. They help to reveal not only intriguing differences between countries and cultures, but also aspects of one's own country and culture that would be difficult or impossible to detect from domestic data alone.

In addition, cross-national research helps narrow the gap between different cultures and creates bridges so salient information flows more freely.

There is a need to study what citizens of different nations think about crime, criminals, punishment, and treatment (Cao & Cullen, 2001). This study examines views about crime, criminals, treatment, and punishment among residents of India and the US to determine similarities and differences. The literature suggests that social orientations influence individuals' views, attitudes, and perceptions, and cultural groups have their distinct values, views, and norms (Chung & Bagozzi, 1997; Green, 1982; Yick, 2000). It is unclear whether views would differ between Indian and US citizens. The two nations have commonalities, yet are unique.

Literature Review

Brief Comparison of India and the US

Both the US and India are former British colonies. Both are currently federal republics with democratically elected executives, bicameral legislatures, and Supreme Courts; however, the US has been an independent nation far longer

than India. The US has about three times the landmass of India, but its population is three times smaller (300 million versus India's 1.15 billion). The majority of Indian residents are Hindu (80%), although 11% are Muslim, 2% Christian, 2% Sikh, and 5% belong to other religious denominations (Hands off Cain 2006). The majority of US residents are Christian (77%), 4% identify another religious denomination (approximately half of those are Jewish and Muslim), 14% have no religious preference, and 5% refused to identify themselves in terms of religion (US Census Bureau, 2006). While Hindi is the most common language spoken in India, English is widely used (World Fact Book, 2006). English is the most common language in the US, although 18% of US residents speak another language.

Before British colonization, the criminal justice system in many parts of India was based on the Hindu concept of "*dharma*," which refers to right behavior (Raghavan, 2004, p. 2). The jurisprudence of ancient India was shaped by *dharma* as outlined in various manuals explaining the Vedic scriptures such as *Puranas* and *Smritis*. The king had no independent authority but derived his powers from *dharma*, which he was expected to uphold. The distinction between a civil wrong and a criminal offense was clear. While civil wrongs related mainly to disputes arising over wealth, the concept of sin was the standard against which crime was to be defined (Basham, 1967; Jois, 1990). The Maurya Dynasty, which extended to substantial parts of the central and eastern regions during the 4th century BC, had a rigorous penal system, which prescribed mutilation as well as death penalty for even trivial offenses (Sharma, 1988). About the 2nd or 3rd century AD, Manu, an important Hindu jurist, drew up the *Dharmasastra* code, which was called the *Manusmriti*. The code recognized assault and other bodily injuries and property offenses such as theft and robbery (Griffith, 1971; Jaishankar & Haldar, 2004; Pillai, 1983; Raghavan, 2004; Thapar, 1990).

Manusmriti dealt with the duties of a king, the castes, and rules of occupation in relation to caste, occupations in times of distress, expiations of sins, and the rules governing specific forms of rebirth. Though a theoretical text, *Manusmriti* dealt with the practicalities of life and largely with human conduct. After *Manusmriti* came *Dharmasastras* attributed to Yajnavalkya, Vishnu, Narada, Brahaspati, Katyayana, and others (Jayaswal, 1930). The later *Dharmasastras* were nearly pure legal textbooks, and the *Manusmriti* was considered superior to them (McGrath, 2003). The *Dharmasastras* claimed to be divine in origin and to have been passed on by ancient sages who cannot be identified as historical figures (Bhatia, 2001; McGrath, 2003; Singh, 1998). In pre-independence India, the British resurrected the *Manusmriti* and used it to frame the "Hindu Civil Code." Before

colonization, the *Manusmriti* was nothing more than an obscure text, long forgotten and rarely used to determine acceptable social practice (Kishwar, 1994). The *Manusmriti* came in very handy in social control, because due to their numerically small presence, the British had to rule largely by proxy. It was important that their agents not face resistance or rebellion, even in the social realm. Owing to its repressive and highly divisive character, the *Manusmriti* helped in preventing both individual and collective resistance to local authorities, which were typically upper caste and often Brahmin. That the *Manusmriti* represented an archaic and outdated social code did not matter. It fit in very well with the British colonial project (Jaishankar & Haldar, 2004). India obtained independence from the British Crown and became a sovereign nation in 1947. However, Indian criminal justice is still "a legacy of the British system" (Raghavan, 2004, p. 2), and the Indian law is based mainly on English Common Law (Devakar, 1985).

While originally based on the British legal system, the US system has evolved and is often embraced by Americans as uniquely their own. The US relies far more on official control structures than informal control structures. Even though the crime rate has been declining for the past 10 years, there is a fair degree of fear of crime in the US. Although rehabilitation was the mainstream before the 1970s, the US has recently been dominated by punitive attitudes toward crime and criminals (Cullen, Pealer, Fisher, Applegate, & Santana, 2002).

Brief Review of Published Crime Figures

From the 1950s to the 1990s, there was a dramatic increase in murder, as well as other violent crimes in India (Raghavan, 1998). For example, there were 55,726 reported violent crimes in 1961, and by 1996 there were 243,574 reported violent crimes. Similarly, in 1986, there were 27,269 known homicides, which increased to 37,671 by 1996 (Raghavan, 1998). In 2004, there were approximately 35,000 murders in India and about 28,000 attempted murders (National Crime Records Bureau, 2004). The number of reported murders in India hit a peak in 1992 and has been slowly declining since then (National Crime Records Bureau, 2004). There were also about 4,000 "culpable homicides not amounting to murder" in India (National Crime Records Bureau, 2004, p. 169). In 2004, there were more than 64,000 cases of death from negligence (National Crime Records Bureau, 2004). Most Indian murder victims were between 18 and 30 years of age and male (National Crime Records Bureau, 2004). About a quarter of Indian murder

victims are killed by firearms, the vast majority involving unlicensed firearms (National Crime Records Bureau, 2004). Most are killed by stabbing, beating, or strangulation (Blackshield, 1979). Motives for many murders were personal disputes, relationship disputes, and property disputes (National Crime Records Bureau, 2004).

In the US, homicide rates rose from the 1960s with a rate of 5 per 100,000 in 1960 and peaked in the early 1990s with a rate of 9.8 per 100,000 in 1991 (Fox & Zavitz, 2004). From 1992 to present, the murder rate in the US has dropped. In 1992, there were 23,760 murders and non-negligent manslaughters recorded in the US. In 2004, 16,137 murders and non-negligent manslaughters were reported to authorities (Uniform Crime Reports, 2005). Most of the people murdered in the US were killed by firearms (Uniform Crime Reports, 2005). Most murder victims were less than 30 years old, male, and killed by people they knew and not strangers (Uniform Crime Reports, 2005).

The murder rate in India, higher than most European countries, was lower than in the US. In 2004, India's murder rate was 3.8 per 100,000, the US' murder rate was 5.5, France's was 3.5, the 2001 murder rate for Germany was 1.2, and the 1996 murder rate for England was 1.1 (Barclay & Tavares, 2003; Langan & Farrington, 1998; National Crime Records Bureau, 2004).

In 1971, there were almost 2,500 rapes reported to Indian authorities. In 1993, there were about 12,000 reported rapes. By 2004, the number of rapes in India had risen to 18,233 (National Crime Records Bureau, 2004). As in the US, the actual number of rapes in India is probably higher, due to reluctance by victims to report them (Majumdar, 2004; Rajagopalan, 2004). In the US, the number of rapes peaked in the early 1990s and has declined since (Bureau of Justice Statistics, 2005). About 94,600 forcible rapes were reported to the U.S. police in 2004 (Uniform Crime Reports, 2005). Overall, India had a rate of about 2 reported rapes per 100,000 in 2004, while the US had a rate of about 32 per 100,000.

Robbery has recently been declining in both countries. In 1980, there were approximately 23,000 robberies reported to Indian authorities. The number of reported robberies peaked at 26,444 in 1992. By 2004, the number of reported robberies had declined to about 18,500 (National Crime Records Bureau, 2004). In the US, the robbery rate peaked in 1991 and has generally declined since 1991 (Bureau of Justice Statistics, 2005). In 2004, there were about 401,000 robberies reported to US authorities (Uniform Crime Reports, 2005). The US has a far higher robbery rate than does India (137 versus 2 per 100,000). Overall, India has a lower rate of violent crime than the US. In 2004, there were more than 2 million reported violent crimes

in India, which translated to a rate of 19.2 per 100,000 (National Crime Records Bureau, 2004). In the US in 2004, there were 1.4 million violent reported crimes, which translated to a rate of 465 per 100,000 (Uniform Crime Reports, 2005).

There has also been a drop in property crimes in India during the past two decades. In 1975, there were 192,854 reported burglaries. The number of burglaries declined to 92,490 in 2004 (National Crime Records Bureau, 2004). In the US, the burglary rate hit a high in the late 1970s and has been declining most years since this point (Bureau of Justice Statistics, 2005). In 2004, there were 2.15 million reported burglaries in the US (Uniform Crime Reports, 2005). The rate of burglary is much lower in India than it is in the US (730 versus 9 per 100,000). As with burglary, reported theft crimes have been declining in both nations. In 1974, reported theft crimes hit a high of 4.4 million in India. In 2004, the number had dropped to slightly above 273,000. This translates to a rate of 27 per 100,000. In the US, the rate of reported thefts has declined since the early 1990s and has recently stabilized (Bureau of Justice Statistics, 2005). In 2004, there were 6.9 million reported larceny-thefts in the US, which translates to a rate of 2,366 per 100,000 (Uniform Crime Reports, 2005). The overall crime rate for India (185.1 per 100,000 in 1996) is much lower than that in the US (5,278 per 100,000) (Raghavan, 1998).

Research Question

No previous research on views regarding crime comparing Indian and US residents could be found. This exploratory study was undertaken to fill this gap. It is unclear whether views would differ between Indian and US individuals. Both nations have had declining crime rates in the past several years. However, overall, India has a lower reported crime rate compared to the US. This may mean that crime is less frequent in India and is not seen as a major social problem. It is possible that nations with high crime rates will be more punitive in their approaches to dealing with criminals because crime is a greater social threat than it is in countries with low crime rates. Moreover, the literature suggests that social orientations influence individuals' views, attitudes, and perceptions, and distinct cultures have their own values, views, and norms (Chung & Bagozzi, 1997; Green, 1982; Yick, 2000). In India, the welfare of the community is very important. In the US, more importance is placed on the individual. The US legal system operates on the premise that

individuals have free will and the offender chooses to commit crimes and should be punished. Overall, the US tends to be viewed as punitive in how it handles criminal offenders. "Virtually everyone agrees that the public in the US harbors punitive views toward offenders" (Cullen, Pealer, Fisher, Applegate, & Santana, 2002, p. 128). With an incarceration rate of 775 per 100,000, the US has the highest rate of people under criminal incarceration in the world. The next nearest nation is Russia with a rate of 584 per 100,000. India has a much lower rate of 29 per 100,000 (NationMaster.com, 2003). Thus, US respondents were predicted to be more punitive in their views than their Indian counterparts. Americans emphasize individualism more than Indians. They are also more critical of the government and governmental agencies, including the criminal justice system. The importance of family and community in educating or reentering offenders into the free society is less in the US when compared to India. Thus, Indians were predicted to trust the government more than their Americans counterparts in dealing with crime and criminals. Also, Indian students were predicted to be more supportive of rehabilitation than American students.

Methods

In 2005, a convenience sample of students at one Indian university and one in the US was surveyed. The Indian institution was a large metropolitan public university in southern India (i.e., in the state of Andhra Pradesh), which offered undergraduate, master's, and terminal degrees and had an enrollment of about 100,000 students. The surveys were administered in 20 undergraduate classes. The selected courses represented a wide array of majors and included classes required by all majors at the university. The US university was a public institution located in the Midwest with enrollment slightly below 20,000 and offered undergraduate, master's, and doctoral/terminal degrees. Undergraduate students in 18 classes were surveyed at the US university. The selected courses represented a wide array of majors and included classes required by all majors. At both academic institutions, the survey was explained to the students, and it was emphasized both verbally and in writing that participation was voluntary. Students completed the survey during class time and were told not to do so if they had completed one in another class. It was estimated that more than 90% of the students present took the survey. A total of 434 usable surveys were returned by Indian

students, while 484 usable surveys were returned by US students. Thus, a total of 918 surveys were used in this study.

For the overall group of respondents, 50% were men and 50% were women. There were more men in the Indian group than there were in the US group (57% versus 44%). For the entire group, the median age of the respondents was 21, and the mean age was 21.52, with a standard deviation of 4.61. The Indian respondents were slightly younger than the US respondents (21.00 versus 21.96 mean years old). For the entire sample, 30% were freshmen, 21% were sophomores, 30% were juniors, and 19% were seniors. The Indian students were more likely to be freshmen and the US students were more likely to be seniors.

The respondents were asked 15 questions on crime, treatment, punishment, and views of criminals (see Table 4.1 for specific questions asked). All the questions were answered using a five-point Likert response scale, ranging from strongly disagree to strongly agree. In addition, gender, age, academic level, importance of religion in a person's life, and nationality of the respondent were used in the multivariate analysis. All these variables have been linked to attitudes to crime in the US (Lambert, 2004). Gender was measured as a dichotomous variable, i.e., whether the respondent was male (coded 1) or female (coded 0). Age was measured in continuous years. Academic level was an ordinal variable coded where 1 = freshman, 2 = sophomore, 3 = junior, and 4 = senior. Respondents were also asked the role that religion had played in their lives. Fifteen percent of the respondents indicated not at all (coded as 1), 32% indicated not much (coded as 2), 26% indicated a fair amount (coded as 3), and 27% indicated a great deal (coded as 4). US respondents were more likely than Indian respondents to indicate that religion played an important role in their lives. Finally, a dichotomous variable was created measuring if the respondent was from India (coded 1) or the US (coded 0).

Findings

The percentage responses for the 15 questions are presented in Table 4.1. On many of the questions, there are differences between Indian and US respondents in their views. Far more US respondents felt their nation had a great deal of crime than did Indian respondents (89% versus 64%). Interestingly, more Indian respondents felt that crime was a pressing social ill (89% versus 62%) and that courts were not harsh enough on offenders (66% versus 43%). The Indian students appeared more supportive of treatment for offenders

Table 4.1 Percentage Results and Differences between Indian and US Respondents on Their Views of Crime, Criminals, Treatment, and Punishment

	(N = 918)														
	Indian Respondents (n = 434)						US Respondents (n = 484)								
	SD	D	U	A	SA	SD	D	U	A	SA	Mean	S.Dev	Mean	S.Dev	t-value
India/US has a great deal of crime	6	15	14	39	25	1	3	7	53	36	3.61	1.20	4.19	0.78	8.76**
Crime is one of the most serious social problems facing society today	3	4	4	37	52	4	16	18	47	15	4.33	0.92	3.50	1.07	-13.35**
Courts generally are not harsh enough with criminals	4	13	17	42	24	4	27	26	33	10	3.71	1.08	3.20	1.05	-7.29**
The main goals for dealing with criminals should be to treat and rehabilitate them	4	8	12	47	29	4	19	24	40	14	3.90	1.02	3.42	1.05	-6.98**
We need more educational and vocational programs to effectively deal with crime and offenders	2	6	6	40	46	2	8	17	54	19	4.21	0.96	3.80	0.91	-6.72**
Showing mercy is more important than seeking revenge	6	11	10	44	28	4	22	35	32	7	3.76	1.16	3.14	0.99	-8.70**
We should stop viewing criminals as victims of society who deserve to be rehabilitated and start paying more attention to the victims of these criminals	7	9	17	42	25	4	19	30	38	9	3.69	1.15	3.28	1.00	-5.65**
Society has a right to seek revenge on violent criminals	13	18	10	35	24	10	26	26	30	8	3.39	1.36	2.99	1.13	-4.91**
Criminals need to be punished, not coddled	9	14	9	44	24	4	8	19	54	14	3.59	1.25	3.66	0.95	0.97

A criminal will only "go straight" if the punishment is harsh	7	17	24	38	14	11	42	32	11	4	3.34	1.12	2.56	0.97	-11.36**
Criminals do not generally fear being caught and punished	5	24	16	41	14	3	22	23	47	4	3.35	1.13	3.17	0.96	-1.23
I support the death penalty	23	27	10	23	17	13	15	15	38	19	2.83	1.44	3.36	1.30	5.80**
Once a criminal, always a criminal	26	39	17	11	7	18	44	19	16	4	2.33	1.17	2.44	1.07	1.42
Most people commit crime because they are mentally ill or sick	17	34	16	27	6	14	47	20	18	2	2.72	1.20	2.48	1.00	-3.32**
People commit crimes because they are lazy	21	36	15	20	7	17	48	19	16	0	2.57	1.24	2.35	0.95	-2.98**

Source: Authors' findings/calculations.

Notes: (i) Percentages may not equal 100% due to rounding.

(ii) SD = Strongly Disagree, D = Disagree, U = Uncertain, A = Agree, and

SA = Strongly Agree.

(iii) S.Dev stands for standard deviation.

(iv) The independent t-test was used.

(v) * $p \leq .05$ and ** $p \leq .01$.

than US students. For example, 76% of the Indian students felt the main goals of dealing with criminals should be treatment and rehabilitation as compared to 54% of the US students. Except for support for capital punishment, Indian respondents were more supportive of punishment for offenders. For example, 52% of the Indian respondents agreed that an offender would only becoming law-abiding if the punishment is severe, while only 15% of the US respondents agreed with this view. More US students indicated that they supported the death penalty than Indian respondents (57% versus 40%). Overall, a slightly more favorable view of criminal offenders was held by US respondents compared to Indian respondents. For example, 27% of the Indian students felt that criminals committed crimes because they were lazy compared to 16% of the US respondents. There were also similarities between the two groups of students. Both groups felt that offenders had to be punished for their crimes. Slightly more than half of the Indian and US students felt that criminals did not fear being caught and punished. Very few (about 20%) thought that a person who committed a crime would continue to do so (i.e., once a criminal, always a criminal).

The independent t-test was used to determine whether the two groups of respondents significantly differed in their views, and the results are presented in Table 4.1.¹ A statistically significant difference was seen on all but three of the measures. US students were more likely to feel that their nation had a great deal of crime, while Indian students were more likely to feel that crime was one of the most pressing social problems in India and that courts were not harsh enough with criminals. Indian respondents were more supportive of rehabilitation and treatment as main goals for responding to offenders, more likely to feel educational and vocational programs for offenders were needed, and more likely to feel that showing mercy was more important than seeking revenge. Interestingly, Indian students were also more supportive of punishing offenders than US respondents. There was less support for capital punishment among Indian students compared to US students. Indian respondents were slightly more likely to feel that criminals were lazy and mentally ill. No significant differences between Indian and US respondents were found in their views of whether offenders needed to be punished, if criminals feared being caught and punished, and if criminals could change their ways.

¹ In addition to the independent t-test, two nonparametric tests were used. Specifically, the Kruskal-Wallis H test and the Mann-Whitney U test were utilized. Similar results to the t-test were observed.

To determine whether the two groups differed significantly in their views independent of gender, age, academic standing, and importance of religion, Ordinary Least Squares (OLS) regression was utilized. Each of the 15 measures presented in Table 4.1 was entered into an OLS regression as the dependent variable and gender, age, academic standing, importance of religion, and nation (location) of the respondent were entered in as the independent variables. The results are reported in Table 4.2.² The coefficients for independent variables and the R-squared statistic are reported in the columns and the dependent variables are presented in the rows.

Of the independent variables, the nation variable had the most significant relationships. In fact, it had a significant impact on 13 of the 15 of the OLS equations. Gender had the next highest number of significant relationships with impact on 10 equations. Academic level had significant effects for three OLS equations. Age had significant associations on two questions. The importance religion played in a person's life had no significant relationships. As with the bivariate analysis, in the multivariate analysis, Indian respondents were more likely to agree that crime was a major social issue, that courts were not harsh enough in their sentences for offenders, supported treatment and punishment for offenders, and were more likely to feel that offenders were lazy or mentally ill. US respondents were more likely to feel that their nation had a great deal of crime, were more supportive of capital punishment, and were slightly more likely to feel that offenders would continue to commit crimes. There were significant differences in views between Indian and US students that offenders needed to be punished and that most offenders were not concerned about being caught. Finally, it is important to note that for many of the questions the R-squared statistics were very low. For all 15 questions, the independent variables, including the nation of the respondent, explained 16% or less of the observed variance in responses.

Discussion and Conclusion

There are two major findings from this study. First, there are differences between the two groups of respondents in their views. Second, both groups

² The dependent variables in the OLS regression equations were ordinal level variables. While OLS regression is robust, it is sometimes argued that Ordered Ordinal Regression should be used when the dependent variable is measured at the ordinal level (Long, 1997; Menard, 1995). Using Ordered Ordinal regression, similar results in terms of statistical significance were found.

Table 4.2 OLS Regression Results—Standardized Regression Coefficients Reported

(N = 918)

Statement	Gender	Age	Level	Relig.	Nation	R ²
India/US has a great deal of crime	-.02	.03	-.17**	-.01	-.33**	.10**
Crime is one of the most serious social problems facing society today	-.02	.02	-.02	.04	.40**	.15**
Courts generally are not harsh enough with criminals	.03	.09**	-.02	-.01	.24**	.07**
The main goals for dealing with criminals should be to treat and rehabilitate them	-.18**	.04	-.12**	-.04	.19**	.09**
We need more educational and vocational programs to effectively deal with crime and offenders	-.15**	.02	-.03	.00	.24**	.08**
Showing mercy is more important than seeking revenge	-.15**	.01	-.08*	.01	.25**	.09**
We should stop viewing criminals as victims of society who deserve to be rehabilitated and start paying more attention to the victims of these criminals	.14**	-.02	.03	.01	.18**	.06**
Society has a right to seek revenge on violent criminals	.15**	-.01	.03	.04	.19**	.06**
Criminals need to be punished, not coddled	.16**	.03	-.03	.05	-.01	.02**
A criminal will only "go straight" if the punishment is harsh	.15**	-.07*	.01	.02	.35**	.16**
Criminals do not generally fear being caught and punished	.04	-.03	.01	.02	.03	.01
I support the death penalty	.18**	-.02	.08	.00	-.17**	.07**
Once a criminal, always a criminal	.20**	-.05	-.05	.04	-.10**	.05**
Most people commit crime because they are mentally ill or sick	.02	.07	.01	.05	.11**	.02*
People commit crimes because they are lazy	.16**	-.01	.06	.02	.08*	.04**

Source: Authors' findings/calculations.

Notes: (i) Gender was measured as 0 = females and 1 = males.

(ii) Age was measured in continuous years.

(iii) Level represented the academic level of the respondent and was measured as 1 = freshman, 2 = sophomore, 3 = junior, 4 = senior.

(iv) Relig. stands for the importance religion played in a person's life and was measured as 1 = not at all, 2 = not much, 3 = a fair amount, and 4 = a great deal.

(v) Nation represented the location of the respondent and was measured as 0 = US and 1 = India.

(vi) * $p \leq .05$ and ** $p \leq .01$.

were complex in their views. On all but 2 of the 15 items, there was a statistically significant difference between the two groups. The US respondents were more likely to feel that there was a great deal of crime in their country compared to the Indian respondents. This is an accurate view in light of the crime figures, which clearly show that the US has a much higher reported crime rate than India. What is interesting is that Indian respondents were more likely to agree that crime was a serious social problem than US respondents were. It could be that US respondents have become used to crime and do not feel it is a pressing social problem. Further, the lower perception of crime as a significant social problem in the US could result from either the "War on Terrorism" and/or the economic recession, both ongoing at the time of the survey. Resulting media coverage of wartime violence, frequent and deadly terrorist attacks, as well as domestic economic woes may have pushed crime from the forefront as a social issue. Crime, in a society that stresses individualism, is more likely to be seen as the sum of individual acts, rather than a threat against the group. Thus, crime could be seen as more of a problem in India because of the importance of the group.

Indian students were more likely to feel that courts were not harsh enough with criminals. This may be because Indian students were more likely to feel that crime was a pressing social issue. In addition, this variance may be the result of differences in the justice systems in both nations. There is a much higher acquittal rate, and a lower conviction rate, in India in comparison to the US (Bureau of Justice Statistics, 2005; NationMaster.com, 2003). Only 42% of defendants in India are convicted by the courts (National Crime Records Bureau, 2004). In addition, it is possible that sentences for offenders are not as long in India as they are in the US. For example, there is no life without parole sentence in India where a person sentenced to life may be released after 14 years (Deathpenaltyinfo.org, 2006). Lastly, the US has about 25 times the incarceration rate of India (NationMaster.com, 2003). There may be a greater demand by the Indian respondents to have offenders sentenced to prison than is actually occurring.

Indian students were more likely to feel that criminals needed to be punished. The desire for punishment may be because they feel it would change the offender or would also deter others from committing crimes. On the one hand, Indian respondents showed greater mercy and were highly supportive of rehabilitation. On the other hand, the same Indian respondents were highly punitive toward offenders, except for the death penalty. Interestingly, while Indian students were more supportive of harsh punishment, they were less supportive of capital punishment. In addition, Indian students may be more willing to use punishment to change offenders and to bring

them back into society. This may also explain why Indian respondents were generally more supportive of treatment for offenders. Indian students may feel that the goal of punishing offenders is to change them and return them to society, while US respondents may feel that offenders deserve punishment because they choose their own actions. Many in India hold that individuals can be socialized to change and conform to societal norms with the help of family, friends, and neighbors. The state only becomes involved when this intervention fails or the crime is serious, and formal punishment is required. Interestingly, US respondents were more likely to disagree that people committed crimes because they were either lazy or mentally ill.

The findings also illustrate that views are complex. For both groups, there was no unitary view toward crime, criminals, punishment, and treatment; both groups exhibited multidimensional views. There is far less uncertainty in the views of Indian respondents when compared to US respondents. As illustrated in Table 4.1, on almost every item, fewer Indian students selected the uncertain response than US students. It appears that the Indian respondents had formed views and were willing to express them. Finally, it is important to note that on many items, the difference between the two groups was more the degree of agreement/disagreement than completely opposite views. For example, the majority of respondents in each group felt that their country had a great deal of crime, but US students were more likely to feel this way (i.e., 89% versus 64%).

Given that this was but one study of Indian and US college students, it has limitations. College students were selected because they were convenient and this was an exploratory study. Exploratory studies are less concerned with generalizing the results and more concerned with determining if any relationships exist in areas not routinely studied. There is clearly a need for more research on the views of Indian and US residents in the general population on crime. This would help determine whether our findings hold true. More variables can be added and indexes, rather than single item measures, may be used. Further, other questions about crime, criminals, punishment, and treatment could be asked. It is important to realize that the explanations offered for the results in this study have not been tested. Finally, future research should examine other factors that may explain differing views toward crime, criminals, punishment, and treatment. In this study, the R-squared statistic never went above 0.16 (see Table 4.2). This means that most of the variance for a particular variable was accounted for by factors other than gender, age, academic level, importance of religion, and nationality. These other factors need to be identified and explored. Continuing research is also

needed to determine whether views evolve as both nations undergo social and economic change.

While the study has limitations, there are several implications based on the results. First, while there is a concern about crime in both nations; Indian respondents were more likely to feel that crime was one of the most pressing social issues in their society. This concern will not be easy for Indian criminal justice agencies to reduce quickly. It will take time and engagement with citizens to deal with the crime concern. One suggested method may be to involve community residents in crime control, such as neighborhood meetings, voluntary community watch groups, and harden potential targets. Having people become involved may provide them with a more accurate view of the extent of crime and the types of crimes in their communities. In addition, it should also help reduce crime in the neighborhoods where these efforts are initiated. Forming partnerships can lead not only to possible changes in views on crime but also more positive views of the efforts of criminal justice agencies. These potential partnerships between citizens and criminal justice agencies to help curb crime is a bidirectional flow of information that will help citizens to deter crime in their communities and police agencies to know about minor problems before they become larger problems.

Second, the finding that Indian students tend to be more punitive in their views of criminals suggests on the surface for the need to increase sanctions on criminal offenders. This, however, may not be the best solution to this finding and is likely to be a costly one. It may be frustration over crime that is leading to a desire for harsher punishments. If the first implication does lead to lower crime, it is possible that punitive views would decrease as well. Additionally, it could be a lack of information that is driving desires for harsher punishment for offenders. Enhancing the flow of information to citizens about not only about the amount of crime but also the sanctions on offenders may make people more aware of what is actually occurring. This could change people's views of punishment of criminals.

The third implication is that while both groups of students favored treatment for offenders, Indian respondents were much more in support of rehabilitation of offenders. This suggests that there should be more efforts aimed at treating offenders and that these efforts would be supported by those in this study. Rather than broad, general rehabilitative interventions, specific treatment efforts aimed at the criminologic needs of offenders would be required. If the rehabilitation efforts are successful, this should reduce recidivism, which in turn may lead to lower crime rates. Moreover, criminal justice agencies involved with the handling and treatment of criminals need to educate the public on what they do and why the treatment interventions

matter and make a difference. It is unrealistic that rehabilitation efforts will be one hundred percent successful with all offenders, but it is important to educate the public on the success of treatment efforts on reducing recidivism among offenders.

All three implications presented have a common theme of informing the public and getting them more involved in dealing with crime. Successful crime control will probably involve both formal government control and efforts (e.g., police, courts, and correctional facilities), and informal control by citizens (e.g., family, peers, and neighborhood watches). Of course, the suggested implications are untested and need to be explored in future studies. Finally, the sharing of information and involving the public in criminal justice issues and decisions may be relatively new in India; it should provide more information on the views of Indian citizens toward criminal justice issues and how these views can be changed (Khan & Unnithan, 2009; Verma, 2005).

It is clear that more comparative research is needed to better understand views toward crime, criminals, punishment, and treatment. Payne, Gainey, Triplett, and Danner (2004, p. 198) argue that "research on the public's attitudes about punishment is useful in that it generates understanding about a particular culture's most basic values and beliefs." Angel and Thoits (1987) point out that the views of different groups are windows to the values of particular groups. More cross-national research will provide a better understanding of views on crime, as well as how and why they differ. In any event, the differences observed in this study should shed more light on the views of Indians and Americans on crime, punishment, treatment, and criminals.

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Criminological and Criminal Justice Education in India

N. Prabha Unnithan

Abstract

In an effort to understand criminal justice education comparatively, this chapter traces the development of the field in India considering both general education and specific job training. There are several key similarities and differences in comparison to the US. After discussing these findings, the chapter raises four issues which emerge from the comparison: (a) the national government's influence over criminal justice education; (b) the gap between academic education and job-related training; (c) the influence of the level of economic development on crime-related education; and (d) the circumstances surrounding the influence of outsiders and outside agencies on criminal justice education.

Introduction

In recent years there has been considerable interest in examining crime and criminal justice utilizing a comparative and international perspective (Rounds, 1999) leading to an increase in books, journals, and papers in this area. However, most of our knowledge of criminal justice education itself continues to come from the more developed and Western nations. This myopic view of the world leads to insularity and ethnocentrism (Johnson, 1983) while simultaneously managing to ignore "the greater part of mankind"

(Lombardo, 1984). Similar to the arguments made by comparative criminologists regarding how studying patterns of crime in other countries leads to a better, critical, and contextualized understanding of crime in one's own (see Zimring, 2006), considering the development of criminal justice education in more than one country may lead us to a better understanding of the overall course of criminal justice education.

In this section, we trace social science-based criminological and criminal justice education in India and assess its current status. Mirroring the split of criminal justice education into the academic and vocational models (see Morn, 1995) we examine the evolution in India of general education in criminology and criminal justice, and to a lesser extent, professional (i.e., job-related) training that is closely related to the criminal justice system. We consider both key differences and similarities between India's experience and that of the better-known details of such educational efforts in the US. Thus, similar to the goals of all international research, we focus on the criminal justice education in India for the twin purposes of (a) learning more about how this field develops in varying societal contexts; and (b) enlarging our own understanding of the possible sources and influences on this process.

Methods

We first consulted standard publications on criminology and criminal justice in India (e.g., Bayley, 1969; Bhushan 1970; Chakrabarti 1997; Ghosh & Rustamji 1993; Khan & Unnithan 1984; Kumari 2004; Mann 1979; Raghavan 1999; Rao 1991; Siddique 1978) for delineating the broad outlines of historical trends affecting these areas. Given that these works have often dealt with education and training issues in fragmentary and indirect ways, we looked for more details utilizing other methods.

For academic education we began by examining the listings on India in the Yearbook of the Association of Commonwealth Universities (2005). This publication is an authoritative and long-running guide to higher education in nations of the British Commonwealth including India. We looked for coursework and degree programs in universities identified in the yearbook as involving criminology, criminal justice, or forensic science, given the close connections among these terms in Indian higher education. We then went to the entries associated with each institution and noted if there were separate departments of criminology, criminal justice, or forensic science and collected information on faculty, curricula, and degree programs. Finally,

we cross-checked and verified these details with other sources such as the Association of Indian Universities (www.aiuweb.org), the Indian Association of Social Science Institutions (www.iassi.nic.in), and the websites of various universities.

For information on job training in criminal justice we again began with the standard works mentioned earlier and included in our references. We then consulted official publications and/or websites of the governments of all 28 states that constitute India for details on how police and correctional training is carried out. This is appropriate in that job training for criminal justice personnel (other than inductees into the Indian Police Service [IPS] who are trained at the national level for upper-level positions in both police and corrections) is controlled by the states. Based on this information collected, we consider general education and job training in criminology and criminal justice in India. Our goal, as mentioned earlier, is to discover similarities and differences with the US.

General Education in Criminology and Criminal Justice in India

Before describing criminological and criminal justice education, it would be relevant to take a brief look at how education is structured in India. Although there have been some historical variations, education in India now generally follows what is referred to as the 10+2+3 pattern. This means that 10 years of schooling are followed by 2 years of pre-university preparation and 3 years of bachelor's level college or university education. The first two stages are followed by major examinations that are conducted by governmental or other recognized national bodies. After entrance to a college (which may be affiliated to a regional or state-level university for curriculum and examination purposes) or university undergraduate program, a student may expect to take examinations at the end of every semester during all the three years in major and minor subjects. If the student wishes to continue, master's programs generally take two years of course work (with examinations at the end of each year) and often contain a thesis requirement. Finally, master's in philosophy programs, which require two years of course work, and doctoral programs, which are generally based on a dissertation requirement without additional coursework, stand at the apex of higher education. It should be noted that legal education (the academic basis for prosecution, defense, and

judicial personnel) is provided by law colleges throughout the country and is generally a five-year program following high school leading to a B.A., LL.B. (Bachelor of Arts and Bachelor of Law) degrees.

Turning to the origins of criminology and criminal justice education in India, these may be traced to the national conference of state Director Generals of Police, Inspectors-General of Police, and Deputy Inspectors-General of Police, which is a periodic and regular feature of Indian policing. Following the recommendations of the Deputy Inspectors-General, the issue of initiating courses of instruction in Criminology and Forensic Science was taken up with vice-chancellors (the highest executive officers of universities in India) of several institutions of higher learning in 1950. This initiative, meant to ensure that some relevant education was provided to those who would subsequently opt to serve in various sectors of the criminal justice system, met with some success. The Tata Institute of Social Sciences (TISS) in Bombay (now Mumbai) began a program in Criminology and Correctional Administration as part of its Master's in Social Work degree in 1954. The influence of the American criminologist, Walter C. Reckless is discernible in the particular shape that the TISS program took (see the following section for details). The University of Saugar (now renamed Hari Singh Gour University after its founder) created a separate Department of Criminology and Forensic Science in 1959.

In 1961, a delegation of prominent judges and central administrators met with the University Grants Commission (UGC), the apex funding agency for colleges and universities in India, to enhance the teaching of criminology and forensic science particularly at the undergraduate level. They also suggested that graduate (or in Indian terminology, postgraduate) programs be introduced at a national institution. However, both the UGC and the central government did not take decisions favoring further growth of criminological and criminal justice education at that time, resulting in halting and haphazard development of the field in Indian higher education. In addition to the University of Saugar (located in central India) mentioned above, other graduate programs developed in Patiala University (in the north; now Punjabi University, Patiala) and the University of Madras (in the south; Madras, the city, has now been renamed Chennai). They were joined in 1970 by Karnatak University in Dharwad.

Much of the impetus for development of these early independent departments came from an influential (quoted directly in the University of Madras criminology website) report of the United Nations Educational, Scientific and Cultural Organization (UNESCO, 1957) prepared in cooperation with the International Society of Criminology. Dennis Carroll (a British

psychiatrist) and Jean Pinatel (a French criminologist) who were respectively President and Secretary-General of the Society wrote the main report. They argued (UNESCO, 1957, p. 13):

Thus, the need for teaching criminology has been asserted not only by criminologists themselves, but all those who co-operate in crime prevention and the treatment of delinquents.

The UNESCO Report (1957, pp. 28-40) went on to urge that, ideally, criminological education should be interdisciplinary and include the following areas: criminal biology, criminal psychology, criminal sociology, and penology; general and clinical criminology; forensic medicine; scientific police methods; and judicial psychology. Gaining scientific training and experience that was clinical and experimental in nature was emphasized throughout the report as being the basis for teaching methods.

Perhaps as a result of these urgings for the development of a more "scientific" criminology as opposed to a social science-based criminology, the focus, if not the emphasis, of three (Saugar, Patiala, Karnatak) of the five pioneering departments in India was on the forensic science components of their programs, rather than on criminology or criminal justice aspects. For example, the Department at the University of Saugar shared building space for many years of its early existence with the forensic laboratory of the state of Madhya Pradesh. Patiala (now Punjabi) focused on forensic science to the exclusion of criminology and continues to do so. The exceptions to this observation are the TISS where Criminology was (and continues to be) connected to Social Work and had a heavy emphasis on correctional work, and the University of Madras, where until separating in 1983, the department was associated with their Department of Psychology. It still remains common for all these departments to emphasize, in their publicity materials, more of what they offer in various forensic analytical techniques and equipment without similar details about the social science side of their curricula. This is of course at variance with the practice in the US where forensic science or criminalistics programs are not usually joined with criminology and criminal justice (there are exceptions such as California State University, Los Angeles, and Albany State University).

More recent entrants to the criminology and criminal justice education scene in India include the following: Andhra University in Waltair, which now offers an M.A. in Criminal Justice with specializations in security management and forensic psychology; Bundelkhand University in Jhansi, which offers master's level programs separately in criminology and forensic

science; and Manonmaniam Sundaranar University in Thirunelveli, which offers master's and PhD programs in "criminology and criminal justice science." The privately-run Amity University near the capital, New Delhi, recently created a separate program in criminology. According to its website, it provides a master's degree emphasizing forensic science.

Perhaps the most important development in recent times has been the entry of the National Institute of Criminology and Forensic Science (NICFS) into the field of criminology and criminal justice education.¹ NICFS (an agency of the central government's Ministry of Home Affairs), has until recently been involved heavily in advanced in-service training for individuals already working in various sectors of the criminal justice system at middle and higher administrative levels and selected by their home departments. It has been estimated that every year around 500 individuals belonging to the middle and upper echelons of Indian police, prosecutions, judiciary, corrections, and forensic laboratories participate in these programs. Criminal justice personnel from African and other Asian countries are also present in some of these programs occasionally. Its Master's in Criminology curriculum consists of following coursework: Principles of Criminology; Contemporary Forms of Crime; Criminal Law and Procedure; Criminal Justice System; Criminological Theories; Penology and Correctional Administration; Research Methods; Juvenile Delinquency; Criminal Psychology; Forensic Science; Social Legislation and Crime; Victimology; and elective classes ranging from Drug Abuse to Human Rights and Restorative Justice (NICFS, 2005). With NICFS's entry into criminal justice education, the vision of the 1961 delegation of creating a national institution for criminological and forensic scientific education is closer to realization, even though there have been recent moves to split the two areas of emphasis (Khan, 2011).²

It should be noted that the above discussion of the growth of distinct programs in criminology and criminal justice has not included institutions where such topics are covered within the other social sciences. A large number of other university-level social science departments and associated schools and institutes offer related elective courses as part of their graduate programs.

¹ As a hypothetical analogy it might be useful for American readers to think of the impact and consequences of the direct entry of the US National Institute of Justice (NIJ) into graduate criminal justice education. With the prestige and backing of the US federal government and its superior resources, such a move would make the NIJ a highly influential player in the discipline. Of course, as we have noted elsewhere in the book, in India, the central government plays an even more crucial role in professional criminal justice, thus increasing its sway over the field through this move by the NICFS.

² Personal communication from M. Z. Khan.

Examples of such coursework can be found in many programs devoted to law, psychology, sociology, and social work. Generally speaking, these programs deal with topics such as criminology, penology, correctional administration, criminal law, policing methods, forensic science, and crime-related social problems. For example, many law colleges offer diplomas in criminology (heavily focused on legal aspects of crime and punishment) for their students following graduation. The emphases and details of issues that are discussed obviously vary by institution, department, and program.

Criminal Justice Job Training in India

We now turn our attention to another aspect of criminal justice education: job training for those already working within the system. The first such formal training program began with the inauguration of a Jail Training School in Uttar Pradesh (India's largest and most populous state) in 1940 for correctional officers. In 1951, the eminent American criminologist, Walter C. Reckless, identified as an "expert in Criminology and Correctional Administration" was sent to India (at the central government's request) through the United Nations Technical Assistance Program on a mission to study and make recommendations regarding improving correctional training in India. While there, he linked up with J. M. Kumarappa, Director of TISS, who acted as an intermediary between India's government and the expert representing the UN. Among his major recommendations were many that would be familiar to any American observer of 20th century corrections, especially as the field was conceived of at that time. Those recommendations included: increasing the number of correctional rehabilitative personnel; providing adequate reformatory and retraining programming; enhancing diversification and specialization in prison functions and improved classification procedures; setting up an indeterminate sentencing system; increasing the use of probation; making available after-care of released prisoners; and separating juveniles from prison populations (Reckless, 1953). TISS continues to recognize the importance of this event with an annual criminology award named after the two individuals involved in this mission from the United Nations and India respectively: the Kumarappa-Reckless Award.

Subsequent to Reckless' recommendations, the Lucknow Jail Training School began offering short-term orientation, refresher and pre-promotion training programs for prison and other correctional officials. This state-level

training school model has been emulated by other Indian states. For example, there is a training center in Vellore (in the state of Tamil Nadu) meant for new and in-service lower-level prison personnel. In 1978, the Regional Institute of Correctional Administration was set up, also in Vellore, to cater to the training needs of higher-level correctional personnel from the four major southern states. In 1989, a parallel Institute of Correctional Administration was set up in Chandigarh for some of the northern-most states. In addition, the National Institute of Social Defence (NISD), a part of the central government and originally set up in 1961 as the Central Bureau of Correctional Services, provides small grants for teaching and training programs and conducts some on its own. Its original mandate, which focused on both adult and juvenile corrections, has now shifted to include juvenile justice, child protection, care of the elderly, and the prevention of drug abuse. As a result, it is now less influential in the field of correctional training. Overall, the impact of social science-based criminal justice education on these forms of correctional training can be described as minimal when compared to the coverage of more technical aspects of corrections that Reckless (1953, p. 60) disparaged as "sheer administration and custody."

The procedures for police training are long standing although these have typically paid little attention to the humanities and the social sciences. Verma (2005), who is highly critical of police training and accountability in India, notes that the reports of several police commissions and committees for necessary police liberalization and reforms have been all but ignored. Social science-based criminological and criminal justice education is provided in some of the state police training colleges (meant for lower- and middle-level police officers) located in various parts of the country. This is also carried out at the Sardar Vallabhbhai Patel National Police Academy in Hyderabad for upper-echelon IPS officers selected by the central government who also undergo a short training period in the state that they are assigned to. In addition, several central police agencies such as the Central Bureau of Investigation, the Central Reserve Police Force, the Intelligence Bureau, the Bureau of Police Research and Development, and the National Crime Records Bureau do incorporate elements of criminal justice education in their in-service training programs. However, again, their foci are likely to be the technical aspects of each agency's mission. For example, the National Crime Records Bureau provides technical training for police computer programmers and on the maintenance of computer-based fingerprint records.

Finally, social science-based criminological and criminal justice training separate from generic law education for prosecutors and judicial officials is practically non-existent (the solitary exception being some of the NICFS

training programs mentioned above). The major national center for graduate legal education and research, the Indian Law Institute, does not provide any training that may be thought of as compatible with social scientific crime-related education. However, we should mention that most individuals who have attained degrees in law and work in the legal profession or in the judiciary in India are likely to have some exposure to criminology and criminal justice in college, minimally, in terms of curricular offerings in criminal law. A few others may have received an additional diploma in criminology that some law colleges (e.g., Jai Narayan Vyas University; Aligarh Muslim University) offer.

New police and correctional trainees at the national and state levels are unlikely to have had prior exposure to criminology or criminal justice in college given the relative rarity of these programs. This is an obvious point of difference with the US where those who go into police or correctional academies are more likely to have taken courses in criminology and criminal justice as part of their major or electives during their undergraduate education. Of course, this does not apply to those who enter policing or correctional work without college-level education.

Discussion

From the foregoing brief account of the development and current status of criminological and criminal justice education in India we notice a number of similarities and differences in the record in comparison to the US. First, the influence of the national government has been crucial in the US especially through the old Law Enforcement Assistance Administration, which provided funding for many criminal justice personnel to go to college and for criminal justice programs to be set up in institutions of higher learning (Morn, 1995). In addition, the National Institute of Justice (NIJ), the Federal Bureau of Investigation (FBI), the National Institute of Corrections (NIC), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) have all supported research that involved criminal justice faculty and graduate students (e.g., research grants from the NIJ and OJJDP) and training for criminal justice system personnel (e.g., the FBI's National Academy and NIC training programs for local and state correctional officials).

The influence of the central government has been of overwhelming importance in the case of India. Without the initial support and encouragement of various central agencies (the IPS cadre, UGC, NISD, and NICFS),

criminology and criminal justice could not have taken off in India. The differences between the two countries on this issue may be traced to the greater (India) and lesser (US) degrees of control that the national governments have over criminal justice in the states of the respective countries. The question here for those who study the comparative development of criminology and criminal justice education is whether an influential national government is required for the establishment and expansion of criminology and criminal justice education.

The second similarity one notices between India and the US is the relative lack of integration of academic criminology and criminal justice concerns into the job training undergone by criminal justice personnel. While general education and job training are separate enterprises, with the former providing context and perspective, and the latter focusing more on developing a set of occupational and job survival skills, this criticism has been made repeatedly in relation to the US training curricula (see Berg, 1994). As the description of Indian criminal justice job training makes clear, this is also true there (see Raghavan [1999], who argues that cooperation between academia and training professionals is more common in the US when compared to India). What makes for this separation between the two that has now been noticed in more than one country? Would it be possible to ever integrate the two arms of education in this field, perhaps utilizing general medical or legal education and related professional training models?

In contrast, there are several key differences in the development of criminology and criminal justice education in both countries (as one would expect given other structural and cultural differences between the two) even though there are commonalities in their legal traditions and colonial histories. We will concentrate on two of the most obvious differences identifiable from the description above. First, we should consider the slow and almost halting expansion of general crime-related education in India when compared to the US, where the field has experienced continuous explosive growth in the last four decades. Most of this difference may be due to the relative economic development levels of both countries. The US, an advanced, industrialized (at the beginning of the growth of criminal justice education), or post-industrial and information economy simply has a vast amount of resources to deal with issues and problems that may arise, such as the need for more educated criminal justice personnel. At the same time, it could also be argued that having these resources available may mean that, for better or worse, more issues are likely to come under the purview of the criminal justice system (e.g., the war on drugs; drunk driving; stalking).

In contrast, India, until recently, has been a developing economy where national planning and the bulk of aid from international agencies have rarely focused on dealing with problems of crime and justice by furthering criminal justice education or training. The main priorities of various five-year plans in India have been in developing agriculture, irrigation, power, mining, and manufacturing, and on improving overall educational levels, health services, and welfare programs. Here it could be argued that deficits in criminal justice resources may mean that many forms of criminal and delinquent behavior are often left to fester unattended (e.g., vandalism; political corruption; white-collar crime). This leads to another question that comparative researchers may study profitably. Does economic development have a relationship to expanding crime-related education and training? Does it take a certain level of economic success to be achieved before a country feels the need to tackle questions related to crime using criminological and criminal justice education?

Finally, an obvious difference between the paths criminology and criminal justice education have taken in these two countries is the relative impact of external agencies and experts in India (larger) and the US (smaller). As we saw earlier, criminology and criminal justice education in India has been heavily influenced by outsiders such as Walter Reckless and outside agencies such as UNESCO.³ The US has been relatively less affected directly. Willis et al. (1999, p. 227) note:

The most notable criminological developments occurred in the emerging scientific fields of biology, psychology, physiognomy, phrenology, and social statistics. By the end of the 1800s, the European tradition in criminology was firmly established. In the United States, theoretical development of criminology drew its inspiration from sociology, thus largely rejecting European thinking about crime and delinquency.

It is, of course, possible to find some external impact on American criminology and criminal justice education, especially from sociology (which itself crystallized as a discipline in European universities), and in contemporary interests in victimology and restorative justice. However, the nearest parallel one could find to more than modest impact is in the work of immigrant

³ Willis et al. (1999, p. 233) citing Sandhu (1983) comment: "Criminologists in India, most of whom were not trained in foreign universities, have essentially ignored theories popular in industrialized countries." While this is an empirically debatable statement, it would be safe to say that foreign experts and international organizations have been more than involved in the initiation of criminological and criminal justice education in India.

scholars such as Thorsten Sellin, who is closely identified with criminological education at the University of Pennsylvania. Again, it is an empirical question as to what makes certain countries more welcoming (or susceptible) to outside ideas regarding the proper role and function of crime-related education while others are relatively less so.

Conclusion

We have reviewed criminology and criminal justice education in India briefly with a view to help us understand the topic comparatively. We found that separate academic programs in general criminology and forensic science education were influenced by UNESCO's call for the development of the "science" of criminology. Job training in criminal justice (which has focused mostly on the police and correctional sectors) uses very little social scientific information. We then considered similarities (e.g., the role of national governments; the lack of integration of criminal justice education and training) and differences (the relative impact of economic development levels; the influence of outside expertise) on the development of these educational undertakings in India when compared to the US. These similarities and differences provide questions that comparative criminologists and criminal justice researchers should examine.

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Secularism and Preventing Terrorism in India

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Abstract

The major goals of this chapter are to (a) identify and rank, in terms of importance, selected characteristics of secularism relevant to the Indian context; (b) review and assess selected examples of incidents of where the tenets of Hinduism, Islam, and Sikhism have been historically employed in instigating and justifying incidents of violence and terrorism; and (c) articulate possible secularist strategies for preventing the use of India's leading religions in terrorist and criminal activities. Using the Delphi method, we first developed a list of all possible characteristics of a secularist orientation based on a thorough review of relevant literature. Second, 62 "experts" on the subject were selected through a chain-referral procedure and interviewed to rank the characteristics based on the relative importance of each of the three areas of secularism. Third, data were analyzed, interpreted, and discussed from a sociological perspective, indicating the implications of our findings relating to the value of secularist ideas in preventing religion-based violence. Our data provided clues to the potential for developing a multi-dimensional scale of secularism that may need to be tested globally.

Introduction

The potential for, as well as actual incidents of, terrorism have not only increased but have also become relatively more global, often conducted

by transnational and non-state actors. These individuals are well financed, difficult to penetrate, and have increased access to creative technology and weapons of destruction (see Homer-Dixon, 2008; Howard, 2008; Lutz & Lutz, 2004). Some studies (Pedahzur, 2005; Reuter, 2004) have noted that terrorism is on the rise in numbers as well as in significance of impact despite serious efforts made by various countries to control or even combat it. In addition, it appears that the problem of terrorism has added newer and more dangerous forms of violence against people, including methods or tactics such as the so-called "suicide terrorism" and the carefully planned use of religion for recruiting and training terrorists (see Joshi et al., 2002; Juergensmeyer, 2003; Selengut, 2003). Terrorists and terrorist organizations, including governments in a few countries, have taken an increased interest during the past few decades in articulating religious reasoning to rationalize or justify violent means to achieve their political and economic goals (see four volumes on the subject edited by Ellens [2003]). However, no formal religion in the world may have been known to condone violence against innocent people. According to Weber (1964), it is the "virtuosos" or practitioners with "charisma," not the original or formal elites in each religion, who add varying interpretations to beliefs and rituals to meet particular needs of believers (see also Sharot, 2001). We contend that if the institution of religion has been misused by some, it is time to reverse the cycle and advocate its "right or proper" use in human relationships, that is, for initiatives against violence. Contemporary societies need to develop and adopt an optimistic tone that seeks to find future-oriented ways of preventing religion-based terrorism or any other related form of violence against humanity and enhance the opportunities for promotion of secularism and global peace.

Objectives

Focusing on India, the major goals of this chapter are to (a) identify and rank in terms of importance selected characteristics of secularist conceptualizations relevant for the country; (b) review and assess selected examples of incidents of the use of Hinduism, Islam, and Sikhism in instigating and justifying violent activities; and (c) articulate possible secularist strategies to deter the use of India's leading religions in terrorist and criminal activities.

While it is difficult to detect and prevent all forms of terrorism, it is important that we strive to find ways and means for doing so (see Abbey, 2002; Browne, 2001; Whiteneck, 2008). The focus on prevention involves

anticipating when, where, and how terrorist incidents or related violence might occur and developing ideas, rationale, and conceptual framework for articulating strategies and actions to stop and hinder the problem before it occurs.

However, despite the challenges involved in materializing various pacifistic and secularist strategies, several leaders in the past (e.g., Mahatma Gandhi and Martin Luther King) succeeded in conceptualizing and advocating nonviolent ideologies refusing to give up in their struggles (see Gandhi, 1957; Huxley, 1937; Muste, 1940; Steinkraus, 1973; Unnithan & Singh, 1973). In this chapter we take the position that while violence will always occur in society in one form or another, we must stay willing to deal with it without fears and overcome a "false consciousness" some people may have of its denial (see Marx & Engels, 1930). By focusing occasionally on a sense of "doom and gloom" (see Russell, 1962), we tend to deteriorate our courage and creativity to resolve the problem through a calm and constructive pragmatism of "hope" and "civility" (see Sartre & Levy, 1996; Forni, 2002).

The study on which the present chapter is based recognizes that we try to interpret ideas through an eclectic application of sociological paradigms such as functionalism, conflict theory, and behaviorist exchange perspective (see Martindale, 1960). While there is no scarcity of scientific data on historical accounts of terrorist activities or incidents, many of those seem not to have been put through a conceptual analysis and discussion based on critical thinking. For example, Durkheim's (1951) analysis of "altruistic suicide" has been interpreted by some as relevant, though only in a limited way, to suicide terrorism (see Singh & Abbassi, 2005). Functionalism articulates ways of strengthening a social system through integration of parts instead of any toleration of deviance and violence that actually paralyze the system. The conflict theory paradigm recognizes the reality of violence in society based on inequality and injustice. However, that paradigm neither necessarily supports extremism of "true believers" (see Hoffer, 1951) nor argues in favor of the violence of hate (see Bellamy, 2008; Levin, 2007). Conflict theory, just like other approaches, has variations of outlook, some of which tend to inflate conflict while others advocate ways to manage it (see Klausen's [2005] analysis illustrating how the Islamic groups in Europe have been adopting a rather liberal outlook in order to adapt to a democratic political style). Behaviorist exchange theory advocates an approach of reciprocity based on rational and pragmatic reasoning in societal relationships (see implications of this theory for dealing with terrorism in Madhu [2003]; Netanyahu [1995]; Nicholson [1961]; Pape [2003]). Theoretical analysis and interpretations of terrorism will continue to enable us interpret our thoughts on the subject.

India's Experience with Secularism and Religion-based Violence

Incidents of serious forms of violence have become more complex in terms of their forms, means used, and socioeconomic consequences in South Asia and beyond (Homer-Dixon, 2008; Unnithan, 1995). In addition, India has a formally declared secular democracy as well as having provided legislative, judicial, executive, and public support for recognizing diversity in religions. The country has had a history of struggle facing challenges in dealing with deviations from secularist spirit and continues to, at least formally, staying determined to comply with the constitutional principles of secularism. Ideas based on India's experience with secularism and the religion-based terror should be suggestive for application in other parts of the world.

Most of the literature on terrorism has been increasingly pessimistic, citing examples of terrorist incidents in various parts of India generating frustration and fear (see Singh & Singh, 2008). Here we focus on understanding secularism in the context of three major religions in India (i.e., Hinduism, Islam, and Sikhism). Other religions (e.g., Baha'ism, Buddhism, Christianity, Jainism, Judaism, and Zoroastrianism) and particular sects or sociopolitical movements claiming to be religious in orientation (e.g., Arya Samajis, Radhaswamis, Ramakrishna Mission, etc.) are not included in the chapter based on a lack of their known involvement in terrorist activities. Finally, it is likely that focusing on India's experience may provide a number of compelling implications for addressing secularism and terrorism in other areas of South Asia and beyond (see Bajpai, 2002). Examples of secularism in relation to terrorist violence based on the three major religious groups in India are summarized below.

Hinduism

Traditional Hinduism, starting with the ancient times, generally supported an attitude of tolerance toward people of other faiths, as it did not recognize converting people into its own fold. In four volumes on the topic addressing "the destructive power of religion" Ellens (2003, p. 6) points out that Hinduism is one of the inward-oriented religions, that, unlike the Middle-Eastern and Western religions that are more extrinsic and action-oriented, emphasizes the importance of individual and intrinsic spirituality. Vivekananda (1946, p. 5) states, "Did you ever hear a religion that supported

kings who traced their descent, not to kings or robber-barons living in old castles, but to semi-naked sages living in the forests?" Warriors subscribed to strict rules of warfare during violent conflicts, avoiding killings of innocent civilians (Prasad, 2006, p. 16). It is said, for example, that during the Mahabharata war, the opponent armies would never damage crops of farmers, lay down arms at dusk, help the injured of both parties, have supper together before moving to their respective tents, and would enter the battle ground again at dawn to fight (Prasad, 2006, p. 89). Prasad (2006) describes numerous instances from Indian history showing that Hindus did not engage in attacking other nations for looting and/or ruling them. However, they were subjected to attacks, for example, by Mughals and other invaders, repeatedly looting their temples and other monuments during the 16th and 17th centuries (Raj, 2005, pp. 57–64).

Hindu society became fragmented after the Vedic period. Brahmins, having claimed monopoly over religious practice and knowledge, became the elite caste group in terms of social prestige. The Brahminization of Hindu culture led to the growth of polytheism or multiple deities, inconsistent moralities, hypocrisy, exclusion and exploitation of tribal people, and in treating *sudras* as "untouchables" (Sharot, 2001, p. 103). Hinduism began developing a cultish mentality as well in religious practice (see Tambiah, 2007). Newspapers and other media report even currently on-going practices of commercial, superstitious, and formula outlooks claiming astrological and magical solutions for people's day-to-day problems.

Several reforms were suggested to simplify and modernize Hinduism's ancient complexities by reformers such as Mahatma Gandhi during the last century. Vivekananda (1946, p. 19), for example, denounced Hindu practices of neglecting equal status of women, cultural heresy, and fanaticism. Selengut (2003, p. 13) asserted that stereotyping any world religion, including the so-called Eastern religions such as Hinduism, as godly and peaceful is non-factual because they have histories of involvement with killings and rampages led by organizations such as the Rashtriya Swayamsevak Sangh for sociopolitical reasons. A member of that organization assassinated Mahatma Gandhi because of his nonviolent ideology supporting coexistence and mutual respect among various religions in India (see Merton, 1965). More recently, radical Hindu ideologies have become involved in extremist politics in the west coast and a few other parts of India, attempting to disrupt the secularist outlook of India.

Islam

Muslims, who constitute the largest minority of India's population, seem to have experienced a negative image in the mass media during the past several years with reference to violence and terrorism in a few parts of the world. According to historians, Islam is believed to have begun as a religion with the *Hijrah*, the departure of Prophet Mohammed from Mecca to Medina, in AD 622. Mohammed died 10 years later. It has been estimated that some time was spent in consolidating the position in Arabia, and then an astounding series of events took place which carried the Arabs with the banner of Islam, right across central Asia in the east and across the whole African continent to Spain and France in the west. Nehru (1945, p. 223) has stated: "the Prophet of Islam vitalized his people and filled them with faith and enthusiasm."

As stated earlier, the Mughal rule in India led to some hostility between Hindus and Muslims. However, Hindus and Muslims learned to live peacefully for several hundred years, which included the joint struggle for an independent India from the British rule during the period from 1857 to 1947. If it were not for political movements, India would not have been divided based on religion.

The Koran commands Muslims to believe in God, His angels, His prophets, pray, fast, give charity, make pilgrimage, do good works, and avoid sins (The Koran, verse 2, p. 177). Actually, there is no concept of holy war (*al-harab al-muqaddas*) in Koran. The noun *jihad* is found four times in the Koran. The verb *jahada* (to struggle) does not refer to fighting. In fact, Verse 29:8 gives believers permission to disobey parents who strive without partnering with Allah. "Fight in the cause of Allah against those who fight you, but do not aggress as He does not love the aggressors" (The Koran, p. 190). "If aggressors lean toward peace, you do the same and trust in Allah" (The Koran, verse 9, p. 7). However, "radical" and "Qutbism" interpreters of Koran often lean toward a so-called "literal and pure Islam as originally practiced during the time of the Prophet," implying fanaticism and extremism and often demand jihadist activism against those who are perceived as enemies (Sivan, 1985, pp. ix-xi; Eikmeier, 2008).

Sikhism

Sikhism is a relatively new and progressive religion in India. Holdich (1905, p. 210) described the Sikhs as an "important factor of our military strength

as the Gorkhas." However, the Sikhs are a diverse people who are ambiguous about their identity as a community (McLeod, 1989). The Sikh religion was founded by Guru Nanak Dev (1469–1539) followed by nine other Gurus or preceptors in the state of Punjab, northern India, which previously included the southeastern area of Pakistan. Guru Gobind Singh (1666–1708), the 10th Guru, brought an end to the line of human Gurus and finalized the installation of the scripture, entitled the *Guru Granth Sahib*. Shackle and Mandair (2005, pp. xii–xx) provide details on the establishment of Sikhism as well as the Sikh community. They describe how by the turn of the 17th century the Sikh community, under the leadership of Guru Gobind Singh, expanded its base and became a threat to the Mughal administration. This led to the establishment of a powerful Sikh kingdom later on under the kingdom of Maharaja Ranjit Singh (1780–1839) in the northwestern region of India.

Sikhism is a unique faith that has aspects of Islam (e.g., monotheism and iconoclasm) and Hinduism (e.g., reincarnation, karma, and nirvana). However the religious philosophy of Sikhism is quite different from that of Hinduism and Islam (see Cole & Sambhai, 1978). Guru Nanak emphasized the unity of all religions. Overall, the Sikh Gurus were, like Martin Luther and John Calvin, reformers who rejected the Hindu caste system and the many rituals followed by Hindus and Muslims. According to Weber (1964, p. 88), Sikhism originated as a "strongly pacifist religion" and has been a monotheistic faith, preaching the existence of only one God and one true name ("*Ek Omkar, Satnam*" and "*Sat Kartar*"). In his famous study of Indian history, Holdich (1905, p. 210) maintained that the "Sikh religion is a comparatively modern offshoot of Hinduism, with none of its debasing superstition and demonology." It also denies that God takes birth and rebirths despite its many similarities with Hinduism. Similar to Muslims, Sikhs have not believed in the worship of multiple gods and goddesses, stones, statues, idols, pictures, tombs, and so forth (Sikh Missionary Center, 1990, p. 3). However, similar to other religious movements, it has been plagued by violence caused by some groups and individuals within its realm (see Kapur, 1986). Incidents of violence against Sikhs have also taken place in the past, particularly during the partition of India, when a large number of Sikhs were forced to move from what is now Pakistan assigned by the British government. Incidents of violence between Hindus and Sikhs began to occur during the 1980s for the first time in a significant way. People belonging to these two religions got along with each other almost perfectly before experiencing that violence (Mann, 2001; Juergensmeyer, 2003, pp. 86–87).

Dimensions of Secularism

Secularism as a Sociopolitical Movement

The medieval period of world history has been considered by many scholars as a "Golden Age" under the authority of a supra-national papacy in terms of an outstanding achievement in the value of religion all over the European countries as well as colonies (see Bruce, 2002, pp. 50–54). Weber (1950) suggested that later in the European history cultural values other than religious piety could affect economic success, arguing that the Protestant Reformation led to the development of a "spirit of capitalism" that drove people toward worldly achievements, a hard work ethic, and saving to accumulate wealth for investment. That change, in some ways, became the beginning of the end of the Golden Age, along with the origin of secularism, which flourished during the so-called "New Age" (see Bruce, 2002; Feldman, 2006; Bhargava, 2007; King, 2007; Nussbaum, 2008). The word "secularism" was used for the first time in 1648 at the end of the Thirty Years' War in Europe (Madan, 2007, p. 297). One of the characteristics of the New Age has been a decline in people's commitment to religious rituals as well as authority, except in a few parts of the world. According to Nussbaum (2008, pp. 3–17), America's commitment to religious diversity and equality did not come easily. Gradually, however, the framers of the US Constitution established protection for religious fairness, stating in the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The American support for secularism became an exemplary boost to the secularist movement.

Historians have generally treated secularism as a rather simplified and mainly one-dimensional phenomenon consisting of separation of the church and state. There seem to be three major reasons why secularism as a social movement has lacked a meaningful and widespread momentum reaching out beyond the Western civilization. First, while selected countries have paid lip service to the belief in secularism in their government, its application to societal structure has stayed minimal (see Bhargava, 2007, pp. 1–4; Chatterjee, 2007, p. 345). Second, the Anglo-Saxon usage of "separation of church and state" has been "singularly inappropriate and misleading in discussing a country in which the majority religion is Hinduism" (Smith, 2007, p. 179). According to Taylor (2007, p. 37): "Western secularism from European Christendom may not 'travel' very well to the east." Third, we need

to broaden the scope of secularism. We take the position that secularism, as a functioning practice in any society, needs to be acceptable to people just as much or even more than it is to their government. People's attitudes toward other religions in their society need to become positive toward freedom and equality in matters of conscience. King (2007, pp. 9–44), for example, in his book talks about the “secular mind” as currently portrayed through aspects of culture that include the arts, science, philosophy, language, psychology, and neurophysiology. Nussbaum (2008, pp. 18–26), probably for the first time in the history of literature on secularism, expands the scope of the framework of multiple concepts and principles involved in the sociopolitical movement. Concepts involved are liberty, equality and equal respect, conscience, protection of minorities from domination by majorities, neutrality, establishment, and separation. The principles involved in concepts of secularism are the equality principle, the respect–conscience principle, the liberty principle, the accommodation principle, the nonestablishment principle, and the separation principle. We developed a multidimensional scale of secularism in terms of its characteristics stated below, incorporating these and other concepts and principles particularly relevant to India.

Identifying and Ranking Characteristics of Secularism

The Delphi technique was used to identify components or characteristics of secularism in India. This technique has methodological potential for utilizing the knowledge of experts in a particular area of investigation. The Delphi procedures for development of a list of characteristics of secularism under appropriate headings consisted of the following steps: First, we developed a list of characteristics of secularism based on existing knowledge after conducting a thorough review of the literature relevant to secularism. The major step toward accomplishing that objective was to prepare an initial list of characteristics of secularism that could be handed over to experts or judges who would rank them in terms of degree of importance and then could also add, if they chose, to that list any additional characteristic(s) considered relevant to the topic. To achieve that goal, we consulted philosophical and historical literature on secularism in general and the Indian situation in particular. Second, we selected a panel of “experts” consisting of faculty members of social sciences and humanities departments at three universities in north India, journalists working for prominent news media at New Delhi, and political as well as known religious leaders in the region who were assumed to be knowledgeable about secularism-related issues. The experts were selected

through a snowballing or chain-referral technique based upon their reputation in the field. Thus, we started with a short list of prominent persons in each category and asked each of them to give us names of influential people in various categories of secularism, when possible. We identified 93 names of these potential respondents and collected our data from 62 of them. The nonrandom sample in our exploratory study consisted of 17 faculty members, 14 journalists, 12 politicians at the national level, and 19 religious leaders. Third, we contacted and personally interviewed respondents through a questionnaire consisting of conceptually related characteristics of secularism. Interviewing respondents appeared to be a necessity for us because of the sensitive nature of our topic of study and because of the types of respondents involved. In addition, interviewing respondents ensured a satisfactory response rate and we took notes on their candid reactions to items and their comments helped us in evaluating their responses.

A number of scholars have discussed the merits of the Delphi approach. We are summarizing a few advantages of using this approach, as follows:

1. The Delphi approach relies on the rationality of group judgment, or "n-heads are better than one." It is a process of eliciting and refining the opinions of a group of individuals. The individuals remain anonymous to each other; their opinions are continually refined and reiterated; feedback to participants is controlled.
2. The Delphi approach is a variant of the panel or committee approach for arriving at a consensus of majority opinions. Its design eliminates or prevents face-to-face confrontation, specious persuasion, and the bandwagon effect of a majority agreement.
3. The Delphi approach uses some form of statistical index as a representative of the group opinion. Thus, there is no particular attempt to arrive at unanimity among the respondents, and a spread of opinions on the final round is the normal outcome.
4. The Delphi approach is very useful in such areas as the one concerning this study where objective and valid measures are not easily accessible.

The Delphi approach has been used in studies concerning several kinds of problem areas especially as a tool for forecasting. It has proved to be a valuable technique for planning and forecasting the long-term future (Singh & Webb, 1979). A large number of studies sponsored by the Rand Corporation have employed Delphi procedures in developing criteria for decision-making and policy formulation (Custer, Scarcella, & Stewart, 1999). Singh and Abbassi (2005) used these procedures in an earlier study identifying, as

shown in Table 6.1, a profile of suicide terrorists. Findings related to this multidimensional profile of suicide terrorists are meaningful and suggestive for expanding on the secularist concepts.

Table 6.1 A Sociological Profile of Suicide Terrorists

The psychological and personality profiles of individuals/groups:

Emotionally charged for militancy against particular government/authority; dependent, particularly on some specific person(s) of authority; believe that violence is the only way to defend self, family, community, or nation from perceived aggressions by others; low self esteem but a false/irrational sense of courage/confidence; a lack of specific goals and direction; sense of desperation; depression; sense of having experienced significant loss/deprivation; pessimistic; nomadic (unsettled) lifestyle; loner and egocentric; obsessive/compulsive; anxiety disorder; serious temper/anger control problems; rash/erratic; authoritarian and controlling; focused on blaming someone/something particular or general for own problems; inflexible/rigid, resisting change and having perseverance in perusing same cause and behaviors over time; experienced a dramatic change in the recent past; tend to label people/nations without giving a second thought; individuals having a history of a certain degree of mental illness, emotional disturbance or psychopathology; a history of over/covert suicidal tendencies; manipulative; phobic/hateful of law enforcement and military people, substance abuser; and fatalistic (on the other hand, some of the examples of personality orientations of non-violent people were identified as: "calm, self-reliant, mature, autonomous, unprejudiced and open, selfless, civil, ethical, truthful, non-manipulative, believing in equality and freedom, and tolerant of diversity").

Demographic-economic characteristics of individuals/groups:

Largely young, single, males recruited at tender age (though there is a recent trend of recruitment of females of all ages among some terrorist groups); none or unstable employment history; relatively lower socioeconomic status, including low or a conditioned/highly regulated/programmed educational background; a low rate of inter-generational/intra-generational mobility; and likely to belong to particular ethnic or religious background (which may vary from place to place and from time to time).

Sociopolitical background of individuals/groups:

Fanatic and radical interpretation of a religion; having expectation or received viable publicity for a cause through media; a vocal lack of trust in legal recourses such as negotiations/collaborations/conflict resolutions and in organizations that provide help in those internationally; having been over-socialized and controlled from childhood; obsessive belief in familism or kinship; obsession in a separatist political ideology; tend to be over-committed to a particular cause/movement; dictatorial political activism; family/affiliated-group history of violence; having been a victim of violence or abuse, or had a family member/friend who has been a victim of violence and terror; recipient of financial and emotional support from a terrorist group/individual(s); having an access to a training facility for terrorism; ethnocentric and has a racial/religious prejudicial orientation toward select groups; and having own or close family or friends with criminal and/or suicide history.

Source: Delphi procedures.

Findings

The Delphi procedures facilitated the final selection and ranking of the characteristics of secularism. Selected findings related to that are summarized below. As stated earlier, we initially started with a rather long list of possible characteristics based on an extensive review of literature under three categories: (a) Separation of religion and state, (b) Modernism and religion, and (c) Pluralism in religious outlook and practice. As shown in Table 6.2, the respondents, based on consensus, ranked various characteristics under the three conceptual categories in a rank order of average importance (from highly important to less important). We grouped some of the ranked characteristics in various categories through a consensus among respondents during the interviews. In addition, we did not use characteristics that were repetitious or redundant.

We analyzed responses from the interviews statistically to determine the degree of consensus among respondents on each item. The standard deviation on an item represented a degree of consensus among respondents, while a mean response on the item was an indicator of the degree of its importance in relation to other items.

Of all respondents, we found the faculty members to be the most cooperative in the interview process.

Data presented in Table 6.3 show the interrelationship among the four groups of respondents in terms of the degree to which they had consensus on ranking characteristics of secularism and the way they assigned importance to those items. Spearman rank order correlation (RHO or "r") coefficients presented in the table indicate that several significant differences existed among the four sets of respondents in their levels of consensus over the profiling items as well as varying degrees of importance given by them to items. Data indicate that faculty members and journalists had the strongest correlation to the total *N* in having consensus over selecting characteristics of secularism. Data also show that political and religious leaders were in significant agreement with each other, but did not have significant consensus with others in the way the characteristic items were ranked in importance. Both types of leaders did not seem to agree with each other in assigning relative importance to various characteristics of secularism. Political and religious leaders did assign importance to items significantly correlated to those done by journalists. The faculty members and journalists again agreed with each other in assigning importance to items.

Table 6.2 Respondents' Ranking of the Ideal Characteristics of Secularism**1. Separation of religion and state**

Equal liberty of conscience (or conviction/faith) to all people in society; free exercise of religion, along with a prohibition of economic and political controls, regulation, or interference in affairs of all religions from the government; a maintenance of state's neutrality by avoiding the establishment of any particular religion, or by basing civil and criminal jurisprudence on logical and democratic processes than on any scripture of faith; maintain impartial and independent judiciary and a fair and effective law enforcement system without the use of any religious favoritism; a lack of dependence on any religion for external controls from national or international sources, or from some specific person(s) of charisma or other form of authority; non-alliance of every religion with any political activities or parties; and a desire in every religion for autonomy and independence for only pursuing spiritual activities.

2. Modernism and religion

An advocacy of moderate, tolerant, non-militant, open-minded, and humanist (rather than inflexible, rigid, fanatic, fundamentalist, authoritarian, aggressive, expansionist, separatist, intrusive, or radical) outlook in every religion; separation of religion from educational programs (specifically, promote no schooling of children to solely brainwash them for any religious training); separation of religion from magical, fatalist, superstitious, or cultist approaches; every religion recognizing individualism, equality, and freedom for all people; preventing all religious organizations from engaging in a business model or from soliciting monetary charges for "divine favors or interventions" to help people overcome life's problems; increased emphasis on spirituality as the primary goal of religion; and religious organizations recognizing needs and realities of change and rationality oriented progress in society.

3. Pluralism in religious outlook and practice

Promoting religious diversity without recognizing any form of separatism and ranking world religions; endless sense of and public's positive attitude toward co-existing, tolerating, and accepting people of different faith voluntarily without prejudice; no efforts of persecution, reprisals, threats, aggressiveness, intrusiveness, retaliation, harassment, or hate crimes against people of other religions; reasonable accommodation provided to minority religions; media treating people of all religions with professionalism and objective reporting; not promoting or spreading fears or phobias about any religion; no law enforcement labeling or profiling based on religion; making every possible effort for resolving conflicts through negotiations, collaboration, non-violence and civility; being non-obsessive/non-manipulative in every religious movement; and being truthful toward promoting peace and goodwill.

Source: Delphi procedures.

Discussion

Our objective in the study on which this chapter is based was to make a beginning toward the construction of a multidimensional scale of secularism. The scale should contain items that are realistic, conceptually relevant to secularism, consist of items that are internally consistent, and be repeatedly

Table 6.3 Correlation Matrixes in Terms of Spearman's Rank Order Correlation (RHO) Coefficients Indicating Interrelationships among Four Sets of Sample in Ranking Characteristics of Secularism

	Total N (N=62)	Faculty (N=17)	Journalists (N=14)	Political Leaders (N=12)	Religious Leaders (N=19)
Degree of consensus in ranking profile items					
Faculty	.47*				
Journalists	.49*	.54*			
Political Leaders	.18	.11	.23		
Religious Leaders	.14	.19	.21	.47*	
Degree of importance assigned to profile items					
Faculty	.36				
Journalists	.48*	.39			
Political Leaders	.25	.18	.41*		
Religious Leaders	.21	.20	.29	.24	

Source: Delphi procedures.

Note: *Related t-test values significant at .05 or less.

tested, through a systematic methodology, in empirical contexts for reliability and validity before becoming established in the literature. We have in this exploratory study begun identifying selected ideal characteristics of secularism, first through a relatively extensive review of literature relevant to the topic, and then by consulting some "experts" in trying to sort as well as rank those characteristics in as meaningful a way as possible. It is a limited effort at addressing a complex topic inherently plagued by confusions, philosophical controversies, and a lack of research that could solidify logical and empirical dilemmas. We summarize a few interpretations and implications of the study below.

First, identifying several ideal characteristics, based on concepts and general underlying principles of secularism (in Table 6.2), may be seen as a meaningful beginning in the Indian context and beyond. We are, however, reminded by Mann (2001, 298) that secularism in India is "impossible," with a "great majority of people in their own eyes are active adherents of some religious faith" and because of incoherent decisions by government in matters such as declaring few religions as "state-protected," and so forth. However, developing Weber's "ideal" or "pure" types (see Martindale, 1960, pp. 381-383) can be considered a worthy task as such typologies set standards before us that provide guidelines to assess or evaluate our empirical realities. For example, the phrase "Justice for All" in the US Constitution may be too idealistic to be true, knowing the complex realities in administering justice, but we still can aspire that our judges and prosecutors be reminded of the

noble notion of blind justice despite limitations some of them may have in implementing the spirit of the idealism involved. We hope our summary of some characteristics of secularism from literature and opinions of few experts will generate further discussion and empirical research, attempting to refine their articulation into the future. Indeed, "the problem of idealization is one common to all sociologists" (see Glasner, 1977, p. 8).

Second, our identification of multiple characteristics organized under topics of multiple categories should be useful for continuous efforts needed in broadening the operational definition as well as the base of the concept of secularism. Our findings summarized in Table 6.3 indicated a lack of consistency the way religious and political leaders, in comparison to faculty members and journalists, ranked the importance of characteristics of secularism listed in Table 6.2. Bilgrami (2007, pp. 382–385) noted how several political and religious elements and incidents tend to complicate matters, often beyond repair. While inconsistent ways of rankings are common, we do get reminded of the way people perceive and interpret matters. Indeed, matters of rationality and religion will require people to continue to engage in dialogs and open communication in order to deal with such sensitive issues as those that we deal with in this chapter. As Nandy (2007, p. 324) points out, "religion is an ideology in opposition to the ideology of modern statecraft and, therefore, needs to be contained." Confusion and discontent among people dealing with religious and secularism issues are becoming increasingly common, even though those negative indicators might bear fruits through the critical thinking process for both activities in the future (for an excellent debate on the subjects see Sen [2007, pp. 454–485] and Tambiah [2007, pp. 418–447]).

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SECTION TWO

Policing in India

Introduction

Formal policing in India began during the era of British colonialism. Currently, responsibilities for the maintenance of order and the enforcement of laws through prevention, investigation, and detection of crime belong to the police. While other government bodies (e.g., Customs) may undertake some law enforcement, the major police organization tasked with the above is run by each state. Various state governments (see Bayley, 1969; Gupta, 1978; Raghavan, 1999; Verma & Subramaniam, 2009) control police forces in India who are assigned to the different districts that each state is divided into. However, it should be remembered that the upper echelon of each state's police force (headed by a Director General of Police and assisted by Inspectors-General and/or by Deputy Inspectors-General) consists of individuals belonging to the centrally trained and controlled Indian Police Service (IPS). IPS officers on graduation from their academy are assigned to the cadre of a particular state, which often may not be the state from which they came. Each state administers the recruitment and training of police officers at the middle and lower levels. Apart from the state police, there are other central organizations that, on request from state governments, may help with carrying out policing-related work (e.g., dealing with widespread and locally unmanageable threats to public order, investigating major cases that the local police are having difficulties with or are suspected of not being impartial about, etc.). These organizations, which are controlled from New

Delhi include, among others, the Central Bureau of Investigation and the Central Reserve Police Force. Policing in India is characterized therefore by a higher degree of centralization and central and state-level control in comparison to other countries, e.g., the much more fragmented American system which has police forces at the federal, state, county, and municipal levels, all operating more or less autonomously (Raghavan, 1999).

The five chapters in this section examine several compelling challenges and emerging issues in policing this vast country. The police in India have been historically perceived as coercive and high-handed as we have seen in Chapter 1 as well as corrupt and "on the take" as demonstrated in Chapter 3. The correlates of this perception, as in which demographic groups of Indians are likely to consider the police as possessing more or less integrity and who are more or less likely to report corruption, is an important question. This is explored in Chapter 7 by Mahesh K. Nalla and Manish Madan. They utilize two methods, a neighborhood survey in New Delhi and an innovative survey of passengers on a train trip from New Delhi to Bangalore to assess the perceptions of citizens regarding police integrity. Notable among their findings is that younger Indians earning higher incomes and middle-aged members with lower incomes are more likely to perceive police integrity negatively. What is it about the experiences of these particular demographic groups that color their perceptions of the police?

Chapter 8 by Sessa Kethineni and Murugesan Srinivasan describes how the police handle domestic violence cases in the state of Tamil Nadu, India, focusing on the work of police stations staffed by women (Natarajan, 2008). This issue is especially important in the light of India's continuing problems with violence that targets women (see also Chapters 12 and 13 in this volume). The two researchers highlight the gamut of cases that these police stations have responded to and, sometimes, helped resolve. At the same time, it appears to be a ripe time to assess the overall effectiveness of these gender-based agencies.

Next, Julia Scott, Douglas Evans, and Arvind Verma examine whether receiving higher education affects job-related perceptions of police officers in Delhi. As they note (and as we have seen in Chapter 5 of this volume), for a long time, the advantages of a better-educated police force have been touted in many settings. Surprisingly, their findings, drawn from a survey of Delhi police personnel, show that "higher education alone does not lead to desirable perceptions amongst the police personnel. Indeed, higher education appears to make the officers more rigid and less idealistic in their attitudes." Ever-increasing levels of higher education may not necessarily be the panacea

for better police performance and perhaps what matters more is the content of the learning and the culture of the police that the well educated step into.

The fourth contribution to this section from Jyoti Belur discusses the topic of "encounters," an egregious form of police use of deadly force, which nevertheless is perceived by the Mumbai police as enjoying near-universal approval (see Chapters 1 and 17). The experiences and justifications provided by police officials and gathered through intensive qualitative interviews by Belur are chilling as they are disturbing. If education does not make much difference in positive police attitudes (as Chapter 9 suggests), the culture of approval for the entrenched practice of dealing death to high value criminal targets is going to be well-nigh impregnable.

Finally, Mahesh K. Nalla, Kiran Ommi, and V. Steemannaharaya Murthy explore how members of the public perceive the roles and functions of private security guards. The widespread adoption of "private policing" as exemplified by ubiquitous security agencies for hire is a relatively new phenomenon in India. The authors, based on a sample survey of college students and neighborhoods, report that consistent with earlier studies, security guards are viewed positively by the public and that they (public) would like greater cooperation between the security guards and police agencies. An important future question is whether further expansion of private security is likely to be viewed positively or negatively by the "public" police organizations as the former take on more functions associated with the latter. Again, how will these changes affect the rather stagnant culture of government policing agencies?

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Citizens' Perceptions of Police Integrity in India: An Empirical Exploration

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Abstract

This study examines citizens' perception of police corruption and integrity in India. We use survey data collected from residents in a New Delhi neighborhood and from train passengers on a 41-hour, 1,281-mile round trip between north and south India. Using the literature, we examine a range of variables that explain citizens' perceptions of police corruption: demographic characteristics, nature of contact, views about police professionalism, satisfaction, and trust in police work. We find that the younger population earning a higher income and the middle-aged group within the lower-income category are more likely to perceive police integrity negatively. Citizens with less satisfaction or trust in police work are more likely to report police corruption. Those who view social inequality and social status as influencing police conduct are more likely to report corruption. We highlight areas for police administrators to work on, which are as follows: (a) infuse higher professionalism and (b) build bridges with citizens to engender trust and reduce perceptions of police corruption.

Introduction

Although political parties are seen worldwide as the single most corrupt domestic institution by surveys conducted globally, the police are most frequently reported to be receiving bribes at an individual level (Burnett, Everett, Garcia, Kaiser, & Barker, 2010, p. 50). In the past few decades, extensive research has been conducted in the Western world to examine citizens' attitudes toward the police and police services. Individual experiences via regular interaction with public services highlight that the police and the judiciary appear as the two most corruption-prone sectors. Stories about police corruption and citizens' unfortunate experiences with police personnel are often highlighted in media and popular culture, albeit that no systematic evaluation had been conducted in India by practitioners and scholars to learn about the nature of police corruption or citizen's perceptions of police integrity.

The world's largest democracy, India, is undergoing rapid economic growth and one can sense a substantial social change in the country. On the one hand, India is an emerging international superpower with a rich and diverse cultural heritage recognized for its stable economy, and on the other it is affected by many problems that hinder its progress (Unnithan, 2009). Corruption in a public institution such as the police can fatally damage the image of the police and public confidence in police services by lowering respect for police officers and trust in the institution (Bayley, 1995; Tankebe, 2010). Nothing is more destructive of the standing of the police than corruption (Bayley, 1995). Further, it indicates that the criminal justice system operates with little concern for the broader public interest (Rose-Ackerman, 1999), and cross-nationally, it is found that "corruption reduces support for, trust in and even the legitimacy of political and legal institutions" (Tankebe, 2010).

While it is known that the police represent an integral part of a nation's criminal justice system, what is less understood is how this vital arm of the criminal justice system and its existing corruption, as is frequently reported, are viewed or perceived by citizens. The purpose of this study is thus to examine empirically the extent and correlates of citizens' perceptions of police corruption in India. We address two empirical explorations and analysis in this study:

1. An exploratory analysis of citizens' perceptions and attitudes toward police corruption in India.
2. An assessment of the demographic and contextual factors that influence citizens' perceptions of police corruption.

Literature Review

There is not much research in the Indian context relevant to this study. The review of literature covers extant empirical studies conducted in Western countries and other contexts. Although on one occasion, close to the topic of this study, the third ever and the first and only post-independence National Police Commission of 1977 studied police functioning and reported on the public perception of police that "in the perception of people, the egregious features of police are politically oriented partisan performance of duties, brutality, *corruption* and inefficiency, degrees of which vary from place to place and person to person" (National Police Commission, 1981, chapter I: 1.1) (emphasis added). The first and second Police Commissions were constituted in 1860 and 1902 (Rajeswar 1998). Despite this detailed and exhaustive Report (disseminated in eight parts), which was prepared by prominent members (such as a retired governor, a retired judge, an ex-director general of the Border Security Force (BSF), Central Reserve Police Force (CRPF), a social scientist, and a director of the Central Bureau of Investigation (CBI) appointed by the then government keeping in mind police reforms), the government expressed the following view (Human Rights Initiative):

[The] commission has been unduly critical of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. Government is of the view that no note should be taken of such observations. (Singh, 2007)

Following which, the recommendations and/or implementations did not see much light of day (*Tribune*, 2003) and perhaps "what most of the police commission reports gathered was only dust" (Singh, 2002).

Beyond this Report, multiple searches in various available scholarly databases using several related keywords do not produce any study close to this present research. More so, the Report of the 1977 Commission did not examine the factors (socio-demographic or attitudinal) that are typically found to

be related to citizens' perception of police corruption, but rather presented the conclusions without a systematic analysis. Although the 185th Report of the Law Commission of India asserts that transparency in governmental functioning is an essential feature of democracy, it is frequently reported that literature on 2003) Indians' attitude toward police and police services is rare, unclear, and nonrepresentative. Thus, this study makes a significant addition to the literature on the policing of the world's largest democracy.

Demographic characteristics such as age, race, gender, education, and place of residence have often been frequently studied as factors in citizens' perceptions of police. Over the past three decades, there have been numerous studies on citizens' perceptions or attitudes toward police in the US. A large number of studies highlight that the American public expresses a positive attitude toward the police (Schafer, Huebner, & Bynum, 2003). Cao, Stack, and Sun (1998) suggest that age is often associated with a higher confidence in the police as older people have learned to accept police conduct (or misconduct) at its face value, i.e., integrated into the normative order through cultivation of "stake in conformity." However, at the same time, older people can be seen as having had more interactions with police and being more informed of and having more anecdotes (personal or vicarious) regarding police and their conduct.

In the past two decades, scholarly literature has identified numerous factors that impact citizens' perceptions of police. Research has found that a citizen's perceptions of the police are shaped by the individual's race, personal experiences, age, media exposure, and the neighborhood in which he/she resided. Although only a handful of these studies specifically address public opinion with regard to police misconduct, Weitzer and Tuch (1999) suggest that a citizen's overall perceptions of the police guides his/her opinion of police misconduct and that young people were more likely than older age groups to disapprove of the police. Numerous studies have also found that those individuals who have had negative interactions with the police in the past view the police less favorably.

Much of the research specifically addressing public opinions of police misconduct suggests that race, neighborhood, social class, and media exposure impact citizens' perceptions of police misconduct. Several studies have found that race has a significant impact on citizens' perceptions of police misconduct. Blacks and Hispanics are more likely to view police misconduct as a frequent occurrence while whites display more favorable views regarding police actions (Weitzer and Tuch, 1999). Some studies suggest that the class differences among blacks impact their perceptions of police misconduct.

Some studies have found that middle-class blacks view police more favorably than lower-class blacks (Murty, Roebuck, & Smith, 1990).

In a study conducted by Pagon, Lobnikar, and Anzelj (2004) in Slovenia regarding gender differences in moral reasoning, the researchers used perceptions of corruption among males and females to measure moral reasoning. The concept they used was a modified version of the Kutnjak-Ivkovich, Cajner-Mraovic, Klockars, and Ivanusec's (2002) scale, which was used to measure public opinion regarding police misconduct in Croatia. Pagon, Lobnikar, and Anzelj's study (2004) concluded that police brutality and preferential treatment is viewed by males as less serious and more acceptable when compared to the females in the study. The conclusions from the study by Kutnjak-Ivkovich et al. (2002) were not published anywhere in the study by Pagon et al. (2004).

Weitzer and Tuch (1999) found in their research in the US that neighborhood class position has a greater impact on a citizen's perception of police misconduct when compared to the individual's class. Citizens in lower-class black neighborhoods viewed police misconduct as a frequent occurrence when compared to middle-class black neighborhoods within the community. While other studies have found that racial differences have a greater impact on a citizen's perception of police misconduct, Weitzer and Tuch (1999) suggest that black middle-class citizens share more perceptions regarding police misconduct with those of middle-class whites. They also warn against analyzing public opinion regarding police misconduct based solely on demographic factors since they fail to take into consideration micro- and macro-level forces such as media influence and citizens' previous interactions with the police. Individuals who have had previous negative interactions with the police tend to view the police as being more corrupt. Media exposure to incidences of police misconduct is shown to affect citizens' perceptions and these incidences of police misconduct as well as citizens' perceptions of police misconduct were found to be statistically significant.

Another factor relating to media exposure that impacts citizens' perceptions of police misconduct is published scandals involving the police. Weitzer and Tuch (2002) found that although whites and blacks both reported increased unfavorable attitudes toward the police after publicized scandals, the magnitude of change among blacks' perceptions was most striking. While this research relates specifically to societies with unique demographic characteristics, the stratification of Indian society is observable more by social status measured by income. More importantly, there is no prior work done in the Indian context on this specific issue, making this study an important introduction to the study of police integrity.

Research Objective

Corruption and perceptions of corruption can be considered as cultural phenomena. They depend on how a society understands the rules and what constitutes a deviation (Melgar et al., 2010, p. 120). While there is an abundance of literature on police corruption in the Western world, there is very limited systematic scholarly research on police in India. While it is documented that police personnel in India are poorly educated and are notorious for extortion, misbehavior, and poor services to citizens (Scott, Evans, & Verma, 2009, p. 214), there is barely any research conducted on citizens' perceptions or attitudes toward police corruption in India.

Thus, the first objective of this study is to examine empirically the extent and correlates of Indian citizens' perceptions of police corruption in India. The second objective is to assess the importance of contextual factors such as the perceptions of citizen satisfaction, professionalism, trust in police work, and influence of social inequality and social status on police corruption. Third, this study attempts to determine whether our new data collection strategy produces results consistent with prior research conducted in the Western context, which further enhances reliability and validity of our methods and the survey instrument. To accomplish these objectives, two levels of analysis were conducted, univariate followed by multivariate analysis. Multivariate modeling was conducted by using the Ordinary Least Squares (OLS) method. Finally, based on prior research, we are particularly guided by the following expectations from our dataset:

1. Older citizens express a higher level of perception of corruption about the police as compared to younger citizens.
2. People who express less citizen satisfaction with police are more likely to perceive police corruption.
3. People who express less trust in police work are more likely to perceive police corruption.
4. People who report a higher influence of social inequality and/or social status are more likely to view police corruption.

The variation explained by the inclusion of attitudinal variables in explaining citizen satisfaction with police is higher than that explained by just the socio-demographic factors.

Measurement Procedures

A close-ended questionnaire was constructed in English as most Indians are fluent in the language. There was one open-ended question in which the respondents were asked the first image that came to mind when they heard the term police in general. Along with collecting the basic demographic characteristics of the respondents, the questionnaire aimed at capturing citizens' views or perceptions on satisfaction with police performance, professionalism, police corruption, nature of contact with police, and trust in police work amongst other variables. The majority of the items were constructed and operationalized based on previous research (for details, see Davis, Ortiz, Gilinskiy, Ylesseva, & Briller, 2004; Decker, 1981; Hwang, McGarrell, & Benson, 2005; Kusow, Wilson, & Martin, 1997; Reisig & Correia, 1997; Reisig & Giacomazzi, 1998) and a few others were introduced keeping in mind the cultural context of the present study. For instance, to capture the influence of social status on policing style, we asked the respondents, on a five-point Likert scale, "*The more expensive your car the more likely you are to get away with motoring offenses,*" and to capture the influence of social inequality, we asked them "*It's not about what you have done but who you are and who you know when it comes to the police in India.*" Both items received high assertion rates from the sample.

Method

The data ($N = 204$) for this study were collected in two segments in the summer of 2008—one from a middle-class neighborhood in the capital city, New Delhi, India, referred to as "community sample" or "static sample" and another from citizens on rail travel from the northern part (New Delhi) of the country to the southern part (Bangalore). This segment of the data is referred to as "dynamic sample." As such, the data represents a subsample of population that lives in a middle-class neighborhood of the capital city and those who happened to be on a 41-hour-long train journey. In this pilot study we introduce a new data collection strategy, which was employed to generate a most randomized and heterogeneous data about citizens' perception of police in India.

A majority of our sample, which we call the "dynamic sample" (69%) comes from the train passengers who boarded at New Delhi en route to

Bangalore. At this juncture, a brief background on Indian Railways is warranted to provide a better framework to understand the context more adequately. The railways came relatively late to India, when the first line of 21 miles (33.6 km) was opened from Boribunder to Thane in 1853 (Acharya, 2000, p. 34). Today, Indian Railways (IR) is the world's second largest railway system under single management and it is also the largest in Asia.¹ Its fleet of rolling stock includes over 9,000 locomotives, 38,000 passenger cars, and 350,000 freight cars. IR is a multi-gauge, multi-traction system covering over 60,000 miles of track. It operates about 10,000 trains daily carrying 10 million passengers and 1 million tons of freight traffic (Ramani & Mandal, 1992, p. 39). In the suburbs, railways are a preferred mode of transport and although commuting accounts for only 20% of the total passenger miles carried by IR, the 12 million commuters boarding 7,500 IR passenger trains for a myriad of destinations comprise a huge 60% of all passenger traffic (Acharya, 2000, p. 34). IR practically forms the lifeline of the country's economy, catering to all its needs for large-scale movement of both passengers and freight.

As is evident, numerous people travel by train and are seated comfortably in their assigned coach cars. It was therefore assessed that there would be no safety hazard to the participants in completing the survey in a moving train. The participants were told about the instructions from the Michigan State University Institutional Review Board (IRB). The requirements of confidentiality and anonymity of the data, including the voluntary nature of survey were met. Further, no identifiable information was collected in the surveys. On average, an interview required 15 to 20 minutes to complete.

There are 29 stops between New Delhi and Bangalore City Junction.² This means that at almost every junction there is a possible flow of passengers both ways. Coordinating with this dynamic flow of passengers and recruiting them as survey participants throughout the 41-hour, 1,281 miles long journey made the data collection challenging, albeit rewarding, as it offered us a unique opportunity to collect a sample from a very diverse population coming from different parts of the country, with varied backgrounds (educational, socioeconomic, cultural, and traditional setting). Indian societies are among the most diverse in the world and their populace encompass all of the major religions, share different cultures and traditions across state boundaries, and possess many languages that are spoken in the country. The value of the data reported in this study, therefore, lies in how representative

¹ <http://www.indianrailways.gov.in/> (accessed on April 21, 2010).

² <http://indiarailinfo.com/train/map/920/664/136> (accessed on April 25, 2010).

it is of the diversity of the demographic makeup (in terms of language, religion, ethnicity, education, culture, caste, and city of origin) and that it had enough variance.

Keeping the Indian cultural context in mind, one may view passengers typically chit-chatting with other passengers, playing board games, reading magazines and books, listening to music, or simply just doing nothing. In the presence of all these possible scenarios, it is encouraging for a researcher to approach them, and ask for their assistance in filling out a survey. Knowing that the passengers are going from one destination to another, both unknown to the researchers, and therefore unlikely to be traced back, they can also be viewed as highly likely to share their opinions and perceptions more in sync with their actual beliefs, thus adding to the reliability of this method, and further the results. In spite of the favorable response from the passengers, there were some refusals to participate. For the sake of organization of this chapter, the reasons for refusal have been covered under limitations in a later section of this chapter titled *Discussion and Conclusion*. Regardless, the benefit of collecting such heterogeneous data spatially within a short span can be incomparable and ultimately very valuable.

Data Collection

As described previously, the data collection for this study can be summarized in two broad ways: first, in a very static environment where a few people assemble every day in the morning for practicing yoga, and second, in a very dynamic setting where there is a constant flow of passengers traveling on a 41-hour-long rail journey via Indian Railways. In the first instance, members of the local community who assembled in one of the neighborhoods in New Delhi in the morning were approached to consider participating in the study. Typically, the researcher would distribute the survey to the group of residents before they began their morning yoga session, leave the spot, and at the end of the session come back to collect the surveys from a particular resident who was requested to gather the group's surveys on his behalf. This way the researcher had no way of matching or identifying the surveys with any particular resident, thus maintaining complete anonymity of the survey participants. Similarly, in the second instance, the train sample was collected over the course of a round trip journey, with New Delhi and Bangalore as originating and terminating junctions.

Dependent Variables

Citizens' perceptions of police corruption were operationalized as a scale variable. It was constructed using several items that loaded after conducting a factor analysis using varimax rotation. A few items were drawn from recent literature (see Hwang et al., 2005) and a few more were added to this study given the Indian cultural context. For example, it is a commonly shared experience that when someone is found to commit a traffic violation by a police person, he/she is often asked for (or offers himself or herself in a concealed manner) some money, which is less than the actual citation. Further, bribing the official at that time may well avoid the need to go to court and pay a higher legitimate amount, not to mention the time involved in attending court. Such instances between the driver and the traffic police personnel are not unheard stories on the Indian roads—a practice causing Verma (1999) to associate Indian police personnel with "notorious extortionists", where they let the driver go upon receiving a bribe. In light of this, we introduced a new item in our survey, which was: "People often get away by bribing a police person instead of being given a citation/ticket." Arising from a similar cultural context, the respondents were further asked their level of agreement on a five-point Likert scale if they were concerned that a police person would end up asking for a bribe when approached.

Similarly, the respondents were further probed if they agree with the statement, "The more expensive your car the more likely you are to get away with motoring offenses" and "Police are more likely to follow up with the victim's complaints/reports when they recognize that you have social or political influence, or if the police personnel are bribed." All of these items measuring citizens' perceptions of police corruption had a factor loading ranging from 0.63 to 0.78. The Cronbach's alpha for this scale was noted as 0.89, signifying a high internal reliability. Originally, each item incorporated a five-point Likert scale ranging from "strongly agree" to "strongly disagree." All items were reverse coded to a scale ranging from 1 = strongly disagree to 5 = strongly agree to assure that high values indicated higher perception of police corruption. Factor analysis (principal component) with varimax rotation method was used to identify various items loading up in the scale. The dependent variable, *citizen perception of police corruption*, was thus operationalized as both an additive scale and a weighted factor regression score through factor analysis and reliability testing. It was measured by eight independent items (see Table 7.2), with each of the factors loading greater than 0.60 reliability.

Independent Variables

The independent variables used in the regression model primarily comprised two sets of variables: individual demographic characteristics and contextual or experiential characteristics indicating citizens' perception of police. First, demographic variables comprised of age, gender, education, income estimate, relatives or friends in the police. Respondents were asked their *age* at their last birthday rounded to the nearest year. *Gender* was a dichotomized variable (0 = female; 1 = male). *Education* was recorded as a dichotomous variable with 0 = college and less, and 1 = university degree. *Income status* (in rupee was categorized as 1 = less than ₹ 250,000 (approximately US\$ 4,821), 2 = 250,001–400,000, and 3 = 400,001 and more. *Relatives or friends in police* was a dichotomous variable with 0 = no and 1 = yes. Respondent's *contact with police* was characterized as positive (coded 1) and other (coded 0).

The second set of variables, experiential characteristics, consisted of three scale variables and two individual items (see Table 7.2). For the second scale variable, three items loaded on citizens' perception of police professionalism: *police persons are well educated; police persons are well trained; police persons, in general, are able to handle complex situations*. These items altogether yielded an acceptable reliability coefficient of 0.75. The third scale variable, namely, *trust in police work*, was measured by asking the respondents three related items: *police trust the public to work with police in crime prevention or order maintenance; the public trust the police enough to work with them to prevent crime/order maintenance; police personnel in my neighborhood take active role in reaching out to the public for support in police work*. This scale reported an internal reliability of 0.69.

The remaining two independent variables employed in this study were based on the study's contextual scenario. Termed "social inequality," this item asked the respondents whether they agreed with the statement: "*The more expensive your car the more likely you are to get away with motoring offenses.*" Forty-six percent of the respondents agreed to this statement as opposed to 28% who disagreed and 26% who responded neutrally. A final variable measured the "influence of social status" on police. Citizens were asked to respond on a five-point Likert scale on the statement: "*It's not about what you have done but who you are and who you know when it comes to the police in India,*" to which an overwhelming 75% of the respondents responded as agree/strongly agree. Almost 19% responded neutrally.

Analysis and Findings

Table 7.1 describes the general characteristic of the sample. Of those who responded, almost 38% of the overall sample were less than 25 years old, 26% were between 26 and 40 years of age, and almost 36% of the sample were 41 years or older. The average age in the sample was 35 years. The sample constituted about 26% females and 71% males. Sixty percent of the sample comprised university graduates as compared to the 40% who reported education up to college or less. The respondents were approximately equally split in the three categories of income brackets. About 34% reported their family annual income to be ₹ 250,000 (approximately US\$ 4,821 at US\$ 1 = ₹ 44.3) or less. Thirty-five percent noted their family annual income to be between ₹ 250,001 and ₹ 400,000 and close to 31% reported theirs to be above 400,001. Thirty-three percent of the respondents reported having a relative or friend in the police. Only 39% of the respondents reportedly had a positive contact with the police in the last 12 months.

Since citizen satisfaction with police is an additive scale, comprised 10 individual items, the scale may record a minimum of 10, implying the least satisfaction with police, or 50, indicating highest satisfaction with police. The mean for this scale is 26.15 with a standard deviation (s.d.) of 7.6, suggesting a fairly conservative view of satisfaction with police. Likewise, citizens' views of police professionalism is an additive scale made up of three distinct items, which means that their perfect positive view of police professionalism results in a score of 15 and a complete opposite view will result in a score of 3. The mean in this case was reported as 8.04 with a s.d. of 2.5, indicating close to a neutral standpoint toward professionalism of police. On a scale of 3 to 15, trust in police work comprised three items, reported a mean of 7.10 with an s.d. of 2.2.

Transparency International 2009 reported India's corruption perceptions index to be 3.4 and placed it at 85th out of 180 countries (Zinnbauer, Dobson, & Despota, 2009). Police corruption in India has been a point of contention in general. Corruption within the Indian police is well recognized, pervasive, and exists within every rank, from the constable to the chief of police, and in every police department in the country (Verma, 1999). In the citizens' perception of police corruption scale, a perfect agreement with each item measuring police corruption on a scale of 1 = strongly disagree to 5 = strongly agree would have resulted in a score of 40 for this eight-point scale. Similarly, a complete disagreement (indicating no police corruption perceived by the respondents) would have reported a score of 8.

The respondents reported a mean of 32.31 with an s.d. of 5.7, indicating a very high agreement with the items measuring police corruption. This suggests that the police in India are not looked upon as a profession that is at all remote from corruption.

Policing in India can be subjective. This is clearly indicated by the percentage of people who identified the influence of social inequality and social status over policing style. On a scale of 1 to 5, where 5 represents strongly agree, the mean for social inequality and social status is 3.23 (s.d. = 1.1) and 4.01 (s.d. = 1.0) respectively. This means that a large proportion of respondents agreed that someone with an expensive car is more likely to get away with a motoring offense, where the expensive car acts as an indicator of social inequality. Similarly, the better part of the respondents agreed that when dealing with police, one's social standing in terms of who-he-is and who-she-knows matters.

Table 7.1 Distributions and Descriptive Statistics of Respondents

(N = 204)

Variable	Description	N	%	Mean	S.D.	Min	Max
Demographic characteristics							
Age	1 = ≤25 years	77	37.7	35.70	14.50	18	78
	2 = 26-40 years	53	26.0				
	3 = ≥41 years	74	36.3				
Gender ^a	0 = Female	53	26.0	0.73	0.44	0	1
	1 = Male	145	71.1				
Education	0 = College and less	80	39.2	0.61	0.49	0	1
	1 = University degree	124	60.8				
Estimate of gross family income (₹)	1 = ≤250,000	69	33.8	1.98	0.81	1	3
	2 = 250,001-400,000	71	34.8				
	3 = ≥400,001	64	31.4				
Relatives or friends in the police	0 = No	137	67.2	0.33	0.47	0	1
	1 = Yes	67	32.8				
Nature of police contact	0 = Other	126	57.8	1.42	0.49	0	1
	1 = Positive	78	38.2				
Contextual characteristics^b							
Citizens' satisfaction with police services				26.15	7.60	10	50
View of police professionalism				8.04	2.53	3	15
Trust in police work				7.10	2.19	3	15
Perception of police corruption				32.31	5.65	8	40
Social inequality (Expensive car)				3.23	1.09	1	5
Social status (Who you are and who you know)				4.01	0.96	1	5

Source: Authors' findings/calculations.

Notes: (i) ^a 1 = strongly disagree; 5 = strongly agree.

(ii) S.D. means Standard Deviation.

^b 5 Missing cases.

As shown in Table 7.1, the scale of corruption index reported the highest mean. A detailed breakdown in Table 7.2 further highlights each item that captured citizens' perceptions of police corruption. It is noteworthy that each item on the five-point Likert scale (with 5 = strongly agree) reported positively with the mean ranging from 3.78 to 4.26. This emphasizes the level of a citizen's attitude toward police corruption and, given the cultural context, it shows how certain activities of police personnel are viewed as corrupt practices by the respondents. Table 7.2 presents a detailed account of the contextual variables constructed in the study representing the individual item's factor loading and Cronbach's alpha indicating internal reliability of each scale used in further analysis. These scales were constructed using factor analysis with varimax rotations. Based on the rotated component matrix generated using principal component analysis, the items were modeled accordingly to form the scales, as shown in Table 7.2. As is evident, a large number of respondents have a high perception of police corruption. For instance, an overwhelming 86% agreed that police officers take bribes in handling traffic accidents or violations. On a five-point scale, the mean is 4.26 with an s.d. of 0.9. Although police personnel are expected to assist citizens in cases of a theft or robbery, etc., this study reports that 82% of the respondents observed that assistance only comes after bribing the official.

Eighty-one percent of the respondents agreed that police personnel allow operation of shops and other businesses to operate in areas where they are not legally allowed to operate and that it is very easy to bribe a police person these days. Nearly 75% of the respondents believed that people get away by bribing a police person instead of being given a citation. The likelihood that a victim's complaint/report would be followed up by a police person can be influenced if they can be bribed by the victims or if they recognize that the victim may have social/political influence. For instance, almost 67% and 79% of the respondents agreed that police are more likely to follow up on the victim's complaints only if they are bribed or if they have social or political influence respectively.

The data inclination in Table 7.2 indicates citizens' satisfaction with police undertakings on several fronts. For instance, only 26 percent of the respondents reported that the police are generally helpful. On a scale of 1 (strongly disagree) to 5 (strongly agree), the mean is 2.77 with an s.d. of 1.0. A discouraging 20% of the sample reported that police officers, notorious for the way they handle traffic violations, perform politely in handling traffic accidents or violations. Police persons, in general, are sensitive to the public—only 21% of the respondents seemed to agree with this attribute of citizen satisfaction. Only 26% of the sample felt that police are attentive

when a victim reports a crime. Similarly, the mean scores for other items vary between 2.43 and 2.77, indicating an overall negative view of satisfaction with police. For each of the item, the factor loading is between 0.54 and 0.74. This factor yielded a reliability coefficient (Cronbach's alpha) of 0.90, indicating high internal reliability.

Table 7.2 Public Perceptions of Police in India

<i>Variable</i>	<i>Strongly Agree/Agree</i>		<i>Factor Loadings</i>
	<i>N/%</i>	<i>Mean/SD</i>	
<i>Dependent variables</i>			
Citizens' perception of police corruption			
Police officers take bribes in handling traffic accidents or traffic violations	176/86.3	4.26/0.94	0.78
Police take bribes in connection with their handling of criminal cases (theft, robbery, investigation, etc.)	168/82.4	4.18/0.89	0.78
Police personnel allow illegal operation of shops and other businesses to operate in areas they are not allowed to operate	165/80.9	4.02/0.91	0.73
It is very easy to bribe a police person these days	165/80.9	4.11/0.90	0.74
People often get away by bribing a police person instead of being given a citation/ticket	152/74.5	3.94/0.93	0.59
When a policeman approaches me, I am very concerned that he will end up asking for a bribe in order to let me go	144/70.6	3.82/1.05	0.66
Police are more likely to follow up with the victim's complaints/reports only if they are bribed	136/66.7	3.78/1.00	0.63
Police are more likely to follow up with the victim's complaints/reports when they recognize that you have social/political influence	162/79.4	4.19/0.90	0.66
<i>Cronbach's alpha</i>			0.89
<i>Independent variables</i>			
Satisfaction with police services			
Police persons are generally helpful	52/25.5	2.77/1.04	0.58
Police officers perform politely in handling traffic accidents or violations	41/20.1	2.74/1.15	0.58
Police persons handle calls for assistance with politeness	67/32.8	2.75/0.99	0.66

(Continued)

(Continued)

Variable	Strongly Agree/Agree		Factor Loadings
	N/96	Mean/SD	
Police in my neighborhood are kind and helpful even when consulted on a case that is not under their jurisdiction	50/24.5	2.52/0.99	0.69
Police officers in my neighborhood investigate in a fair manner regardless of the difference of social status of victims	30/14.7	2.43/1.01	0.58
Police are very attentive when a victim reports a crime	53/26.0	2.58/1.10	0.54
Police persons, in general, are sensitive to the public	43/21.1	2.58/1.05	0.66
I am satisfied with the police service in my neighborhood	36/17.6	2.62/1.02	0.69
Generally, I am satisfied with the way police persons conduct themselves	41/20.1	2.53/1.04	0.74
Citizens can generally trust police persons to protect their lives and properties	59/28.9	2.62/1.17	0.55
<i>Cronbach's Alpha</i>			0.90
<i>View of police professionalism</i>			
Police persons are well educated	31/15.2	2.49/0.99	0.72
Police persons are well trained	64/31.4	2.84/1.07	0.73
Police persons, in general, are able to handle complex situations	54/26.5	2.71/1.04	0.58
<i>Cronbach's alpha</i>			0.75
<i>Trust in police work</i>			
Police trust the public to work with police in crime prevention or order maintenance	28/13.7	2.41/0.91	0.66
Public trust the police enough to work with them to prevent crime/order maintenance	27/13.2	2.41/0.96	0.74
Police personnel in my neighborhood take active role in reaching out to the public for support in police work	31/15.2	2.28/0.92	0.60
<i>Cronbach's alpha</i>			0.69
<i>Singular items</i>			
Social inequality (The more expensive your car the more likely you are to get away with motoring offenses)	93/45.6	3.23/1.09	
Social status (It's not about what you have done but who you are and who you know when it comes to the police in India)	152/74.5	4.01/0.96	

Source: Authors' findings/calculations.

Notes: (i) 1 = strongly disagree; 5 = strongly agree.

(ii) S.D. means Standard Deviation.

Regression Analysis

After a detailed univariate analysis, Ordinary Least Squares (OLS) multiple regression analysis was performed to determine the relative influence of citizens' demographic characteristics and contextual characteristics on the citizens' perception of police. This analysis included demographic characteristics such as age, gender, education, relatives and friends in the police, and nature of police contact. The contextual perception variables (factor scores of citizens' satisfaction with police, views of police professionalism, trust in police work, social inequality, and social status) were also included among the independent variables to ensure the contribution of these attitudinal variables to the model. Finally, the multiple regression analysis was performed separately, controlling for age. This assisted in indicating whether perceptions differ across the given age groups.

In Table 7.3 using the Ordinary Least Squares (OLS) multiple regression analysis, we examined the extent to which the relationship reported in the Analysis of Variance (ANOVA) still holds while controlling for the effects of other variables. Since we have controlled for age, we ran a total of four models—all using citizens' perception of police corruption as a dependent variable. The first full model measuring perception of corruption uses two sets of independent variables—socio-demographic factors (including age) and contextual factors.

Consider the full model ($N = 204$), based on the unstandardized regression coefficient, with a slight increase in the age, the citizen's perception of corruption with police is likely to increase ($\beta = 0.04$, $p < 0.1$). Age is significantly related to the corruption perception. This means that older people reported a slightly higher perception of police corruption. Although a male sample is more likely to report a higher perception of police corruption than their female counterpart, this finding is not significant. Similarly, while a higher educated and higher income sample is more likely to perceive police corruption, the findings are not significant for these two independent variables. Of all, 32.8% of the respondents reported having relatives or friends in the police. This is a significant finding ($\beta = 1.44$, $p < 0.05$) as those who have relatives or friends in the police are more likely to perceive police corruption than those who do not have police officials as relatives or friends. Finally, among the socio-demographic characteristics, consistent with the expectations, although not significant, the nature of contact is inversely related to the perception of corruption. This means that those who did not have a positive contact are more likely to have a higher perception of corruption as compared to the counterpart sample.

In the same full model, contextual variables such as citizens' satisfaction, perceptions of police professionalism, trust in police, social inequality, and social status are also considered as independent variables. Interestingly, all the contextual variables load significantly in explaining perception of police corruption. The scale of citizens' satisfaction with the police did not have a very favorable response from respondents (see Table 7.2). In the OLS model, it is a significant finding ($\beta = -0.37, p \leq 0.00$) that people who were less satisfied with the police were more likely to perceive police corruption. A strange but significant finding is that the respondents who reported higher on the scale of police professionalism were also more likely to perceive police corruption. The unstandardized coefficient is found to be $\beta = 0.27, p \leq 0.1$. Trust in police work was measured by asking the respondents three related items: *police trust the public to work with police in crime prevention or order maintenance; the public trust the police enough to work with them to prevent crime/order maintenance; police personnel in my neighborhood take active role in reaching out to the public for support in police work*. Similar to the relationship between satisfaction and perceived corruption, it is found that those who expressed less trust in police were more likely to perceive police corruption. This relationship is found to be significant ($\beta = -0.45, p < 0.01$).

Finally, the two new items (social inequality and social status) that were introduced based on the context of this study load significantly in the constructed full model. Respondents who found police persons to discriminate based on social inequality and social status appeared to perceive police corruption. The two independent variables (social inequality and social status) appeared to explain perception of police corruption significantly at $\beta = 0.80$ and $p < 0.01$, and $\beta = 1.11$ and $p \leq 0.00$, respectively. These two findings (based on Indian data) are consistent with the findings in the study conducted in Latin America by Fried, Lagunes, and Venkataramani (2010, p. 91). The authors assert that police officers enforce the law selectively. Once a driver is stopped by traffic police personnel, class distinction clearly comes into play. Officers are more likely to demand bribes from poorer individuals and to let richer individuals off with a warning (Fried et al., 2010). Summarily, amongst the socio-demographic variables, only age and gender explain perception of police corruption significantly but among the contextual variables, all of them highlight a significant relationship in explaining the police corruption perception. The R-square value of the full model is reported as 42%. This means that 42% of the variation in citizens' perception of police corruption is explained by our model.

Based on the three age groups created for this study, the remaining three models were run controlling for each age group (2a, 2b, and 2c). In the

model 2a ($N = 77$), the model was run controlling for the respondents who were less than 25 years old. For this group, among the socio-demographic variables, only income is significantly ($\beta = 1.41, p < 0.05$) associated with the perception of police corruption. This suggests that in the sample (respondents aged 25 years and less) those in the higher income group were more likely to view police corruption as compared to the counterpart income group. Alternatively, one may say that as compared to those earning a lower income, younger respondents earning a higher income were more likely to live an extravagant lifestyle, possess motor vehicles (which increases their likelihood to be stopped for motoring violations), carry expensive cell phones, sun glasses, etc., thereby giving an impression to the police about their hefty wallets and their ability to pay higher bribes. In which case, police personnel expect that this subset of the population to make larger payments before they are let go, an analysis consistent to the findings in a study conducted in Latin America (Fried et al., 2010, p. 91).

In the same Model 2a, amid the contextual variables, respondents exhibiting less trust in police work were more likely to perceive police corruption ($\beta = -0.76, p < 0.01$). Social status is positively ($\beta = 2.70$) and significantly ($p \leq 0.00$) associated with a perception of corruption, implying that the more the respondents agreed with the statement: "It's not about what you have done but who you are and who you know when it comes to the police in India," the more they were likely to report a perception of police corruption. In the Model 2a, although the remaining socio-demographic characteristics (gender, education, having relatives/friends in the police, and nature of contact with police) and the contextual variables (satisfaction, professionalism, and social inequality) are reported in the expected directions, none of them is significant.

Model 2b regresses the perception of police corruption against middle-aged respondents (ages 26–40). Similar to model 2a, among the socio-demographic variables, only income is significantly ($p < 0.05$) related to the corruption perception, however surprisingly in the opposite direction ($\beta = -1.49$). This means that respondents earning a higher income were also less likely to report a corruption perception in police. Further insight reveals that the respondents who are between 26 and 40 years of age and earning less than ₹250,000 were more likely to report police corruption. Income earned and social status can be directly proportional to each other indicating that with higher income, one can maintain a higher social status. However, as is evident in the literature, poorer individuals are more likely to be victims of demands for bribes from the police and thus this income group reported the highest perception of police corruption for the age group 26 to 40 years.

Next, citizens who reported a lesser satisfaction with police were significantly more likely to report police corruption ($\beta = -0.36, p \leq 0.00$). Respondents who agreed with the social inequality and social status scale were more likely to indicate a perception of police corruption. These two findings are significant with the unstandardized coefficient, $\beta = 1.76$ ($p < 0.01$) and $\beta = 1.38$ ($p < 0.1$), respectively. As opposed to the findings in model 2a, model 2b reported a significant relationship between the social inequality scale (expensive car) and corruption perception. One can assume that respondents in the higher age group are more likely to possess cars than the younger lot, some of whom are still dependent on their parents or finding a job and that they cannot yet afford a vehicle. Since this former age group is more likely to be driving in cars (thus more likely to be stopped by the traffic police) for a larger part of their lives than the latter group, they can be expected to have more experience or instances dealing with the traffic police where they were either asked for a bribe or were let go due to their social influence. The R-square value of the full model is reported as 63%, implying that 63% of the variation in the selected citizens' perception of police corruption is explained by our model.

Finally, consider model 2c, where the model was run controlling for respondents 41 years and older. Among the socio-demographic variables, having relatives/friends in the police is significantly associated with corruption perception. This relationship is significant with $\beta = 2.26, p < 0.1$. This means that respondents who have relatives/friends in the police were almost twice as likely to report a corruption perception compared to those who do not have any relatives/friends in police work. Citizens' satisfaction with the police can be an important indicator for a citizen's overall view about the police. In this model, consistent with the previously discussed models, citizens who reported less satisfaction with police were more likely to perceive police corruption. This relationship is significant at a $p \leq 0.00$ level of significance with an unstandardized coefficient, $\beta = -0.40$. Those who have less trust in police perhaps have it for a significant reason. Consistent with the findings, respondents reporting less trust in police are more likely to view a corruption perception in the police ($\beta = -0.57; p < 0.05$). As compared to the first age group (≤ 25 years), this age group (≥ 41 years) is more likely to have expensive cars, and one may safely assume that this latter group has more direct experience dealing with the police, and can more often relate to the conduct of a police person on the basis of an expensive vehicle. Thus, once again those who found the influence of social inequality on the police's conduct with citizens significant had a higher perception of police corruption ($\beta = 0.91, p < 0.1$). The overall R-square value for Model 2c is 48%, suggesting that

48% of the variation in citizens' perception of police corruption is explained by this model.

There is one similarity in the four models that must be pointed out to the readers. In none of the models, gender, educational background, and nature of police contact appear to have any significant relationship in explaining a citizen's perception of police corruption, although most are in the expected

Table 7.3 Ordinary Least Squares (Police Corruption Regressed on Demographic and Contextual Variables)

Variables	Model 1 Full Model (N = 204)		Model 2a Age (≤ 25) (N = 77)		Model 2b 26 \leq Age \leq 40 (N = 53)		Model 2c Age ≥ 41 (N = 74)	
	β	t	β	t	β	t	β	t
Socio-demographic characteristics								
Age	0.04	2.11'						
Gender	0.07	0.10	0.36	0.30	-1.10	-0.88	0.34	0.26
Educational background	0.43	0.64	-0.21	-0.19	1.59	1.27	1.27	1.14
Income	0.17	0.43	1.41	2.06''	-1.49	-2.49''	0.31	0.46
Relatives or friends in the police	1.44	2.06''	0.87	0.78	1.42	1.11	2.26	1.94'
Nature of police contact	-0.30	-0.44	-1.48	-1.29	1.42	1.14	-0.16	-0.14
Contextual Factors								
Satisfaction	-0.37	-7.14''''	-0.15	-1.40	-0.36	-4.35''''	-0.40	-4.51''''
Professionalism	0.27	1.76'	0.01	0.02	0.04	0.16	0.32	1.33
Trust in police work	-0.45	-2.72'''	-0.76	-2.63'''	-0.25	-0.94	-0.57	-2.05''
Social inequality (Expensive car)	0.80	2.61'''	0.51	1.08	1.76	2.67'''	0.91	1.93'
Social status (Who you are and who you know)	1.11	3.14''''	2.70	4.73''''	1.38	1.96'	-0.62	-1.07
Constant	33.52	13.58''''	25.76	6.13''''	33.43	7.24''''	42.27	11.61''''
R ²	0.42		0.56		0.63		0.48	
Adjusted R ²	0.38		0.49		0.54		0.40	

Source: Authors' findings/calculations.

Note: ' $p < 0.1$; '' $p < 0.05$; ''' $p < 0.01$; '''' $p \leq 0.00$.

Beta (β) is the unstandardized regression coefficient, t-value is the t-statistics and p signifies the level of significance value.

direction. In terms of distinction, except in Model 1 where a citizen's view of police professionalism is significantly associated with his/her perception of corruption, in none of the models when controlled for age does it have any significant relationship in explaining the said perception. Secondly, income is positively related to explaining a citizen's perception of police corruption in the models, except for Model 2b (ages 26–40), where it is negatively related. That is, persons in the lower-income group between the ages of 26 and 40 were more likely to report police corruption.

Discussion and Conclusion

High levels of corruption in a public service agency may cause growth in institutional instability and/or weakening of the relationships among individuals and public officials. Public service agencies such as the police must secure the support of the public if they are to provide efficient and effective services (Schafer, Huebner, & Bynum, 2003, p. 441). A positive public image is vital for police agencies (and personnel) to maintain their efficacy as public institutions.

Keeping analysis from previous sections in perspective, the four expectations from the dataset outlined in the research objective were fulfilled. Older citizens were slightly more likely to report a perception of police corruption. Citizens reporting less satisfaction with police and trust in police work were more likely to report a perception of corruption in police; and the citizens who reported a higher influence of social inequality and social status are more likely to view police corruption. Overall, the full model suggests that age, income, citizen satisfaction with police, view of police professionalism, and trust in police work are significant predictors of a citizen's perception of police corruption. In addition, people who agree with the statement: *"The more expensive your car the more likely you are to get away with motoring offenses"* are more likely to report police corruption and finally, citizens who assert: *"It's not about what you have done but who you are and who you know when it comes to the police in India"* were also more likely to view police corruption in India.

As expected, indication of police corruption is associated with lower citizen satisfaction. This finding is not at all surprising both empirically and logically. In particular, it is often noted in public discourse and rhetoric in the media that corruption and police in India work hand in hand. This is also

supported by Verma (1999, p. 264) where the author notes: "Corruption within the Indian police is well recognized and pervasive. It exists within every rank, from the constable to the chief of police and in every police department of the country."

For instance, we asked respondents whether "*it is very easy to bribe a police person these days*" to which almost 81% agreed positively. Almost 71% opined that they are very concerned that a policeman will end up asking for a bribe when approaching him/her. Not only do these scales capture different dimensions of police corruption, they also offer an insight that might as well be correlated with other factors such as education, training, etc., of police persons. We found that only 15.2% of our sample felt that police persons are well educated, 31% reported that they find police persons are well trained and only 26.5% view that police persons, in general, are able to handle complex situations. This implies that almost more than two-thirds of the sample does not view police persons as well educated or as well trained or as being able to handle complex situations. This finding is further validated by a report published by the Bureau of Police Research and Development (BPRD) of India that suggests that at an all-India level (in 2007–2008) only 1.57% of the total police expenditure of ₹262.69 billion was spent on police training (BPRD 2009). With a much lower amount (though higher than the preceding year) spent on police training, it should not be surprising when a police person comes across to citizens as less well trained or incapable of handling complex situations.

The negative view of police persons by citizens can also be related to the limited numbers of police in India who are entrusted to maintain law and order. Recent news reports have reported that the country has merely 129 police persons per 100,000 people, which is considerably lower than the United Nations norm of 220 police personnel for a population of this size.³ BPRD (2009) offers more support by reporting that whereas 695 people were being looked after by one constable in the year 1997, 653 people are being looked after by one constable in the year 2007.

Despite the fact that our findings are consistent with prior research and seem to inferentially coincide with the findings of BPRD, this study suffers from a few limitations and therefore should be interpreted cautiously. For instance, our survey did not capture citizens' perceptions across caste or religion, which are both predominant in Indian society as opposed to the

³ <http://timesofindia.indiatimes.com/india/India-has-only-129-cops-per-1-lakh-people/articleshow/5669651.cms>

race variable in Western context (Thomas & Hyman, 1977). In the wake of a community riot in 2002, popularly known as the "Godhra Riots" the nation's communal (Hindu-Muslim) harmony was harmed and it also caused immense damage to the image of the Indian police as a whole because of the manner in which they handled the aftermath of these riots. In view of this, Raghavan (2003, p. 122) noted that the "police are not always objective in what many believe to be their paramount task, namely protect minorities." Future research measuring citizens' perceptions of the police in India can perhaps incorporate other demographic characteristics, namely caste and religion. The inclusion of these defining demographic variables might give us an understanding of how Indian police persons and their conduct are perceived by the different communities in India, varied by citizens with different religions and castes.

Another factor missing from our study was "media influence," as most people derive their knowledge about criminal justice from media consumption (Surette, 2006). For example, following a study by Wu and Sun (2010), future research measuring citizens' perceptions of police can include this variable constructed by asking the respondents the frequency of how many times they hear or read (on the radio, television, Internet, or in the newspaper) about incidents of police conduct (such as excessive use of force by police, verbal abuse, extortion, corruption, etc.) from different parts of the country. Also, Tankebe (2010) suggested studying public perception in terms of personal, vicarious experiences, and subjective evaluations. Apart from a singular qualitative response in our present study and a few incidental discourses, we posit that asking for more qualitative responses from citizens can make the study more robust and provide qualitative thesis support to our quantitative findings.

From the perspective of policy implication and a word of caution to the efforts of police reforms in India, this empirical assessment examining citizens' perceptions of police corruption showed a fairly less than favorable attitude toward the police in India. Barring the limitation of a small sample size in this study, most of the public perceptions of the police ranged from very negative sentiment to at the most a neutral standpoint. That said, on a continuum of very negative to very positive perceptions of the police, it might be beneficial for policy makers to devise reforms in policing that first aim to appease and bring those citizens falling into the far left of perceptions about the police to neutrality. Perhaps that may be a realistic starting point where citizens' positive perceptions of police can be seen as achievable in the continuing approach toward implementing police reforms in India.

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All-Women Police Stations in Tamil Nadu and Their Focus on Crimes against Women

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Abstract

For the past two decades, the state of Tamil Nadu, India, has established All-Women Police Stations (AWPS) to focus exclusively on crimes against women. There are 195 AWPS in the state and 35 in the city of Chennai and its suburbs. Using a formal process, the police register and investigate serious cases such as cruelty by a husband or his relatives, rape, and dowry deaths. In contrast, dowry-related cases, drunkenness by husband, adultery by husband, family quarrel, false promise of marriage, desertion by husband, etc., are handled in an informal manner through counseling and mediation. This study, using a stratified sample of 17 of the 35 AWPS from Chennai, compares Available online at the types of serious and non-serious domestic violence cases registered by the AWPS and the unique aspects of case disposition.

Introduction

Domestic violence, which used to be a private family matter, has become a criminal justice issue in many countries, including India. As such, legislators have revised old laws and drafted new ones to criminalize perpetrators. These

changes have not come easily for the victims. Major reform efforts initiated by women's organizations throughout India resulted in significant amendments to the Indian Penal Code, 1860 (IPC), the Indian Evidence Act, 1872, and the Dowry¹ Prohibition Act, 1961, as well as changes in police procedures in domestic violence cases (Bush, 1992; Rajalakshmi, 2002; Visaria, 1999). Section 498A of the IPC classifies domestic violence as a cognizable (i.e., felony) offense, allowing the police to arrest the accused without a warrant. A more recent piece of legislation, the Protection of Women from Domestic Violence Act, 2005, allows civil remedies such as a woman's right to reside in her matrimonial home or shared home, irrespective of her having rights in such home (p. 4). The revised laws were intended to help women victims and punish abusers who perpetrate violence or other crimes against women. In the past, the police who are responsible for enforcement of these laws either did not take these laws seriously or intentionally avoided them (Amnesty International India, 2001; Kishwar, 2006). Moreover, women were reluctant to report abuse because they thought that police officers, who are predominantly male, would not take their concerns seriously (Natarajan, 2006). More importantly, many women victims do not necessarily want their abusers to go to jail or file for divorce, but want their family situation to improve (Rao, Indhu, Chopra, Nagamani, & Padaki, 2000). Therefore, they sought support from close family members or friends (International Center for Research on Women [ICRW], 2001).

To address women's concerns, specifically family violence, states such as Tamil Nadu (in southern India) set up special women's units, known as All-Women Police Stations (AWPS). The first AWPS was opened in Chennai city in 1992. Since then 195 AWPS have been opened throughout the state. Women police officers primarily handle crimes against women, including serious forms of domestic violence and nonserious family disputes. Serious domestic violence cases are filed as First Information Reports (FIRs), whereas nonserious cases are recorded in the Community Service Register (CSR). This chapter examines FIR and CSR cases handled by the AWPS in the city of Chennai, Tamil Nadu, India. It describes the disposition of FIR and CSR cases during a four-year period (2005–2007) and examines complaint patterns for specific offenses and their dispositions. In addition to the description of typical cases handled by AWPS, we also present qualitative information on specific complaints filed.

¹ "Dowry" is a cultural practice in many Indian communities. It involves giving property or valuables to the bridegroom or his family by the bride's family in consideration of marriage.

Literature Review

Domestic violence includes a wide range of acts, including physical, sexual, and psychological abuse, and threats of violence inflicted by an intimate partner related to the victim through marriage, family relationship, or an acquaintanceship (Sahoo & Pradhan, n.d., p. 1). The more recent Protection of Women from Domestic Violence Act, 2005, included economic abuse as part of family violence. As in the US, a vast majority of perpetrators are males and their victims are overwhelmingly female. The National Crime Records Bureau (NCRB) in India publishes national crime data, including crimes against women, and reports IPC offenses including rape, kidnapping and abduction, dowry deaths or their attempts, torture, both mental and physical, sexual molestation, sexual harassment, and importation of girls (NCRB, 2010). In addition to IPC offenses, the NCRB also documents gender-specific offenses under Special and Local Laws (SLL). These laws include the Immoral Traffic (Prevention) Act, 1956; the Dowry Prohibition Act, 1961; the Child Marriage Restraint (Amendment) Act, 1979; the Indecent Representation of Women (Prohibition) Act, 1986; and the Commission of Sati (Prevention) Act, 1987. The Dowry Prohibition Act, 1961, prohibits demanding, receiving, or taking dowry. The Commission of Sati (Prevention) Act, 1987, prohibits burning or burying alive of a widow on the funeral pyre of her husband, attempting to commit such an act, or aiding and abetting in committing the act.

In 2010, a total of 213,585 incidents of both IPC and SLL crimes against women were reported nationally. Of these offenses, torture ($N = 94,041$) and sexual molestation ($N = 40,613$) were the two most common. There were 8,391 dowry deaths under the IPC and 5,182 offenses under the Dowry Prohibition Act, 1961 (NCRB, 2010, 79–83). No case was registered under the Commission of Sati (Prevention) Act, 1987.

In the Indian context, the historical subordinate status of Indian women, combined with sociocultural factors (e.g., patriarchy and the practice of *sati*), exacerbate the problem of violence against women. Researchers report various causes, such as substance abuse (Rao, 1997; Bhatt, 1998), poverty (Duvvury & Nayak, 2003), low educational status (Gerstein, 2000), and a patriarchal family structure that delineate gender roles (Malamuth, Linz, Heavey, Barnes, & Acker, 1995), as possible explanations for male dominance in domestic situations. Sahoo and Pradhan's (n.d.) study of a national representative sample of 90,303 women between the ages of 15 and 49 either

currently married or formerly married, showed that one-fifth of the women in India are beaten by their husbands. In Tamil Nadu, more than one-third of women reported such an abuse. The same study also reported that three out of five women consider beating of one's wife justified if a woman shows disrespect to in-laws, neglects the house or children, leaves the house without telling her husband, is unfaithful to her husband, or fails to make good food. In Tamil Nadu, women ranked neglecting house or children, leaving house without telling her husband, and showing disrespect to in-laws as the top three justifications, whereas states such as Andhra Pradesh, Madhya Pradesh, Nagaland, and Uttar Pradesh selected suspicion of wife's infidelity as another important reason, in addition to the above three, as justifications for wife beating.

The International Center for Research on Women (ICRW), in collaboration with researchers from Indian academics and community organizations, conducted a domestic violence study in rural Gujarat (in western India) (Visaria, 1999). The study found that three-quarters of women suffered some form of psychological, physical, or sexual abuse, whereas 42% suffered physical beatings or sexual abuse (Visaria, 1999, p. 10). Women who had been married for one to five years reported both psychological and physical abuse at similar levels (40% and 30%, respectively). Those who were married 11–15 years reported more physical abuse (51%) than psychological abuse (18%). The primary triggers of violence, as reported by women, included failure to prepare food on time, failure to cook proper food, failure to care for children or property, and increased economic stress. Although the general perception is that dowry is the main cause of domestic violence in India, only 1% reported inadequate dowry as a precipitating factors for violence (Visaria 1999, p. 12).

One of the governmental responses to dealing with domestic violence was the development of AWPS. These stations were created to not only criminalize domestic violence but also to make police stations "more approachable and less intimidating to women" (Poonacha & Pandey 1999, p. 30). The idea was that the women police officers would be more gender sensitive and take women's issues more seriously. During the past two decades, AWPS have been established throughout Tamil Nadu to deal exclusively with problems relating to women (e.g., dowry issues, family disputes, false promises of marriage, sexual assaults, rape) (Natarajan, 2005). In June 2008, 195 AWPS had been opened in rural and urban areas in Tamil Nadu. There are 35 AWPS in Chennai and its suburbs. The following section discusses the types of cases registered by police at AWPS.

Reporting, Registration, and Maintenance of Crime Records

AWPS handle cognizable and non-cognizable crimes committed against women. Cognizable offenses (i.e., felonies) are those where police officers may take cognizance of cases as soon as they learn about the occurrence of such offenses even without a complaint by victims, and may register cases either by themselves or on the basis of a victim's complaint. These serious offenses are registered in a report called the First Information Report (FIR). Once cases are filed in an FIR, official investigation commences. Non-cognizable offenses include less serious offenses, which are entered in the Community Service Register (CSR). Officers try to resolve issues in CSRs through counseling or mediation. If the case is not resolved, the police refer it to an appropriate court.

First Information Reports

FIR cases include dowry death (Sections 302 and 304B of the IPC), cruelty by husband or relatives of husband (Section 498A of the IPC), forcible conversion to different religion (Section 4 of the Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002), rape (Section 376(1) of the IPC), intimidation and harassment of women (Tamil Nadu Prohibition of Harassment of Women Act, 1998), prostitution or solicitation (Immoral Traffic (Prevention) Act, 1956), mental illness resulting in violence (Section 23(3) of the Mental Health Act, 1987), demanding or receiving dowry (Section 3 of the Dowry Prohibition Act, 1961; Tamil Nadu Dowry Prohibition Rules, 2004), drunkenness, and/or riotous or indecent behavior in a public place (Section 75 of the Madras City Police Act, 1888). The cases registered in the FIRs are taken up for investigation by the police.

Community Service Register

The CSR is maintained at police stations. Moreover, these cases are not taken up for investigation by the police. Instead, an inquiry is conducted and attempt at resolution is made using alternative methods of disposition. CSR cases include dowry-related cases, drunkenness by husband, adultery, bigamy, family quarrel, seeking custody of children, false promise of marriage,

and desertion by husband. Final dispositions of CSR cases are maintained only at the police-station level.

The current study describes FIR and CSR cases filed by women at AWPS from 2004 through 2007 and the manner in which these cases were resolved by the Chennai police. In addition to typical cases, examples of unique cases that are handled by police are presented. The data were compiled from a stratified sample of 17 police stations from a total of 35 AWPS in Chennai.

Methods

Research Site

This study was conducted in Chennai (formerly known as Madras), the capital of the state of Tamil Nadu. It is the largest city in southern India with a population of approximately 4.21 million people. Chennai is a leading commercial and industrial center, and has a diverse cultural heritage. It has a total area of 174 sq. km., with a density of 24,231 persons per sq. km. (Census of India, 2001, pp. 116, 172), making it one of the most densely populated cities in the world. Although English is widely used in business, education, and commercial sectors, Tamil is the primary language spoken in the state. The vast majority of the people in the city are Hindus (82.27%), followed by Muslims (8.37%), Christians (7.63%), and Jains (1.05%). The literacy rate is 80.14%, compared to the national average of 64.5% (Department of School Education, 2001). Despite the high literacy rate, the city has the fourth highest population of slum dwellers (18.6%). In 2005, the crime rate in the city was 313.5 incidents per 100,000 people, an increase of 61.8% from 2004. The city's crime rate accounts for 6.2% of all crimes reported to the police for the country (NCRB, 2010).

Procedure

For this study, the 35 AWPS in the city of Chennai were classified into "low," "medium," "medium-high," and "high" categories based on the economic characteristics of the jurisdictions of each police station. There are 4 AWPS in low-economic jurisdictions, 17 in medium-income jurisdictions, 6 in medium-high jurisdictions, and 8 in high-income jurisdictions. Approximately 50% of police stations were chosen from each group, resulting

in a total of 17 AWPS. Prior to data collection, permission was requested from the Chennai commissioner of police. Upon approving the study, the commissioner forwarded a letter to all joint commissioners of police in Chennai City, who in turn sent their approval to the deputy commissioners of police.

At each stage, these officers reviewed the research protocol, confidentially of the data, and anonymity of the subjects. The final permission letter was sent to the station house officer at each selected police stations. In general, cases registered at the police stations are sent to the office of the subdivisional officer. A subdivisional officer, who is designated as an assistant commissioner of police, is in charge of three-four police stations. From this office, information pertaining to the registered cases is sent to the District Crime Records Bureau (DCRB). The DCRB collects and compiles the data from the 121 police stations in Chennai. The DCRB maintains the number of offenses registered for individual police stations. However, the DCRB does not keep dispositional details of certain cases (e.g., cases under investigation, pending trials, convictions, acquittals, actions dropped). Therefore, researchers had to compile this data from individual police stations. Four doctoral students were hired from a local university for approximately two months to compile the data. The students were supervised by the researchers.

Type of Data Collected

FIR CASES AND THEIR DISPOSITION

There are 15 specific types of FIR cases, which represent both IPC and SLL. The IPC cases include cruelty by husband or relatives of husband, rape, eve-teasing,² and voluntarily causing hurt. SLL cases include giving, demanding, or receiving dowry; forcible conversion of religion or attempts; harassment of women; seducing or soliciting for prostitution; the depiction of women in any indecent, derogatory, or denigrating manner (Indecent Representation of Women [Prohibition] Act, 1986); exploitation of children (Juvenile Justice [Care and Protection of Children] Act, 2000); civil disputes; confinement of a mentally ill person; and drunkenness and/or riotous or indecent behavior in public place. There are six possible ways that FIR cases can be disposed: under investigation, pending trial, conviction, acquittal, dropping of charges, and transferring to another jurisdiction.

² "Eve-teasing" refers to a milder form of sexual harassment (Nahar, 2006). Section 509 IPC Criminalizes any word or gesture or acts intended to insult the modesty of women.

CSR CASES AND THEIR DISPOSITION

There are the 19 types of CSR cases handled by AWPS. Some CSR cases (e.g., rape and molestation, cruelty by husband, eve-teasing) could fit the profile of FIR cases. After initial investigation, if the police officer determines they are mere accusations and there is no evidence, then the case is entered into the CSR and the subjects are counseled and released. It is possible for some of these cases to be later charged as FIR cases.

Types of CSR cases are as follows:

1. Dowry-related cases
2. Drunkenness by husband
3. Adultery by husband/wife
4. Bigamy by husband
5. Family quarrel
6. Seeking custody of children
7. False promise of marriage
8. Drunkenness or riotous or indecent behavior in a public place
9. Desertion by husband
10. Rape and molestation
11. Suspicion of fidelity
12. Restoration of *stridhana* (personal property of a woman)
13. Domestic violence
14. Assault
15. Civil dispute
16. Threat
17. Abuse
18. Cruelty by husband
19. Others (e.g., molestation)

There are 10 ways CSR cases can be disposed: (a) registering a criminal complaint; (b) referral to family court; (c) withdrawing the case; (d) transferring the case to FIR; (e) formal counseling and reuniting; (f) mediation and compromise; (g) mistake of fact and no real evidence of wrongdoing; (h) dropping of action; (i) pending; and (j) other dispositions, e.g., restoring *stridhana*.

Results

As shown in Table 8.1, the stations differ in size. The smallest station accounts for only 1% ($N = 71$) of all cases, whereas the largest station accounted for 17% ($N = 2,314$) of all registered cases. The 17 stations handled a total of 13,919 cases, including FIR and CSR cases, over four years (2004–2007).

Table 8.1 Total Number of FIR and CSR Cases by Station

<i>Station</i>	<i>Percentage of All Cases</i>	<i>Total Number of Cases</i>
Thousand Lights	9	1,212
Triplicane	4	515
Egmore-1	3	482
Vepery	2	328
Ayanavaram	9	1,249
Kothavalchavadi	2	242
High Court	1	71
Harbour	2	297
Washermenpet	10	1,395
Thiruvottiyur	7	1,004
Royapuram	4	615
Pulianthope	8	1,121
Sembium	5	704
MKB	8	1,106
Mylapore	3	420
Teynampet	17	2,314
T. Nagar	6	844
Total	100	13,919

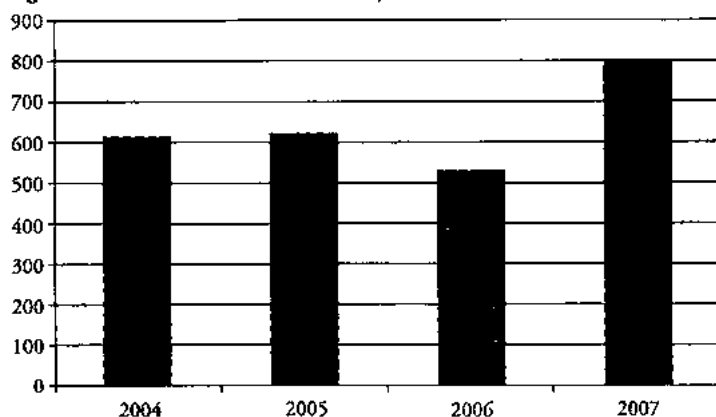
Source: Authors.

FIR and CSR cases are listed by year in Figures 8.1 and 8.2. The highest percentage of FIR cases (21.9%) was registered in 2007, compared to 15.6% in 2006. The highest percentage of CSR cases (84.4%) was registered in 2006, compared to 80.8% in 2004. Overall in terms of caseload, AWPS deal with approximately 80% of CSR cases on an annual basis (see Table 8.2 and Figure 8.2).

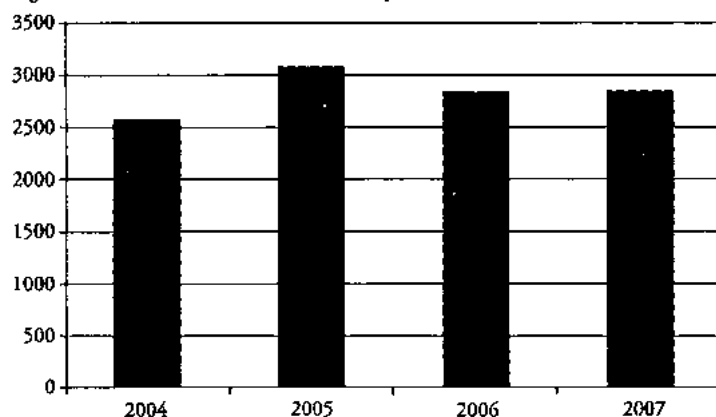
Table 8.2 Total Number of FIR and CSR Cases Registered Annually

<i>Number of Cases Registered</i>	<i>FIR (%)</i>	<i>CSR (%)</i>	<i>Total</i>
2004	611 (19.2)	2,570 (80.8)	3,181
2005	622 (16.7)	3,099 (83.3)	3,721
2006	526 (15.6)	2,840 (84.4)	3,366
2007	801 (21.9)	2,850 (78.1)	3,651
Total (2004–2007)	2,560 (18.4)	11,359 (81.6)	13,919

Source: Authors.

Figure 8.1 Total Number of FIR Cases by Year

Source: Authors.

Figure 8.2 Total Number of CSR Cases by Year

Source: Authors.

As can be seen in Table 8.3, the most common offense registered in the FIR was drunkenness and/or riotous or indecent behavior in a public place (Section 75 of the Tamil Nadu City Police Act, 1888). This category represented between 60% and 70% of all FIR cases, followed by dowry offenses, cruelty by husband or his relatives, and a conglomeration of other offenses. Other offenses included civil disputes, forcible conversion of religion, indecent representation of women, civil disputes, abuse due to mental illness, and exploitation of children.

Under CSR, family quarrels made up approximately 37%, followed by drunkenness of husband (about 20%), adultery by husband or wife (about

11%), and dowry-related charges (about 9%). False promise to marry and suspicion of fidelity made up a small percentage of cases. The other offenses include molestation, assaults, civil disputes, threats, abuse, and cruelty by husbands (see Table 8.4).

Table 8.3 Total Number of FIR Cases by Type

Type of FIR	Number of Cases (Percentage)			
	2004	2005	2006	2007
Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 read with the Tamil Nadu Dowry Prohibition Rules, 2004	29 (5)	39 (6)	21 (4)	30 (4)
Section 498A of the IPC	34 (6)	58 (9)	58 (11)	93 (12)
Rape under Section 376(1) of the IPC	2 (1)	3 (1)	4 (1)	5 (1)
Tamil Nadu Prohibition of Harassment of Woman Act, 1998	4 (1)	11 (2)	8 (2)	24 (3)
Immoral Traffic (Prevention) Act, 1956	12 (2)	9 (1)	2 (1)	5 (1)
Section 23(3) of the Mental Health Act, 1987	2 (1)	15 (2)	12 (2)	14 (2)
Section 75 of the Tamil Nadu City Police Act, 1888	482 (79)	381 (61)	369 (70)	579 (72)
Eve-teasing under Section 509 of the IPC	0 (0)	31 (5)	0 (0)	1 (1)
Others (indecent representation of women, exploitation of children, civil disputes, violence due to mental illness, forcible conversion of religion, etc.)	46 (8)	75 (12)	52 (10)	50 (6)

Source: Authors.

Table 8.4 Total Number of CSR Cases by Type

Type of CSR	Number of Cases (Percentage)			
	2004	2005	2006	2007
Dowry-related cases	257 (10)	321 (10)	210 (7)	230 (8)
Drunkenness by husband	647 (25)	713 (23)	746 (26)	715 (25)
Adultery by husband/wife	338 (13)	300 (10)	278 (10)	286 (10)
Bigamy by husband	47 (2)	53 (2)	40 (1)	33 (1)
Family quarrels	875 (34)	1,125 (36)	1,067 (38)	1,105 (39)
Seeking custody of children	55 (2)	44 (1)	40 (1)	23 (1)
False promise of marriage	52 (2)	60 (2)	26 (1)	57 (2)
Eve-teasing	5 (1)	9 (1)	1 (1)	4 (1)
Desertion by husband	20 (1)	67 (2)	71 (3)	20 (1)
Domestic violence	40 (2)	32 (1)	43 (2)	16 (1)
Suspicion of fidelity	60 (2)	75 (2)	99 (3)	96 (3)
Restoration of <i>stridhana</i>	14 (1)	22 (1)	19 (1)	24 (1)
Other (molestation, assaults, civil disputes, threats, cruelty by husbands, etc.)	160 (5)	278 (9)	200 (7)	241 (8)

Source: Authors.

Disposition of FIR and CSR Cases

The most common disposal of FIR cases was conviction (78% of all dispositions); 11% are still awaiting trial. Regarding the disposition of those charged under Section 498A of the IPC ($N = 243$), there was only one conviction reported. One hundred and twelve cases (46.1%) were awaiting trial, 32 (13.2%) were under investigation, 17 (7%) were acquitted, charges were dropped in 19 (7.8%) cases, and 26 (10.7%) were transferred. Only one case resulted in conviction. Of the 119 cases filed under the Dowry Prohibition Act, 1961, almost half ($N = 55$; 46.2%) were awaiting trial, 18 (15.1%) were under investigation, charges were dropped in 9 (7.6%) cases, 7 (5.9%) were acquitted, 9 (7.6%) were convicted, and 5 (4.2%) were transferred to other jurisdictions. Of offenses under Section 75 of the Tamil Nadu City Police Act, 1888 (drunkenness and/or riotous or indecent behavior in a public place), which also includes eve-teasing, all cases ($N = 1,807$) but one resulted in conviction (see Table 8.5, Figures 8.3 and 8.4).

CSR cases were disposed of at a faster pace than FIR cases. Two most common ways of disposal of CSR cases were compromise through mediation and referral to family court. Two-thirds of the cases were mediated and the

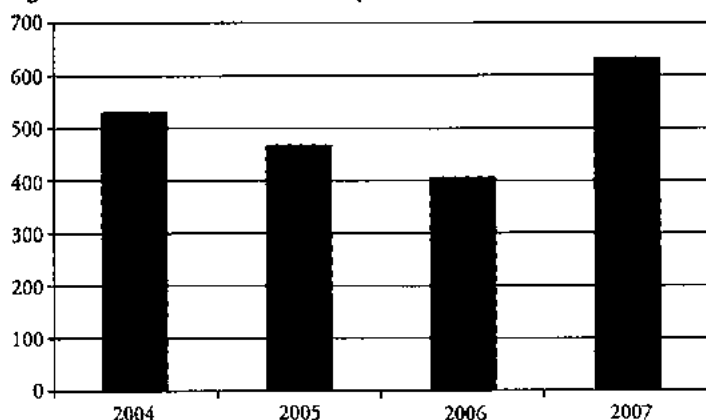
Table 8.5 Disposition of FIR Cases

Type of FIR	Disposition type						
	UI	PT	CON	ACQ	AD	TRF	OTH
Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 read with the Tamil Nadu Dowry Prohibition Rules, 2004	18	55	9	7	9	5	16
Section 498A of the IPC	32	112	1	17	19	26	36
Rape under Section 376(1) of the IPC	1	8	2	1	1	0	1
Tamil Nadu Prohibition of Harassment of Woman Act, 1998	2	22	18	3	0	0	2
Immoral Traffic (Prevention) Act, 1956	0	1	25	0	0	0	2
23(3) the Mental Health Act, 1987	3	3	5	0	19	2	9
Section 75 of the Tamil Nadu City Police Act, 1888	0	1	1,806	0	0	0	0
Eve-teasing under Section 509 of the IPC	0	4	25	2	1	0	1
Other	16	78	112	1	4	7	9

Source: Authors.

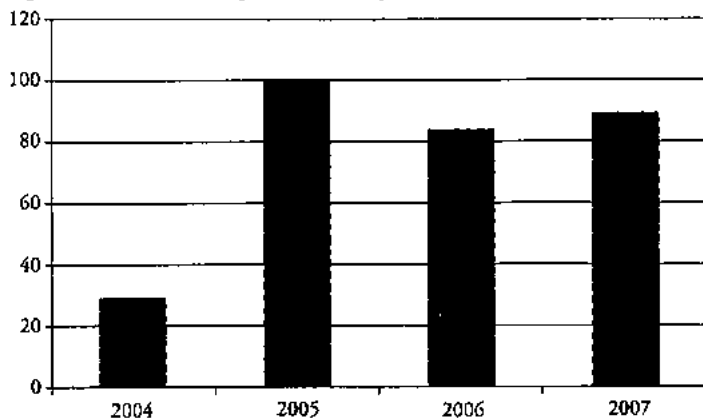
Note: UI = Under investigation, PT = Pending trial, CON = Convicted, ACQ = Acquitted, AD = Action dropped, TRF = Transferred on point of jurisdiction, OTH = Others.

Figure 8.3 Convictions in FIR Cases by Year



Source: Authors.

Figure 8.4 Trials Pending in FIR Cases by Year



Source: Authors.

parties agreed to stay in the relationship ($N = 7,316$; 64.4%), about 15% ($N = 1,738$; 15.3%) of the cases were referred to a family court for divorce or separation, and less than 2% ($N = 201$; 1.8%) resulted in formal investigation because of the seriousness of the offense or because the parties did not want to compromise. Of dowry-related cases ($N = 1,018$), over half agreed to compromise after mediation ($N = 564$; 55.4%), 16.2% ($N = 165$) of the cases were referred to family court for divorce or separation, and fewer than 10% ($N = 91$; 8.9%) resulted in the criminal charges being filed and were pending further inquiry (see Table 8.6 and Figures 8.5 and 8.6).

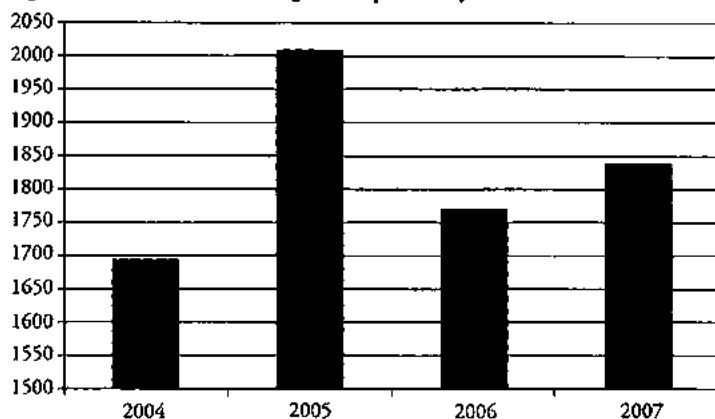
Table 8.6 Disposition of CSR Cases

Type of CSR	Disposition Type									
	CCR	RFC	CW	TRF	CR	COM	MF	AD	PD	OTH
Dowry-related cases	91	165	68	33	10	564	1	11	10	65
Drunkennes by husband	29	436	182	15	49	1,900	0	34	24	153
Adultery by husband/wife	4	161	91	5	15	833	0	19	10	64
Bigamy by husband	11	33	8	3	1	101	0	3	2	11
Family quarrels	21	667	311	35	126	2,740	0	39	54	178
Seeking custody of children	1	31	18	4	0	96	0	3	0	9
False promise of marriage	16	12	14	5	5	114	1	1	5	22
Eye-teasing	6	1	0	1	0	8	0	0	0	3
Suspicion of fidelity	0	68	41	0	2	210	0	3	1	4
Restoration of <i>stridhana</i>	1	30	7	2	0	37	0	2	0	0
Desertion by husband	3	49	23	0	0	87	0	4	2	10
Domestic violence	1	17	24	1	0	86	0	2	0	0
Other	17	68	83	16	30	540	3	6	9	107

Source: Authors.

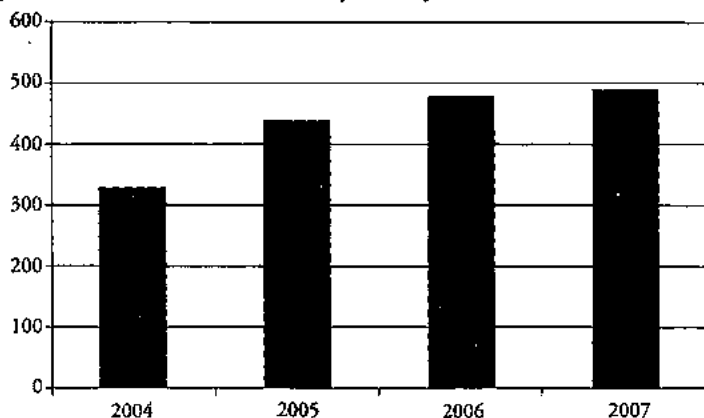
Note: CCR = Criminal case registered, RFC = Referred to family court, CW = Cases withdrawn, TRF = Transferred, CR = Counseled and reunited, COM = Compromised, MF = Mistake of fact, AD = Action dropped, PD = Pending disposal, OTH = Others.

Figure 8.5 CSR Cases Resulting in Compromise by Year



Source: Authors.

Figure 8.6 CSR Cases Referred to Family Court by Year



Source: Authors.

Qualitative data collected from AWPS show typical and unique cases. A typical case involves dowry complaints, family disputes (e.g., false promises of marriage, refusal to accept a daughter's marriage), adultery, and incest. The following cases are typical.

Dowry Harassment

I was harassed by my husband, sister-in-law, and mother-in-law and they demanded money and jewelry. I was beaten up and was often sent to my

mother's place to bring more money. When I was pregnant, they physically tortured me to abort the child.

The victim (aged 21) filed a dowry harassment complaint with AWPS. After an inquiry, the police told the complainant and her husband to live in a dwelling separate from her in-laws.

Refusal to Accept Daughter's Marriage

Parents often refuse to accept their daughters' marriage when their daughters run away from home and marry without their consent. In one case, a mother filed a complaint stating that her daughter was missing. The police found out that the girl was actually staying with her relatives. Moreover, it was revealed that she had married at a temple without her mother's consent. The mother refused to accept the marriage, stating that the son-in-law would cheat her daughter and told the police that her daughter should be returned home. The police advised the couple to register their marriage and the decision was accepted by the mother.

Restoration of Conjugal Rights

Family disputes, specifically a wife requesting restoration of conjugal rights, although rare, come under the purview of AWPS. In one case, a woman delivered her first child and her husband did not come to see them. She believed that her husband did not come because his mother advised him not to visit. The police counseled the couple and reunited them.

Sexual Molestation or Incest

When a women complained that her current husband was sexually molesting her daughter from her previous marriage, the police sought help from the Women's Self-Help Group and referred the parties for counseling.

Complaint of Adultery

Although it is common for a wife to file a complaint about a husband's adulterous affair, in this case, a 21-year-old married woman admitted that

she had had an extramarital relationship and requested that the police reunite her with her husband.

Immediately after marriage, I ran away from her husband to be with my lover. Now I have realized my mistake and want to reunite with my husband. However, I fear that he will not take me back.

The police summoned both parties and counseled them three times. The woman was advised not to have any further communication with her lover. The complainant promised to be faithful to her husband, and the couple was reunited.

Forceful Conversion of Religion

The complaint came from a Hindu woman (aged 23), who had married a Muslim man (aged 24). "We have a two-year-old daughter and now he is compelling me to convert to Islam, which I refused. As a result, I was continuously tortured. Therefore, I am filing a complaint against my husband." During the inquiry, the husband informed the police that he did not want to live with his wife, but did want custody of their daughter. The case was referred to the family court.

In a similar case, the police counseled a husband and told both parties to reunite. The complainant said:

I was married to my husband one-and-a-half years ago. It was a love marriage and we are from different religions. Now he, at the advice of his mother, started creating problems saying that he does not want me since I am from a different religion.

False Promises of Marriage

I am 22 years old and was in love with him. He promised that he would marry me and therefore I consented to have a sexual relationship with him. Later, he refused to marry me.

In this case, the police tried to reconcile the parties, who were given counseling several times. In spite of their efforts, the man refused to marry the complainant. She then filed an FIR case under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. The court convicted him.

In another case, the victim approached a women's police station claiming that her boyfriend had promised to marry her.

I had an affair with a man and he promised to marry me. Believing him, I had consented to have a sexual relationship with him. Later he refused to marry me as his marriage was fixed with another girl.

She filed a complaint under Sections 417 and 506 of the IPC for cheating and criminal intimidation respectively. He was arrested, convicted, and is now serving time in prison.

Discussion and Conclusion

We found that AWPS officers have a broad role, covering a wide range of crimes against women. In addition, they must process a large number of complaints each year. In order to carry out this special responsibility, the legal system made several changes, starting in the 1980s, to protect women and punish their abusers. Despite these laws, many women's rights advocates argue that legal reforms have been sporadic and inadequate (Nigam, 2005; Viswanathan, 2000; Vanita, 1984). For example, the Family Courts Act, 1984, intended to speed up the settlement of disputes and to promote conciliation, failed to recognize the concept of "irreconcilable differences" in marriage and encouraged women to opt for reconciliation (Vanita, 1984). Another notable law, which was amended in 1983, was Section 498A of the IPC. The change made cruelty to married women by their husbands or in-laws a cognizable and nonbailable offense. One major failing of the legislation, however, was it did not allow the victim the right to live in the matrimonial house once the complaint was filed (Nigam, 2005). Although such a remedy is possible under civil law, women had to seek a separate court trial. Moreover, the use of criminal law to address centuries-old patriarchal dominance makes domestic violence an individual responsibility and fails to view it as a broader social issue (Greenburg, 2003). A more recent piece of legislation, the Protection of Women from Domestic Violence Act, 2005, however, provided a much needed civil remedy by allowing women to reside in matrimonial house or shared dwelling, monetary relief, and a protection order. It also extended protection to those who are in live-in relationships, widows, mothers, and other family members. In addition, the Act recognized domestic violence as a human rights issue and not merely a crime, and

includes sexual violence, verbal abuse, and emotional abuse in its definition of "domestic violence" (Juneja, 2006).

In terms of enforcement, many states have created AWPS to address crimes against women as well as other family grievances. The current study shows the vast number of CSR cases that are resolved through mediation and reconciliation by the police. In cases where professional counseling is required, officers tend to refer complainants and accusers to Women Helpline Centers, which are staffed by professional counselors. Access to AWPS empowers women. A woman can refuse counseling and prefer formal charges against her abuser(s). Further, it is interesting that men also seek redress through AWPS for various situations, including cases of infidelity or verbal harassment by their spouses.

The police stations have been largely successful in bringing social awareness to women's issues (Chaturvedi, 1996). Since many of the women officers have no formal training in counseling or mediation, efforts have been underway to provide training to female police officers in Tamil Nadu (Natarajan, 2005, 2006). Future research should study victims' satisfaction with the process (from initial complaint to final disposition), which will not only help provide appropriate training to officers, but also identify best practices when dealing with violence against women in India.

In addition to the formal systems of criminal justice agencies, a unique informal system is gaining momentum in many parts of India. Because many women often find the formal justice system inaccessible and costly, rural and tribal women seek justice through informal *nari adalat* (women's courts). Many of these courts are located in rural areas, and are run by a group of women using a process of social censure, argument, and persuasion (Sharma, 2000). They hold informal courts sitting in a circle on the floor in front of a *panchayat* office or any place where they can gather. They hear cases of divorce, abandonment, rape, and dowry demands (Sharma, 2000). Efforts are underway to bring these courts to other parts of India.

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Impact of Higher Education upon Perceptions of Police Officers in India

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Abstract

Indian authorities have long advocated the induction of more educated police officers into the service. A common belief is that educated police officers will perform better and, more significantly, be more responsive to citizens, given that misbehavior and rude interactions have been major embarrassments. Citizens fear police officers and are reluctant to go to the police station to report their complaints. It is believed that with improved training and more qualified officers, the Indian police will be able to improve its image and provide better services to the people. However, there is little research on the impact of education on the perceptions and subsequent actions of police officers. This research seeks to understand the impact of education upon police personnel in terms of their perceptions of role, work values, stress, and management issues. Our research suggests that education makes only a marginal difference and provides evidence for a policy change in this direction.

Introduction

Historically, education was considered unnecessary to serve in police departments. When the modern police were first established by the British in 1861 the country lacked a formal education system and the majority of the population had little formal schooling. Moreover, the Indian police were designed as a colonial model by the British rulers where subordinate ranks, recruited from the native population, were deliberately given a lower status. All senior ranks were reserved for British officers and it was not until 1921 that some Indians were permitted to join the leadership ranks in this Indian Police (IP) service. Further, educational qualifications and training were minimal for the lower ranks. Such a police organization was bound to be oppressive and exploitative but this was a deliberate policy, for the British Raj was built upon the powers and terror of police. The low pay, minimal demand for education, and the emphasis on maintenance of law and order, rather than service to the people, ensured that the police served the purpose of providing an economical means of keeping the people of India under the British sovereignty. Unfortunately, even after independence the colonial model has not been changed for a variety of reasons (Verma, 2005). The Police Act (V of 1861) is still applicable¹ and the organizational structure, culture, ethos, and even most of the rules and regulations continue unchanged (Arnold, 1992). Considering the bitter and protracted struggle against the British rule in which the police were used ruthlessly to deal with freedom fighters, and despite independence and establishment of a democratic government, the Indian leaders still choose to continue this British-made machinery without fundamental changes. It was naively thought that after independence the bureaucracy and the police would serve the people, as it would be under the political control of elected representatives. No substantial organizational changes were made notwithstanding India adopting a constitutional form of government and a democratic means of electing political leadership.

After the initial euphoria of independence, the defects could not be ignored any longer and dissatisfaction with the system was no more seen as the teething troubles of a new republic. The Indian police remain notorious for their extortion, misbehavior, and poor service to citizens. Further, the personnel are largely seen to be insensitive to ethnic and gender issues and lack a proper understanding of their responsibilities (Sharma, 2007).

¹ Under a directive by the Supreme Court, this Act is being revised; this is discussed in a later section.

Appropriate training is needed, but obviously this requires a certain level of education. In India, educational qualifications for constables (forming the bulk of the force) have deliberately been kept very low (grade IV in many states of the country) due to political considerations, which contributes to a poor image of Indian police departments.

Dissatisfaction with the police system has led to several efforts to reform the organization. The National Police Commission of 1977 outlined major structural changes, but due to politics its recommendations were not accepted (Verma, 1999). The judiciary has been another catalyst of reform and through the well-known process of judicial activism, the Supreme Court has recently directed the government to modify the Police Act, 1861. Although court directions are yet to be implemented and the political rulers are reluctant to depoliticize the police, changes are forthcoming. Additionally, a variety of secondary factors are coalescing to force changes in the system. As democracy is taking firmer roots in the country and elections are being fought on specific issues like corruption, development, and security, these matters are becoming difficult for elected governments to ignore. Moreover, a new kind of leadership, technological ability, and innovation are sweeping Indian police agencies since the Union Public Service Commission changed the system of examination for the Indian Police Service² in 1980. These new entrants have brought a welcome change to police leadership and performance. Many officers are computer-savvy, at home with new technologies, and well acquainted with the Internet. They have brought new technological applications to the management and supervision of the police. The performances of new leadership and constant demands for police reform have convinced the authorities that raising educational standards of the subordinates should be a key reform mechanism. Accordingly, there is growing support for this factor (Menon, 2002), and it is translating into the induction of better-educated people to the subordinate ranks.

However, the question remains as to how education affects the performance of police personnel. Do educated police officers perceive their roles differently and are they more inclined to follow a due process course of law? Do they tend to work with citizens and believe in protecting the rights of the accused in the course of their work? Are they able to qualitatively improve their performance and provide more services to the people? These are several questions that have not been examined in the Indian context. A presumption exists that by raising the educational standards the police personnel will

² The nomenclature IP was changed to IPS in 1947 to reflect a new police leadership for the country.

naturally perform better. This research empirically examines these questions and attempts to analyze the impact of education and related factors upon the perceptions of police officers. We first conduct a literature review to understand the current research on police education and then describe our analysis of the perceptions of a large sample of police officers from India.

Policing and Higher Education

It is generally believed that among the many factors that impact the quality and performance of police officers, education is the foremost. Nearly four decades ago, the American Bar Association (1973, p. 212) proposed that police need "intellectual curiosity, analytical ability, articulateness and a capacity to relate the events of the day to the social, political, and historical context in which they occur" to perform their job. More recently, Smith and Aamodt (1997, p. 8) remarked that "college education facilitates the development of traits that coincide with Goldstein's essential five qualities of police—intelligence, tolerance and (cultural) understanding, values favoring controls on police conduct, self-discipline, and the ability to control one's emotions." Acknowledging the importance of the college-educated police officer not only reflects the increased recognition of the police officer's job, but may also be interpreted as an indication of what the field of policing thinks of itself (Goldstein, 1977).

In the early 20th century, August Vollmer's movement to professionalize the American police led to the notion that law enforcement officers must be adequately educated and trained. In an effort to construct a department with "more intelligent and better educated officers," Vollmer hired college students as part-time police officers for the Berkeley police department (Dourhit, 1983, p. 104). His visionary thinking, however, failed to catch on and education reform in policing throughout the US remained relatively unchanged for decades. It was not until the late 1960s, when the President's Commission on Law Enforcement and Administration of Justice (PCLEAJ) promoted higher education to advance the quality of law enforcement, that police and politicians revisited the issue of heightened standards of education for police officers. The notion that "police officers should be college educated has [since] become a cornerstone of the movement to professionalize the police" (Sherman, 1978, p. 18). *The Challenge of Crime in a Free Society* (PCLEAJ, 1967) advocated for all law enforcement officers to have baccalaureate degrees (President's Commission on Law Enforcement

and Administration of Justice, 1967, p. 109), but that mandate remained an "untested assumption" four years later (Ruth, 1971, p. 16). The education sentiment was reiterated in 1973 when another Federal report asserted that for many police agencies, "minimum educational level is still the same as was 40 years ago—a high school education" (National Advisory Commission on Criminal Justice Standards and Goals, 1973). In the report, the National Advisory Commission's (NAC) Standard 15.1(4) espoused that "Every police agency should, no later than 1982, require ... the completion of four years of education (baccalaureate degree) at an accredited college" (National Advisory Commission on Criminal Justice Standards and Goals, 1973, 369). This proposition laid the groundwork for an evolving academic framework in the field of criminal justice at colleges and universities across the US.

Vollmer's college-level police education program became integral to the development of more scientifically grounded methods of crime detection and patrol operations (Scott, 2010). To reinforce the proposed mandate for a college degree, the NAC reported that police departments that have implemented a higher-education standard maintain higher morale, take less time off, and have quicker response times (National Advisory Commission on Criminal Justice Standards and Goals, 1973, p. 371). In support of the recommendation, the Congress enacted the Omnibus Crime Control and Safe Streets Act, 1968 to provide funding that would enable police officers to attend college (Carter & Sapp, 1990, p. 60). Federal support emanated from the belief that education would improve the quality of the police occupation.

The legal system also has addressed the issue of higher education in policing. Support for a police educational requirement has been upheld in numerous US court cases. Court rulings in *Morrow v. Diolard* and *United States v. Buffalo* affirmed that "a high school diploma is the absolute minimum amount of education a police officer should possess to be eligible for employment" (Smith & Aamodt, 1997, p. 9). In 1975, *Arnold v. Ballard* developed an educational platform on which job performance could be quantitatively validated (Roberg & Bonn, 2004, p. 479). Finally in 1985, *Davis v. City of Dallas* upheld a Dallas Police Department requirement that officers complete 45 semester hours of college coursework. According to Roberg and Bonn (2004), the educational mandate upheld in the *Davis* decision was substantiated by the complexity of relationship between police risk and police role. Education was deemed necessary for the level of judgment needed to maintain the performance and professionalism expected of the police.

Education has become an "important determinant of professionalism," considered crucial in the effectiveness of law enforcement personnel (Miller & Fry, 1978, p. 30). Though education and training are equally important to

policing, they are conceived of, often unnecessarily, as adversarial concepts in the pursuit of police professionalism (Glisson, 1976, p. 62). Indeed, professionalism cannot be achieved outside the mutually supportive objectives of both education and training. When questioning police personnel on the value of education, one study found that over three-quarters of the officers surveyed felt that more college-trained career officers were needed (Watson & Sterling, 1969, p. 64) but only 38% felt that "the best officers generally have more education than the others" (Watson & Sterling, 1969, p. 64). In her analysis of police professionalism, Price (1976) scrutinizes how the policing occupation has been moving toward professionalism, and discusses administrator ambivalence toward this movement. Specifically, administrators tend to fear professionalism because they feel it sacrifices organizational authority. Consequently, in the decades since the government issued recommendations to police departments, social scientists have conducted numerous studies to explore the effects of college education on policing. Evidence has both supported and contradicted the benefits of college education requirements for the police.

Education may influence police cynicism, which numerous studies suggest is the "most threatening enemy" of professionalism, pervading all ranks and areas of law enforcement (Regoli, 1976, p. 340). Though one study suggests college-educated officers may be less cynical (Shernock, 1992), Regoli's (1976) replication and extension of Neiderhoffer's (1967) research found that officers with more education were more cynical than their less-educated counterparts. In his study, Regoli (1976) surveyed 324 police officers, trichotomizing his sample by rank and separating officers by level of education (those with less than two years of college and those with two or more years of college), in order to uncover determinants of police cynicism. When rank was examined, the survey indicated a significant impact on education, dedication, and organization for lower-level personnel (patrolmen), while cynicism was highly correlated with education for mid-level officers (sergeants). Though no variables revealed a significant difference between officers based on education, an officer carried out every incidence of cynical behavior by a supervisor with less education (Regoli, 1976, p. 343). While these findings lack statistical strength, they suggest that college-educated, lower-ranking officers are more cynical than officers of the same rank with less education.

The leadership inherent to law enforcement indisputably affects all aspects of policing. When examining organizational factors, Mastrofski, Ritti, and Hoffmaster (1991) concluded that police leadership has a discernable impact on officer discretion. In a study examining police use of discretion by education level, Finckenauer (1975) found mixed results. When presented with 10

scenarios involving citizen interaction, police were asked to indicate whether they would arrest the suspect, resolve the issue using extralegal means, or do nothing. Results from three of the discretionary situations revealed that officers with some college education scored significantly higher than those without a college education. Also, officers with some college education were more likely to block loopholes, reflect the ideals of community when taking action against declared criminals, and act appropriately in cases where the victim does not request prosecution (Finckenauer, 1975, p. 453).

A further study on officer discretion solicited patrol officers' responses to a questionnaire relating to a drinking-driving scenario for which they were evaluated on experience, education, work-related values, desire for promotion, and quality of Driving Under the Influence (DUI—is the act of driving a motor vehicle with blood levels of alcohol in excess of a legal limit) training (Mastrofski, Ritti, & Hoffmaster, 1991, p. 373). Taking into account individual officer characteristics, researchers found that the largest of four departments taking part in the study also had officers with the highest level of education (14.9 years) and served an "education-oriented community." The officers in this department were willing to maintain a neutral outlook on their use of street discretion and placed a high value on thinking independently. This department displayed the lowest percentage of scenario response to arrest drunk drivers. The ability of the officers to remain open-minded yet rational in a DUI scenario attests to their tolerance and understanding of cultural differences and may also reflect their intelligence and emotional control.

Supporting these findings, a study utilizing college-student police reveals a relationship between exposure to a college education (regardless of the major) and cognitive processes, specifically dogmatism (Guller, 1972). This research suggests that not only are senior police students less dogmatic than their freshman counterparts but that "lower levels of dogmatism are related to greater flexibility and openness to alternative points of view" (Guller, 1972, p. 400). Later findings also suggest that college-educated officers are less dogmatic than officers with less education (Parker, Donnelly, Gerwitz, Marcus, & Kowalewski, 1976, p. 34). These findings suggest that, for police officers, education may facilitate a more open-minded decision-making process.

Community policing programs appear to be well suited to officers with high education. Community policing has shown positive effects on police officers and is expected to improve officer knowledge, attitudes, skills, and problem-solving techniques (Rosenbaum, Yeh, & Wilkinson, 1994; Worden, 1990). Worden (1990, p. 576) indicates that a higher level of education may improve an officer's ability to analyze and evaluate "nontraditional solutions"

to problems because added insight into human behavior affords him/her the opportunity to develop extra legal strategies. This suggests that education may benefit police officers' approaches to community policing initiatives and the community at large.

Much research regarding policing and education has examined how education affects the quality and interpersonal proficiency of police-citizen interactions. A ten-year California study sought to examine how officers' levels of education relate to citizen complaints. Personnel records of 500 police officers who had obtained their degree prior to being hired were screened for citizen complaints against them. Findings revealed that officers with a two- or four-year degree tended to receive fewer citizen complaints than those without a degree. In addition, officers with less college credits tended to have significantly more complaints than officers with a higher numbers of college credits (Wilson, 1999, p. 3). Paoline and Terrill (2007) also reported fewer citizen complaints and higher citizen satisfaction amongst college-educated officers.

Education may further affect how police approach citizen encounters that potentially involve the use of force. A study combining systematic observation and officer interviews in Indiana and Florida assessed the impact of a college education on citizen encounters (Paoline & Terrill, 2007). Researchers evaluated the daily encounters of police for their use of verbal and physical abuse across four levels of education: high school, some college, bachelor's degree, and further education (Paoline & Terrill, 2007, p. 186). Findings revealed a significant relationship between educational level and use of force. In interactions between citizens and officers with a high school education, the incidence of force resulted in more than two-thirds of encounters, compared to around 56% of incidents involving college-educated officers. The association between education and citizen feedback suggests that education may contribute to improved police-citizen relations.

LaGrange (2003) examined how officers of different educational levels handle cases involving mental disorders. When encountering persons assumed to have a mental disorder, three options are available: psychiatric referral, informal resolution (talking to or escorting the person away), or making an arrest. When compared with high school educated officers, officers with a university education made more psychiatric referrals (82% compared to 54%), fewer arrests (2% compared to 9%), and fewer informal handlings (16% compared to 37%) (LaGrange 2003, pp. 100-101). These findings support the notion that that officers with higher education are more likely to reflect critically on the performance of their duties and to seek extralegal

solutions (LaGrange, 2003). Education may provide the police with a better understanding of the individual differences between citizens.

In addition to benefiting police-citizen encounters, education has been shown to impact police work performance (Cohen & Chaiken, 1972; Kakar, 1998; Krimmel, 1996; Roberg, 1978; Roberg and Bonn, 2004; Trojanowicz & Nicholson, 1976; Truxillo, Bennett & Collins, 1998), and working values (Jagiello, 1971; Krimmel, 1996; Sapp, 1978; Shernock, 1992). Truxillo et al. (1998) conducted a 10-year study investigating the relationship between education and work performance within a southern metropolitan police department. Educational variables included a college degree (associates or bachelor's), number of years of college, number of credit hours in criminal justice courses, and outcome on a written examination. Job performance included measures of supervisory ratings, promotions, and disciplinary actions. Supervisory assessments included job knowledge, quality and volume of work performed, dependability, and cooperation. Regression analyses indicated significant correlations between all educational variables and job knowledge, with dependability showing a significant positive relationship with two-year and four-year college degrees (Truxillo et al., 1998, p. 274). Smith and Aamodt (1997) conducted a study in Virginia to assess the relationship between officer education level and work performance. They also examined whether experience has an effect on the work performance of officers with college degrees. The study revealed a significant, positive relationship between education and overall police performance (Smith & Aamodt, 1997, p. 13). A 1978 Nebraska study revealed similar findings and noted that a college degree aided officers in "adapting to the complex nature of the police role" (Roberg, 1978, p. 344).

Research suggests that a college education, in addition to upward mobility, brings about changes in the working values that police hold toward their job. A higher level of education is thought to facilitate intellectual commitment and rationality, altruism, and increased "involvement, participation, and autonomy" on the job (Jagiello, 1971, p. 120). Furthermore, research indicates that college-educated officers value the importance of professional ethics more than those with less education (Shernock, 1992). Collectively, these studies demonstrate that education has a positive impact on work performance and occupational values.

Finally, research indicates that law enforcement officers' perceptions of occupational stress take numerous forms. For example, through a survey of police chiefs nationwide, Hays, Regoli, and Hewitt (2007) provide a cogent examination of policing and anomia, which is defined as a sense of alienation

and feeling that life is meaningless. Their analysis found that "education is the only variable that has both a strong and significant effect on anomia." As education level increases, anomia levels decrease (Hays et al., 2007, p. 12). In addition, their findings suggest that officers with a college education generally are less cynical, less prejudiced, less hostile, and less likely to use force than non-college educated officers (Hays et al., 2007, p. 7). These findings suggest that education has the potential to reduce police stress.

Strides have been made to mandate an educational requirement for police, but many departments still fail to meet the standard set by the NAC in 1973. Between July 1992 and October 1996, nearly two-thirds of officers hired by the Indianapolis Police Department did not have a college degree, regardless of gender (Decker & Huckabee, 2002, p. 800). Police agencies have benefited, however, from increased levels of education in the general population and the increase in college criminal justice programs nationwide (Carter & Sapp, 1990, p. 78). Though few scholars will dispute the need for higher education requirements in policing, research fails to provide consistent empirical support for mandating postsecondary education for the police.

Police Experience—Years of Service

Some scholars contend that job experience is the best determinant of performance and is more valuable than classroom training (Bayley & Bittner, 1984; Paoline & Terrill, 2007). Examinations of the effects of years of experience on police professionalism and police occupational perceptions have yielded numerous findings. Bayley and Bittner (1984) reject the notion that police professionalism is developed exclusively through formal education: "Officers correctly perceive that there is a gap between the operational world and the classroom, between the lore of policing as it is practiced and the principles of human behavior discovered by social scientists" (Bayley & Bittner, 1984, pp. 35-36). They submit that the peculiarities of police experience add to their professionalism and that working on the streets provides valuable experience in conjunction with a college education (Bayley & Garofalo, 1989).

A study by Miller and Fry (1978) suggests that experienced officers found postsecondary education unjust because it required them to change their personal life and work patterns to accommodate classes and studying, which they felt pressured to take. Experienced officers also resented the college requirement because courses often had little overlap with their work performance, and classes were often held in the evenings, which reduced their leisure time. Education was "hard to sell to an individual who had

come by his skill in settings less formalized than the classroom" (Miller & Fry 1978, p. 31). Miller and Fry's (1978) survey sought to measure the impact of a college education on police perceptions of work-related attitudes and professionalism. Overall, findings revealed negligible support for a college education but revealed that education did have a slightly positive impact on dimensions of the "professional model." A college education also failed to reduce work strain or improve job satisfaction (Miller and Fry 1978, p. 32). These studies indicate the importance of considering the impact of police experience when examining the impact of education.

An evaluation of the community policing program in Joliet, Illinois, indicates that police officers with less than 15 years of service perceived less autonomy on the job, showed less satisfaction with their supervisors, and were less favorable toward foot patrol duties (Rosenbaum et al., 1994, p. 348). Similar to the impact of education, experience also significantly affects anomia, with more experience being associated with reduced levels of anomia (Hays et al., 2007). Smith and Aamodt (1997, p. 13) report "no significant difference in performance among police officers with varying amounts of education and limited experience." Finally, officers with less than five years' experience were the most likely to use force, and officers with over 10 years' experience were least likely to use physical force compared to officers with less experience (Paoline & Terrill, 2007, p. 188). In sum, it appears that the officers that perform most effectively on the job are those with sufficient education *and* experience. This suggests that experience combined with higher education leads to improved police officer performance.

Data and Methods

This research examined the impact of education and years of service on the perceptions of police officers in India. Our interest was to determine if education has a significant impact on officers' perceptions of their role, work values, management issues, and stress. The study has policy implications that provide evidence for increasing the educational requirements for police in India. Our data was derived from a comparative study of police personnel perceptions in Canada, India, and Japan (Nickels & Verma, 2008). The survey responses were based upon a multifaceted instrument developed by Canadian scholars Curt Griffiths and Chris Murphy, who collected three types of data from respondents: (a) attitudinal (items related to the perceptions of their work and dimensions of policing); (b) demographic (age, sex,

marital status, and education); and (c) occupational (rank, years of service, years in current rank, and years at present posting). The attitudinal data was scored on a Likert-type scale. In this study, we isolated the data from the Indian police because this sample was our focus in the current study.

The Indian sample was drawn from Delhi police agencies with the cooperation of the Police Commissioner, known to one of the authors. New Delhi, the capital of India, is a metropolis of nearly 15 million people. Because of its political and economic importance in the country, Delhi attracts people from all corners of the nation. Delhi police recruit personnel from all over India, which promotes representativeness of the country's diverse citizenry. It also may be noted that India has a uniform police system. The Police Act, 1861, governs police structure, practices, and training, while departmental rules are generally uniform across the country. Accordingly, the likelihood of finding a representative sample of *Indian* police in Delhi appeared to be high.

A total of 1,300 questionnaires were distributed via mail to police personnel in Delhi through the office of the Commissioner. A letter from the Commissioner stressed the importance of the study but noted that participation in the survey was voluntary. Data collection involved stratified random sampling to take into account all of the police units and ranks as high as deputy superintendent of police. The final sample included 957 surveys, which reflected a 73.6% response rate. There were some missing entries in various categories across surveys but the cases were retained if the majority of the questionnaire was completed.

Data analysis for this study focused on four primary areas: (a) role, (b) working values, (c) stress, and (d) management issues. Each measure of role, working values, and management issues were based on a four-item Likert-type scale, while stress variables were measured on a five-point Likert-type scale. Each of the four primary areas encompasses between 8 and 18 individual response items. Appendix A describes the variables that comprise each area in the survey instrument as well as the corresponding response categories.

Independent variables utilized in the study were *education* and *years of service*, and each were dichotomized for comparison purposes. For education, participants with at least a high school education (the majority of respondents) were categorized in one group, while those with any postsecondary education comprised the second group. Years of service (or experience) were divided such that respondents with less than 10 years of service made up the group of less experienced officers, and respondents with 10 or more years represented the group of more experienced officers.

The data were analyzed in two ways: First, a multivariate analysis of variance (MANOVA) was conducted to determine mean differences based on

education and *years of service* for the dependent variables comprising the four areas. The objective was to ascertain if differences in perceptions could be ascribed solely on the basis of these two categories. The questionnaire items were then combined into factor scores to develop latent structures that were used in a regression model to explore the impact of the independent variables upon specific questionnaire items.

Results

Descriptive Statistics

Our final sample comprised 957 Indian police personnel respondents ($N = 957$). The mean age of officer respondents was nearly 34 years with a minimum age of 22 and a maximum age of 57. In terms of educational level of Indian police personnel, there were 490 officers with some high school education, 250 high school graduates, 6 with a college/technical diploma, 145 with some university education, and 27 university graduates. For the years of service variable, the average length of time that the respondents had spent in police service was 12.6 years with a minimum of one year and a maximum of 37 years.

MANOVA

MANOVA is an extension of an analysis of variance (ANOVA) design where multiple dependent variables are considered. As such, the primary consideration is that of an experimental design in which the dependent variables, measured at interval level, are grouped by some categorical independent variables. As a group, the dependent variables indicate some conceptual meaning for being considered together. MANOVA is based on the assumptions of independence of observations, and normality and homogeneity of the variables involved. The assumption regarding equality of variance and covariance matrices is important since the mathematics involves a matrix rather than a single variable. This assumption of homogeneous covariance (i.e., covariations should not differ much in the cells) is a strict requirement since it assumes that not only the variances are equal but also, all the pairs of covariance are equal. It is possible to minimize the effect of this assumption

by taking a sample of a large size. In view of our large $N = 957$, this assumption appears to have been met. Finally, the assumption of normality of the data implies that all the dependent variables are multivariate normal; that is, their joint effect is also normally distributed. Since there is no direct test for joint normality, the procedure is to test if each of the dependent variables is normally distributed. If univariate normality exists then multivariate normality departures are said to be inconsequential (Hair, Anderson, Tatham, & Black, 2000). We tested this assumption with the PP-normal plots, which suggested that most of the variables have a normal distribution. Accordingly, this data set met the requirements of MANOVA.

We carried out MANOVA by analyzing the following categories as dependent variables: (a) work values, (b) management, and (c) stress (each area conducted separately) with education and service years as independent grouping variables. The results indicate that for police role, personnel with higher education disagree significantly with less educated officers on numerous items. The former disagree strongly that "police are held in high regard"; that they "provide stability to the community" and "are representative of the people"; that they "must reflect government policies" and "remain involved in all aspects of community"; that "enforcement of law is important;" and that "settling problems is as important as catching criminals." Moreover, in a surprising result, the more educated officers disagree with their less-educated counterparts that "the role of police is to protect the rights of the citizens." The results for years of service also indicate that attitudes become more stable with more time spent on the force. The only redeeming factor is that those new to police service with higher education assert strongly that "citizen rights must be protected," a sentiment which unfortunately changes as they gain experience through years in service.

For the variables of work values, education appears to make a difference in only two variables—those with more education disagree with less educated officers that "police have greater individual responsibility" and that "policing is a good way to help the people." Interestingly, this perception remains the same when years of service is the grouping variable. Perhaps more education, and in some instances, serving more years in policing, makes them realistic about organizational constraints governing individual responsibility. Unfortunately, this outlook appears to make them more cynical about their ability to assist the people.

Education also has an effect on how police personnel perceive the role that senior managers should be playing in their organization. The less educated significantly differ from more educated officers who seek a proactive management and demand that "it respond to public and political demands."

Clearly, the less-educated officers feel that these external factors affect their work and that these are best handled by the management. Interestingly, *years of service* does not seem to make any difference. Both the less educated and more educated officers begin to agree on the role of management after serving more years in the organization.

Police personnel, particularly the Indian police, work under stressful conditions. The Indian police report one of the highest death rates of on-duty officers among police forces around the world. Accordingly, we examined whether education helps handle stress within the force. According to our sample, officers perceive "home environment," "criminal contacts," and "foot patrol" to be the major factors associated with stress. The less educated officers seem more affected, reporting higher mean values for their perceptions. Interestingly, when considering the categorical variables *education* and *years of police service*, the variable that affects stress significantly is *departmental policies and objectives* and is thus an important element to consider further. Educated officers indicate higher levels of stress, but as *service years* increase, this equates to less perceived stress, irrespective of education. Educated officers find the departmental policies frustrating and stressful, but over the years, officers learn to cope with them.

MANOVA results indicated some differences in perceptions of officers based on the variables of *education* and *years of police service*. This suggests that a mechanism should be used to explore the significance of these variables in explaining *desirable* traits among police personnel. We approached this analysis as a two-step process. First, we combined the variables within each set of four areas under consideration through factor analysis to develop factors displaying meaningful latent structures. We then used these factors in a regression model as explanatory variables.

Factor Analysis

Principal Components Analysis (PCA), the technique we used in our study, provides a mechanism for categorizing groups of variables that are difficult to measure directly (into latent variables), reducing them to a more manageable data element while retaining the substance of the original information. "By reducing a data set from a group of interrelated variables to a smaller set of factors, factor analysis achieves parsimony by explaining the maximum amount of common variance in a correlation matrix using the smallest number of explanatory concepts" (Field, 2005, p. 619). In our analysis, the

PCA of the *police role* items created two groups: "community orientation," in which the component variables indicated an emphasis upon "involvement in community life" and "order and stability functions," and a "professional orientation," where the component variables were "settling problems," "law enforcement," and "taking care of citizen rights." Based on factor loadings, work values variables created three latent structures, respectively labeled: "authority," "positive ethics," and "thrill." Positive ethics appeared to be an important factor, as it reflected the variables "positive impact on society," "is a good way to help people," and "has a lot of individual responsibility."

A factor analysis of our *Management* category created two structures. One we labeled *internal management*, which included variables related to issues within the police department, and the other we labeled *external management*, which described variables that relate to managing the interaction of law enforcement with the community, such as "protecting departmental reputation," "responding to public requests," "responding to political demands," and providing "direction and guidance to members."

A final factor analysis of *stress* items created four structures: traditional work stress, system interaction stress, advancement stress, and personal stress. "Traditional work stress" included perceptions of conventional stressors such as supervisors, paperwork, shift work, work environment, foot patrol, and relations with fellow officers and citizens. "System interaction stress" includes variables that describe perceptions of stress such as those induced by court testimony, criminal contacts, emergency responses, and the criminal justice system. We labeled the third structure "advancement stress," which included perceptions of stress concerning promotion routines and lacking opportunities to use skills. Finally, "personal stress" describes perceptions of personal finances and health as stressors. These factor loadings are described in Table 9.1:

Table 9.1 Factor Analysis of Sets of Survey Questions

	Police role set	
<i>Community-oriented role</i>	Police held in high regard	-.883
	Representatives of the people	.659
	Involved in all aspects of community life	.608
	Major reason orderly and stable	.587
	Reflect policies of the government	.542
<i>Professional role</i>	Settling problems as important as catching criminals	.873
	Enforcing law is most important job	.861
	Protects citizens' rights	.589

(Continued)

(Continued)

Police working values set		
<i>Authority</i>	Given authority over people	.816
	Earns the respect of most citizens	.724
<i>Positive ethics</i>	Freedom to make own decisions	.660
	Provides a secure and stable occupation	.626
	Is a good way to help people	.734
	Positive impact on society	.726
<i>Thrill</i>	Has a lot of individual responsibility	.677
	Exciting most of the time	.785
	Chance to punish lawbreakers	-.507
Police management set		
<i>Internal</i>	Ensure police budget is adequate	.824
	Discipline members when necessary	.769
	Provide a disciplined work environment	.606
	Ensure members effectiveness and efficiency	.505
	Cooperate with media and citizens	.436
<i>External</i>	Respond to public requests*	.460
	Protect reputation of department	.889
	Direction and guidance to members	.686
	Respond to public requests*	.500
	Respond to political demands	.321
Stress set		
<i>Traditional</i>	Citizen contact on the job	.846
	Relations with fellow officers	.771
	Shift work	.769
	Department policies and objectives	.767
	Work generally	.742
	Paperwork	.691
	Foot patrol	.597
	My home environment	.523
	My work environment	.383
	My supervisor*	.566
<i>System interaction</i>	Criminal contacts	.822
	Court testimony	.800
	Criminal justice system	.721
	Emergency responses	.498
<i>Advancement</i>	Lack opportunity to use skills/abilities	.714
	Promotion routines	.714
	My supervisor*	.527
<i>Personal</i>	Personal financial affairs	.872
	Personal health	.422

Source: Authors' findings/calculations.

Note: * The only variable to overlap within the designated latent structure.

Regression

For our analysis, linear regression was utilized to model the relationship between each individual response item in the dependent variables, with *Education*, *years of service*, and other factors as explanatory variables. The following statistical model was used:

$$Y = \alpha + \sum \beta_i X_i + \epsilon_i$$

where X_i represents the explanatory variables and Y is the dependent variable, with coefficients α and β_i as regression parameters to be estimated in the analysis, and ϵ_i representing the errors in the model (Fox, 2008, p. 100). Though all the latent structures produced interesting models, only the *stress* factors failed to demonstrate significant outcomes. When the model was run with each of the *stress* factors as dependent variables, Pearson's R^2 revealed that less than 4% of the variance could be explained by the predictors. *Stress* factors were, however, used as predictors for the remaining regression models. Table 9.2 illustrates notable findings for regression models of *police role*, *working values*, and *management*:

The stepwise regression model shown above indicates that by itself, education has little effect on perceptions of the *community-oriented* role of officers surveyed, accounting for only 4.9% of the variance in the model. But after including the factors for *positive ethics*, *external management*, and

Table 9.2 Regression Analysis Summary for Police Role, Working Values, and Management Indicators

Predictors	Indicators (Dependent Variables)					
	Community-oriented Role (Education & Experience Only)		Community-oriented Role (Plus Values, Management & Stress)		Positive Ethics	
	Std. Beta	p	Std. Beta	p	Std. Beta	p
Education	.221	.000***	.190	.000***	.086	.022*
Positive Ethics	-	-	.319	.000***	-	-
External Mgmt	-	-	.185	.000***	.452	.000***
Advancement Stress	-	-	-	-	-.103	.007**
R^2	.049	.247	.247			

Source: Authors' findings/calculations.

Notes: * Depicts factors added to Police Role without Education & Experience only model.

* $p \leq .05$ ** $p \leq .01$ *** $p \leq .001$

advancement stress, explanation of the variance increases to 24.7% and the model was statistically significant, with the *positive ethics* factor having the greatest perceptual impact ($\beta = .319$), followed by *education* ($\beta = .190$), and the ability to *handle external management issues* ($\beta = .185$). Each of the stress factors developed in our factor analysis was initially run in the regression model; however since they all failed to improve the result, no stress factors were used in the final model.

Considering the importance of the *positive ethics* factor, a stepwise regression was conducted to determine what variables predict its influence. As such, the *handling of external management issues* had the most substantial impact ($\beta = .452$), followed by the *advancement stress* factor ($\beta = -.103$), and *education* ($\beta = .086$), all of which were statistically significant and again explained 24.7% of the predicted variance. *Advancement stress* had a negative sign, which suggests that officers desire to reduce this stress in order to develop positive ethical values.

It is also interesting and important to note that experience, as measured by *years of service*, was included in each of the regression models, but failed to significantly impact the results. This suggests that occupational experience fails to affect how officers perceive their *Community-oriented role* in society or their *ethical working values*. The composition of our model's independent variables and results are meaningful, and their policy implications are discussed below.

Discussion

Our results indicate that higher education alone does not lead to desirable perceptions amongst police personnel in India. Indeed, higher education appears to make the officers more rigid and less idealistic in their attitudes. Higher educated officers are more likely to disagree about the enforcement of laws, settling problems, and disturbingly, about the importance of protecting the rights of citizens. This seems surprising, but considering that the Indian police emphasize crime control over due process (Verma, 2005), the responses appear to bring out the indifference of officers toward legal boundaries in the public domain. A redeeming feature is that officers with higher education who are new to the job agree strongly that citizens' rights must be protected.

Although work-related values do not change much with education or with more years of experience in policing, they do appear to make officers cynical about assisting the people. This appears to support the research

of Regoli (1976), which suggests educated officers question departmental rules and regulations and feel frustrated. The more educated officers also demand greater responsibility and support from management, particularly regarding external exigencies. Because the Indian police are much maligned in the media and find little support from the public, this is a task that police personnel feel that management must address.

The failure of Indian police management to address the concerns of the police is also reflected by the MANOVA analysis of stress factors. Officers with more education are often able handle stress better and are more willing to seek assistance with their stress-related problems, which adds to their occupational stability (Carter & Sapp, 1990, p. 63). The difficult working conditions and little protection from criminal elements are basic realities that the Indian police face. Further, the foot patrols are disorganized: officers often live in places that are far from their assigned postings and have to commute long distances; furthermore, they spend extended hours dealing with chaotic traffic. Understandably, these are stressful situations for subordinate personnel who deal with them on a regular basis. It would be useful for the police leadership to address these issues.

Indian police personnel are often forced to live away from their families due to a lack of adequate government housing, and many personnel live in barracks that are poorly maintained. Accordingly, police personnel face acute problems of raising a family and taking care of their children from a distance. Not surprisingly, many officers reported that their *home environment* is a significant stressor. An additional stressor comes from facing crowds, handling traffic violators, and pursuing criminal offenders while unarmed and without adequate backup support. The more educated perhaps deal with these stressors by relying on their ability to deal professionally with citizens, utilizing a skill set "needed and valued at higher organization levels" (Truxillo et al., 1998, p. 275). This skill set could explain why they find these concerns less stressful.

Though no strong regression models emerge from the sample data, results do suggest some important lessons for police leadership. First, education by itself will not produce much change in the perceptions and attitudes of officers toward desirable work traits. Second, management should address the external pressures operating on the police organization, such as the media and insufficient budgets. Third, disciplining delinquent officers and recognizing those who display positive job skills are also important. Addressing these issues along with the induction of educated personnel will facilitate the development of positive ethics and more responsible work values within the organization. Furthermore, when the management addresses internal

problems needed to improve departmental direction and managerial guidance, ensure the effectiveness of officers, and protect the reputation of the police force, the model suggests that officers are more likely to support the community-oriented role. This role is largely defined as officers being representative of the people and being involved in all aspects of community life. This is an important result because it provides a mechanism for the police leadership to develop a positive community image, one that is unfortunately missing. A desire to get involved in community life is not only a desirable trait by itself but is in tune with the democratic ethos of the country and supportive of a more responsible form of policing.

Policy Implications

This study suggests a policy imperative to police management that higher education may be not an important factor. Yet, education appears to have an impact on officers' inclination to question the existing system of police administration. The induction of college-educated officers into the Indian police force may catalyze internal changes to Indian police organizations. Further, employing more educated officers *may* help alleviate some of the stressful realities of policing, a finding that echoes research on the American police (Carter & Sapp, 1990).

It must be noted that research illustrates a vagueness regarding the college requirement, obstacles within the police organization (paramilitary versus academically oriented structure), and the unrealistic posture of hiring only college graduates from political and budgetary perspectives (Bromley, 1999, pp. 78-80). In addition, it has also been noted that to hire only degreed officers would exclude many otherwise qualified, motivated, and willing individuals who have not attained a degree. There are an enormous number of excellent police officers employed today that would have been rejected had the education requirement been in place (Lynn, 2001, pp. 99-100). An education requirement would force police administrators to reevaluate organizational policies and officers' expectations, requiring accountability for their increased demands and desires (Patterson, 1991, p. 71). In sum, educational mandates may have many unforeseen organizational costs and policy implications for police agencies. Implementation of such policies should be considered only after carefully weighing the mission, goals, structure, and budget of the agency with the culture and political framework of the communities they serve.

Limitations and Future Directions

Although this study has limitations, particularly the sampling of data from only one site (Delhi), the lessons are important nevertheless. Indian police need to emphasize better management practices and improve the working conditions of its personnel. The perception that police are not held in high regard indicates an unfortunate conscious reality on the part of officers. The disregard for protection of citizens' rights by educated personnel is another alarming finding. The IPS officers who provide leadership to the organization must focus on a variety of internal management issues, such as maintaining a disciplined environment and promoting the effectiveness of their personnel. They could benefit from a restructuring of those functions, in addition to improving working conditions such as housing and fieldwork. Furthermore, this study suggests the need to address several problems external to the responsibilities of the officers—budgetary concerns, media relations, and protecting the reputation of organization. Redressing these issues is likely to foster desirable working values among police personnel, and combined with a higher education mandate, should have a positive impact on community-oriented policing practices.

Prior to this study, there has been little research on the impact of education on police performance in India. The constabulary is comprised primarily of people with minimal education, reflecting the education level typical of India's general population. Previous research analyzing the behavior of constable-rank Indian police recruits during training revealed an intellectual block to learning (Mathur, 1991). Also, training centers for constables have traditionally been separated from training facilities for college-educated, noncommissioned officers (Shane, 1980, p. 86). This separation between educated and uneducated officers leads to intellectual segregation of law enforcement personnel and contributes to a perceived difference between the two groups, which affects officer performance. These issues clearly suggest that more research is needed in order to determine the appropriate educational requirements for Indian police agencies. While education should ideally improve police performance, there may be organizational constraints that need to be addressed before educational requirements can be properly implemented.

While the data here provide insight into the impact of postsecondary education on police perceptions, more research is required to draw causal inferences. Many empirical avenues stand unexplored but are necessary in order to develop a cogent basis for policy decisions. First, sampling through a

time-series analysis could be utilized to measure officer attitudes and perceptions over time in order to compensate for the possibility of environmental confounds such as high crime periods, changes in management and supervision styles, and other unforeseen contingencies. In addition, face-to-face interviewing of law enforcement personnel might be used, which would allow officers to respond to open-ended questions and permit a more comprehensive view of the police perspective. This method of interviewing also would ensure that officers fully understand the question items and the inherent issues they imply. The instrument could be strengthened to eliminate items that overlap, and the questionnaire could address a wider scope of interest in particular areas of policing (white-collar crime, Internet crime, politicization, etc.). Lastly, the survey could be more widely administered to capture the perception of officers from different agency demographics and geographic locations, as well as the various levels and hierarchies of police organizations.

The literature finds mixed support for an educational requirement for law enforcement personnel. This study reveals the ambiguous effects of education on police occupational perceptions. From the responses of Indian police officers surveyed, education had a significant impact on the perceptions of the community policing role. The higher the education level of officers, the more likely they were to agree with the perception that their role is to fulfill a community policing function. Furthermore, education had a significant impact on nonroutine stress; officers with more education tended to perceive less stress from nonroutine aspects of policing. Besides these two significant findings, education did not have a significant impact on items from the working values and management categories.

Since education showed only a marginal impact on police occupational perceptions, this suggests that organizational restructuring may be necessary to allow for educational mandates to have any noteworthy effects on the beliefs and practices of the Indian police. It is remarkable that few Indian universities offer courses in criminology (Khan & Unnithan, 2008). While universities may be slow in adding new disciplines to their curriculum, the police training institutes could at least offer criminological education in their classroom training. If nothing else, the organizational leaders could educate police personnel about police-related subjects. Nevertheless, more research into the area of police education is essential before any strict conclusions can be drawn, but this research lends insight into the perceptions of Indian police officers and the differences that result from varying levels of education.

Appendix A

Police Role

- Q1 Police are held in high regard
- Q2 Major reason: orderly and stable
- Q3 Representatives of the people
- Q4 Reflect policies of the government
- Q5 Involved in all aspects of community life
- Q6 Protect rights of all citizens
- Q7 Enforcing law is the most important job
- Q8 Settling problems as important as catching criminals

Working Values

- Q9 Exciting most of the time
- Q10 Freedom to make own decisions
- Q11 Authority over other people
- Q12 Respect from most citizens
- Q13 Secure and stable occupation
- Q14 Lot of individual responsibility
- Q15 Positive impact on society
- Q16 Good way to help people
- Q17 Chance to punish lawbreakers

Management

- Q18 Protect reputation of department
- Q19 Direction and guidance to members
- Q20 Respond to public requests
- Q21 Ensure members effectiveness and efficiency
- Q22 Respond to political demands
- Q23 Provide a disciplined work environment
- Q24 Ensure police budget is adequate
- Q25 Discipline members when necessary
- Q26 Cooperate with media and citizens

Stress

- Q81 My supervisor
- Q82 Relations with fellow officers
- Q83 Citizen contact on the job
- Q84 Paperwork
- Q85 Shift work
- Q86 Dept policies and objectives
- Q87 My home environment
- Q88 My work environment
- Q89 Court testimony

- Q90 Criminal contacts
- Q91 Emergency responses
- Q92 Criminal justice system
- Q93 Personal financial affairs
- Q94 Personal health
- Q95 Promotion routines
- Q96 Lack opportunity to use skills/abilities
- Q97 Work generally
- Q98 Foot patrol

Response key

Role, working values & management variables on a scale of 1 to 4, from 1 = agree to 4 = strongly disagree.

Stress variables on a scale of 1 to 4, from 1 = very stressful to 5 = never stressful.

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Police Shootings: Perceived Culture of Approval

Jyoti Belur

Abstract

This chapter examines police officers' perceptions of their colleagues, the police organization, other criminal justice agencies, the media, the politicians and the public toward the use of deadly force against criminals in situations known as "encounters," portrayed as spontaneous shootouts between the police and "hardened" criminals. Interviews with 38 police officers (referred to in the Chapter as T1 to T38) of various ranks in Mumbai, India, revealed that they perceived an overall sense of approval for shootouts, sometimes of dubious legality, which made accountability mechanisms more a paper exercise than ensuring compliance with legal and ethical standards. While the abuse of deadly force is neither unique nor limited to the police force reported in this study, the perception of police officers that there is general support for, or even apathy toward, shortcut methods to deal with alleged criminals is noteworthy and has implications for policing elsewhere.

Introduction

Police use of deadly force in situations, known as *encounters*, is a peculiar feature of Indian policing. The term *encounter* is part of everyday discourse in Mumbai and is used to describe a spontaneous, unplanned "shootout"

between the police and alleged criminals, in which the criminal is usually killed, with few or no police injuries. In Mumbai, police *encounters* were a type of crime control introduced in response to burgeoning organized crime in the city. The striking aspect of such police use of deadly force, however, was the near absence of public censure or calls for police accountability. Moreover, given that the police's "cover story" (Hunt & Manning, 1991) of *encounters* from official sources and the media is *always* the same, suspicions have consistently been raised that it is a cover-up for facts that might not be legally defensible or permissible. In the period 1993–2003, there were a total of 453 incidents of *encounters* in which 589 alleged criminals were killed, with the numbers killed reaching a peak in 2001 and tapering off thereafter (Crime Branch statistics, Mumbai Police).

This chapter examines police officers' perceptions of what they think is the public reaction to *encounters*. A clearer understanding of how officers perceived society's reaction to *encounters* and how they constructed their own roles provides the essential background to the motivations and justifications put forward by officers in explaining *encounters*, and connected moral and ethical issues.

Methods

The aim of the research was to explore the discourse around *encounters*: to understand how officers explained and justified killing a fellow citizen to themselves, their colleagues, the organization, and to their various audiences—politicians, the media, and the public (Belur, 2010). A qualitative approach was employed, carrying out semi-structured, open-ended interviews with 38 officers of the Mumbai Police, covering ranks classified as Senior Management, Middle Management, Inspectors, and Sub-Inspectors, and ranging between one and three hours. The sampling method included "quota" (various ranks), "purposeful" (those who had some experience of *encounters*), and "snowball" (being referred on to meet other officers who were considered "experts" on some of the issues being researched) sampling (see, e.g., Lawrence, 2000; Patton, 2002; Warren, 2002). Officers were also classified as *active participants* (those who were actively involved in *encounters*), *supervisors and facilitators* (those who made it possible for others to carry out *encounters*), and *bystanders* (those who had never participated in an *encounter* situation).

The interviews were conducted against a background of "contextualism" (Bryman, 1988), that is, an attempt was made to understand events and people's perspectives as they are situated in the wider social and historical context. Awareness that interviewing as a research technique is full of pitfalls around issues such as—social desirability of the answers, demand characteristics, sample bias, telescoping, and confabulation—helped guard against these. The use of qualitative in-depth interviews seemed the obvious choice as the main aim of the research was "to derive interpretations, not facts or laws, from respondent talks" and also "establishing common patterns and themes between particular types of respondents" (Warren, 2002, pp. 84–85).

Officers' Perception of Reaction to Encounters: An Illustrative Case

A first person account of one of the most talked about *encounter* cases in Mumbai (Khan, 2004) is illustrative of officers' perception of reaction to *encounters*. This incident, which took place in 1991, and was the subject of a major Bollywood¹ film (*Shootout at Lokhandwala* in 2007), in which seven members of a gang were killed by a huge party of policemen. Khan (2004, pp. 73–76) describes the "bouquets and brickbats" that followed in the aftermath of this operation:

The initial applause was overwhelming. The Chief Minister of the State of Maharashtra, as well as a lot of political bigwigs, called to record their appreciation. We were congratulated, felicitated by the grateful residents, by the Lions, the Rotarians and several other social organizations. Warm letters poured in from unknowns, whose faith in the state machinery and its ability to bring offenders to book had been reinstated. ... Since the entire episode had been witnessed by hundreds of eyes, it was difficult to dismiss it as yet another staged encounter. ... Despite the presence of concrete proof, some accusations were hurled at us, even from within the force ... jealous fangs were bared. ... A few of these debunkers actually implied that we too were on the don's payroll, settling scores on his behalf because some goons were getting too big for their boots. Others hinted that it was the builders' lobby which had hired us to finish off the extortionists. ... I requested the state government to reward my boys with some special compensation, and I am glad to report that [they received monetary rewards and bravery medals] ...

¹ The Mumbai (formerly Bombay) film industry is referred to as Bollywood.

in spite of all the positive reactions we got from the majority of the press, the public, and even the local political party in power, we still had to undergo a trial by fire before the fingers pointing at us were finally put to rest. We had to submit our self-esteem for cross-examination by the special enquiry officer who was appointed to investigate the legitimacy of our actions. ... During the hearing in court however, many senior journalists testified in our favour ... both cases were eventually dismissed, but ... this case taught me that you are forever guilty, until you are proved innocent.

This account touches upon several interesting themes: the vilification of the "gangsters" and unquestioned acceptance of their "criminal record" by all; the description of the *encounter* situation; the fact that thousands of bullet rounds were fired but there was no allusion to concepts of proportionate or reasonable force; the public outpouring of felicitations; political approval to police *encounters*; the outrage of officers at having to account for their actions; recognition of divisions within the organization and envy of elite squads; accusations of police corruption; justification that presence of several witnesses meant that it was not "another staged encounter"; and finally officers' sense of being betrayed by a system of accountability that is considered unnecessary and stressful and not a normal, procedural matter of establishing accountability. The incident is an example of how an *encounter* went well, was then considered unsuccessful when criticisms were made and inquiries instituted, and finally ended well.

The *encounter* described above illustrates the layers of complexity that surround the phenomenon. Given the lack of reliable information about what happens in *encounters*, the dominant public perception becomes very important in determining how they will be viewed. A few *encounter* cases have given rise to public outcries and demands for inquiries or judicial probes in the past few years. These demands for accountability have not always resulted in successful criminal prosecutions of errant officers, but have succeeded in making officers aware of their own fallibility and in the importance of ensuring that the "paper trail" is properly maintained. The officers' conviction that favorable public perception would prevail every time gave them the confidence to be repeatedly involved in *encounters*.

It therefore becomes important to understand how officers' perceived the response of others (politicians, the media, the public) as well as that of colleagues, the police organization, and other relevant agencies, whose opinions would have a bearing on *encounters* being an accepted response to organized crime. Bayley (1996, p. 285) puts forward examples of countries like Argentina, Brazil, and Jamaica where "police executions" of "undesirables"

has been justified by officials, elected politicians, media commentators, and the public generally, thus consolidating public sympathy for police excesses which "creates a grim world of vengefulness in which persons accused of crime are literally outlaws, subject to execution by everyone, official or private" (citing Chevigny, 1990, p. 412). Bayley's observations might apply equally to the situation in Mumbai, as the perceptions of the officers to the public's attitude toward *encounters* revealed.

Attitude of Colleagues

Apart from talking about their own attitude, officers also expressed their perceptions of other officers' attitudes toward *encounters*. Sensitivity and awareness of other officers' reaction was important because of the negotiation required with colleagues and supervisory officers while creating the written records for "situationally justifying action" (Manning, 1997, p. 131). This is because especially in *encounter* cases, "management of appearances" was of vital significance. Of the range of opinions expressed, on the one end of the spectrum was the view that everyone in the organization approved and supported *encounters* as they functionally contributed to maintaining and increasing solidarity within society. At the other end was the view of some disgruntled officers that just a few chosen individuals had monopolized the use of deadly force and were a highly privileged and pampered group who had gained undeserved recognition and position within the organization and in society. A majority of the officers, however, held the moderate position that most of their colleagues disapproved of "fake" *encounters* but on the whole supported actions that were deemed justified if not legitimate.

There was a distinction between how officers from the Crime Branch (a special section that is devoted to investigation and detection of serious and organized crime) as opposed to all other officers talked and thought about *encounters*. Regardless of whether they denied or either indirectly or directly admitted "wrongdoings" in *encounters*, it was clear that interviewed officers connected to the Crime Branch were "in the know," that is, were aware of the exact nature and extent of the illegal and unethical practices (if any) involved in these operations. Officers gave more than a hint of the murkiness that lay beneath what was ostensibly portrayed as proactive action in the pursuance of social good. *Active participants* were proud of the image they had cultivated and fed the media image that portrayed them as "cleaners of scum." One "encounter specialist" is recorded as having claimed, "Criminals are filth.

And I'm the cleaner" (Perry, 2003); talk reminiscent of what Hughes (1961) has referred to as "dirty work" in policing.

Some officers boasted of the number of "scalps" they had to their credit, one officer described his first *encounter*. "That was my first. Since that day I have not stopped killing. ... My name is a brand today. Prisoners stick my photos on the walls of their cells" (Lakshmi, 2003). The "active" *active participants* did not show much remorse or regret for the actions taken by them, which seemed logical when one considers that they were still managing to motivate themselves to continue this course of action. By comparison, a small majority of the "dormant"² *active participants*, it seemed, had had more time to reflect on the implications of their actions and were more questioning of the "policy" of *encounters*. *Active participants* enjoyed a special status within the organization, and this was resented as well as coveted by other officers. The former were aware of this and had a somewhat patronizing attitude toward those who were stuck with the banalities of everyday police station routine duties. Some of these dynamics are captured in the police literature on what is considered to be "real policing," the emphasis that officers like "action-oriented," "macho" aspects of police culture (see Reiner, 2000) as opposed to routine (often noncrime-related) policing tasks. Morgan and Newburn (1997, p. 81) also cite that studies have shown that "this 'service' work is widely regarded by the mainstream police occupational culture as 'bullshit' and very much the poor relation of 'real' police work."

A large majority of the nonparticipants or *bystanders* who had no connection with the Crime Branch, on the other hand, only had an inkling that illegalities and corruption existed in these operations. There was envy of their more flamboyant colleagues in the Crime Branch but there was also a feeling of "better them than me" doing a dirty job! One officer, a *dormant active participant* with no connection with the Crime Branch, and who had run into legal difficulties during two *encounters* that he had been involved with, added as a post-interview comment:

However having said that [encounters are effective] I feel that it is better that encounters are left to the Crime Branch rather than the regular police. They are better trained, they have the time and resources for the planning and cultivating their sources. This is their entire job so they are the professionals and should do it.³

² "Active" *active participants* were those who were then still actively doing *encounters* around the time of the interviews as opposed to the dormant ones, who had ceased such activity for a few years.

³ Interview with T 38: Middle Management.

Organizational Attitude

While officers, by and large, felt that there was general organizational approval and support for *encounters*: "Our force believe that they are into encounters, I think, irrespective of the government support. There is no alternative to control crime in an effective manner,"⁴ a few officers felt that this approval was not always to be taken for granted, but was conditional upon the merits of each individual case, and in some instances, upon the personal relations of the officers involved in them. It was generally felt that if the paperwork was in order, that is, all legal requirements were fulfilled in the written documentation that followed an incident, and there were no major procedural lapses, the organization tended to support *encounters*. However, a few officers mentioned that in case there were any problems, public protests, or inquiries ordered—the officers concerned would then be on their own—to defend themselves and their actions as best as they could. However the declaration of the *encounter* of Javed Fawda (1997)⁵ to be "fake" by a judicial commission was an exception, as the officers involved had full support from senior ranks.⁶ Nevertheless, the officers actually involved in that operation still faced many months of agonizing uncertainty and underwent tremendous mental stress and anguish for 10 months in the year 1999. One officer said:

When the Aguiar Commission was supposed to look into 100 cases of encounters done by the Mumbai police ... the paperwork was incomplete, the formalities had not been followed and it was such a big problem. We could have been in very serious trouble, but we just managed to miss it because the High Court took a favourable view of the police action. The Fawda case was a terrible experience Mumbai police went through. ... People now just don't seem to appreciate what a narrow escape they had and they just don't seem to be learning their lessons.⁷

⁴ Interview with T 1: Inspector.

⁵ In 1997, two civil rights bodies along with a political party petitioned the Mumbai High Court to conduct an inquiry into police *encounters*. There were two parts to the allegations against the police in the case of Javed Fawda: mistaken identity and deliberate police murder.

⁶ The *encounter* of Javed Fawda in 1997 was the subject of a judicial inquiry. The Judicial Commission concluded that the *encounter* was "fake" and ruled against the Mumbai Police (Aguiar Commission, 1998). The Mumbai police appealed to the High Court against this verdict. A two-judge bench ruled that the *encounter* was "genuine" and also criticized the finding of the Commission.

⁷ Verbatim notes from interview with T 33: Upper Middle Management.

None of the officers talked about this stress openly in the interviews, but there was subtle evidence of the unspoken trauma that the officers had undergone. However, the above-mentioned comments of the officer indicated that the Mumbai police did not seem to have learned their lessons from this experience.

Attitude of Other Related Agencies

Officers were asked whether in their opinion other agencies, including medical departments (who play a vital role in producing the postmortem or autopsy report⁸), forensics (who produce the ballistics report⁹), the administrative bureaucracy (responsible for conducting magisterial inquiries—mandatory in every case of custodial or unnatural death), and the courts (conducting judicial inquiries and criminal cases against the police) supported the police in *encounter* cases. It was intentionally a loaded question, obliquely implying that the police needed "extra support" to justify *encounters*. The aim was to elicit responses to whether officers thought other agencies supported police "wrongdoings" (for either moral or corrupt purposes), making it easier for them to get away with killing alleged criminals, and indicating wider support for such actions. A few officers (mainly those who denied any wrongdoing, called *deniers*) spotted the trap and replied that other agencies did their job according to the merit of the case—so there was no question of 'support' of any kind. A typical *denier* had this to say:

⁸ The postmortem report is of vital significance in establishing the cause, mode, and time of death. Any discrepancy between this report and the official account given by officers can land them in serious trouble. The courts tend to hold this document sacrosanct and thus indisputable. For example, if any signs of scorching or blackening around the wound are indicated in the report, it would be damning evidence that the *encounter* was conducted at very close quarters or point blank range and raises questions on the veracity of the self-defense account given by the officers. One officer recounted his personal experience where the postmortem report indicated such black scorch marks around the bullet wound and this created endless hassles for the officer and his team had to get second and third opinions on this report that contradicted the findings of the original report.

⁹ Forensics have to provide the eyewitness report of the criminal, providing evidence that the "criminal" had indeed attempted to fire on the police party, a ballistics report on all the weapons used during the *encounter*, belonging to the "criminal" (whether it had been recently discharged) and the officers (matching the bullets with the weapons and the number of shots the officers claim to have discharged), etc.

There is no support as such from them. They have a very indifferent attitude. What the police have done, whether he [the victim] was a big criminal, a small criminal—they have nothing to do with that. ... And basically we [the team doing the *encounter*] don't keep the case with us. Immediately we have to refer it to the nearest police station. Then they have all the control, it is not under our control.¹⁰

In contrast to this, it was generally felt that the Crime Branch had good connections and the requisite resources for the purpose of "managing" the aftermath and subsequent investigation into *encounters*. Another officer from the Crime Branch felt that other agencies did not provide as much support or cooperation that extraordinary *encounter* situations demanded. He felt:

We have difficulties with them [other agencies]. ... They may not be doing it intentionally but it is our expectation that—we have done this for [the country]. It is a unique occasion; it is a life and death situation for the policeman, so the reaction from other agencies should also be fast. But they treat us as a normal thing. "Let it be, leave it. Today the doctor is not there. It cannot be done today." Magistrates ask them [*encounter* specialists] to line up, routine inquiries go on. This is, for the force, it is slightly demoralizing.¹¹

This officer continued to suggest that specialist officers should be treated "Like [in] the armed forces, where all their actions are in-house; in-house doctor, in-house court martial and where you have dignity as an officer. Here, you are exposed to civil agencies like doctors and magistrates—it is demoralizing." Given the general opinion that these situations could be "managed" either on grounds of personal rapport between officers and other agency officials or as a result of money being exchanged, the officer wanted to take the level of management to a new dimension, where there would be no "civilian" involvement in the investigation of *encounters*, thus avoiding any accountability to outside agencies. The language of militarization, and the distinction between the police and "civilians" (a term used rather disdainfully) by this officer, is reminiscent of similar talk by officers in studies conducted in other countries in relation to use of force (Chevigny, 1995; Huggins et al., 2002).

Other officers felt that other relevant agencies approved of police action and thus cooperated or supported in whatever way they could. Still others admitted that money ruled—and that if the authorities concerned were paid

¹⁰ Interview with T 28: Inspector, "encounter specialist."

¹¹ Interview with T 26: Upper Middle Management.

enough, they would write a report as per your specifications. When queried, 11 of the 38 officers said that these things could be "managed." An opinion expressed unequivocally by one officer is as follows:

They co-operate, but it all works on money. In the districts there may be a case of personal relationships and rapport making a difference but here in Mumbai only money speaks. So yes, they do help and co-operate, but it has to be managed. It has to be done by the people involved, co-operation is not assumed or automatic.¹²

As far as the attitude of the courts was concerned—officers tended to feel that while on the whole the courts were very tough on officers and came down hard upon them in other matters, they too tended to give a bit of space to officers in the matter of *encounters*. The Javed Fawda case clearly demonstrated the power of the courts and individual judges in interpreting events in favor of (or against) the police. As one officer said:

Now if a Sessions Court convicts in a particular case, the High Court acquits, if the High Court convicts, then the Supreme Court acquits. The law is the same, the arguments are also more or less the same, they just study the papers [in the Appellate courts] and decide and give different decisions ... judges have a different viewpoint and they have different interpretations for the law ... they have discretion. ... There are some judges who have this fixed feeling that they will trouble the police, then they do cause trouble. The doctors are also like that.¹³

Clearly, officers were aware of the power of the courts to punish if they failed to do what Manning (1997, p. 166) describes as "writing the proper paper in order to construct the appearances."

Attitude of Politicians

The officers' perception of the political reaction to *encounters* in Mumbai was mixed. The majority of officers felt that while there was some interference in the matters of transfers and postings, there was no political interference in operational matters of policing. Officers of sub-inspector and inspector ranks

¹² Interview with T 38: Middle Management.

¹³ Interview with T 7: Middle Management.

were mainly of this opinion, presumably because at that level they would not have been subject to political pressure. As one officer said: "In Maharashtra¹⁴ there is little political interference in general. They have to govern and by doing *encounters* if activities of criminal gangs are dampened, then there is no political trouble about *encounters*. They support the police."¹⁵ Another officer felt: "Action is supported also [by politicians] and not also. Because they have to continue ruling, so from that viewpoint they do what is suitable. There is pressure to control crime."¹⁶ Reportedly, there was political support for *encounters* in Mumbai.¹⁷

Almost all the officers believed there was political support, if not open encouragement for *encounters* as an effective policy to counter organized gangs. Senior officers admitted that at various points in time, especially during 1998–1999, when heightened gang activity was apparent in the city, there was a lot of political pressure on the police to be seen as being effective and proactive in the war on crime. One officer said:

When the situation became grim and things became uncontrollable in the city... Businesses started closing, the multinationals started packing up, capital inflow had stopped, the share market had reacted, real estate collapsed, hotel industries, car purchases had stopped, then the whole thing had come to a grinding halt—obviously the society wanted some desperate help to be rendered by the police. The state government, no-confidence motion was brought; the traders called the Chief Minister and told him that we are not going to pay you taxes. ... Then they said we will celebrate black Diwali,¹⁸ instead of bursting crackers in all the houses and business establishments we will all put up black flags and protest. ... Then the Government of India was thinking of dismissing this government belonging to the other party and applying 356 [Article of the Constitution of India] for collapse of law and order. So obviously under such circumstances, any measure which was legal, which was giving help, was all right—the press and the judiciary... would welcome any medicine given to this uncontrollable, galloping disease.¹⁹

The officer essentially described the state of law and order and the resulting economic and political crisis as the reasons for why the public, press, judiciary,

¹⁴ Mumbai is the capital of the state of Maharashtra.

¹⁵ Interview with T 8: Sub-Inspector.

¹⁶ Interview with T 15: Sub-Inspector.

¹⁷ See, for example, Aiyar and Koppikar (1997), where the Deputy Chief Minister is reported to have "admitted that he favoured the policy of encounters."

¹⁸ Diwali, the festival of lights, is celebrated all over India. A Black Diwali, i.e., a Diwali without lights is the ultimate form of protest, signaling society-wide unhappiness and resentment.

¹⁹ Interview with T 24: Senior Management.

and politicians approved of *encounters*. Officers either did not perceive it as such, or did not want to admit that they were receiving direct political directives regarding *encounters*. However, in interviews with senior members of the ruling government and the opposition that were also conducted as part of this research, they admitted in the conversations following the interview that they had given directives to senior management officers to "take care of" members who were on the wanted list of criminals and that they would monitor police action against such persons on a regular basis. The overall impression received was that officers were at pains to emphasize that while there was no political interference as such, they had political support for these actions.

One senior officer remarked

The Law and the Constitution are like God, you cannot touch them, or see them, but they are there. The politicians are like priests and you do their bidding, that's all. We should work according to the law—but we don't—because of personal glory and somehow we feel obliged to please our political masters—that is how we are moulded or trained.²⁰

Following this logic, it becomes clear that the police would not pursue such a potentially controversial policy if it did not have the political mandate, as one Crime Branch officer clearly admitted that they would not be able to continue operating the way they had been, if political support were withdrawn. This is manifest in the fact that the state government has the power to order magisterial or departmental inquiries into alleged misconduct of police officers. Also, according to Section 197 of the Code of Criminal Procedure, 1973, no criminal proceedings can be brought against a public servant for alleged offenses committed or purported to be committed in the discharge of his/her official duty except with the sanction of the concerned Union or state government. Neither can the investigation of such cases be transferred to the Central Bureau of Investigation (the premier investigating agency in India) without the prior approval of the state government. Thus, the political party in power wields considerable powers to either protect or prosecute police officers, making their approval for *encounters* of utmost importance.

²⁰ Interview with T 6: Middle Management.

Attitude of the Media

The attitude of the media toward *encounters* was summarized by one officer: "Generally they are not adverse. After about 200 encounters somebody may complain about a single case or in one or two cases they make allegations, but basically they are not against."²¹ Another officer felt: "Encounters make good news and that is how the media looks at them."²² While a small proportion of officers felt that the media unconditionally approved of *encounters*, a majority of others felt that media reporting displayed a mixed attitude—approval if the *encounter* was perceived to be "genuine" and criticism if the dead person was not a "hardcore" criminal. As the following interview demonstrates:

In the beginning 1992, '93, up to '97, they used to feel that encounters are big news. Now encounters are not that sensational. There are some press people who are directly or indirectly connected with these gangs, their viewpoint is different, so there is a mixed reaction. But overall there is less criticism, for encounters.²³

This officer recognized the "normalization" of *encounters* by the press and alleged that the media had vested interests and links with gangs, which colored their coverage of *encounters*. While a majority of the officers maintained that the press was neither prejudiced nor biased either against or toward the police and reported facts as they saw them, there was a subtext, which implied that the media reported events only to sensationalize, not as responsible reporting but as commercialized packaging of news. From the interviews it emerged that while the officers realized the importance and impact of the media on public opinion, they nevertheless did not consider it to be of any intrinsic value in itself, in fact there was more than an undercurrent of contempt for the media, their perceived irresponsibility, and lack of integrity.

Nearly 40% of the officers interviewed felt that the media was mainly interested in sensationalizing the issue, and serving their own interests; as one officer said:

There are categories in the press—you can read the same news in four different ways. Some newspapers are always publishing anti-police stories and they have a habit of printing everything negative in every matter. ... They have

²¹ Interview with T 1: Inspector.

²² Interview with T 32: Inspector.

²³ Interview with T 27: Inspector, *active participant*.

a habit of exaggerating. ... the journalists that I have come across, none of them have any professional knowledge of their job. ... Here the journalists are really petty and amateurish.²⁴

Some of the officers articulated the awareness that the reporting of an incident was largely dependent upon the reputation and personality of the officers involved and their personal relations with the reporters, in other words: "If your work is good and if you have good relations, good contacts with them then they publish favourable news."²⁵ Other officers implied that the so-called "*encounter* specialists" had established good personal networks with media reporters and enjoyed a good rapport, ensuring that they did not get negative press coverage or elicit too close an inquiry into the background and circumstances of the incident.

Press have both reactions—they are against it in some cases and in favor of others. But it depends on the officers who did it, how they "managed" it. There is a group of officers, if they do it [*encounters*] then there is always a positive coverage for it, but if anyone else does it then they allege that the police picked them up and killed them. [Laughs]²⁶

However, underlying all these conflicting opinions was the firm conviction that the press and media on the whole approved of *encounters* and that this provided a morale boost to the organization. One officer mentioned that in the 1980s, a reporter had tried to probe into an alleged "fake" *encounter* case, one of the earliest in Mumbai. His editor was flooded with angry letters from the public and it had generated a lot of public anger against the reporter who "dared" to question the "effective action" taken by the police. The reporter and the editor had to abandon their approach. Since then there have been articles and editorials questioning police *encounters* but on the whole these have not appealed to the masses and one can only infer that they have not made much of an impact on the general attitude toward *encounters* as there have been few serious investigations into these cases since. Officers remained secure in their knowledge that they could continue to manage appearances and ensure that there would be no danger of the media raising uncomfortable questions.

²⁴ Interview with T 20: Inspector.

²⁵ Interview with T 31: Senior Management.

²⁶ Interview with T 11: Sub-Inspector.

Attitude of the Public

A total of 25 of the 38 officers in the sample felt that the public attitude toward *encounters* was one of unconditional approval. Speaking of the "extraordinary" situation that prevailed during the late 1990s, and especially during the period when *encounters* were at a standstill while the Mumbai police appealed to the High Court against the Aguiar Commission's verdict that the Javed Fawda *encounter* was "fake," one officer said:

See, till 1998, the general public was not very much concerned with these, what you call, police encounters. But when in 1998, these shootouts became on the higher side, when it started affecting the local masses. ... Because all these local henchmen also started extorting money from the people, even when you purchased a new car you would get a threatening call, "I am from this gang, or from that gang, give me money, and this and that," Even people have cancelled marriage celebrations, in fear of these calls. ... These gangsters also, were freely moving around the city, extorting money, terrorizing local areas, using their weapons to threaten people ... so after 1998, society in general, is supporting police for taking this stern action against gangsters. If there is no stern action or proactive actions by the police, then questions are raised—"what are the police doing?"²⁷

Describing the situation in the early 1990s, when the scope and extent of the activities of the big gangs and the menace created by small-time operators riding on the coattails of the established gangs was at a peak, this officer felt that the general public demanded stringent police action. In fact, the officer seems to be saying that if the police had not obliged with *encounters*, it would have created widespread dissatisfaction among the public.

Of the whole sample, 10 officers felt that there was conditional approval on the part of the general public toward *encounters*, on a case-by-case basis. One officer said:

General public don't support any kind of *encounter* deaths if they feel they are false or fake or that the person has been framed. But when there are genuine instances, which are 99.9% cases, they support the action by the police because ... large number of these *goondas*²⁸ have a very high criminal record,

²⁷ Interview with T 26: Senior Management.

²⁸ *Goonda* means hooligan or ruffian.

they are wanted for big crimes and in certain cases they are anti-nationals [terrorists] also.²⁹

Officers concluded that *encounters* perceived to be "genuine" by the public were applauded. The lack of public outcry or sustained campaigns against this policy might have been the result either of public apathy or a sort of resigned acceptance of other "fake" *encounters* as "collateral damage." There were occasionally some mutterings of dissatisfaction but rarely a public call for further inquiry or investigation into the matter.

Three officers interviewed were convinced that the common man was indifferent to *encounters*, as it did not affect him (the common man) personally and that he was too immersed in his own problems and with the day-to-day struggles of surviving in the city. One officer said:

They [the public] are in no way concerned. They are not interested, except the family of the person killed. It has become an everyday occurrence because, in general, the public has become insensitive towards others' problems in Mumbai. Insensitive. If it is my problem, it will pinch me—if it is somebody else's problem, it will not pinch me. I am not going to ponder over it because my life is so busy, I don't have time for that. Bombay life is such—even if you ask a beggar how much time he can spare from begging? He will say, "I have very little time." [Laughs]³⁰

Some *active participants* and *deniers* felt that the reaction of the public was immaterial to police actions, since *encounters* would occur regardless of public approval. However, they felt that it did help the police case if by and large the public approved of *encounters* and there was not too much organized opposition.

Further, the officers felt that the only public opposition to *encounters* came from "fringe" nongovernmental organizations (NGOs) whose credentials, political affiliations, integrity, and intentions were suspect. Officers, almost unanimously, regarded the few human rights organizations and NGOs working in this area with some degree of contempt and did not think that they had a wide enough following or sufficient popular appeal to make any significant impact on policing policy. However they were recognized as having sufficient "nuisance value" to cause discomfort and inconvenience to officers, who would otherwise have gone about doing *encounters* with less hindrance and more efficiency. One officer (T 1: Inspector) described

²⁹ Interview with T 37: Middle Management.

³⁰ Interview with T 1: Inspector.

NGOs as a "hindrance," peopled by officers who had "ample time but no knowledge of the system," and "only causing nuisance."

This contempt on the part of police officers for "do-gooders" is reflected in wider policing literature and has been observed in various studies. Holdaway (1983, p. 71), for example, calls such people or groups "challengers," consisting mainly of lawyers, doctors, and, to a lesser extent, social workers, who are a threat to the secrecy and independence of policing.

In conclusion, officers overwhelmingly believed that there was social consensus and approval for *encounters*. Officers accepted that there might be anomalies and mistakes committed, but these are largely accepted by the public as byproducts of human error, which are avoidable but inevitable. A very senior officer summed up the attitude of the majority of officers:

There is a silent and now no longer silent, rather, vocal, acceptance of this police approach [encounters] from the public at large. In the debates in the State Assembly, the people's representatives have defended this, rather demanded it openly from the floor of the house. The media has also supported it and the public at large feel relieved that these dangerous elements are given a dose of their own medicine.³¹

This chapter has described police officers' perceptions of external situational determinants which included social approval of, as well as organizational attitudes toward, *encounters*, which had an impact on the propensity of the police to use deadly force. But as with all human behavior, police *encounters* also were the product of external situational factors and internal motivational reasons. The internal motivational factors influencing behavior concerned how officers understood, perceived, and internalized their role in policing society, and were as important as societal approval for the use of deadly force. Officers' perception of their role, their attitudes toward their jobs, and how they define the boundaries within which they operate become influential determinants of their conduct.

Officers perceived their role within society as one of providing service: Their self-image, the expectations of others, and those they felt society placed upon them gave them a sense of righteousness in performing their role. Officers admitted that their actions were not always within the confines of their legal powers and obligations, but justified their actions by the belief that they were undertaken, for social well-being. Priding themselves on the "social work" component of their role, they appeared convinced that

³¹ Interview with T 30: Senior Management.

there was no conflict between upholding the law and serving the public. Thus, a combination of factors, actual and/or perceptual, such as societal approval, complicity of other criminal justice agencies, organizational and political directives, nature of police role, and a belief that good intentions are adequate to justify use of deadly force were cited by police officers as explanations for *encounters* being an acceptable crime control method in Mumbai (Belur, 2010).

Law and *Encounters*

The most commonly invoked justification by police officers for shootings is the right to private defense extending to causing death granted under Section 100 of the Indian Penal Code, 1860 (IPC). The Supreme Court of India has ruled in *Darshan Singh v. State of Punjab* (2002) that merely a reasonable apprehension of impending danger is sufficient to bring the right of self-defense of citizens into operation and that it is not necessary for the actual commission of the offense to give rise to the right (Law Resource India, 2010). It appears that the right to private self-defense is considered sacrosanct by the Supreme Court, provided it is not deemed to be disproportionate to the apprehended danger to the citizen. The official police story of an *encounter* being an "exchange of fire" makes it logical for police officers to claim protection under the right to self-defense, especially since the "criminals" are claimed to be the aggressors who fired first.

Under the provisions of Section 41 of the Code of Criminal Procedure, 1973 (CrPC), a police officer has the power to arrest without a warrant, any person who has committed or suspected of having committed a cognizable offence. Further, Section 46(2) allows the police officer to use all means available to detain a person who attempts to evade arrest. Interestingly, Section 46(3) of the CrPC is worded such that it makes it permissible for police officers to use force to the extent of causing death, if the person is accused of a cognizable offence punishable with death or life imprisonment. Thus, the law permits police officers to legitimately cause the death of a person in the exercise of self-defense or in the exercise of powers of arrest.

Officers revealed that cases of *encounters* are not recorded as homicides, but are generally registered as a crime under various other sections of the IPC and the Arms Act, 1959. The First Information Report (FIR) on any *encounter* case is filed on behalf of the police officer involved in the *encounter* against the alleged criminals who are accused of attempting to murder the

officer (Section 307 of the IPC); assaulting or using criminal force to deter a public servant from discharge of his duty (arresting the criminal: Section 353 of the IPC); acting in furtherance of common intention (conspiracy to commit crime: Section 34 of the IPC), as well as illegal possession and use of unregistered firearms under various sections of the Arms Act. Thus, no criminal case is lodged against the police officers involved in *encounter* deaths in the first instance, rather the dead "criminal" is accused of attacking with the intention to kill a police officer fulfilling his official duty.

In response to a petition filed by the Andhra Pradesh Civil Liberties Committee with the National Human Rights Commission (NHRC) in India to inquire into five cases of alleged fake *encounters* by the Andhra Pradesh police, the NHRC issued directives to all state governments as early as 1997, which were revised in 2003, that every *encounter* case must be investigated independently as a cognizable offence in itself and that the police version of events be established following a compulsory magisterial inquiry. In addition, a six-monthly compliance report was to be submitted to the Commission by all states (National Human Rights Commission, 1997, 2003). However, these directives have yet to be strictly adopted by states in all cases of *encounters*.

The research revealed that accountability structures in Mumbai, though rudimentary, nonetheless existed. Whether they were functioning as they ought to was doubtful, given the lack of faith expressed in them generally and the officers' dismissive attitude toward them. Lack of external or civilian oversight of the police complaints process has contributed to the fact that complaints have seldom resulted in conviction of officers. Judicial inquiries and courts can be formidable in demanding police accountability, but have rarely done so and as part of the accountability mechanism are often capricious and politically expedient. Also, since investigations into police misconduct are invariably conducted by police agencies themselves and because courts and commissions can only adjudicate on a case based on the facts and evidence placed before them, there is scope for a great deal of manipulation. The lack of an independent investigative agency makes it easier for officers to get away with abuse of force.

The police in Mumbai are not just formally accountable to the political executive, but even on operational decisions defer to political compulsions. They carry out the wishes of the ruling executive but are not open to public scrutiny. It also means that politicians have a great deal of power in protecting officers by disallowing scrutiny by other central police agencies, by not commissioning a judicial inquiry into alleged misconduct, or by not sanctioning permission to prosecute officers under Section 197 of the CrPC (though this

last power is rarely invoked). As a result, police officers remain confident that if they "act in good faith" and follow the tacit policies of the political party in power, they will be protected.

The close nexus between the police and politicians and how it affects accountability was demonstrated when the Home Department in Maharashtra, acting on a recommendation of the Maharashtra State Human Rights Commission, had declared that inquiries into *encounters* would mandatorily be conducted by the State Criminal Investigation Department (CID). However, senior police officers appealed to the minister-in-charge to reconsider this decision because of the "humiliation and embarrassment" that officers had to face in a number of cases, where the CID hastily arrested senior officers upon registration of an offense but had to discharge them later (Marpakwar, 2007). The government is said to have accepted the suggestion of senior police officers and reportedly planned to issue fresh guidelines that in certain disputed cases special inquiries into *encounters* would be conducted by senior police officers rather than the CID (*Times of India*, 2007). However, political patronage for police use of force is fickle and could give way to public pressure should the occasion arise.

Conclusion

The interview data made it amply clear that police officers were convinced that they had a mandate from and had the support of the press, politicians, and the public, that is, society as a whole (officers did not consider organized criminals to be part of legitimate society, hence their disapproval did not matter), for the measures they adopted to control organized crime. In their perception, however flawed, they felt justified that the strategy of combating the menace of increased criminal gang activities with *encounters* was just, fair, and correct.

The implications of this research are important in policy terms whereby the blame cannot be laid squarely on the police organization or on a few officers ("rotten apples") but in accepting that a whole culture of complicity, apathy, and/or even approval (whether real or perceived) exists and which is partly responsible for police abuse of and justification for deadly force in Mumbai. Unless this is recognized, merely introducing organizational or legal reforms might not prove to be as effective as envisaged.

However, recent developments in India with respect to police *encounters* should ring alarm bells in the minds of officers throughout the country. Over

the past couple of years the courts in India have begun to pass adverse rulings and judgments in *encounter* cases in different parts of the country. The 177th report of the Law Commission of India (2001) observed:

In cases of fake encounters and custodial deaths, the Supreme Court and the High courts have been awarding token, ad hoc amounts toward damages in proceedings under article 32/226 of the Constitution of India, leaving the aggrieved parties to a suit for damages where the proper damages awardable would be determined. This is undoubtedly a heartening trend but in present-day Indian conditions, a suit for damages against the State for police excesses is still a rarity.

Another instance is when the Andhra Pradesh High Court ruled in February 2009 that it would be mandatory to register every *encounter* as a murder case against the police officer/s involved.³² The judgment caused a great deal of consternation among police officers across the country and officers from Andhra Pradesh appealed against the High Court's judgment to the Supreme Court. The grant of an interim stay on the High Court's ruling has brought a measure of temporary relief to the police, but it is a situation fraught with potential pitfalls for those officers who have been secure in the knowledge that their actions have the approval of the public, politicians, and the courts. Senior officers have been arrested and prosecuted,³³ even convicted in some cases³⁴ demonstrating the fallibility of the perception that public approval will continue to support *encounters*. A fresh look at the perceptions of police officers in the light of these developments is perhaps required.

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³² Writ Petition No. 15419 of 2006 and others in *A.P. Civil Liberties Committee v. The State of A.P.*

³³ Senior Indian Police Service officers in the state of Gujarat were arrested in the case of an alleged fake *encounter* of Sohrabuddin Shaikh in 2005 (*Deccan Herald*, 2010).

³⁴ The first high profile conviction of 10 police officers in a fake *encounter* case was that of ACP Rathi and nine colleagues of the Delhi Police (*Hindustan Times*, 2007). The latest in a string of cases has been the conviction of a former Inspector-General of Police in an alleged fake *encounter* that took place in 1970 in the state of Kerala (*Hindu*, 2010).

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Nature of Work, Safety, and Trust in Private Security in India: A Study of Citizen Perceptions of Security Guards

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Abstract

The employment of private security personnel has increased in Asian countries in recent decades. India is no exception. Despite large increases in the growth of the private policing industry, little is known about how the public perceives agents of private policing and their role in crime prevention and enhancing the public's sense of safety. In this exploratory chapter, we examine Indian citizens' perceptions of private security personnel. More specifically, we examine public attitudes toward the nature of security guards' work, professionalism, and their relationship with public police. Our findings suggest that Indian citizens have a positive view of the nature of security work, the professionalism of security guards, and trust security guards to protect their lives and property. In addition, they are strongly supportive of security guards and police officers working together to promote a greater level of safety and security from criminals.

Introduction

As in other developed and emerging free market economies, India has experienced a significant growth in the employment of private security guards in recent decades. Some estimates put the figure at about 5 million, which is about 1.3 times more than the combined total of all the law enforcement officers and military forces put together (Harwood, 2009). Coupled with a strong economic growth and a lack of public confidence in public law enforcement (Nalla & Madan, 2008), the demand for private security has intensified in recent decades. Additionally, the once considered "sleepy" industry has become an important provider of safety and security for businesses, as well as for the state, in the aftermath of the terrorist attacks on three Mumbai hotels in November 2008. Along with the growth in business entrepreneurship, Indian cities have witnessed a transformation in the physical attributes of the housing industry. Once single dwelling homes, several homes have been converted to multistoried buildings, with each floor having multiple residential units—representing mass private properties (Shearing & Stenning, 1983). Despite its fast-paced growth and the presence of significant numbers of personnel relative to police officers, we know very little of public attitudes relating to security officers, their work, professionalism, and in general their working relationship with police officers. Thus, the aim of this chapter is to assess Indian citizens' perceptions of security work, professionalism, and the general working relationships between public police and security guards.

The Private Security Industry in India

In 1988, there were about 700 guard companies in India, with Delhi alone employing close to 50,000 guards (Hazarika, 1988) in its approximately 80 companies. However, in 2009, the Central Association of Private Security Industry (CAPSI) put the figure at 15,000 guard companies employing 5.5 million guards (Bennett, 2009) making it an estimated US\$2 billion industry (Timmons, 2009). Data projections suggest that a million new guards will be added in 2010 (Timmons, 2009). While these are estimates, such forecasts are similar to those projected for security guard employment in the US (Cunningham, Strauchs, & Van Meter, 1990) and other developed economies where security guard industries are well established.

Legislation relating to security licensing and training is limited. The earliest and only piece of legislation in India was in the state of Maharashtra, where Mumbai is located. Mumbai is the financial hub of the country and is similar to what New York City represents to the US. In 1981, the Maharashtra Private Security Guards (Regulation and Employment Welfare) Act was passed into law in an effort to prevent exploitation of security guards by private companies. To enforce this Act, a Security Guard Board for Mumbai and the Thane District was formed to oversee security guard companies. In 1981, in Mumbai and Thane districts, there were 29 approved security companies and approximately 271 illegal security companies. Twenty-five years later, the number of approved companies was reduced to 22 but illegal companies had risen to 3,500 and employed approximately 300,000 guards, thus suggesting a failure of the Act and its enforcing agency.

After years of apathy, a bill for security regulation was introduced in the Indian Parliament in the mid-1990s, which was eventually signed into law in 2005. The Private Security Agencies (Regulation) Act, 2005, is an all-India piece of legislation that outlines a clear framework for licensing security guard companies. However, the Act makes little reference to training. In Section 7(2) the Act notes that the application for granting of a license to a security guard company must show evidence of "availability of training for its private security guards and supervisors" (Security Act, 2005). Section 9(2) notes that "every private security agency shall ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed..." (Security Act, 2005). Section 10 of the Act makes references to the eligibility to be a private security guard. Conditions include proof of citizenship; 18 years of age and not to exceed 65; "satisfies the agency about his character and antecedents in such manner as may be prescribed"; completion of prescribed security training; meets the prescribed physical standards; and meets other required standards. However, these standards are not spelled out. The Act does provide for individual state governments to prescribe more specificity to the language relating to training. Interestingly, these conditions are not too different from the ones legislated for security guard in many states in the US (Maahs & Hemmens, 1998).

Many new recruits to the security industry consider a security career as their third choice (Timmons, 2009), a situation similar to those in the US, after "military-wanna-be," followed by "police-wanna-be" (Nalla and Newman, 1990). With an annual salary of about US\$1,000, which is considerably less than India's per capita income of US\$2,900 (Bennett, 2009), the security guard occupation is not generally an attractive career option for someone living in an urban area. As a matter of fact, most new recruits for

security positions in large cities are unemployed youth coming from rural areas (Toms, 2007).

Prior Research

Research on public perceptions of private security guards is limited or nonexistent in India. Limited scholarly work is available on the subject in North America, Europe, and East Asia. In one of the first attempts to study this topic, researchers from Canada (Shearing, Stenning, & Addario, 1985) examined Canadian citizens' perceptions of security guards, the nature of their work, and their relationship with public police. Findings suggest that the public did not have a cultural referent for contract guards and viewed them more in the context of their behavior than from any established professional imagery. Drawing from Shearing and his colleagues' work, Nalla and Heraux (1993) conducted a large-scale survey of US college students to assess their views specifically about the nature, goals, and professionalism of security guards. Their findings suggest that contrary to the popular negative imagery of security guards (National Advisory Committee on Criminal Justice Standards and Goals, 1976), US college students viewed security guards' work, goals, and professionalism less negatively and were less ambivalent at best. More interesting was the finding that those who had no contact with security guards were less ambivalent and more likely to view them less negatively, suggesting a need for the industry to work on improving the imagery, which would come with improved training and professionalism of the industry.

Similar studies in Singapore (Nalla & Lim, 2003), South Korea (Nalla & Hwang, 2004), and Slovenia (Nalla, Mesko, Sotlar, & Johnson, 2006) affirm these findings, with college students in these countries not necessarily having negative views, but rather ranging from being uncertain to a lesser degree of positive leanings on issues relating to security guards' work, professionalism, and image. Among them, the Singapore respondents had a slightly more positive view of the aspects of security guards' work, professionalism, and imagery relative to other studies. Van Steden and Nalla's 2010 work on the adult population in the Netherlands found that most citizens, while not negative regarding security guards, did appear more ambivalent about their work, imagery, and professionalism. Similar to the US research, college students and adults in those countries who had an encounter or interaction with a security officer were less positive about various attributes of security

guards. Interestingly, respondents who had a positive encounter with guards were inclined more positively toward various dimensions of security guards, including professionalism, work, and image. Further, findings from prior work emphasize the customer-oriented roles and functions of private security staff instead. Caution must be exercised in drawing these conclusions given the participation of only a small student subgroup of the entire citizen population though they might signal a greater acceptance of private security than often believed (Van Steden & Nalla 2010). Given the limited research on citizens' views of private security guards, this chapter contributes to this area of study by exploring perceptions of contract guards at the level of a wider audience by analyzing a select group of citizens living in one of the fastest growing cities in south India.

Present Study

Data for the present study are drawn from a larger project where information was gathered from a bustling and growing cosmopolitan city in southern India. What used to be a sleepy fishing village in the early 19th century grew to about one million in population in 2001. The population in 2011 is over three-and-half million as a result of the incorporation of many villages into the city, coupled with the mass migration of rural populations in recent years. Given the cosmopolitan nature of the city, the demographics of its citizens vary tremendously and people are from various states. Additionally, being a port city and an industrial hub, and one of the 10 fastest-growing cities in the world, it draws other business ventures to the city, making it extremely attractive to the security guard industry. The city has a balanced male-to-female ratio with a literacy rate of 70%, which is higher than the national average of 60%.

A survey was developed based on prior research conducted to explore citizens' perceptions in the US (Nalla & Heraux, 1993). Similar scales were used to study public perceptions of security guards in Singapore (Nalla & Lim, 2003), South Korea (Nalla & Hwang, 2004), Slovenia (Nalla, Mesko, Sotlar & Johnson, 2006), and, the Netherlands (Van Steden & Nalla, 2010) and the relationship between the public and police. Further, most items were adjusted for the Indian context. The survey was first written in English, later translated into the local language of the state, and translated back into English to check for validity and reliability. Questions were written to elicit citizens' responses on a wide range of issues that include the nature of security

work, professionalism, and their relationship with public police, and trust in guards' services. Questions were designed to measure their opinions on a six-point Likert scale where 1 represents strongly agree, 5 strongly disagree, and 6 represents "do not know."

The sample for the data collection began at a graduate-level management institute and we used convenience sampling in 2009. One of the authors of this chapter is a faculty member in a management institute and he selected two sections of his graduate class for a student-run research project. Each of the 50 students was given a survey to be filled out in class. After they filled out their surveys, each student was asked to administer nine additional surveys in his or her neighborhood. The institute did not have a dormitory and students either lived with their parents or in apartments rented around the campus. A total of 480 surveys were distributed. A total of 368 usable surveys were returned, representing a 77% return rate.

Though the return rate was healthy, we acknowledge certain limitations to this form of data collection. Generating random samples using telephone white pages, census tract information, or block data is very complicated in a fast-paced Indian city generally famed for haphazard development. Acquiring telephone-listing data is more complicated and inadequate given that there is more mobile phone use than that of landlines. Further, housing is not zoned—making it difficult to identify housing zones by socioeconomic characteristics.

Findings

Respondent Characteristics

Respondent characteristics are presented in Table 11.1. The majority of the respondents are in the age group of 21 to 30 years and are young professionals. Of the total, 35% were 32 years or more and 13% of the respondents were 20 years or younger. Gender distribution was fairly even with 57% of the respondents being male. Similarly, nearly half of them (49%) lived in their own properties while the remaining lived in rental properties. A little over half of all respondents (56%) had university (graduate) degrees and the remaining have college or vocational/polytechnic diplomas. Almost half of all the respondents (46%) indicated that they have friends or relatives in the police, 49% said no, and the remaining (5%) did not answer. However,

Table 11.1 Distributions and Descriptive Statistics of Respondents

(N = 368)

Variable	Description	N	Percentage
Demographic Characteristics			
Age	1 = 20 or less	48	13
	2 = 21-30 years	192	52
	3 = 31 or more	128	35
Gender	1 = Male	210	57
	2 = Female	158	43
Property ownership	1 = Rental	181	49
	2 = Owned	187	51
Education	1 = College (Vocational, etc.) and less	161	44
	2 = University Degree	207	56
Friends and relatives in law enforcement	1 = Yes	170	46
	2 = No	181	49
	3 = No answer	17	5
Friends and relatives in private security	1 = Yes	59	16
	2 = No	292	79
	3 = No Answer	17	5
Personal contact with security guard	1 = Yes	193	52
	2 = No	175	48

Source: Authors' compilation/findings/calculations.

an overwhelming majority (79%) did not have any friends or relatives in the private security industry. Only 16% said yes to this question, while the remaining 5% did not answer. Finally about half the sample (52%) had contact with security guards.

Views on Private Security Guards' Work

Descriptive statistics for citizens' views on various attributes of private security guards are presented in Table 11.2. The data had been re-coded for convenience with 1 representing strongly disagree to 5 representing strongly agree. Overall the percentage of responses marked "do not know" ranged from 0% to 3% with an average of less than 1.5%, with the exception of few items that include questions relating to guards' education. Fifty seven percent of the respondents felt that "In the future, many police functions will be taken over by private security" while only 14% disagreed about such a possibility.

We added "do not know" as a neutral category for ease of analysis and additionally because we were more interested in finding the number of those who agree or disagree. There are four major categories that represented

various attributes of security work. Over three-fifths of all the respondents noted that guards run the high risk of getting injured in the course of their work (68%, mean = 3.81), that security guard work is stressful (77%, mean = 3.92), and dangerous (64%, mean = 3.76). Nearly half the respondents (48%, mean = 3.48) said that security guard work is complex and a third (36%) were unsure. More than half of the respondents (53%) said guards do not get paid well, while about a third (29%) were unsure.

Views on Private Security Guards' Professionalism

The survey included seven questions designed to tap into citizens' views on various attributes of security guards' professionalism. Seventy one percent said that their first impression of security guards is that they are professional (mean = 3.82) and about a fifth (19%) noted some ambivalence. A similarly high number of people (73 percent, mean = 3.8) said that guards are helpful and 61% (mean = 3.65) felt that they could trust security guards to protect their lives and properties, suggesting a strong endorsement of support and confidence in the private security guard industry. Nearly half the respondents (48%) noted that guards are not well educated and another 38% was unsure about their educational qualifications. A little less than half the respondents (43%) felt guards are well trained (mean = 3.23) and an equal number said guards can handle complex situations (mean = 3.19). For both these two issues, nearly a third were unsure (30% and 29% respectively). Regarding integrity, 45% of the respondents felt that security guards are honest and an equal percentage were unsure (mean = 3.41).

Role Played by Security Guards

The third set of questions was framed to elicit citizens' responses regarding the role security guards play in society. A majority of them (62%, mean = 3.57) believed that the primary role of security guards is to apprehend suspects, though about half of them (51%) also noted that security guards, in general, spend very little time in catching criminals (mean = 3.46). About a quarter (24%) to a third (33%) were unsure of the above two issues respectively. Though most of the respondents (49%, mean = 2.76) did not believe it is hard to distinguish security guards from police officers, over half of all the respondents (58%, mean = 3.48) felt guards should be able to use force to

arrest suspects. This finding is interesting given that 47% (mean = 3.33) of the respondents agreed that security guards act more like social workers.

Views on Security Guards vis-à-vis Police Officers

Respondents were asked four questions to capture their views on the relationship of security guards to public law enforcement officers. A majority of the respondents (63%, mean = 3.66) believed that security guards and police officers should work together and that guards and police officers working together can protect the public from criminals (64%, mean = 3.66). Respondents were evenly divided on the issue of security guards and police officers often working together in solving crime (mean = 3.07) but a majority (57%, mean = 3.55) were optimistic that in the future, many of the police functions would be taken over by private security organizations.

Table 11.2 Descriptive Statistics for Contextual Variables*

Variable	SD/D*	Neutral	SA/A	Mean/SD
	N/Percentage	N/Percentage	N/Percentage	
Security guard work				
Security guards run high risk of getting injured in the course of their work	45/12	72/20	251/68	3.81/1.03
Security work is paid well	195/53	106/29	67/18	2.58/1.06
Security work is stressful	38/10	46/13	284/77	3.92/0.93
Security work is dangerous	41/11	92/25	235/64	3.76/1.03
Security work is complex	58/16	132/36	178/48	3.48/1.03
Professionalism of security guards				
My first impression of a security guard is that he/she is professional	38/10	70/19	260/71	3.82/0.92
Security guards are well educated	175/48	139/38	54/15	2.62/0.89
Security guards are well trained	97/26	111/30	160/43	3.23/1.10
Security guards, in general, are able to handle complex situations	103/28	108/29	157/43	3.19/1.10
Security guards are generally helpful	20/5	81/22	267/73	3.80/0.78
Security guards are generally honest	38/10	165/45	165/45	3.41/0.88
Citizens can generally trust security guards to protect their lives and properties	40/11	103/28	225/61	3.65/0.94

(Continued)

(Continued)

Variable	SD/D*	Neutral	SA/A	Mean/SD
	N/Percentage	N/Percentage	N/Percentage	
Role of security guards				
Security guards are hard to distinguish from police officers	181/49	78/21	109/30	2.76/1.19
Security guards should be able to use force to arrest suspects	66/18	89/24	213/58	3.48/1.06
The primary role of security guards is to apprehend suspects	52/14	87/24	229/62	3.57/1.04
Security guards, in general, spend very little time in catching criminals	60/16	121/33	187/51	3.46/1.05
Security guards act as social workers	76/21	118/32	174/47	3.33/1.07
Security guards vis-à-vis police officers				
Security guards and police officers often work together in solving crime problems	117/32	119/32	132/36	3.07/1.17
Security guards and police officers should work together	58/16	77/21	233/63	3.66/1.10
Security guards and police officers together protect the public from criminals	45/12	86/23	237/64	3.66/1.04
In the future, many of police functions will be taken over by private organizations	52/14	108/29	208/57	3.55/1.05

Source: Authors' compilation/findings/calculations.

Notes: (i) * Responses on a scale of 1 = strongly disagree to 5 = strongly agree.

(ii) SD/D* = strongly disagree/disagree.

(iii) SA/A = strongly agree/agree.

Additional Analysis

Factor analysis was conducted to determine the unique structuring of various questions. Principal component factor analysis was used to guide this process. Consequently, three scales emerged which are presented in Table 11.3. We labeled them *Nature of work*, *Professionalism*, and *Security guard-Police officer working relationships*. After an exploratory approach to find underlying factors, a reliability test and confirmatory factor analyses were conducted for each factor to create scales. *Nature of work* had four items that included guards running a high risk of getting injured in the course of

Table 11.3 Factor Loadings of Select Contextual Variables

<i>Variables</i>	<i>Factor Loadings</i>
Nature of work	
Security guards run high risk of getting injured in the course of their work	0.52
Security work is stressful	0.74
Security work is dangerous	0.75
Security work is complex	0.68
Cronbach's alpha	0.67
Professionalism	
Security guards, in general, are able to handle complex situations	0.44
Security guards are generally helpful	0.61
Security guards are generally honest	0.62
Cronbach's alpha	0.64
Security guard-Police officer working relationship	
Security guards and police officers often work together in solving crime problems	0.73
Security guards and police officers should work together	0.74
Security guards and police officers together protect the public from criminals	0.64
In the future, many of the police functions will be taken over by private organizations	0.61
Cronbach's alpha	0.68

Source: Authors' compilation/findings/calculations.

their work and security work being stressful, dangerous, and complex. Three questions are loaded in the scale of *Professionalism*. These are: guards handle complex situations; are generally helpful; are generally honest. And, finally, four questions are loaded in the scale of *Security guard-Police officer working relationship*. These questions are: the two groups work together in solving crime problems; they should work together; together they protect the public from criminals; in the future many of the police functions will be taken over by private security organizations. The scales were reliable, with Cronbach's alphas for each scale exceeding 0.64.

To determine respondents' views on various questions in each of the four scales we employed analyses of variance (ANOVA) and F-tests to compare the mean scores. In particular, we compared the mean scores of various subgroups in the selected demographic characteristics on three scales of *Nature of work*, *Professionalism*, and *Security guard-Police officer relationship*. In addition, we also included one question that did not load in any of the scales but tapped into an important dimension of *trust*. Specifically, the question was "Citizens generally trust security guards to protect their lives and properties." The findings are presented in Table 11.4. The scores of these scales, therefore,

Table 11.4 Comparison of Mean Differences for Respondent Characteristics

(N = 368)

Variables	Nature of work (4 items)		Professionalism (3 items)		Trust ^a (1 item)		Working relationship (4 items)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
Age								
	1 = 20 or less	15.56/2.57	10.48/2.11	3.88/1.02	13.33/3.31	48/13		
	2 = 21-30 years	15.14/2.82	10.53/2.18	3.92/0.85	14.09/3.06	192/52		
	3 = 31 or more	14.50/2.95	10.19/2.03	3.84/0.78	13.96/3.14	128/35		
F-value (Sig.)		3.15** (0.04)		1.04 (0.35)		0.29 (0.75)		1.13 (0.33)
Gender								
	1 = Male	14.80/2.81	10.30/2.12	3.77/0.91	14.15/3.02	210/57		
	2 = Female	15.21/2.90	10.55/2.12	4.04/0.74	13.67/3.24	158/43		
F-value (Sig.)		1.90 (0.17)	1.31 (0.25)	9.06** (0.03)	2.15 (0.14)			
Education								
	1 = College (Vocational, etc.) and less	14.76/2.76	10.41/2.28	3.79/0.91	13.87/3.27	161/44		
	2 = University degree	15.14/2.92	10.40/1.99	3.96/0.79	14.00/3.01	207/56		
F-value (Sig.)		1.54 (0.22)	0.00 (0.97)	3.76** (0.05)	0.17 (0.68)			
Property ownership								
	1 = Rental	14.84/2.80	10.46/2.00	3.88/0.84	14.30/2.98	181/49		
	2 = Owned	15.10/2.90	10.35/2.24	3.89/0.86	13.60/3.23	187/51		
F-value (Sig.)		0.77 (0.38)	0.28 (0.60)	0.02 (0.97)	4.59** (0.03)			
Paid occupation								
	1 = Yes	14.72/2.89	10.42/2.29	3.70/0.95	13.95/3.24	132/36		
	2 = No	15.11/2.83	10.40/2.02	3.99/0.77	13.94/3.06	236/64		
F-value (Sig.)		1.62 (0.20)	0.01 (0.94)	9.58*** (0.00)	0.00 (1.00)			
Personal contact with security guard								
	1 = Yes	14.74/2.85	10.31/2.21	3.91/0.94	14.21/3.29	193/52		
	2 = No	15.23/2.84	10.51/2.01	3.86/0.74	13.66/2.91	175/48		
F-value (Sig.)		2.82* (0.09)	0.89 (0.35)	0.24 (0.62)	2.86* (0.09)			

(Continued)

(Continued)

Variables	Nature of work (4 items)		Professionalism (3 items)		Trust ^a (1 item)		Working relationship (4 items)	
	Mean ^b /S.D	Mean ^b /S.D	Mean ^b /S.D	Mean ^b /S.D	Mean ^b /S.D	Mean ^b /S.D	Mean ^b /S.D	N/Percentage
Friends and relatives in law enforcement	1 = Yes	15.08/2.75	10.49/2.12	3.89/0.90	13.95/3.20	170/46		
	2 = No	14.82/2.99	10.33/2.01	3.83/0.81	13.97/3.02	181/49		
	3 = No Answer	15.59/2.32	10.35/3.20	4.35/0.49	13.65/3.55	17/5		
F-value (Sig.)		0.77 (0.46)	0.28 (0.76)	2.94** (0.05)	0.08 (0.92)			
Friends and relatives in private security	1 = Yes	15.17/3.02	10.69/2.14	3.97/0.91	14.44/3.16	59/16		
	2 = No	14.95/2.82	10.37/2.08	3.87/0.84	13.82/3.08	292/79		
	3 = No Answer	14.76/2.93	10.00/2.74	3.82/0.88	14.35/3.69	17/5		
F-value (Sig.)		0.20 (0.82)	0.90 (0.41)	0.34 (0.71)	1.12 (0.33)			

Source: Authors' compilation/findings/calculations.

Notes: (i) ^a Refer Table 2.

(ii) Mean^b/S.D based on scale 4 = strongly disagree and 16 = strongly agree; Mean^b based on 3 = strongly disagree and 9 = strongly agree;

Mean^b based on 1 = strongly disagree and 5 = strongly agree.

(iii) * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$.

range from the lowest "strongly disagree" to the highest "strongly agree." High values indicate positive perceptions of each concept.

One of the strongest findings was that all age groups viewed security guards' work positively and felt that security guards are professional and they could trust security guards to protect citizens. All three groups were optimistic that guards and police officers would work together. To some extent, respondents were not overly optimistic about police officers and security guards working together though the findings do not necessarily suggest a negative finding. In terms of mean scores, the findings suggest that the respondents had the most trust in guards and were very positive about security guards' work and their professionalism. There were no statistically significant mean differences between the groups with the exception of *Nature of work* where respondents in the age group of 31 and older were slightly less positive (mean = 14.5) compared to the middle group of 21-30 years (mean = 15.14) and those 20 years and less (mean = 15.56).

Overall, both males and females were positive about guards on all four dimensions. There were no statistically significant mean differences with the exception of *trust*. As anticipated, females (mean = 4.04) were more trusting of guards than males (mean = 3.77). Similar to this gender variable, we found only one statistically significant mean difference for the relationship between education and trust. Those with university (graduate) degrees were more likely to trust (mean = 3.96) compared to others (mean = 3.79). Although both groups trusted security guards, those who were university graduates had a higher degree of trust in guards. Those who lived in rental properties (relative to those who lived in their own properties) felt that police and security should cooperate more with each other, as they believed that greater crime prevention would occur. This finding was statistically significant but once again, the degree of faith in police-security relationships was greater among those who lived in rental properties. It is possible that those who live in rental properties are a transient population who do not have enough time to spread roots in the community and raise their own social capital.

The findings also suggest another interesting dimension when we compared those with paid occupations with those who did not work. Those who did not work had a greater trust in security (mean = 3.99) compared to those who worked (mean = 3.70). While both had trust in security, those who stayed at home appeared to have a greater trust in security to protect them. This finding is statistically significant.

Overall, respondents who had contact with security guards as well as those who did not had a positive view of the nature of security work. However,

there are subtle mean differences between the two groups, with those who did not have contact with security guards having a higher degree of positive views on the nature of security work and police–security working relationships. However, the statistical probability was significant at a 0.1 level. Those who had contact with guards were slightly less positive of their views of the nature of security work but were more positive about the police–security relationships. This can be interpreted as those who had contact with guards realized that given the less challenging nature of security work, there can be a benefit from working closely with police to improve the crime prevention activities.

There are no statistically significant mean differences among those who had or did not have relatives in law enforcement on all dimensions of security work, with the exception of trust. Compared to those who had relatives in law enforcement (mean = 3.89) and those who did not have relatives (mean = 3.83), those who did not answer this question had more trust in guards (mean = 4.35). This finding is statistically significant. Overall, all groups were positive on all dimensions of security work. Finally, there were no statistically significant mean differences among those who had or did not have relatives in private security and those who did not answer though; overall they appeared positively inclined toward security guards.

Discussion and Conclusions

The primary objective of this first-time research on security guards in India was to assess citizens' perceptions of the nature of security work, security guards' professionalism, and the extent to which security guards and police officers should work together in improving crime prevention and garnering more safety and security for citizens. Overall, our findings suggest that relative to similar research conducted in the US, Slovenia, South Korea, Singapore, and the Netherlands, Indian citizens have a higher degree of trust and support in the security guard industry and in security guards themselves. More specifically, some of the highlights of this study are as follows:

1. Younger citizens view the nature of security work a little more positively than their older counterparts.
2. Women have greater trust in security guards than men.
3. Those with university (graduate) degrees, compared with those with less education, have a greater trust in security guards.

4. Those who live in rental properties seek a greater degree of working relationships between security guards and police personnel to work toward reducing crimes.
5. Those who live at home or are not working have greater trust in security guards to protect and safeguard the interests of citizens.
6. Finally, those who had contact with security guards had a slightly less positive view of the nature of their work and consequently felt more positively inclined to the idea that guards and police officers should work together in crime prevention activities.

However, we should interpret these findings cautiously. This study is limited to one city in south India, which may not necessarily represent the rest of the country. More importantly, we have to recognize the historical and cultural context of the city. The nature of growth in the city that occurred in the last two decades has been a remarkable increase in business, housing, urbanization, and migration from both rural and other smaller urban centers. This has brought about a quick transformation of the population that has historically had a dismal view of police services (Verma, 1999). What used to be a relatively homogenous city transformed into a megacity with greater levels of anonymity and cultural diversity resulting in a greater fear of crime. Given the rather negative disposition toward formal social control agents such as the public police (Verma, 1999), citizens have a greater faith in the presence of "chowkidhar" (watchmen), as security guards are often referred. In that sense, the citizens rely and have greater faith in "sponsored" protection, guards, than trust in public law enforcement who did not enjoy as much public support or a positive view of their ability or integrity (see Nalla & Madan, 2012, Chapter 7 in this volume) to respond adequately and in a timely manner to citizens' needs.

A second area where we recommend exercising caution in interpreting the results are from the sampling strategy. Clearly, greater resources are needed to generate more representative and random samples to participate in research of this nature. As noted earlier, given the haphazard nature of the city's growth, the absence of city block-wide data and organized planned development of the city resulted in a residential concentration of the population from various demographic characteristics. While on the upside this may result in a greater randomness of the respondents who participated in the study, the degree of this randomness is less precise than can be developed in more advanced democracies.

Perhaps, more importantly, this research draws attention to the nature of private security guard regulation in India. The security guard industry in

India is rapidly expanding, with the number of security personnel far exceeding the number of police officers. Additionally, the nature of the security guards' employment, duties, and responsibilities brings them in close contact with citizens, creating opportunities for violations of civil rights and use of force in the name of protecting private property. Yet, the security guard regulations have little by way of guiding state governments in minimum training standards in matters relating to professionalism and citizen-guard contacts. Given the growth trends in India, which are similar to patterns in other emerging markets, one thing India can take note of is the aggressive governmental stance adopted by many of the emerging markets in regulating standards relating to recruitment and training of security guards.

On a positive note, we conclude that overall, we find that citizens in India appear to have a higher degree of faith and trust in the security industry. However, it appears that their greater support for guards' relationships with police personnel suggests that citizens crave for greater public police involvement in crime prevention activities. It is less clear, however, if this is a representation of the context of public law enforcement in a recent democracy with a relatively recent history of colonial past with distinct public memory of police brutality and therefore an identification of police with oppression. Further, it is also unclear if this greater faith in private security is more a reflection of their lack of faith in police (see Nalla & Madan, 2012). This is clearly an issue that future research should address.

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SECTION THREE

Criminal Law and Courts in India

Introduction

Historically, prosecutors in India functioned under the District Superintendent of Police. Beginning in 1974 and following the recommendations of the Law Commission, a permanent central governmental body, various states each created a Directorate of Prosecution. There are branches in each district to handle cases going to trial. As a result of this move, the earlier system of having police officials sometimes act as prosecutors has been abandoned in most states. Currently, prosecution of criminal cases is a function of a state-level organization, the Directorate of Prosecution. There are district-level Chief Public Prosecutors and court-level Assistant Public Prosecutors.

The local legal sector consists of magisterial courts for less serious, and sessions courts for more serious, offenses. Magisterial courts also serve as children's courts in dealing with juvenile offenders. At the state-level, there are High Courts, which have appellate jurisdiction, while the Supreme Court (in New Delhi) is the court of last resort. In the High Courts and in the Supreme Court and depending on the nature of a particular case, one or more judges may listen to an appeal. In these appellate courts, a majority judgment is deemed to be final. The concepts of free and fair trials, the prosecution bearing the burden of proof, the presumption of innocence, and the benefit of doubt going to the accused are all in place to ensure due process. There are two points of interest to foreign readers regarding Indian criminal law and courts. First, it has not historically recognized plea bargaining

(see Chapter 15 in this volume by Mathai Vairamon Mathew for recent changes and reasons for them) and trials are therefore more adversarial in nature. Second, India discarded jury trials for all court cases in 1960 because it was felt that jurors were likely to be unduly affected by the media and public opinion. In common with other sectors of India's criminal justice system critics note that inefficiency, delay, waste, and corruption characterize the functioning of law and the courts (Menon, 2008) such that the promise of equality under rule of law remains just that.

There are four contributions to this section. The first two deal with issues that are crucial in pushing India toward enhancing and sustaining equality among the genders, in law and the courts, both *de jure* and *de facto*. The other two deal with recent attempts to innovate and energize the law and courts.

In Chapter 12, Sheetal Ranjan surveys India's legal responses to violence against women. She describes the extent of the problem of crimes against women and the passage of several laws meant to deal with these. Impressive as these laws are, it continues to be an open question as to how successful the process of implementing them throughout the length and breadth of the country has been. Women continue to contend with a patriarchal culture that views them as subservient (Shanthi, 2005). In the second contribution to this section, Meghna Bhat and Aimee Wodda hone in on legal responses specific to the perpetration of sexual violence. Their analysis of major court decisions in this area describes several continuing practices that result in revictimization or secondary victimization of Indian women by sectors of the criminal justice system that are expected to protect them.

Sesha Kethineni and Jeremy Braithwaite discuss in Chapter 14 how the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to deal with limitations in previous similar legislation. This landmark law envisaged the introduction of "a wide range of options: community placement, imposition of fines on parents, counseling to families of children in conflict with law, and non-punitive treatment of juveniles." Unfortunately, despite more than a decade of operation, the emphasis on rehabilitation envisaged by the Act has not been uniformly implemented and may even have been ignored by various states. A further analysis of the implementation of this law in the juvenile correctional sector is taken up by Divya Sharma in Chapter 18.

Finally, in the last chapter of this section, Mathai Vairamon Mathew describes how plea bargaining has been introduced in India, with some limitations. This long-standing practice has often criticized and decried (Heumann, 1978) but has developed and expanded such that it now possesses a stranglehold in American criminal courtrooms. Ironically, in India it is being viewed as a way of speeding up the processing of criminal cases

and thereby, it is hoped, resulting in greater system efficiency. An encouraging aspect of the matters noted in this section is the capacity of the law and courts in India to promote changes as and when they may be needed. At the same time, they also unfortunately illustrate the maxim that "there is many a slip between the cup and lip." We learn that just the mere passage of needed legislation is not enough to get the requirements implemented meaningfully in a criminal justice structure and culture that has often been described as hidebound and overburdened.

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Crimes against Women in India

Sheetal Ranjan

Abstract

Crimes against women in India constitute a serious issue meriting a separate section in the national statistics compiled by the National Crime Records Bureau (NCRB) of India. This chapter discusses the range and extent of crimes listed therein as well as to throw light on a few other gender-based crimes against females. It describes various crimes, provides data from national statistics, and discusses issues related to low reporting. It also addresses the social norms that tolerate or propagate this form of violence. It discusses the development of some these pieces of legislation and how the law enforcement agencies and courts have handled this issue. It also highlights the work of various organizations and how they have helped in shaping policy and practice and provided advocacy and support. Finally the chapter suggests possible next steps to prevent and eradicate violence against women in India.

Introduction

"To cope with the continuous demand for data on the burning issue of 'Crimes against Women' a new chapter has been added," stated the then Director of National Crime Records Bureau (NCRB) in the Preface to the 1992 publication of *Crime in India* (Amarnathan, 1994). The new chapter was in response to the ongoing feminist movement in India, resulting from

the international call for attention to gender disparities and the labeling of it as a violation of human rights. About the same time, the first National Commission of Women was formed in India to "fulfill the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women" (National Commission for Women, 2009). These first steps recognizing issues of violence affecting women led to the passing of the Protection of Women From Domestic Violence Act in 2005 to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family or related matters (Chatterji, 2006). Another recent step taken to protect the rights of women is the Protection of Women against Sexual Harassment at Work Place Bill, 2010.

Saravanan (2000) in her literature review frames crimes and violence against women as a form of discrimination. The World Human Rights Conference (1993) recognized crimes against women as a violation of human rights. Consequently, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women (1993) which defined "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (Article 1, p. 3).

International recognition of violence against women as a violation of human rights does not mean that violence against women ceases to exist. Coomaraswamy, who was appointed Special Rapporteur (1994–2003) on Violence against Women by the then United Nations (UN) Secretary-General Kofi Annan, pinpointed various types of violence against women in the UN's 1995 report:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non spousal violence and violence related to exploitation.
- b) Physical sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs. (UN General Assembly, 1993)

Crimes against Women in India

Women can be victims of many different types of crimes as defined by various legal statutes in their respective countries. In its report, *Crime in India*, NCRB states that even though women may be victims of crimes such as theft, robbery, cheating, etc., only those crimes that specifically target women because of their gender are discussed in the chapter dealing with "Crimes against Women." The NCRB classifies "Crimes against Women" under two broad categories: Indian Penal Code (IPC) and Special and Local Laws (SLL). The types of crimes listed under the IPC include (a) Rape (Sections 375 and 376), (b) Kidnapping and abduction for specified purposes (Sections 363–373), (c) Homicide for dowry and dowry deaths or their attempts (Sections 302 and 304B), (d) Torture or cruelty—both mental and physical (Section 498A), (e) Molestation and assault (Section 354), (f) Sexual harassment (Section 509), and (g) Importation of girls (up to 21 years of age) (Section 366B). Certain laws in India that have been passed under SLL are considered gender-specific. Crimes under SLL include offenses under the (a) Immoral Traffic (Prevention) Act, 1956, (b) Dowry Prohibition Act, 1961, (c) Indecent Representation of Women (Prohibition) Act, 1986, and (d) Commission of Sati (Prevention) Act, 1987. The following sections explain the various pieces of legislation.

Indian Penal Code Categories of Crimes against Women

RAPE

Under the IPC, a man commits rape if he has sexual intercourse with a woman without her consent, against her will, by threatening or instilling fear to obtain her consent, by falsely convincing the woman she is legally married to him, by obtaining her consent while she is intoxicated or unable to understand what is happening, or with or without the consent of a woman under the age of 16. It is interesting to note that under Section 375 of the IPC, an exception is made for what constitutes rape, which states that sexual intercourse of a man with his own wife, the wife not being under 15 years of age, is not rape. The first time Indian legislature recognized marital rape as an offense was in 2006 when the revised Protection of Women from Domestic Violence Act was implemented. As a result the IPC expanded its definition

of spousal cruelty to include emotional, verbal, and economic abuse of a woman. The only clause that specifically addresses marital rape is in relation to judicially separated partners (Section 376A).

KIDNAPPING AND ABDUCTION

Sections 363–373 of the IPC explain kidnapping and abducting as being unlawful under the following circumstances: (a) as a result of a minor being kidnapped for begging or soliciting, (b) for the purposes of murder, ransom, confinement, slavery, or forced marriage, (c) for the procurement of minor women, (d) importation of women from foreign countries, and (e) for buying or selling minor women for prostitution (IPC, Act No. 45 Sections 363–373, 1860).

HOMICIDE FOR DOWRY AND DOWRY DEATHS OR THEIR ATTEMPTS

Dowry refers to the property a woman brings to her marriage. This property can include estate, goods, or money. The Dowry Prohibition Act, 1961 describes the ancient Vedic practice of dowry in its introduction to the Bill. It says that the ancient rites in the Vedic period were associated with "*kanyadan*" (giving away the bride). It was laid down in the *Dharmashastra* that an act of *kanyadan* is not complete till the groom was given a "*dakshina*" (gift). This gift was offered out of affection and was not considered compulsory being a primarily voluntary practice without any coercive overtones. In the course of time, the voluntary element in dowry disappeared and the coercive element crept in taking deep roots not only in the marriage ceremony but also in post-marital relationships. What was originally conceived of as a "gift" grew to become the evil of "dowry," resulting in numerous incidents of bride burning and torture leading to death. The IPC explains what constitutes "dowry death" in Section 304B: Essentially, if a woman incurs any bodily injury or burns on her body and dies within the first seven years of marriage and it is found that she was harassed or abused by her husband (or relative of the husband) as a result of dowry demands before her death (IPC, Act No. 45 Section 304B, 1860).

TORTURE

Under Section 498A of the IPC, torture of a woman by her husband (or husband's relative), mentally or physically, means subjecting her to cruelty in the following ways: (a) any action that would cause the woman to

commit suicide, (b) any conduct that would cause serious and/or life-threatening injury to the woman, or (c) harassment (IPC, Act No. 45 Section 498A, 1860).

MOLESTATION

Section 354 of the IPC states that molestation includes using "criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty" (IPC, Act No. 45 Section 354, 1860).

SEXUAL HARASSMENT

Sexual harassment also deals with insulting the modesty of any woman and is defined in Section 509 of the IPC as words, sounds, gestures, or objects that are intended to be seen or heard by a woman and/or intrudes upon the privacy of the woman (IPC, Act No. 45 Section 509, 1860).

IMPORTATION

Under Section 366B of the IPC it is unlawful for anyone to import a woman from another country into India who is under the age of 21 for the purposes of forced, seduced, or illicit intercourse (IPC, Act No. 45 Section 366B, 1860).

Special and Local Law Categories of Crimes against Women

IMMORAL TRAFFIC (PREVENTION) ACT

The Immoral Traffic (Prevention) Act, 1956 was passed for India to be in line with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed in New York in 1950. The Act makes trafficking and sexual exploitation of persons for commercial purposes a punishable offense. The Act has undergone two amendments (in 1978 and in 1986), but it was not perceived to be an effective deterrent. In response, another amendment was passed in 2006 called The Immoral Traffic (Prevention) Amendment Bill. The Parliamentary Standing Committee on Human Resource Development was asked to examine and report on the Act. The committee recommended certain revisions, but the Act could not be passed as it lapsed in both the houses of the parliament. Much controversy

surrounds this lapse because the 1956 law is considered outdated. It remains to be seen what measures India will take towards stringent legislation to prevent and punish trafficking.

DOWRY PROHIBITION ACT

This Act was passed in 1961 to combat the serious issue of dowry deaths in India. It was found that the provisions under the IPC, discussed above, were not sufficient to curb this serious social problem and therefore this Act goes much further in listing sanctions. In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with their marriage. It prescribes penalties for: giving or taking dowry, demanding dowry, and offering or demanding dowry in advertisements for marriage. It also considers any agreement for the giving or taking of dowry to be void. It authorizes state governments to appoint as many Dowry Prohibition Officers as it thinks fit to exercise their jurisdiction and powers under this Act.

INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT

This Act was enacted by the Parliament in 1986 to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner. The Act was in response to demands from the women's movement to tackle derogatory depictions of women in the media.

COMMISSION OF SATI (PREVENTION) ACT

This Act was passed in 1987 in response to widespread protests subsequent to the "sati" or public immolation of 18-year-old Roop Kanwar. *Sati* is an ancient traditional Hindu practice of a widow immolating herself on her husband's funeral pyre. This tradition existed among certain sects in ancient India who considered it a great honor for the widow to die on the funeral pyre of her husband. The Commission of Sati (Prevention) Act was passed to provide for the more effective prevention of the commission of *sati* and its glorification. In its introduction the Act states: "[S]ati or the burning or

burying alive of widows or women is revolting to the feelings of human nature and nowhere enjoined by any of the religions of India as an imperative duty."

Other Crimes against Women

While the NCRB specifically classifies the aforementioned as "Crimes against Women" there are a few others that it does not present as gender-based crime. Female feticide, infanticide, prostitution, and trafficking are some other serious gender-based crimes in India. This section describes a few of these.

FEMALE FETICIDE AND INFANTICIDE

The first use of amniocentesis in 1975 as well as legalization of abortion in 1972 created a new form of gender-based violence in India. Using sex-determination tests has resulted in widespread abortion of female fetuses. Female infanticide has existed in certain parts of India since the 1750s. Infanticide is defined as the killing of a dependent child less than a year old by the mother, father, or anyone else entrusted with caring for the child (Kolloot, 1990). There have been reports of mothers lacing their breasts with poison before breast-feeding the female baby. These activities are reflected in the declining sex ratio of children in India. Sex ratio statistics for children in the 0-6-year-old age group has been showing a continuous decline over the years (Chatterji, 2008). From 946 females for 1,000 males in 1951 it has further decreased to 927 females for 1,000 males in 2001 and 914 females to 1,000 males in 2011 (Office of the Registrar General & Census Commissioner, 2001). Recognizing that the widespread feticide using diagnostic techniques for sex selection is discriminatory and violates the fundamental right to equality, the government enacted the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. According to this Act pre-natal diagnostic techniques should be used only for detecting disorders and not for sex determination. It prevents the person conducting such procedures from communicating the sex of the child in word, sign, or in any other manner to either the pregnant woman or her relatives (Chatterji 2008).

PROSTITUTION AND TRAFFICKING

While some aspects of prostitution are dealt with in the Immoral Traffic (Prevention) Act, 1956, others related to minor girls are dealt with directly

under the Indian Penal Code. Procurement of minor girls (for inducement to force or seduce to illicit intercourse) (Section 366A, IPC) is when a girl under the age of 18 (who is considered a minor by law) is made to or likely to be forced to commit illicit intercourse. Selling or buying of girls for prostitution is illegal under the Sections 372 and 373 of the IPC. Additionally, the law explicitly states that if a minor is disposed off to a prostitute or brothel owner it shall be presumed that the intent was to use her for the purpose of prostitution.

Extent of Crimes against Women

This section examines the crime statistics as published by the NCRB for gender-based crimes in India. Table 12.1 presents an overview of crime data starting from 1992 when 'Crimes against Women' was first allocated a separate chapter in the National Report, to the most recent 2009 data. Taking the data at face value, it is evident that there is an increasing trend of victimization across almost all categories. One also needs to understand how some of these crimes appear to be disproportionately higher than others.

The largest reported crime against women in 2009 is "torture." There is more than a fourfold growth in this crime from 1992 to 2009. In comparison, dowry deaths and crimes reported under the Dowry Prohibition Act, 1961, have just about doubled. One reason could be the increasing awareness of dowry laws brought about by cable television networks that have spanned across all parts of urban and rural India in the last decade. This has resulted in greater awareness and willingness to report dowry-related torture. The increasing numbers of dowry death and torture under the Dowry Prohibition Act could also imply that the laws have not been effective in reducing dowry problems in society. The lawyers of the victim and the police often try to categorize dowry-related torture under "torture" instead of categorizing it under the Dowry Prohibition Act.

The National Crime Records Bureau reports just 123 cases of feticide and 63 cases of infanticide in 2009 (National Crime Records Bureau, Ministry of Home Affairs, 2009). The inherent bias against the girl child, coupled with accessibility to the most modern scientific techniques for sex-determination of the fetus, has resulted in large-scale female feticide. Infanticide and feticide are common practices in urban and rural India and this is not reflected in the crime records. Only 87 cases of infanticide and 61 cases of feticide were

Table 12.1 Gender-based Crimes against Women in India

	1992	1995	2000	2005	2010
Rape	11,112	13,754	16,496	18,359	22,172
Kidnapping and abduction	12,077	14,063	15,023	15,750	29,795
Dowry death	4,962	5,092	6,995	6,787	8,391
Torture	19,750	31,127	45,778	58,319	94,041
Molestation	20,385	28,475	32,940	34,175	38,711
Sexual harassment	10,751	4,756	11,024	9,984	9,961
Importation of girls	n.a.	191	64	149	36
Commission of <i>Sati</i> (Prevention) Act, 1987	1	27	0	1	0
Immoral Traffic (Prevention) Act, 1956	12,580	8,447	9,515	5,908	2,499
Indecent Representation of Women (Prohibition) Act, 1986	n.a.	539	6,612	2,917	895
Dowry Prohibition Act, 1961	2,102	2,814	2,876	3,204	5,182
Feticide	n.a.	38	n.a.	86	111
Infanticide	n.a.	139	n.a.	108	100
Procurator of minor girls	n.a.	107	n.a.	145	679
Selling of girls for prostitution	n.a.	17	n.a.	50	130
Buying of girls for prostitution	n.a.	19	n.a.	28	78

Source: National Crime Records Bureau reports.

- Notes: (i) Sexual harassment was called *eve-teasing* in 1992 and previously; the name has been changed in response to suggestions from the National Commission for Women.
(ii) In 1990 there were 52 reported incidents of *Sati*.
(iii) Numbers of feticide and infanticide refer to both sexes, since the NCRB does not provide numbers by gender.
(iv) n.a. = numbers not available from the NCRB.

reported in 1999. These numbers are not disaggregated by sex in the reports. Yet, given the regular occurrence, one can safely assume that the majority of these are females. Also, the reported numbers are astonishingly low. One reason for this is the societal support for the practice. Who is to report what goes on in the privacy of the examination room between the pregnant woman and the examiner? Various research studies have examined this issue and found far greater numbers of female feticide and infanticide than reported in the national report. Using data from the Special Fertility and Mortality Survey (1998) of more than one million households in 1998 it is estimated (using conservative assumptions) that India loses about 500,000 girls a year or about or about 10 million female fetuses may have been aborted in two decades (Jha, Kumar, Vasa, Dhingra, Thiruchelvam, & Moineddin, 2006).

Other poorly reported crimes are those related to sexual offenses such as rape and molestation. India ranks fifth highest in the total number of reported rapes (NationMaster, 2002) yet the numbers represent only a fraction of all rapes as they represent only the reported numbers. Virginity and chastity are given very high importance in Indian society. It is unlikely for a girl to get married if her virginity is in question. Therefore, women are not likely to report an incident of rape. Surveys by independent researchers indicate that a large percentage of women in India have been victims of some form of sexual molestation or assault in their lifetime and are not likely to report the incident to the police. Sexual harassment, which was previously called "eve-teasing," does not show any pattern of increase or decrease. Also, the numbers reported in this section are different from those under the Protection of Women Against Sexual Harassment at Work Place Bill, 2010, which is more civil in nature unless any act therein is criminal and punishable under the Indian Penal Code. In such case those proceedings are usually initiated in addition to civil proceedings.

Most shocking is that the ancient practice of *Sati* was being revered and practiced even in the late 20th century. In 1990 there were 52 reported incidents of *Sati* and in 1995 there were 27. Despite the very stringent laws, there has been one reported incident of *Sati* in 2005.

Kidnapping and abduction of women has shown a steady increase from 12,077 incidents in 1992 to 29,795 incidents in 2010. Crimes such as importation of girls and indecent representation of women appear to have a lower incidence compared to other crimes. The only crime category that has shown a steady decline is the Immoral Traffic (Prevention) Act. Since 1992, crimes under this category have shown a steady decline, indicating possible strict enforcement and punishment. This may be because the recent amendment proposed to the law in 2006 has provisions to penalize clients who visit prostitutes.

The Problem of Reporting

For a country of more than one billion, some of these numbers appear to be astonishingly low giving the impression that these crimes are not widespread. At the outset, one needs to understand that these numbers represent only those crimes that are reported to the police. In India there is no national crime victimization data collection effort equivalent to the US National Crime Victimization Survey (NCVS) to capture unreported crime. There has been some effort to collect victimization data by individual researchers

(Chockalingam, 2003) at the regional level, but these efforts usually lack research funding and are cross-sectional or regional in nature.

It is common knowledge in India that reporting of all crimes is generally low. Reporting varies greatly between urban and rural areas. In rural areas, the village *panchayat* (a group of village elders) often mediates conflicts among individuals and resolves disputes. *Panchayats* or village councils are a system of self-governance that has long been prevalent in many rural parts of India. Many villages might not have a strong police presence but will surely have the *panchayats*.

It is evident that the incidence of violence against women in India is very high. However, these statistics only account for the cases that are actually reported to the police. For example, in 1999–2000, the numbers presented in the National Crime Records Bureau represent that approximately 0.00006% of women are raped or molested in comparison to 2% reported in victim surveys (Chockalingam, 2003). Even though the victim survey was not national, there is a huge disparity in the numbers. There are many women who experience violence but do not make any complaints to the police. According to Mukherjee, Rustagi, and Krishnaji (2001):

Most crimes against women go unreported for understandable reasons; attached social stigma, distrust in legal mechanisms, fear of retaliation, and so on. Institutional indifference makes matters worse. It is almost impossible to lodge a complaint against men in the police and the armed forces, or in government services.

The reality of the situation is that women are more than likely economically dependent on the very people who violate them. They may be uneducated and unaware of the options available to them. Distrust in legal mechanisms is very high in the general public who view law enforcement and judges as corrupt. Also, the extraordinary length of time taken for any case to have an outcome often makes the process meaningless to the victim. A female crime victim is victimized over and over again for long periods of time by the very system that is supposed to protect and provide justice to her. While the Supreme Court of India recognizes that speedy trial is an "integral and essential part of the fundamental right to life and liberty" (*Khatoon and others (1) v. Home Secretary, State of Bihar*, 1 SCC 81, 1980) and that delays would amount to "denial of justice" (*Khatoon v. State of Bihar* AIR SC 1364, 1979), the ground reality for an average person, more so for a woman, is quite different. There have been instances where a victim has spent a decade fighting for a case to be processed through various courts and appeals.

Social Norms and Gender-based Crimes against Women

Besides low reporting the very highly patriarchal culture in India and the social norms surrounding it make it difficult to grasp the extent of the problem. The National Family Health Survey shows that a large percentage of women in India do not recognize certain behaviors (e.g. slapping) as being violent; many perceive it as a husband's 'right' (Kishor and Gupta, 2009). Evidence of this mindset can be seen regarding wife-beating. According to NHFS (2010):

Almost three out of five women (56%) believe that wife-beating is justified for at least one of the six following reasons: neglecting the house or children (40%), wife going out without telling the husband (37%), wife showing disrespect to in-laws (34%), husband suspecting his wife of infidelity (33%), wife does not cook food properly or natal family does not give expected money or other items.

The view is that a woman should remain a "Sati" or "Savitri" (mythological women considered icons of modesty and virtue, who spend their lives serving their husbands and in-laws). Nurtured with these ideas, Indian men feel that women should be subservient to them. Research on attitudes of Indian men toward women indicates that 65% believe there are times that women deserve to be beaten. Men are confined to these patriarchal ideologies, which reflect in their attitudes and behaviors (Gaynair, 2011). Also, in this "process of socialization, violence is a means by which such discipline is enforced and values are instilled" and young males inherit such forms of consciousness and behavior along with other ideas of being a macho male (Giri, 2003). It is ingrained in the female child that she is weak and is in need of protection physically, emotionally, socially, and economically. This sets the scene for her to be vulnerable to all types of abuse and exploitation from "womb to tomb" (Saravanan, 2000). The stereotypical Indian family is not only patriarchal but is also hierarchical. There, older and more powerful females (such as mothers-in-law and sisters-in-law) can also be perpetrators of violence against the woman. Additionally, as Coomaraswamy (1992) proposes, a woman is considered the property, appendage (or even almost like a body part) of her husband or father. It is considered that a woman can have no proper life once her husband passes away.

Further, the perception of what constitutes "violence" is very different for women in India. Usually very serious physical violence may be perceived as "domestic violence" but sexual or psychological violence is rarely ever perceived so. So much so, that the Secretary of the West Bengal Commission for Women, states: "Indian women are discouraged to file complaints against marital rape. It has taken them time to recognize [it as a crime]" (Biswas, 2009). Indian women are not generally open to discussing issues as intimate as marital rape and it takes a lot of courage for them to report it. Especially if the woman is financially dependent on her spouse, she may be worried about how her case will be funded and whether there are alternate sources for shelter (Biswas, 2009).

Also problematic are issues related to counseling (marital or mental health-related). Apart from family and friends, most women do not have resources to seek professional counseling or support. In fact, counseling of any kind is not commonplace in Indian society. Neither is it routinely available nor affordable and accessible, making it very hard for the woman to be able to resolve these issues and get on with day-to-day life. Only in 2005 was counseling incorporated into the Protection of Women from Domestic Violence Act. Additionally there are very few safeguards for a person who files a complaint in India. Here again, the Protection of Women from Domestic Violence Act has recently created provisions for protection orders. There is yet no measure of the success of these provisions. In the next section, we discuss some of these legislations and the critiques thereto.

Recent Legislation and Issues

The Indecent Representation of Women (Prohibition) Act (IRWA)

The IRWA was enacted in 1986 in response to demands from the women's movement to prevent the offensive depiction of women in the media. They believed that the media was perpetrating a social norm that further objectified the woman. The IRWA explicitly prohibits "indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner." It defines "indecent representation" as follows:

[T]he depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

Despite the provisions in the law to punish violators with imprisonment and fine, the law has not been effectively enacted. For example, after 22 years of enactment of the legislation, only in 2009 the Gujarat government sent a notification to all police stations to authorize inspectors to take steps to implement the Act, that too after a public interest litigation (PIL) in this regard hung in the courts from 2001 and came up for hearing only in 2008 (*Indian Express*, 2009). Such is the manner of how some things get done in India. Even though the intent of the Act is good, the ground reality is far from the principles upholding it. The National Commission for Women also questions various aspects of the law. Vyas, the then Chairperson of the National Commission for Women (NCW) argues for the Act to span electronic media and cyberspace. She also calls for more stringent penalties and a clearer definition of "obscenity" (Tandon, 2009). NCW has published its recommendations and calls for more publicity to be given to the law. It asks for state governments to publicize the law in local languages and for effective and expeditious steps to be taken by police officers immediately on receipt of a complaint. It also calls for increasing the fine from ₹2,000 to ₹10,000 for the first offense and for second offense calls for six months' imprisonment and fines up to ₹500,000 (National Commission for Women, n.d.).

The Dowry Legislations

The dowry legislations have also been criticized by women's organizations. Among the most important criticism is the confusion of meaning between "dowry" and "gifts." The law disallows giving and receiving dowry but allows one to receive gifts. The point here is that if a gift is made without demand, it is not considered dowry. In practice, this becomes problematic. The groom and his family may have unspoken expectation of gifts and may find that the gifts given were inadequate. The woman may be ill treated because of this without explicit demands. Further, the law states that such presents should not be excessive and should match the financial status of the person who gives those gifts. This creates the problem of who is the judge of "excessiveness"? Such ambiguous terms make it easier for people to circumvent a law that is cognizable. Amendments to the original act in 1984 and 1986 make dowry offenses "cognizable," meaning that the courts can start proceedings without a formal complaint by the victim. Yet, in reality, rarely are such actions taken. Also, at the time of marriage both the bride's and groom's families are out to please each other. It is only when matters get unpleasant between the families that dowry laws are discussed. The problem here is that the culture

promotes this gift giving implicitly. Most parents of boys are also parents of girls and equally practice the giving and taking of gifts or dowry, further promoting this cultural evil. More recently, the Supreme Court has asked the Indian Parliament to revisit the dowry-related legislation (Venkatesan, 2010) as the "torture" clause of the Indian Penal Code is being used excessively in dowry-related cases.

The Protection of Women from Domestic Violence Act

This Act, passed in 2005, not only recognized physical and sexual abuse, for the very first time in the history of Indian laws, but also psychological, verbal, and economic abuse. It endorses strict sanctions against men who do so. The Act makes such an offense punishable by a jail term for one year or fines of US\$20,000. He can even be booked under various other sections of the Indian Penal Code as applicable. The law goes on to define physical abuse as any act or conduct causing bodily pain, harm, or danger to life, limb, or health, or impairing the health or development of the aggrieved person including assault, criminal intimidation, and criminal force. Sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of woman. Verbal and emotional abuse includes insults, ridicule, humiliation, name-calling, and insults or ridicule, especially with regard to not having a child or a male child, and repeated threats to cause physical pain to any person in whom the aggrieved person is interested. Economic abuse includes deprivation of all or any economic or financial resources to which the victim is entitled, including household necessities for the self and the children, *stridhana*, as well as property, jointly or separately owned by her, payment of rental related to the shared household and maintenance, restriction of continued access to shared household and other facilities, disposal of household items, etc. The Act calls for appointment of female "Protection Officers" at each police station and appointment of service providers and counselors. A woman may directly appeal to a magistrate for a "Protection Order" and the magistrate assigns the protection officer to investigate the genuineness of the complaint and issues one. If the offender repeats or violates the order it is punishable. The woman can go to the local police station or the magistrate and report this. Most important here is that all offenses under this Act are non-bailable, making them very stringent. The Act also offers, for the first time, civil remedies to the woman. Whereas previously they only had recourse to Section 498A of the Indian Penal Code (IPC) to file a complaint against the abuser, the new law allows a woman

right to stay on in her matrimonial home or to demand maintenance from the abusive partner (Kapur, 2008). This law has been applauded by various women's groups who have fought hard for such legislation. While there is reason to celebrate the enactment of the legislation, we are yet to see how the practical aspects of this legislation work out. It took five years for Kolkata to get its first night shelter for women in 2010 (Kalim, 2010). How promptly will the protection officers and counselors be put in place? How effective will they be? Also, how will different judges interpret the law? What kind of relief will a woman who is well cared for in every other way, but abused just economically be able to get? How can women in very long marriages prove abuse? Many questions remain to be answered but this is certainly a long-awaited step in the right direction.

The courts of India have a great challenge ahead in terms of what they need to do. One issue brought to the notice of an international audience by the Human Rights Watch is the admissibility of the "finger test" in courts. In its report titled "India's Need for Sound Standards for Conducting and Interpreting Forensic Examinations of Rape Survivors" (2010), Human Rights Watch documents the indignities faced by women during a rape trial. India, to this date, considers admissible in court an archaic form of forensic examination called the "finger test." This involves, as the name suggests, inserting fingers into the woman to measure "vaginal laxity" and thereby ascertains whether she was "habituated to sex" before the alleged assault. This basically allows for a woman's sexual experience and history to be introduced as evidence in the trial of her accused rapist (Human Rights Watch, 2010). This report outlines specific recommendations to the Indian government to ban finger testing, implement standards in forensic testing of rape victims, ensure transparency in the process, etc.

Role of Organizations and Government

The work of women's organizations and not-for-profits has been the driving force steering changes in the Indian government's handling of women's issues. One huge step in this process was the establishment of the National Commission for Women as a statutory body in the year 1992 to review the constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances, and advise the government on all policy matters affecting women. In keeping with its mandate,

the Commission initiated numerous tasks. Among them are: taking up the issue of child marriage, sponsoring legal awareness programs, establishing the Parivarik Mahila Lok Adalats (or women's courts), and reviewing various laws affecting women to make them more stringent and effective. It also organized workshops and seminars for gender awareness and constituted expert committees on economic empowerment of women. It created publicity campaigns against female feticide, violence against women, and other such issues to generate awareness (NCW, n.d.).

Under the auspices of the NCW, most not-for-profits working toward preventing crimes against women and other gender-based crimes have been able to strengthen themselves, coordinate and mobilize on important issues ranging from simple issues such as advocating for better street lighting to prevent victimization of women to complex ones such as advocating for more representation in the government. The NCW and other not-for-profits also continue to work with international human rights organizations and United Nations-based organizations to promote the cause of gender equality.

Also important are steps taken to monitor and evaluate the effectiveness of new laws so that they do not just remain words on paper. For example, the Washington, DC, based International Center for Research on Women (ICRW) will evaluate the implementation of the Protection of Women from Domestic Violence Act, 2005 (PWDVA), which is designed to protect the rights of women who experience domestic violence and will collaborate with the Lawyers Collective Women's Rights Initiative (LCWRI) to monitor efforts to improve the ability of key agencies to implement the law. ICRW will document how various interventions conducted by LCWRI strengthen India's overall response to violence. Interventions include capacity development workshops for law enforcers (police, protection officers, and magistrates), legal aid to women facing violence at home, and awareness-building campaigns about the law among women and the public. ICRW will use surveys, interviews and group discussions in three major states to assess various stakeholders' attitudes toward the law. ICRW will also design a monitoring system to track the effectiveness of the PWDVA on a yearly basis.

Very important in this course of action is to ensure that women participate in the political process of the country. To this effect, in March 2010, the upper house of the Indian Parliament passed a bill that reserves 33% seats in the lower house (Lok Sabha) for women. Presently almost 500 million Indian women are represented by 60 women in the 545 Lok Sabha seats. If the Women's Reservation Bill is implemented, the number of women representatives would increase three times to 181 (Gupta, 2010).

Next Steps

In a special publication on violence prevention and promoting gender equality to prevent violence against women, the World Health Organization (WHO) identifies a few key strategies based on research evidence. It states that promoting gender equality is a critical part of violence prevention. It suggests: school initiatives should be well placed to prevent violence against women; community interventions can empower women and engage with men; media interventions can alter gender norms and promote women's rights. The WHO stipulates that programs must engage both males and females to be successful (World Health Organization, 2010). The suggestions in this report need to be taken very seriously by India to combat issues surrounding crimes against women and gendered violence. The report provides a blueprint of evidence-driven practices that can be a starting point for holistically addressing this problem. As protests in late-2012 against the gang rape of a student in New Delhi have shown, a deep well of anger exists regarding official inaction on crimes against women in India.

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Examining Legal Responses to Sexual Violence: A Review of Court Systems in India

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Abstract

This chapter examines loopholes in the judicial processes of India's courts, with particular emphasis on the system's response to victims of sexual violence. Studies show that survivors must often relive their victimization repeatedly as they move through the legal process, thus undergoing experiences that have been termed "secondary victimization." Our chapter focuses specifically on survivors of sexual violence, mainly rape cases, and explores how the court system affects rape survivors' lives. We point out limitations in the legal system and interrogate the efficiency of the courts, and also provide recommendations and solutions to fill these gaps. Our findings will be of interest to victim advocates, key stakeholders in the judicial system, and researchers who may wish to use our data to conduct in-depth analyses of how courts might provide effective support for survivors of sexual violence, and lessen the possibility of re-victimization.

Introduction

Survivors¹ of sexual assault must often relive their victimization repeatedly as they move through the legal process, thus undergoing experiences that have been termed "secondary victimization" (see Ahrens, 2006; Campbell, 1998; Frohmann, 1997). We focus specifically on survivors of sexual violence in India, mainly rape cases, and will explore how the court system affects rape survivors' lives. We will not only point out the limitations in the legal system and interrogate the efficiency of the court system, but will also provide recommendations and solutions to fill these gaps. A review of literature will explore the impact of recent rulings on India's legal system.

The objectives of this chapter are to: (a) examine the definitions and the typologies of sexual violence against women in India, specifically rape and sexual assault, by discussing its incidence and prevalence, (b) determine the courts' response to survivors of rape based on laws, judicial procedures, and the impact of the responses on the survivors, and (c) discuss the findings and put forth recommendations for better and more sensitive treatment toward survivors of sexual violence.

As we propose to examine court responses to survivors of sexual violence, we must acknowledge that multiple legal systems currently exist in India. The most influential and widespread legal system in India tends to be secular and is based upon Indian Penal Code (1860) and the Constitution of India (1950) (Metcalf and Metcalf, 2002), yet some contend that the secular law of the land may retain a trace of religious (Hindu) bias persisting as a vestige of colonialism (Brass, 1994; Buultjens, 1986; Hibbard, 2010; Jayal, 1999; Larson, 2001; Madan, 2003; Momen, 2005; Ray, 1952; Singh, 2005; Smith, 1963). Along with the default law of the land, Personal Law (Muslim, Christian, and Parsi) is accepted, common, and typically religious and is meant to cover civil matters (Rajan, 2003). The most recent estimate of India's religious composition suggests that 80.5 % of the population describe themselves as Hindu. Muslims, the largest minority group, comprise 13.4 percent of the population (Census of India, 2011; LOC Country Studies, 2004). Since the majority of India's citizens are Hindu, and since Personal Law is meant

¹ Researchers, mental health therapists, and lawmakers differ regarding terms used to describe a woman who has been sexually violated. The term "victim" is often used to demonstrate the occurrence of any crime perpetrated against an individual; however we support using the word "survivor" recommended by feminists and crisis center counselors in this chapter in lieu of "victim" as it is more empowering and has important implications in advocacy and responses to sexual violence (Young and Maguire, 2003).

to cover civil and not criminal cases, we will focus on secular law and will reference the Indian Penal Code (IPC) throughout this chapter. Until the Uniform Civil Code (UCC) is enacted, Personal Law exists as a separate (and complicated) legal entity. We would like to point out that although the scope of Personal Law is putatively restricted to the administration of religious and familial aspects of life such as marriage, inheritance, adoption, and divorce, and while India's predominant civil and criminal law based upon its Constitution and Penal Code is intended to include all citizens, the practice is not uniform (Gaur, 2006; Vatuk, 2008), as the decision in the 2005 Imrana rape case suggests.^{2,3}

Sexual Violence: An Overview

Defining Sexual Violence

Sexual violence is a common and widely recognized global problem. (WHO, 2010) This form of interpersonal violence not only negatively impacts physical and mental health but also affects reproductive health and social well-being of the survivors, both men and women, with immediate and long-term consequences (World Health Organization, 2002, 2010). In 2010, the *International Statistics on Crime and Criminal Justice* report published by the United Nations Office on Drug and Crime (UNODC) indicated that the perpetrators of rape are mostly men and the victims are mainly women (Shackelford & Goetz, 2004; UNODC, 2010). Although we acknowledge and address the occurrence of males, young girls, and boys as survivors of sexual violence, this review will primarily focus on women who have been victimized by rape and sexual assault. Since there is no widely recognized definition of sexual violence in India, the phrases "sexual violence," "sexual assault," and "rape" will be used interchangeably.

² Article 44 of the Constitution of India mandates a civil code.

³ As Aziz Ahmed explains, "2005's notorious *Imrana* case exemplifies the extremity of enforcing strict "religious" community norms. When she was twenty-eight years old, Imrana was raped by her father-in-law. When she took the case to the Panchayat, the body of men ruled that she must now marry her father-in-law and treat her husband as her son" (2012, p. 79; Metcalf, 2006). The Panchayat's decision notwithstanding, Imrana decided to file an FIR (First Information Report) with the local police who soon arrested Ali Mohammad (her father-in-law) (Kumar, 2011). In 2006, Mohammad was sentenced to 10 years in prison and was ordered to pay compensation to his victim (Daily News and Analysis, 2006).

To demonstrate the scope, incidence, and consequences of sexual violence on women, we borrow the widely used definition of sexual violence from the *World Report on Violence and Health* published by the World Health Organization (WHO) in order to provide a comprehensive framework to discuss rape and sexual assault cases in India. This definition includes rape, but from country to country, the legal definition of rape tends to differ due to varied cultural contexts. Thus, sexual violence has been defined by the World Health Organization (2002, p. 11) as follows:

[A]ny sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting including but not limited to home and work.

This review will focus on only two forms of sexual violence drawn from the WHO definition, rape and sexual assault, in terms of the legal responses. The Indian Penal Code, 1860 (IPC) considers only nonconsensual vaginal penetration by a penis as rape. However, it is important to note that IPC identifies rape and sexual harassment as the only crime-specifying forms of sexual violence. Section 354 of the IPC deals with sexual harassment, defined as follows:

[T]he essence of a woman's modesty is her sex and that the act of pulling a woman, removing her saree [Indian traditional attire for women], coupled with a request for sexual intercourse ... would be an outrage of the modesty of the woman; and the knowledge that modesty is likely to be outraged, is sufficient to constitute the offense. (Kaul, 2007, p. 1)

According to Section 375 of the IPC, rape is defined as follows:

[a] when a man has sexual intercourse with a woman, against her will, without her consent; [b] with her consent, when consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt, with when she believes that he is her husband, [c] with her consent, when consent was given due to unsoundness of mind or intoxication or administration or stupefying/unwholesome substance because of which she is unable to understand the nature and circumstances of her act, [d] with or without consent when she is under 16 years of age ... [e] To constitute sexual intercourse, vaginal penetration is essential. (Khan, Bhattacharya, Bhuiya, & Aeron, 2008, p. 1)

What happens to survivors who have experienced more than their modesty being outraged but have not experienced rape, for instance, any act between

Sections 354 and 375 of the IPC? This critical question needs to be addressed while amending existing laws, as survivors falling into that category would be left abandoned by the justice system.

Incidence and Prevalence

Sexual violence has been documented as a part of domestic violence research conducted by law enforcement and social service agencies (see IIPS and Population Council, 2009; National Crime Records Bureau, 2006; Santhya, Haberland, Ram, Sinha and Mohanty, 2007). The National Crime Records Bureau (NCRB) annually compiles and publishes crime statistics at the national level. Since 1953, this data has been collected from the 35 Indian states and union territories and 35 megacities, in standardized and common formats, in order to understand and explain the different aspects of crime occurring in the country (National Crime Records Bureau, n.d., *Origin*). According to the *Crime in India 2006: A Report* published by the National Crime Records Bureau (2006) a crime was perpetrated against a woman every 3 minutes, one report of molestation was registered every 15 minutes, and one sexual harassment report filed about every hour, and one rape case filed every half hour.

In 2008, New Delhi, the capital of India, was termed as the "rape capital" of South Asia because there were more than 330 rape and molestation cases filed in the first four months of 2008 (Khan et al., 2008). In December 2012, nationwide riots and protests broke out after the gang rape of a student in New Delhi. In Uttar Pradesh (a state in north India), in a study comprising a representative sample of over 6,000 men, 7% of the respondents reported sexually and physically abusing their wives, and 22% reported using only sexual violence (World Health Organization, 2002).

Research indicates certain risk factors that may have triggered incidents of sexual violence reported by the survivors. In a cross-sectional study by Santhya, Haberland, Ram, Sinha, and Mohanty (2007), 1,664 married young women in two states, Gujarat (western India) and West Bengal (eastern India), were surveyed and interviewed in depth. The researchers used descriptive data and multinomial logistic regression to identify the incidence and prevalence of unwanted sex. In addition, qualitative data was analyzed to determine the context in which unwanted sex occurred. Among the 1,664 women participants, 12% of the respondents had experienced frequent unwanted sex while 32% reported experiencing unwanted sex occasionally.

The findings indicated that women who were not yet mothers, were of lower educational status, and consenting to the norms justifying wife-battering were some of the factors associated with the frequent unwanted sex experienced by these participants (Santhya et al., 2007).

Sexual violence not only takes place in urban settings but also in rural settings. In the "Youth in India: Situation and Needs" study conducted by International Institute for Population Sciences (IIPS) and Population Council (2009), a sub-nationally representative survey was conducted among young people in six states of India, covering both rural and urban locations. The representative sample comprising 7,996 married and unmarried young men and women aged 15–24 were surveyed and interviewed in 2006–2007. Out of the 7,996 respondents, 1,322 were married young men and 1,666 were unmarried young men. There were 2,007 married young women and 3,001 unmarried young women. The findings indicated that at least one in four young married women reported being forced into having sex by their spouses (IIPS and Population Council, 2009). Although "being forced into having sex by a spouse" falls within the realm of the sexual violence definition proposed by WHO, this act may not fit within the legal framework of rape as defined by the IPC if the wife is above 15 years of age. These findings also raise the question of whether there may be differences in the trends and patterns of sexual violence between urban and rural settings. Additional research needs to be conducted to examine these geographical differences.

In addition, the study by IIPS and Population Council (2009) showed that rural young women are as likely to report experiencing sexual violence as urban young women in their marriage and similarly, both urban young men and rural young men were likely to have perpetrated sexual violence against their wives. The findings also indicated that the early onset of sexual violence within the marriage played a significant part in assessing the traumatic experience of victimization by the survivors. For instance, one-fifth of young women in this study reported that their first sexual encounter within marriage was coerced (IIPS and Population Council, 2009). These findings show that even though forced sexual intercourse by the spouse may have not been reported by these respondents, sexual coercion remains a common component in these incidents of sexual violence.

Waldner, Vaden-Goad, and Sikka (1999) have defined sexual coercion as "pressure from an [individual] to engage in sexual behavior" and note that this "pressure may take the form of threats of violence, physical force, intoxication, but also may include more subtle tactics such as emotional manipulation," while "rape by physical force has also been perceived as the only manifestation of sexual coercion in intimate relationships" (Shackelford

& Goetz, 2004, p. 541). On the other hand, the definition of sexual coercion was extended to include sexual behavior that ranged from kissing and touching to sexual intercourse leading to a frequent outcome of penile-vaginal intercourse (Shackelford & Goetz, 2004).

Sexual harassment of women is also prevalent in India. It is identifiable not only at workplaces but is also perpetrated by men on the streets with no fear or shame. Sexual harassment in India manifests in what Indians term "eve-teasing," a euphemism described as the "common practice of teasing and taunting women outside their homes, mainly in the public" (Derne, 1994, p. 210). For instance, Chatterjee (2007) reports:

On August 1, Sanjay Soni, a young man, tried to molest a girl inside a shared auto rickshaw in Lake Town in the presence of her father who was escorting her. When the girl tried to resist, the father asked the auto rickshaw driver to stop and began to bash up the culprit. A crowd gathered and beat up the man who was saved from being lynched by the timely arrival of the police. Some of the women who were standing in the queue at the Lake Town auto rickshaw stand said eve teasing and molestation are regular occurrences on the route.

Research indicates that sexual harassment of women is also present in workplaces, for instance, the health sector, thus posing as an occupational hazard. In a study conducted by Chaudhuri (2006), group interviews and in-depth interviews were conducted with 135 employees in different sectors including nurses in private hospitals, heads of the institutions in four hospitals, the heads of unions and associations, and other hospital staff members. Out of the 135 respondents, 77 women reported experiencing some form of sexual harassment at their current or past workplace. For instance, 27% reported experiencing unwanted touch and 16% reported being victimized by sexual gestures. None of the respondents reported being raped but five women said that others had been raped or there were attempts to rape them in their facility. The in-depth interviews in this study further showed that sexual harassment in the workplace was normalized practice, was perceived to be harmless, and by default, was a component of women's working life. One of the most striking findings of this study is that respondents encountered the subject of sexual harassment with fear, reluctance, discomfort, denial, and judgmental perceptions toward women (Chaudhuri, 2006).

Sexual violence, similar to other forms of domestic and intimate partner violence, has severe consequences on the survivors' well-being. In addition to the mental trauma they experience, for example, guilt, shame, and isolation, survivors of sexual violence also experience psychological effects such as

nightmares, sleep disorders, and depression. The immediate and long-term impact of sexual violence on survivors may include: unwanted pregnancies, physical injuries, abortions, reproductive complications, sexually transmitted diseases, and post-traumatic stress disorder (see Campbell, 2008; Varma, Chandra, Thomas, & Carey, 2007; World Health Organization, 2002).

This prevalence of sexual violence in India has been attributed to a culture that promotes violence against women, asserts the highly dominant status of men, and offers a paucity of free interaction such as dating and courtship between men and women, particularly in rural areas. These cultural factors indicate an environment that supports less punitive male attitudes toward the perpetrator and less supportive feelings toward the victim (Kanekar & Dhir, 1993). It is, however, important to note that a culture that condones oppression against women may not be universal throughout India.

Cultural Norms

It has been documented that gender biases derive from embedded oppressive social institutions in India such as caste systems, social class, and religion (Ahmed-Ghosh, 2004; Booroah & Iyer, 2004; Subramanian, Nandy, Irving, Gordon, Lambert, & Smith, 2006). Sexual violence in India is ingrained in deep-rooted traditional beliefs in a predominantly patriarchal system that idolizes the male child and perceives women in traditional stereotypical household duties (see Purkayastha, Subramaniam, Desai, & Bose, 2003). However, it must be noted that cultural norms clarify only part of the entire causal framework and should not be relied upon to explain the causal factors of sexual violence against women.

Prenatal Sex Determination

According to the *World's Women 2010* report published by the United Nations (UN), an imbalance in the population of men and women in some countries can be attributed to a preference for sons over daughters. Hence the preference for a male child has led to an increase in the abortions of female fetuses. For instance, in 1998, an in-depth analysis of 1.1 million household surveys conducted in India and their findings suggested that prenatal sex determination leading to selective abortion of female fetuses must have been the cause for higher male sex ratio at birth (see Guilmoto, 2007; The Prajnya Trust, 2009; United Nations, 2010).

The *Gender Violence in India: A Prajnya Report 2009* published by the Prajnya Trust (2009, p. 4) states: "In India, sex selective abortion has been accountable for causing the death of nearly 7,000 unborn baby girls everyday."⁴ This sex preference often leads to the parents showing preferential treatment toward sons. For example, the male child may be sent to school to pursue his education while the female child might be responsible for household chores and taking care of younger siblings. Also, a female child may be perceived as a financial burden since her father will be expected to pay a dowry⁵ to her future husband. Conversely, a male child is envisioned as a source of wealth and investment as he will be the sole earner and will also receive dowry from his prospective wife's family. Such cultural discrepancies and discrimination against the female child often reinforce gender hierarchy in the socialization process (Ahmed-Ghosh, 2004).

Child Marriage or Early Marriage of Young Girls

Child marriage is a common practice in most parts of South Asia, not only in rural areas but also in urban settings. According to UNICEF, child marriage is marriage before the age of 18 years; in India, the legal age for marriage for a boy is 21 years and for a girl it is 18 years (The Prajnya Trust, 2009). In the state of Rajasthan (western India), the findings from a survey of 5,000 women indicated that about 56% of the women had married before they turned 15 and of these women, 17% were married before they turned 10 (World Health Organization, 2002).⁶

Young married girls are often transferred from their immediate families to their husband's home, where they are treated as objects, used for sex and reproduction, and are expected to dutifully serve the husband and his parents. Due to marriage at an early age, many young brides are unable to

⁴ From 2003 onwards, it has become illegal to test the sex of the unborn child with the intention to terminate the possibility of a female child. The Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) has made it possible to prohibit and punish anyone who participates in deliberate sex selection, before or after the conception. If this law is violated, the sentence could be imprisonment up to three years and a monetary fine up to ₹ 10,000 for the offender's first conviction (The Prajnya Trust, 2009, p. 4).

⁵ A dowry in India can be defined as "the property given to the daughter by her parents and family to take with her into marriage" (Johnson & Johnson, 2001, p. 1056).

⁶ The Prohibition of Child Marriage Act in 2006, which took effect in November 2007, states that a child who is married has the right to cancel the marriage through the court but if the boy voids the marriage, then this law gives the girl the right to claim maintenance from the boy or his parents until she gets remarried (The Prajnya Trust, 2009, p. 5).

bear children and their pregnancies often result in death, or miscarriage, thus affecting these young women and their babies. These drastic consequences of dangerous pregnancy and health conditions for these young women can be decoded in the high infant mortality and maternal mortality rates in India, as well as low life expectancy among rural women, selective sex abortions, malnutrition, increasing birth rates, and high rates of illiteracy (Mohapatra, 2006). Sexual violence such as rape is most often perpetrated against younger women than older women and this means that girls who are married at early ages are highly vulnerable to experiencing some form of sexual violence (World Health Organization, 2002).

Child marriage occurs more frequently in rural India due to patriarchal supremacy, superstitions, and religious practices. For example, getting the female child married off at an early age can be attributed to the importance placed upon virginity or purity of the girl bride by her parents and the possibility of a younger groom demanding lesser dowry as they both are young. This indicates that the girl is not given the choice to make any decisions about her life, education, life partner, and deprives her of a healthy adulthood, leading to no autonomy (Santhya, Haberland and Singh, 2006). To summarize, marriage in India is universal and is perceived as a significant stage for all young men and women. However, there are gender differences in how marriage is perceived for men and women. For example, men may get married as their wives may serve as their caretakers and also need to continue their family lineage by fathering children. On the contrary, for women, marriage symbolizes the process from girlhood to womanhood (Ahmed-Ghosh, 2004).

Premarital Sexual and Romantic Relationships

A second factor that reinforces the age-old traditions toward premarital relationships is the taboo and judgmental attitude toward any possible romantic alliance in which the girl may be involved. In some parts of India, the girl engaging in a romantic premarital relationship, which may not even involve sexual relations, may lead to irreparable damage to the family's reputation and often, the parents getting the girl hastily married. Parents in traditional Indian society protect their daughter from indulging in premarital sex or having a child out of wedlock. For instance, less than 10% of young women and 15–30% of young men are involved in partnerships that may involve sexual relations (Alexander et al., 2006).

The gender roles and expectations about the experiences of romantic relationships and physical intimacy (including sexual intercourse) in India appear to be traditional and rigid. However, these sociocultural norms also indicate that women rather than men are more likely to perceive premarital sex and romantic relationships as negative, unacceptable, and inappropriate. For instance, a community-based study of 15 to 24-year-old youths was conducted in urban slum and rural settings in Pune District, Maharashtra, in order to find correlations between the youths' individual peer and family factors and the experience of romantic relationships, including sexual intercourse. About 17–24% of the young men had been involved in a romantic relationship, 20–26% percent had been involved in some form of physical intimacy, and 16–18% percent had engaged in sex. Among the young women, 5–8% reported the experience of having had a romantic relationship, 4–6% had engaged in physical intimacy, and 1–2% had engaged in sexual activity. Other risk factors that contribute to the likelihood of romantic and sexual relationships for both the young men and women in the study were exposure to alcohol, drugs, access to pornographic material, and conversations with peers (Alexander et al., 2007).

Education and Employment Status of Women

Education level and employment opportunities are instruments through which the nation can empower the women to make their own choices regarding their roles, professions, and reproductive health. According to the key findings from the National Family Health Survey (NFHS-3, 2005–2006) published by the IIPS, the percentage of literate adults is higher in urban areas. Data from a nationally representative sample of 124,385 women ranging from 15 to 49 years and 74,369 men from ages 15 to 54 in 109,041 households indicate that 41% of women and 18% of men aged 15 to 49 have never attended school (Kishore & Gupta, 2009).

Research suggests that women with higher education levels and employment status tend to feel empowered to make well-informed decisions and have higher levels of awareness about social issues. According to Kishore and Gupta (2009, p. 46):

Employment, particularly for cash and in the formal sector, can empower women by providing financial independence, alternative sources of social identity, and exposure to power structures independent of kin networks. Nonetheless, early ages at marriage and child bearing and limited access

to education limit women's ability to participate in the labor market, particularly in the formal sectors. By contrast, male gender roles are compatible with employment and men are typically expected to be employed and be breadwinners for their families. Not surprisingly, men dominate most formal labor markets.

Therefore, advocacy for women's education, employment, and basic human rights is not adequate to create awareness about sexual violence and most importantly, prevent victim blaming and provide the survivors with resources and support. In 2007, the 20,727 rape cases reported do not provide us with the whole picture of the incidence and prevalence of sexual violence in India. Numerous cases go unnoticed and unreported due to social stigma and prevailing rape myths. This can be also attributed to the discrepancies in the legal definitions of crimes administered by an insensitive and inadequate police system who are not trained to follow the actual procedures uniformly and also who do not take the survivors' accounts of victimization seriously (The Prajnya Trust, 2009; Prasad, 1999).

Rape Myths and Responses to Survivors

Due to the sensitivity associated with discussing sexual violence in India, survivors of such violence may feel discouraged and ashamed to report their experiences to their family and even to the police. This subject is sensitive as there is stigma and negative meaning attached to being a survivor of sexual violence. For instance, myths about rape and sexual assault are strong indicators of why sexual violence goes unreported. In 1991, the Supreme Court declared that a woman's past sexual history could not be used in a trial in any way to demonstrate or prove the survivor's willingness to be victimized in its ruling in *State of Maharashtra v. Madhukar N. Mardikar*:

The chastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law...

One barrier to the enforcement of laws to prosecute the perpetrators of sexual violence occurs when society embraces myths about rape and rape survivors. For example, certain rape myths are as follows: women may say "no" to sex but they mean "yes"; women wearing provocative clothes, going to bars alone and strolling at night "are asking for it"; the women who get raped have a

"loose character" and have bad reputations with their past sexual history; the worst myth being that women who get raped seek pleasure and excitement from victimization. Even if all these myths revolving around different forms of sexual violence such as rape, sexual assault, and molestation are completely false and have been invalidated by research, unfortunately these myths pose as a significant element in affecting and negatively influencing the perceptions and decisions of the judges, courts, and others who are involved in the rape trials (Torrey, 1991).

Limitations of Definitions

The findings clearly determine the lack of uniformity in defining the forms of sexual violence in India and most importantly, the gaps through which certain acts of rape cannot be criminalized under provisions of the IPC. According to the World Health Organization (2002), rape is defined as "an act where the survivor has been sexually assaulted in any of the following forms: (1) sexually violated, (2) penetrated by force, (3) vaginal penetration, nonconsensual, (4) anal penetration, non-consensual and (5) penetrated by an object" (Khan et al., 2008, p. 1). Marital rape of survivors who are older than 15 years and similarly, other forms of sexual assault (not including any form of penetration) may not be reported to the police due to the shortcomings in the law and other reasons such as family pressure, shame, guilt, judicial process outcomes, and lack of awareness that they are being victimized (Wax, 2008; World Health Organization, 2003).

Marital rape and sexual coercion have been overlooked in criminal and civil law in India, thus reinforcing the subordination of women in the society (Gangoli, 2007). According to Section 375 of the IPC, in India a husband is not guilty of rape if he has nonconsensual sex with his wife aged 15 or older. Even if sexual violence is reported and the offender is prosecuted, the punishment is often apathetic (Gable, Gostin, & Hodge Jr., 2008). Sexual violence in India is not limited to just sexual coercion and rape in marital and intimate partner relationships, but also includes custody rape (rape by caretaker like police officers), sexual harassment (on streets and at workplaces) and gang rape (a group of perpetrators raping one victim). Despite some landmark judgments and reforms, numerous obstructions hinder the successful prosecution of rape and other forms of sexual violence, thus condoning this form of oppression against women. For instance, in 2006, another judgment by the Supreme Court stated "having sexual intercourse with a girl with her consent obtained through a false promise of marriage, coercion

or fraud constituted rape" (The Prajnya Trust, 2009, p. 14). Hence, there is not only a lack of adequate and sensitive treatment provided to the survivors by their families, the medical sector, police and society, but also there are also discrepancies in how legal actors such as the police, prosecutors, courts, and judges define and perceive sexual violence in India.

Secondary Victimization and India's Legal System

"Rape is a crime not only against the person of a woman; it is a crime against society. It destroys the psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights[7] and violates the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21 [of the Indian Constitution]."⁸

The Indian Supreme Court's 1979 overturning of the lower court's decision in the Mathura rape case⁹ sparked a wave of anti-rape sentiment leading to the 1983 Criminal Law Amendment (Agnes, 1995; Dasgupta, 2002; Singh, 1989), which significantly altered sections in the IPC concerning rape.¹⁰ In the 150 years since its inception, the IPC has been amended several times with respect to women's issues, once in 1983, again in 2005, and once again in 2008. As the excerpt from the 2000 Supreme Court ruling quoted above demonstrates, although amended, Indian rape laws remain embedded in patriarchal constructs (Agnes, 1995; Rajan, 2003). Because penile penetration of the vagina is required for the offense of rape, and because marital rape is considered a separate, civil, and lesser offense, Geeranjali Gangoli argues: "while purporting to provide justice to raped women, the laws in actuality reinforce patterns of heterosexual dominance in which women are seen as inferior, sexually passive and within marriage, the sexual property of their husbands" (2007, p. 58). In addition, recent amendments essentialize gender and mistakenly assume a universal kinship among women by mandating female judges, lawyers, and police officers in

⁷ See *Bodhisattwa v. Ms Subbra Chakraborty*, AIR 1996 SC 922, which held rape as a violation of the fundamental right of a person guaranteed under Article 21 of the Indian Constitution.

⁸ Excerpt from the Supreme Court's ruling in *Chairman, Railway Board v. Mrs Chandrima Das*, AIR 2000 SC 988.

⁹ *Tukaram v. State of Maharashtra* (1979), 2 SCC 143, also known as the Mathura rape case.

¹⁰ See subsection titled "Defining Sexual Violence" above for specifics regarding rape-related sections of the IPC.

cases of rape (Kapur, 2005; Pillai, 1999). Men's potential exclusion from the legal process in rape cases limits their ability to act as partners and hinders their future inclusion in the law as rape victims.

Although a single integrated system of courts administers central and state laws and while certain improvements have been made to existing laws, rape survivors remain marginalized and are likely to experience secondary victimization as they move through the reporting and trial process (Agnes, 1995; Menon, 2004). According to the report released in 2008 by the NCRB, the 26.6% conviction rate¹¹ for rape cases remains one of the lowest for all violent crimes in the country (The Prajnya Trust, 2009). Lawmakers' attempts to draft progressive legislation and their partnerships with women's groups such as the National Commission for Women¹² have resulted in recent (2008) measures that mandate fast track courts and require female police officers, judges, and prosecutors in rape cases whenever possible.

According to Shally Prasad, however: "[d]espite these protective measures, state institutions continually fail to respond to women's complaints and systematically deny women rights to state protection, which are affirmatively embodied in law" (1999, p. 479). This failure occurs at several points during the law's engagement with a rape survivor. One failure manifests in the discrepancy between the law as drafted by lawmakers and interpretation of the law in the courtroom and police station. Feminist activists and numerous High Court judges have begun to demand that the substantial number of judges, lawyers, and police officers who continue to enforce old laws and engage in outdated practices be held accountable for their legal illiteracy (Advani, 2005). Secondly, legal practices are not uniform throughout India (Lawyers Collective, 2008). Each state maintains its own particular modes of procedure and rural and urban practices at police and trial level are wildly different (Lawyers Collective, 2008). Thirdly, rather than ameliorating harm, many laws intended to address gender-based abuse tend to impede survivors' access to the health and legal systems (Prasad, 1999).

Delays in Reporting/Unreported Cases

Women have been reluctant to report sexual assault for a variety of reasons. This reluctance to report to the police arises because of fear of retaliation,

¹¹ National Crime Records Bureau (2008).

¹² The National Commission for Women was directed by the Supreme Court in 1995 to propose a compensation plan for rape survivors in order to close existing gaps in the law regarding compensation; see (1995) 1 SCC 14.

shame, distrust of the reaction of family and friends, lack of confidence in the police and in the court process. In addition, widely publicized rape acquittals in particular, have a significant impact on women's perception on criminal justice system. Even where convictions are secured, judicial comments on the prudence or otherwise of women's behaviour further erode and undermine the confidence in the system of justice. (Singh, 2004)¹³

An estimated 70% of all sexual assaults in India go unreported (Human Rights Watch, 2010; The Prajnya Trust, 2009; Wax, 2008). Although worldwide figures estimating prevalence of unreported sexual assault are also high (NCVS, 2009; UNIFEM, 2007), this figure is particularly disturbing for India since the data on reported rapes reveals a 763.2% increase in the four decades since data collection began.¹⁴ The growing numbers of reported rapes could indicate an increase in the prevalence of rape, could signify an increase in reporting (with prevalence remaining fairly static), or could point to an increase in reporting combined with an escalation in sexual violence against women.¹⁵

Since failure to report is the norm, we must explore the reasons why most women do not report rape in India. Feelings of shame, victimization through gender oppression (lack of access to education, employment, and status), a strong emphasis on chastity and virginity, adherence to codes of family honor, and low caste status are cultural factors that influence a survivor's tendency to remain silent about rape (Gangoli, 1996; Nayak & Mahanta, 2010; Prasad, 1999; Purkayastha, Subramaniam, Desai, & Bose, 2003; World Health Organization, 2002, 2003). It is important, however, to avoid overemphasis of cultural factors.¹⁶ Legal illiteracy and/or a lack of faith in the justice system are also thought to contribute to women's reluctance to report rape (Nayak & Mahanta 2010; World Health Organization 2003); however, the media's

¹³ Justice Bhawani Singh was the Chief Justice, High Court of Gujarat in 2004.

See NCVS, 2009 (<http://bjs.ojp.usdoj.gov/content/pub/pdf/cv09.pdf>) and

Reproductive Health Response in Crises Consortium (RHRC) (web page). Gender-Based Violence: Facts & Statistics. Available online at http://www.rhrc.org/rhr_basics/gbvfacts.html (accessed on October 7, 2012).

¹⁴ In 1971, the first year when rape numbers were collected, 2,487 rapes were reported. 21,467 rapes were reported in 2008. NCRB Snapshots 1953–2008 (<http://ncrb.nic.in/>).

¹⁵ Another reason for doubting the accuracy of reporting rates is that marital rape is not considered rape. Rather, marital rape is handled as a civil matter, not a criminal one (Khan et al., 2008).

¹⁶ See section titled "Discussion," regarding resisting the impulse to over-attribute cultural attitudes as reasons for marginalization, and refusing to replicate a hegemonic and Western idea of "backwardness."

consistent reporting of courtroom backlogs and frequent illegal publication of survivors' names and addresses may also influence the decision to refrain from reporting (Advani, 2005). Women may also delay reporting due to familial pressure or fear of loss of income. The stigma facing rape survivors is so strong that in addition to loss of income resulting from journeying to and attending trial sessions, women may also lose jobs. In an attempt to remedy this situation, legislation mandating compensation for rape survivors has been in effect since 1995 and Section 357A of the amendment to the Code of Criminal Procedure, 1973 (CrPC) enacted in 2008 calls for each district to formulate its own plan to compensate rape survivors whether or not a trial takes place (Jagadeesh, 2010).

Another factor contributing to nonreporting of rape is the lamentable fact that "Indian police are infamous for being perpetrators of sexual violence rather than protectors from violence" (Prasad 1999, 499). While the increase in the number of reported rape cases might be interpreted as an indicator of women's empowerment and increasingly woman-centric laws, the rising reporting rate for rape juxtaposed with the reality that most rapes are *not* reported should instead hint that social stigma and ineffective policing means that women appear to be targets of sexual violence at a rapidly increasing pace (The Prajnya Trust, 2009).

Filing a First Information Report (FIR)

Re-victimization is possible and probable as rape survivors in India negotiate the legal system. Although an estimated 70% of rape survivors do not report to the police, many survivors who do report their assault to the police are unable to convince the officer to file the FIR necessary to proceed through the system: "the FIR is the first written account of the events and circumstances of the alleged crime. Although it is not used as evidence, both the prosecution and the defense view it as a valuable legal document" (Prasad, 1999). Often, when a rape is reported to the authorities, the incident may be "unfounded" or remain unfiled due to a lack of what police might consider solid evidence (such as obvious physical injury to a rape victim) or the circumstances may simply not be considered a "cognizable offense" (Bhattacharya, 2009; Kahol, 2010). Since most incidents of sexual assault are perpetrated by an individual known to the survivor, since survivors tend to delay in reporting, and since there is often no sign of physical trauma, the myth of the perfect rape victim often stands in the way of effective police response to the typical survivor.

Those survivors who are taken seriously by the police have their version of events documented in a FIR. According to The Code of Criminal Procedure (Amendment) Act of 2006, Section 157 of the CrPC, the recording of the statement of the victim shall be conducted at the residence of the victim or in the place of her choice and, as far as practicable, by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality (Jagadeesh, 2010). Unless a survivor has first visited the hospital of her own volition,^{17,18} at this point in the process survivors are taken to a hospital for forensic evidence gathering where opportunities for re-victimization abound. Although these tests are not a legal necessity, proving a case with the survivor's testimony alone is difficult, if not impossible, since lower courts retain outdated legal practices in spite of rulings from the higher courts.

In order to reduce the number of police investigations that stagnate for months, an amendment was added to section 173 of the Criminal Code mandating that where an offence falls under sections 376 or 376A to 376F of the Indian Penal Code concerning rape of a child, the investigation shall be completed "within three months from the date on which the information [relating to the commission of offence] was first received by the officer in charge of the police station" (Section 173 CrPC [Amendment] Act 2008).

A 1994 Supreme Court decision: *Delhi Domestic Working Women Forum v. Union of India and Others*, Jt 1994(7) SC 183, ordered the provision of appropriate legal representation and assistance to complainants of sexual assault cases at the police station and in courts. As the *Lawyers Collective MéRE Report* (2008, p. 67) explains:

Access to court requires a high degree of awareness of rights, knowledge of law and, frequently, money power to hire legal counsel. However, while women of the upper class can afford such direct access to court through their privately hired lawyers, this is not true for all classes of women.

The decision stipulated that advocates should be appointed by the court upon application by the police in order to ensure questioning of survivors without excessive delay.

¹⁷ See National Commission for Women (2010).

¹⁸ See the amendment in 2000 allowing the survivor to first visit a hospital before filing the FIR.

The Forensic Examination

In cases of very young girls—girls below [age] 12 or 13—they [police officers and hospital staff] believe it is a case of sexual abuse. But if they are older, then they believe that the girl is trying to falsely frame someone. Their belief changes the way they address the survivors. They are very rude and disrespectful. They will say things like, "Why are you crying?" "You have only been raped." "You are not dead." "Go sit over there." And order them around.¹⁹

Before the Supreme Court mandated that a rape survivor's testimony was enough to convict a rapist (Mahapatra 2007; Hindu 2006),²⁰ the prevailing opinion in the lower courts was that "medical evidence corroborates a woman's testimony and proves an injury could have happened in the manner alleged, [so] the judiciary [relied] heavily on medical evidence to prove rape" (Bakshi, 1993, p. 47). Even though, according to the law, a survivor's testimony should indeed be enough, the reality is that it is nearly impossible to convict in cases of rape without medical evidence. For example, according to Human Rights Watch (2010, p. 19):

Under Indian criminal law, the prosecution can secure a conviction on a rape charge based solely on the testimony of the rape survivor, provided the testimony is cogent and consistent, inspiring confidence. The law does not require corroboration by forensic evidence to secure a conviction. In theory, it is legally relevant but not essential. However, prosecutors and lawyers have told Human Rights Watch that in practice, judges and the police give significant weight to forensic evidence, and it can influence whether a conviction is secured.

Outdated judicial attitudes that assume women consent to sex without force make it extremely difficult for lawyers to prove rape without physical evidence indicating force (D'Souza, 1998; Prasad, 1999). One example of an outmoded and archaic pseudo-forensic practice is the so-called "finger test" (Human Rights Watch, 2010). Although the Supreme Court's 1994 decision noted: "the factum of admission of two fingers could not be held to be averse to the prosecutrix,"²¹ many medical practitioners continued to

¹⁹ Phone interview with Dr Rajat Mitra, Director, Swanchetan, New Delhi, May 25, 2010. See also Human Rights Watch (2010, p. 16).

²⁰ Man convicted of rape without proof. Dhananjay Mahapatra, *Times of India*, 2007. See also: Victim's testimony is enough for conviction for rape: court. *The Hindu Online*, 2006.

²¹ See also, *Narayanamma v. State of Karnataka with State of Karnataka v. Muniyappa and Others*.

perform this test. Since women are often instructed that noncompliance with this test may cause the police to disbelieve their claim of rape, many feminist scholars consider this unwanted medico-legal intrusion as another form of sexual assault forced on the woman by the state (Baxi, 2005).

Because it is recognized that medical evidence acquired as soon as possible after an assault contributes to a more successful prosecution, the Supreme Court ruled in 2000²² that a survivor's need for medical examination constituted a "medicolegal emergency" and allowed a rape survivor to seek medical services before filing an FIR (Jagadeesh, 2010). While this ruling meant that rape survivors could now proceed directly to a hospital for a forensic examination, many doctors' confusion about the law have led them to refuse to examine rape survivors without an FIR, as was standard procedure in the past (Jagadeesh, 2010).

Legislation meant to provide a safe environment for the rape survivor and ensure rape conviction continues to be drafted. In 2009, the Delhi High Court mandated the Sexual Assault Forensic Evidence (SAFE) collection kit as the standard: "a sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals" (by order dated April 23, 2009).²³ In addition, an amendment to Section 53(2) of CrPC through the Code of Criminal Procedure (Amendment) Act of 2005 was interpreted as calling for female doctors to examine rape survivors. Unfortunately, this meant that a dearth of women doctors, especially in rural areas, created a situation where rape survivors faced even longer waits for the forensic examination (Jagadeesh, 2010).

The Criminal Procedure Code (Amendment) Act of 2005 introduced specific sections for medical examination of victims of rape. Section 164A of the CrPC stipulates that it is essential to gain a woman's consent to the forensic medical examination at every step of the process and that no one (not even the Court) may force her to undergo the examination. In addition, the amendment reinforces the right of a rape survivor to seek care at a hospital first rather than report to the police station (Human Rights Watch, 2010; Jagadeesh, 2010).

²² *State of Karnataka v. Manjanna*.

²³ Order of Chief Justice Neeraj Kishan Kaul made pursuant to the order dated September 10, 2008, by the Delhi Commission for Women.

The Trial Process

Rape is an experience ... which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behavior and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings.²⁴

Although rape survivors may undoubtedly suffer psychological trauma during the reporting and evidence collection stages of a rape case, it is often thought that the rape trial itself is the most brutalizing experience for survivors who manage to reach this point of the judicial process.²⁵ According to Singh (2004, p. 73):

In a recent judgment reported as *Delhi Domestic Women's Union V. Union of India* (1995(1) SCC 14), the Supreme Court has analyzed the defect of the existing system. It has been found that the complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in the court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stressed to suffer as a result of the rape itself.

Lack of sensitivity by judges, prosecutors, and defense attorneys can bring about secondary victimization, according to Mittal (2004, p. 44):

[The] agony of a victim of grave and sexual abuse does not end with the offense. The victim or witness is a woman or may be a young girl child whose sensitivities are brutalized by the torture of facing hostile cross-examination at the hands of an aggressive defence counsel.

Although survivors are allowed to retain their own lawyers in order to assist the prosecution with their case, many survivors are not aware of this right, and some who may be aware of this right may not have the financial means available to engage sufficient counsel (Lawyers Collective, 2008; Mukherjee, 1998). Although the law mandates free legal aid be made available to rape

²⁴ *Delhi Domestic Working Women Forum v. Union of India and Others*.

²⁵ Although we did not discover reliable data documenting exactly how many reported cases of rape go so far as the courtroom, this would be extremely useful information.

survivors, it is difficult to determine whether this is the reality across India, particularly in rural areas and underprivileged urban neighborhoods. When legal aid is available, the advocates are reportedly overworked and underpaid, often resulting in negligent legal assistance (Advani, 2005). The Delhi Commission for Women in India's capital city coordinates a "rape cell" that is focused on providing services to rape survivors, including free legal aid (Delhi Commission for Women, n.d). Other cities across India offer similar advocacy services for women²⁶ (Gangoli, 2007).

Time is another factor that can create trauma. Estimates of how long it takes for rape cases to proceed from reporting to ruling vary. Survivors who see their cases brought to court often wait an average of three to five years in order to even see the case go to trial (*Times of India* 2010). Also, delays in the criminal justice system can potentially create a lapse of 5 to 10 years between rape and court date, making justice difficult for women to achieve (Agnes, 1995; Nussbaum, 2002). Recent rulings mandate fast track courts for rape cases but the preexisting backlog of cases means that this law cannot be executed (Jagadeesh, 2010). The *2008 Lawyers Collective Second Monitoring and Evaluation Report (M&E Report) on the Protection of Women from Domestic Violence Act of 2005* (Lawyers Collective, 2008, p. 69) asserts:

The chronic delays in justice delivery in India are a well-known fact. These delays are not necessarily due to the lack of an adequate number of judges, as is popularly believed, but rather—and more troublingly—because a culture of impunity has set in to the system. A judge may remain absent without any prior notice to the litigant, making repeated visits to the court an unavoidable nightmare. Time truly stands still in an Indian court and all the players have resigned themselves to this situation. This is devastating when the call to justice is being made by the need for anticipatory relief.

The amendment of 1983 to Section 327 of the CrPC mandated *in camera* inquiry and trial for rape under Sections 376, 376A, 376B, 376C, or 376D of the IPC, but this layer of privacy was not considered enough to assuage the trauma of rape survivors (Jagadeesh, 2010). The 2008 amendment to Section 327 of the CrPC calls for *in camera* trial with a woman judge where practicable. Although conducting an *in camera* inquiry and trial is a protective decision, the condition of a woman judge is a potentially harmful path. As mentioned previously in this chapter, assuming that women judges

²⁶ The Socio Legal Aid Research & Training Centre (SLARTC) located in Kolkata, India, has been in operation since 1982 and is active in the eastern and northeastern parts of India, in addition to Bangladesh, Nepal, and Pakistan. www.slartc.org.

will immediately be more sensitive to rape victims essentializes gender and assumes an untenable universality of experience (Gangoli, 1996; Kapur, 2005; Pillai, 1999).

Other attempts to smooth the trial process for rape survivors have met with mixed results. Rape shield laws are meant to protect survivors, but newspapers often print stories with the survivor's full name (Advani, 2005; Balakrishnan, 2009). For example, according to Advani (2005):

In the Ahmedabad rape case, Bijal Joshi, the victim left a suicide note stating that the publication of her photograph, the disclosure of her name and address by the media had made it impossible for her and her parents to lead a life of honour. The present day trend of sensational reporting and the televised dramatic presentation of the crime is an aspect that needs to be deliberated upon by the media itself.

Before 1990, a rape survivor, at trial called a "prosecutrix," was considered a witness to the crime. At this point, rape laws benefited the offender more than the survivor (Gangoli, 1996) since the rape victim had to prove that she did not consent. Brutal cross-examinations of the survivor ensued and forensic evidence was often the only way for a survivor to "prove" that she did not consent. The 1990 ruling by the Supreme Court in *State of Maharashtra v. Chandraprakash Kewalchand Jain* altered the status of the survivor from witness to victim:

A prosecutrix of a sex-offense cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. ... If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration.

Since this decision, the Supreme Court has ruled, time and time again, that the evidence of a rape survivor requires no corroboration.²⁷ In 2002, Section 155(4) was deleted from the Indian Evidence Act, 1872, removing the prosecutor's power to cross-examine a prosecutrix regarding her sexual history. Provision 146 was added to reinforce the concept that the prosecution is not permitted to question the survivor about her general moral character.

²⁷ See *State of Himachal Pradesh v. Raghubir Singh*, 1993 (2) SCC 622; *Vijay @ Chinee v. State of Madhya Pradesh* 2010 (7) SC 502; *Santhosh Moolya v. State of Karnataka*.

Discussion

Women in the postcolonial world are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West. In the end, the focus on the victim subject reinforces the depiction of women in the postcolonial world as perpetually marginalized and underprivileged, and has serious implications for the strategies subsequently adopted to remedy the harms that women experience. It encourages some feminists in the international arena to propose strategies which are reminiscent of imperial interventions in the lives of the native subject and which represent the "Eastern" woman as a victim of a "backward" and "uncivilized" culture (Kapur, 2005, p. 99).

Sexual violence affects individuals and communities regardless of caste, class, age, education, economic status, location, gender, and employment. It is critical to note that rape is not a private affair but a public health concern since the effects of violence impact the community at large. On a macro-level, Indian society's attitude toward sexual violence and toward survivors must change. Awareness about rape myths must increase and literacy programs must be initiated, especially among underprivileged and overlooked populations such as the Scheduled Castes and Scheduled Tribes. These actions will create momentum toward a positive attitudinal shift.

Male victims of sexual assault must be considered when passing new legislation and male allies must be sought at the level of primary prevention. Non-penetrative forms of sexual violence are not given much weight in the IPC, and men and young boys are currently excluded from rape laws. Sodomy laws are used in their place, creating a layer of social stigma for a male survivor who wishes to file an FIR.

Before initiatives are taken to promote a broad, inclusive, and comprehensive human rights approach toward sexual violence in India, it is important to acknowledge the equal importance of increasing sensitivity toward survivors and awareness of the consequences of rape for communities. Secondary victimization of rape survivors remains an overlooked area in research. For instance, we found no data describing survivors' detailed reflections about their post-rape first contact experiences with family, medical practitioners, and the police. An extremely limited number of in-depth studies explore the Indian justice system's response to survivors of rape. More research on the topic would provide better information for survivor advocates and legislators.

To protect survivors of sexual assault in India from secondary victimization, more must be done to prevent the social stigma accompanying court procedures. First and foremost, the court system must show sensitivity to the survivors of various forms of sexual violence by improving the judicial process.²⁸ Inordinate delays create stress for the survivor, and women who are lower on the economic scale and who are less educated may not be able to easily negotiate the legal system due to lack of access to a lawyer (Lawyers Collective, 2008). Although the 2008 Amendment has decreed shorter trial periods for rape cases, finding ways to effect this change in the backed-up lower court system would be a useful next step.

In conclusion, we recommend:

1. More widespread sensitivity training for police, prosecutors, and judges (Menon, 1999).
2. Legal literacy workshops for police, prosecutors, and judges.
3. A plan for fast tracking of trials for cases of sexual violence (as mandated by law).
4. Recognition of the urgency of including males as allies in the fight against sexual violence.
5. Updated rape laws that expand the current definitions and include men and boys as victims.
6. The formation of a stable network for action to create awareness about sexual violence.

Forging partnerships among state agents is a first step in creating a network for action. These partnerships will be more effective if educational institutions, corporate industries and other social organizations are included.

²⁸ The National Commission for Women has long advocated that the term "rape" should be replaced with "sexual assault," a more gender-neutral term that encompasses non-penetrative assault. The Cabinet approved language in late July 2012 that would widen the scope of rape law in India if approved by Parliament. The proposed changes in the Criminal Law Amendment Bill 2012 modify sections 375 and 376 of the IPC. Numerous changes have been put forth, including a sentencing increase from seven to ten years—with the possibility of a life sentence if the circumstances of the crime warrant such a penalty. A category termed "aggravated sexual assault" stipulates harsher punishment for those in positions of authority such as police officers and close family members. The recommended age of consent has been raised to 18 years. As this chapter goes to print, Parliament has not yet met to decide whether it will pass the items proposed by the Cabinet into law (*RashtraMahila*, 2012; *Times of India*, July 21, 2012; *News Track India*, July 20, 2012; *First Post India*, July 20, 2012).

Our findings indicate that sexual violence and secondary victimization can be lessened if government and civil sectors, media outlets, educators, and non-profit and grassroots community organizations work in conjunction to create awareness, promote sensitivity and empathy, and endeavor to provide a safe space for the survivors of sexual violence.

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Toward a Compliance Model: The Indian Supreme Court and the Attempted Revolution in Child Rights

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Abstract

The Juvenile Justice (Care and Protection of Children) Act, 2000, introduced a wide range of options: community placement, imposition of fines on parents, counseling to families of children in conflict with law, and nonpunitive treatment of juveniles. For example, the Act included noncriminal justice terminology; adoption of a child-friendly approach in the adjudication and disposition of matters concerning the best interests of children; and a strong emphasis on rehabilitation. Recent court reviews indicate, however, that many states have disregarded the Act's provisions. As a result, the Indian Supreme Court has directed all states to establish Juvenile Justice Boards and Child Welfare Committees, and that these boards and committees must be established within six weeks of the order. This chapter will review the Supreme Court's decisions pertaining to the Act between 2000 and 2010. These results shed light on the judicial monitoring of the states' compliance with the Act.

Introduction

This chapter addresses juvenile delinquency in India—its history and recent changes in the juvenile justice system, including government policies and legislations pertaining to children. It also discusses the controversies pertaining to the enforcement of those legislations, and the impact of state and Supreme Court decisions in shaping the current juvenile justice system. Finally, recommendations for meeting the goals and objectives of the juvenile justice system are provided.

Overview of Juvenile Crimes

The extent of delinquency in India is difficult to document because many cases go unregistered (Chakraborty, n.d.) and therefore one must rely on official statistics compiled by the National Crime Records Bureau (NCRB). The annual report, *Crime in India*, lists juvenile crimes under the Indian Penal Code, 1860 (IPC), juvenile crimes under special and local laws (SLL), and the distribution of those crimes by age groups and gender. The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJCPA) defines anyone under the age of 18 as a "juvenile."

The 2010 *Crime in India* report shows that a total of 30,303 juveniles were apprehended, and of those, 27,471 (90.7%) were under IPC crimes and 2,832 (9.3%) were under SLL (special local laws) crimes. In 2010, IPC-related offenses committed by juveniles decreased by 5% from 2009 (see Table 14.1). Although there was a decline in some categories of IPC offenses (e.g., dacoity [gang robbery], dowry deaths, arson, and riots), the highest increases were for criminal breach of trust (64.7%), culpable homicide not amounting to murder (40.0%), and kidnapping (32.2%). In contrast to juvenile arrests for IPC offenses, arrests under SLL decreased 40.8% in 2010 (see Table 14.2). The highest decreases were reported under the Dowry Prohibition Act, 1961 (93.2%), and the Public Gambling Act (71.6%). The greatest number of juveniles arrested for IPC offenses in 2010 were for theft, followed by hurt (i.e., assault) and burglary—these three offenses accounted for 49.8% of juvenile IPC crimes. Of the SLL crimes ($N = 2,832$), arrests under the Public Gambling Act, Prohibition Act, and Excise Act accounted for 36.7% of juvenile arrests (NCRB, 2010, pp. 131–138).

Table 14.1 Incidence and Rate of Delinquency under the Indian Penal Code

Year	Incidence of Juvenile Crimes	Total Cognizable Offenses	Percentage of Juvenile Crimes to Total Crimes	Rate of Crime by Juveniles
2001	16,509	1,769,308	0.9	1.6
2002	18,560	1,780,330	1.0	1.8
2003	17,819	1,716,120	1.0	1.7
2004	19,229	1,832,015	1.0	1.8
2005	18,939	1,822,602	1.0	1.7
2006	21,088	1,878,293	1.1	1.9
2007	22,865	1,989,673	1.1	2.0
2008	24,535	2,093,379	1.2	2.1
2009	23,926	2,121,345	1.1	2.0
2010	22,740	2,224,831	1.0	1.9

Source: National Crime Records Bureau (2010).

Table 14.2 Juvenile Delinquency (Special and Local Laws) under Different Heads of Crime and Percentage Variation in 2010 over 2009

Heads of Crime	Number of Cases Reported		Percentage of Change
	2009	2010	
Arms Act, 1920	223	154	-30.9
Narcotic Drugs and Psychotropic Substances Act, 1985	61	82	34.4
Gambling Act, 1867	1,149	326	-71.6
Excise Act, 1944	465	249	-46.5
Prohibition Act	592	314	-47.0
Explosives & Explosive Substances Act, 1908	16	13	-18.8
Immoral Traffic (Prevention) Act, 1956	18	10	-44.4
Indian Railways Act, 1989	2	2	
Registration of Foreigners Act, 1930	14	38	171.4
Protection of Civil Rights Act, 1955	0	0	
Indian Passport Act, 1967	7	18	157.1
Essential Commodities Act, 1955	6	14	133.3
Terrorist & Disruptive Activities (Prevention) Act, 1987	0	0	
Antiquities & Art Treasures Act, 1972	0	0	
Dowry Prohibition Act, 1961	44	3	-93.2
Child Marriage Restraint Act, 1929	0	1	50.0
Indecent Representation of Women (Prevention) Act, 1986	3	0	
Copyright Act, 1957	19	21	10.5
Sati* Prevention Act, 1987	0	0	
SC/ST** (Prevention of Atrocities) Act, 1989	21	28	33.3
Forest Act, 1927	9	9	
Other SLL crimes	1,672	1,276	-23.7
Total of cognizable crimes under SLL	4,321	2,558	-40.8

Source: NCRB (2010).

Notes: (i) *Sati means self-immolation by a female.

(ii) **Scheduled Castes/Scheduled Tribes.

Details about the juveniles apprehended under IPC and SLL crimes by age groups and gender are presented in Tables 14.3 and 14.4. Of the 30,303 juveniles apprehended in 2010, 28,763 (94.9%) were boys and 1,540 (5.1%) were girls. Of the three age groups (7-12, 12-16, 16-18), the vast majority

Table 14.3 Juveniles Apprehended under IPC by Age Groups and Gender during 2010

IPC crimes	7-12		12-16		16-18		Total for All Ages	Total for All Ages	Total for All Age Groups Boys and Girls
	Years		Years		Years				
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	
Murder	8	2	220	17	573	27	801	46	847
Attempt to commit murder	12	0	159	10	436	23	607	33	640
Culpable homicide not amounting to murder	0	0	10	1	23	3	33	4	37
Rape	10	0	275	1	645	6	930	7	937
Kidnapping	6	4	121	22	404	32	531	58	589
Dacoity*	0	0	28	0	105	0	133	0	133
Preparation of dacoity	1	0	11	0	54	0	66	0	66
Robbery	6	1	206	1	474	1	686	3	689
Burglary	139	7	1,254	20	1,621	24	3,014	51	3,065
Theft (including auto theft)	212	26	2,224	82	3,414	106	5,850	214	6,064
Riots	14	4	396	42	1,058	50	1,468	96	1,564
Criminal breach of trust	0	0	14	0	16	2	30	2	32
Cheating	1	0	38	3	120	2	159	5	164
Counter feiting	0	0	3	0	9	0	12	0	12
Arson	4	0	29	1	39	2	72	3	75
Hurt	111	5	1,441	86	2,749	150	4,301	241	4,542
Dowry death	0	0	15	4	361	4	51	18	69
Molestation	6	0	190	2	398	2	594	4	598
Sexual harassment	2	0	40	0	153	1	195	1	196
Cruelty by husband or relative	2	9	40	36	120	96	162	141	303
Importation of girls	0	0	0	3	0	0	0	3	3
Causing death by negligence	2	1	40	0	176	1	218	2	220
Other IPC crimes	150	13	2,113	139	3,984	227	6,247	379	6,626

Source: NCRB (2010).

Note: *Dacoity means robbery by a gang.

Table 14.4 Juveniles Apprehended under SLL by Age Groups and Gender during 2010

SLL Crimes	7-12 Years		12-16 Years		16-18 Years		Total for All Ages, Boys	Total for All Ages, Girls	Total for All Age Groups, Boys and Girls
	Boys	Girls	Boys	Girls	Boys	Girls			
	Arms Act, 1959	0	0	37	0	126	1	163	1
Narcotic Drugs and Psychotropic Sub- stances Act, 1985	0	0	22	1	68	2	90	3	93
Public Gambling Act, 1867	4	0	59	2	359	2	422	4	426
Excise Act, 1944	5	0	85	6	170	15	260	21	281
Prohibition Act	2	0	50	6	228	46	280	52	332
Explosives & Explosive Substances Act, 1908	0	0	3	0	10	0	13	0	13
Immoral Traffic (Pre- vention) Act, 1956	0	0	0	1	1	8	1	9	10
Indian Railways Act, 1989	0	0	2	0	0	0	2	0	2
Registration of Foreigners Act, 1930	10	6	20	3	14	3	44	12	56
Protection of Civil Rights Act, 1955	0	0	0	0	2	0	2	0	2
Indian Passport Act, 1967	2	0	3	0	8	7	13	7	20
Essential Commodities Act, 1955	0	0	0	0	14	0	14	0	14
Terrorist & Disruptive Activities (Preven- tion) Act, 1987	0	0	0	0	0	0	0	0	0
Antiquities & Art Treasures Act, 1972	0	0	0	0	0	0	0	0	0
Dowry Prohibition Act, 1961	0	0	0	0	1	2	1	2	3
Child Marriage Restraint Act, 1929	0	0	1	0	0	1	0	1	1
Indecent Representa- tion of Women (Pre- vention) Act, 1986	0	0	0	0	0	0	0	0	0
Copyright Act, 1957	0	0	2	0	20	0	22	2	24
Sati Prevention Act, 1987	0	0	0	0	0	0	0	0	0
SC/ST (Prevention of Atrocities) Act, 1989	0	0	4	0	28	0	32	0	32
Forest Act, 1927	1	0	4	0	4	0	9	0	9
Other SLL crimes	122	17	439	37	676	61	1,237	115	1,352
Total of cognizable crimes under SLL	146	23	730	56	1,727	150	2,603	229	2,832

Source: NCRB (2010).

of juveniles (N = 19,253; 63.5%) apprehended were in 16–18 age group. Most of the juveniles apprehended for committing crimes (57.5%) in 2010 were either illiterate or had education only up to the primary level. An overwhelming majority (81%) of juveniles either lived with their parents or guardians; only a small percentage (5.5%) was homeless. Nearly two-thirds (62.6%) of these juveniles came from families with annual incomes up to ₹25,000 (US\$563 based on 2010 currency exchange rates), 24.1% came from families with income group of ₹25,000–50,000 (US\$563–1,126); 12.2% came from income group of ₹50,000–200,000 (US\$1,126–4,509); and 0.9% came from income group of above ₹200,000 (National Crime Records Bureau, 2010, p. 138).

Disposition of Juveniles Arrested in 2010

Of the juveniles arrested in 2010 (N = 30,303), 5.6% were either acquitted or released, 13.7% were released to the custody of parents after an admonition, 3.6% were fined, 18.9% were released on probation under the care of parents or guardians, 3.5% were sent to institutions, and 19.1% were sent to a special home (or institution) for juveniles. Slightly more than two-fifths (35.7%) were awaiting disposition. To understand the current philosophy of the juvenile justice system and its legislation, policies, and practices, it is important to know the historical and contemporary changes in the juvenile justice system. The following sections will provide a chronology of changes, including the judicial monitoring of compliance of various children's enactments.

Juvenile Justice in India

The history of the Indian juvenile justice system may be divided into six phases in terms of treatment of children, government policies, legislative developments, and judicial intervention: (a) Prior to 1773; (b) 1773–1850; (c) 1850–1950; (d) 1950–2000; (e) 2001–2010.

Prior to 1773

Historically, both Hindu law (*Manusmriti*) and Muslim law (*Shari'a*) had provisions for the maintenance and proper upbringing of children. It was the

parents' responsibility to provide such care and protection. If families could not provide such care, then someone in the community took care of children. According to Muslim law, whoever finds an abandoned child must take care of the child if he believes that not doing so would harm the child (Kumari, 2004). Hindu and Muslim laws made references to differential treatment of children. For example, according to Hindu law, a child who throws filth on the king's high-road should be reprimanded and clean the place, whereas an able adult must pay a fine and immediately remove the filth (Muller, 1886, p. 392). In Islamic law, there is a specific injunction prohibiting slaying of children (Marghnāni, 1870).

1773–1849

Between 1773 and 1850, India was dominated by the British East India Company, which began as a trading company in 1608. When the Company failed, the British government took control and placed India under the rule of a governor-general. During this period, reform movements gaining momentum in the West also affected India. Concerned with the plight of children, Krishna Chandra Ghoshal and Jai Narain Ghoshal approached Lord Cornwallis, then Governor-General of India, to establish a home for destitute children in Calcutta (now Kolkata), a major trading city. In 1843, the first "Ragged School" for orphan and vagrant children was established (Kumari, 2004). Its purpose was to reform juveniles arrested by the police, and to encourage work through apprenticeship.

1850–1919

The period between 1850 and 1919 saw the passage of special legislation concerning children and young people (Hartjen & Kethineni, 1996; Kumari, 2004; Sarkar, 1987). The first legislation to deal with destitute and delinquent children in India was the Apprentices Act, 1850. Children between the ages of 10 and 18 who were vagrants or had committed petty offenses were made to serve out their sentences as apprentices. The main goal of the Act was to divert children away from criminal influences and make them learn a trade so that they could earn a living (Mukundan, 2008). In addition to the Apprentices Act, the Indian Penal Code (1860), the Reformatory Schools Act (1876, 1897), and the Code of Criminal Procedure (1861, 1898) changed juvenile penal philosophy from punishment to reformation. Section 82 of

the Indian Penal Code, 1860 provided protection to children from criminal prosecution. Any child under seven years of age was exempt from criminal prosecution; children between 7 and 12 years of age could not be prosecuted if they had not attained sufficient maturity to understand the nature of their actions. The Code of Criminal Procedure, 1861 allowed for separate trials for juveniles under the age of 15 and required them to be confined in reformatories rather than adult prisons (Hartjen, 1995). The concept of a reformatory school for delinquent children came to fruition with the passage of the Reformatory Schools Act, 1876. The second Reformatory Schools Act (passed in 1897) dealt solely with the treatment and rehabilitation of offenders between ages of 7 and 15, but did not establish such facilities for girls or destitute children (Hartjen, 1995). The Code of Criminal Procedure, 1898 extended incarceration at reformatory schools for children up to age 18, and then mandated that they be placed on probation until they were 21 (Chakraborty, 2002).

1919–1950

From 1919 to 1950, two major reforms occurred in India's juvenile justice system due to efforts by the India Jail Committee (1919–1920), as well as the League of Nations's Declaration of Rights of Children. The Jail Committee recommended to the British government that it establish separate trials and institutions for children (Mishra, 1991). The Committee's efforts, and the League of Nations's Declaration, prompted Madras (now Chennai) (1920), Bengal (1922), and Bombay (now Mumbai) (1924) to enact Children Acts. Although the Madras Children Act was passed in 1920, the first juvenile court was not established there until 1939. In contrast, Bengal had a juvenile court in 1914 prior to the passing of its Children Act in 1922.

1950–2000

In 1960, the central government enacted the Children Act for the protection and care of children in areas designated as Union Territories, which were under the direct control of the central government (Chakraborty, 2002). India further strengthened its commitment to children with the National Policy for Children (1974), which formally declared the country's children as important assets. The government recognized that children's programs should find a prominent place in India's national development plans, which

included equal opportunity for all children, and which should provide equality and social justice. Some of the objectives included comprehensive health programs; proper nutrition; free and compulsory education up to age 14; protection against neglect, cruelty, and exploitation; revision of existing laws so that the best interests of children are given primary consideration; and strengthening family ties (Government of India, 1974).

By 1980, although many states had created their own juvenile laws, there was no uniformity in the application of laws—the procedures and treatment of juveniles differed from state to state. The need for uniform juvenile legislation for the whole country was discussed in various forums, including the Indian Parliament, but initially it could not be enacted because the laws pertaining to juvenile justice fell under the jurisdiction of the states. Although national-level discussions were going on, the Supreme Court's decision in *Sheela Barse v. Union of India and Others* (1986) had a significant impact on the passage of uniform juvenile justice legislation. In *Sheela Barse*, a social worker and a freelance journalist filed a public interest lawsuit in the Supreme Court challenging the detention of 1,400 children under the age of 16 in jails. The suit requested information on the existence of juvenile courts and special schools. The suit asked the Court to direct that local magistrates be appointed by the district judges to visit jails and sub-jails where children were housed to ensure their proper care, as well as to direct the State Legal Aid Board to appoint a counsel to ensure free legal representation for children accused of crimes. The Supreme Court stated that it is the right of citizens to bring action against those who infringe upon the fundamental rights of children. The Court then directed judicial magistrates (or appropriate judicial officials) to visit jails or sub-jails in their districts and report on the following (Kumari, 1984, p. 271):

1. the number of children detained in jails or sub-jails;
2. the charges against them;
3. whether the children remain in the same facility, or, they had been transferred; if transferred, how many times;
4. whether the children were produced before the Children's Court; if so, how many times;
5. conditions in jails;
6. whether children received legal aid; and
7. whether there were any observation homes/remand centers, and a juvenile court.

The Court also acknowledged that the children in jail are entitled to special treatment (Van Bueren, 1999), and recommended that Parliament should create uniform legislation that would be applicable to children throughout India. The Parliament used its power under Article 253 of the Constitution to make the juvenile justice system in India conform to the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice, an international obligation that India had agreed to abide by. As a result, the Juvenile Justice Bill was introduced in 1986 and the Juvenile Justice Act (JJA) was passed that same year (Kumari, 2004).

The JJA mandated for the first time the care, protection, treatment, development, and rehabilitation of neglected and dependent juveniles, and for the adjudication and disposition of delinquency cases throughout the country. The terminology used in the JJA was based on the Children Act, 1960, which was applicable only to territories under the central government's rule. The JJA developed separate procedures for juveniles accused of committing crimes and for those considered neglected and dependent children. Juvenile courts were established to handle girls under 18 and boys under 16 accused of committing crimes; welfare boards were created to deal with neglected and dependent children (Kethineni & Klosky, 2000).

PROCEDURES UNDER THE JUVENILE JUSTICE ACT

The state governments were authorized to establish one or more juvenile courts to handle delinquent juveniles. The court would be represented by judicial or metropolitan magistrates, one of whom had to be appointed as a principal magistrate. The ultimate decision of how many magistrates to appoint was left up to the individual states. Any state wishing to establish a separate juvenile court must also have an honorary panel of two social workers, one of whom must be female (Kethineni & Klosky, 2000). The magistrates were required to have special knowledge of child psychology or child welfare.

Neglected or dependent children come before the juvenile welfare boards (JWB). Each board consists of a chairperson and as many other members as the states may see fit to appoint. Like the requirements of the members of the juvenile court, one of the board members must be female. All board members have the powers of either a metropolitan magistrate or judicial magistrate. In states where juvenile courts or JWBs were not established, the power to try such cases could rest with a district magistrate, subdivisional

magistrate, metropolitan magistrate, or a judicial magistrate of the first class. Any appeal from the juvenile court or the bench could be entertained either in the Sessions¹ Court or the High Court.²

The JJA provides that when a juvenile is accused of an offense and is arrested or detained by the police, he or she must be released on bail unless such release is considered detrimental to the juvenile in that he or she is likely to associate with known criminals, expose the juvenile to moral danger, or defeat the purpose of justice (JJA, 1986, p. 9). Appeals of denial of bail can be entertained by the High Court. The JJA specifies that the inquiry must be completed within three months, unless there are specific reasons for an extension.

JUVENILE INSTITUTIONALIZATION UNDER THE JJA

One of the primary goals of the JJA was to ensure that juveniles were not kept in jails along with adults before or after trial. Common correctional terms such as "lockup," "confinement," "detention," and "remand" have been replaced with terms such as "protection," "reception," and "treatment" (Mookerjee, 1989). In compliance with the goal of treatment, separate types of institutions were created: observation homes (pretrial detention centers), special homes (facilities for adjudicated delinquents), and juvenile homes (residences for neglected children). If the juvenile is not released on bail due to one of the reasons mentioned above, the arresting officer or the juvenile court should refer the juvenile to observation home or a similar place of safety (Menon, 1990). The observation homes also housed neglected and dependent children prior to the determination of their status by the JWB. Although the maximum length of stay in an observation home is not specified in the JJA, they are supposed to serve as temporary holding facilities for juveniles while awaiting trial or determination by the JWB. The JJA requires that all observation homes provide a basic standard of care (i.e., medical services, food and board, education) as well as occupational training.

Once the juvenile court makes the determination that the juvenile has committed an offense, the court may choose any of the following options:

1. Admonish the juvenile and release her or him.
2. Release the juvenile on probation, and place her or him under the care of her or his parents or guardians.

¹ The Sessions Court deals with criminal cases at the district (county) level.

² High Court is the highest court at the state level and it has both original and appellate jurisdiction.

3. Release the juvenile on probation and place her or him under the care of an appropriate institution for not more than three years.
4. Send boys over 14 and girls over 16 to special homes for not more than three years, or until they cease to be juveniles.

Sanctions that may not be imposed include the death penalty, imprisonment, or commitment to prison for failure to pay a fine. However, if a juvenile is at least 14 years old, has committed a serious offense, and the court is satisfied that the measures available under the JJA are not suitable, the court may order the juvenile be kept in safe custody in a place that it deems suitable (JJA, 1986, Section 22[1]).

In the case of neglected juveniles, the JWB may send a juvenile to a juvenile home until he or she ceases to be a juvenile. Appeals of either the juvenile courts' or the JWB's decision may be appealed to the Court of Sessions within the 30 days of the judgment. The progress of juveniles, whether they are sent to special homes or juvenile homes, is assessed periodically. In the case of juvenile delinquents, these assessments are done after they complete two-thirds of their sentences; if they qualify, they are released on license. Juveniles released on license must meet the conditions set forth by the judge or face further prosecution. Those who need assistance after they have served their sentences—and are not under court or formal supervision—can receive aftercare services. If juveniles have no place to return to, they may be referred to aftercare homes for assistance and possible accommodation (Janeksela, 1991). Aftercare homes are intended to assist youth with future employment and provide skills so that they can adjust to life outside the institutional setting. In addition, the JJA (Sections 53 and 54) recognized the need for an advisory board and appointment of personnel to visit institutions. The advisory board coordinates the activities of various agencies in the juvenile justice system, including developing services to meet the needs of juveniles, and mobilizing financial, material, and human services (Kumari, 2004, p. 134). The visitors, on the other hand, serves as spokespersons for the institutions as well as for the children housed in the facilities. The composition and structure of the advisory board and the nominations of the visitors were left to the state governments (Kumari, 2004).

CRITICISMS OF THE JJA

Several criticisms and concerns were raised regarding the JJA. First, it did not align with many international instruments, especially the Convention on the Rights of the Child. Second, the definition of "juvenile" (boys under age 16;

girls under age 18) was considered sexually discriminatory because there was no scientific reasoning, only the justification that girls needed longer protection. Third, in the Indian context, the distinction between neglected and delinquent juveniles is often muddled because the living conditions of many of these children are similar. Although there are provisions in the JJA that allow for the internal transfer of children from a juvenile court to JWB and vice versa, there are no clear procedural guidelines. According to Kumari (2004), in most cases, the police make the decision based on the circumstances in which the child was caught. Fourth, the individual rights of children were not protected. For example, children in observation homes had no right to appellate review of their placement (Van Bueren, 1999); neglected children were not given the right to an attorney under the rationale that they had not been arrested or tried for an offense and therefore had no need for an attorney, although the consequences of finding a child delinquent or neglected are much the same.

Juveniles were often not provided with copies of the rules governing their detention or a written description of their rights. Many children housed in these facilities stay there without knowing the purpose of their incarceration or the length of their institutionalizations (Pawar, 1993). The JJA guarantees a speedy trial, but in practice, it rarely occurred. The following is an example of a case that took nine years before the appellate court acquitted the accused. In *State v. Chanchu Hansda* (1999), a 14-year-old boy, along with 13 other adults, was accused of participating in the murder of Graham Staines, an Australian missionary working in India, and his two sons. While Graham and his sons were sleeping in a station wagon on January 22, 1999, a mob surrounded the vehicle and set it on fire, killing all of them. The killings were prompted by the rumors that Staines was involved in religious conversions. Chanchu was adjudicated in the juvenile court and was given a sentence of 14 years to be served in juvenile home. The case was appealed in the Additional District Court of Bhubaneswar, Orissa. After nine years, Chanchu was acquitted (Karan, 2008).

Fifth, the JJA states that the state governments "may" create or establish various agencies, but are not *obligated* to do so. In states that did establish separate "homes" for juveniles, many of them are overcrowded, with staff who are overworked and undertrained. Furthermore, the facilities are often in poor condition, and ill-equipped to meet the basic individual needs of juveniles (Pawar, 1993). Finally, many aftercare facilities have antiquated equipment, crumbling buildings, limited maintenance services, and lack resources needed for assisting juveniles in finding future employment (e.g., employment counselors with ties to the community).

INTERNATIONAL CONVENTIONS AND DOMESTIC POLICIES

Since the passage of the JJA and the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJCPA), several international conventions have recognized the rights of juveniles. The UN Convention on the Rights of the Child (CRC), which was passed in 1989, and took effect in 1990, laid the basic principles related to the treatment of children, stating that the best interests of children should be paramount in all actions undertaken by all institutions, courts, administrative bodies, and legislative bodies. In addition, it states that all state agencies shall respect the rights of children and take measures to make available resources that improve their economic, social, and cultural rights (Office of the UN High Commissioner for Human Rights, 1990). The UN Rules for the Protection of Juveniles Deprived of their Liberty were approved in 1990. The Rules emphasize the protection of juveniles' rights and the promotion of their safety and physical well-being. It also states that imprisonment should be used only as a last resort. Finally, the Rules state that they should be made available to juvenile justice personnel in their national language and that authorities should increase their awareness of the care of juveniles being detained and develop avenues for their return to society. At the same time, the UN Guidelines for the Prevention of Juvenile Delinquency (also called "the Riyadh Guidelines,") were adopted in 1990. The Guidelines recognized the need for progressive delinquency prevention policies, especially educational opportunities; stressed the importance of safeguarding the well-being, development, rights, and interests of young people; and emphasized community-based services and programs for prevention of delinquency.

In addition to the international conventions, guidelines, and rules, the Indian government passed several national policies and laws, e.g., the National Policy on Education (1986; modified in 1992), the Protection of Human Rights Act (1993), and the Child Labour (Prohibition and Regulation) (1986) Act for protecting children and providing educational opportunities. One of the significant initiatives taken by the Human Rights Commission was to conduct a nationwide review of the working conditions of custodial institutions.

Despite the child-friendly system created as a result of the JJA, there were numerous reports of gaps between goals and actual practice. In addition, the JJA lacked many of the principles set forth in the CRC. As a result, national conventions were held to discuss the unsatisfactory nature of the juvenile justice system and the Juvenile Justice (Care and Protection of Children) Bill was introduced in Parliament in 2000.

2000–2010

In December 2000, the Juvenile Justice (Care and Protection of Children) Act (JJCPA) was passed, and it came into effect on April 1, 2001, throughout India (except the northernmost state of Jammu and Kashmir). The objectives of the JJCPA are to protect, care, rehabilitate, and educate juveniles, and provide them with vocational training opportunities. The JJCPA emphasizes a welfare approach with the following measures:

1. Its inclusion of noncriminal justice terminologies (e.g., a child in conflict with the law is anyone under 18 who has committed an offense; a child in need of care and protection is one who has been neglected; arrest is replaced with "apprehension").
2. By defining the age of juvenile justice jurisdiction as below 18 years for both boys and girls.
3. With a strong emphasis on the rehabilitation and re-socialization of juveniles in conflict with the law.
4. By minimal formal intervention by the police and correctional authorities. The juvenile justice boards (JJBs) (previously juvenile courts) handle juveniles and child welfare committees (CWCs) (previously juvenile welfare boards) process children; a CWC and JJB must be created in each district (county) or groups of districts (counties).

In addition, the JJCPA stressed the involvement of voluntary organizations and encouraged their participation in the juvenile justice process, including allowing voluntary organizations to compile social investigation reports and run observation homes, juvenile homes, children homes, and shelter homes (Srinivasan, 2010). No juvenile in conflict with the law can be given a death sentence or a prison sentence for nonpayment of fine. A juvenile who is 16 years of age and has committed a serious offense may be sent to suitable place other than the special home.

For the first time, the JJCPA noted the need to create special homes for different age groups—girls above age 10, boys of 11–15, and boys of 16–18 years—in order to separate younger juveniles from more mature juveniles. These institutions must meet the UN Standard Minimum Rules for the Administration of Juvenile Justice (Chakraborty, n.d.).

The JJCPA also included additional procedural rights for juveniles, including bail irrespective of the nature of the crimes, fair trials, and a prohibition against institutionally imposed solitary confinement or corporal

punishment. As with adults, juveniles may be represented by attorneys of their choice as soon as they are taken into custody. If juveniles or their parents are unable to afford representation, then the courts must ensure provision of free legal aid. The JJCPA was challenged in Delhi High Court through public interest litigation and the High Court agreed that some of the provisions of the JJCPA needed revision. One of the provisions included that any juvenile apprehended by a special juvenile police or a designated police officer shall be produced before the JJB within 24 hours, except under special circumstances, e.g., additional time needed for travel to produce the juvenile.

Implementation of the Juvenile Justice (Care and Protection of Children) Act

Given the features of the JJCPA, one would expect widespread adoption and enforcement of its provisions to meet the legal and moral obligations toward children. National-level data on implementation of the provisions of the JJCPA, however, are not published systematically or regularly. Therefore, drawing definite conclusions concerning the entire population of Indian children in conflict with the law is impossible. This necessitated that we rely on local-level data, both official and anecdotal. Such evidence indicates that although certain provisions of the JJCPA have gained acceptance and are followed by Indian states, there are still significant shortcomings that require close scrutiny and proactive responses. The purpose of this section, therefore, is to create a composite picture of India's promise to enforce a just, meaningful, and dignified system of rehabilitation. This necessitates a careful analysis of the police's handling of juvenile delinquency cases, judiciary's actions concerning the age of juvenility (including decisions and the disposal of those cases), and, finally, the correctional issues that result from such cases. In doing so, the JJCPA's guiding principles of "the best interests of the child" and "the preservation of dignity" can be preliminarily evaluated.

Policing Issues with Children in Conflict with the Law

As with the adult criminal justice system, the police represent the first point of contact between children and the juvenile justice system. Several provisions of the JJCPA mandate, however, that special proceedings be held for children

in conflict with the law during the apprehension process. These include the right to be informed of the grounds of the arrest, the right to legal counsel, the right to be produced before the nearest magistrate within 24 hours of arrest, and the right to be released on bail with or without surety (provided the child's release will not expose her or him to any criminal, moral, physical, or psychological danger). Because of the risk of custodial violence, police personnel are advised to promote the well-being of the juvenile and avoid harm to her or him ("the Beijing Rules") (UN General Assembly, 1985). This explicitly forbids any form of police brutality against children. This applies not only to police, but also to personnel employed in observation homes, where juveniles may be held in pretrial detention.

As intuitive as these safeguards may seem, the implementation of these guaranteed provisions is not evident in all Indian states. Rickard and Szanyi (2010) describe an array of abuses by Indian police, most commonly false arrests and abusive interrogation tactics, many bordering on torture. Rickard (2008) reports several of these in detail, including tying children by wrists or with big toes tied together, placing rods between children's shoulders and beating the bottoms of their feet, and beating children for as long as 30 minutes to extract a confession. A shocking incident of Indian police brutality in Bhopal was caught on tape in 2010, as police savagely beat a 17-year-old student, mistaking him for an opposition party protestor. Despite his pleading and denial of involvement, police continuously beat him with *lathis* (clubs consisting of heavy sticks bound with iron) and ignored his pleas (*Times of India* 2010). To make matters worse, the police transported him to a jail instead of a juvenile home. Not only did this incident violate the JJCPA's provision against physical and mental abuse against children, but it also illustrates a blatant disregard for Section 10(1), which prohibits incarceration in a police lockup or jail. A recent evaluation of districts in Tamil Nadu also showed disregard for juvenile policy under the JJCPA. The study, released by Evidence (a Madurai-based nongovernmental organization or NGO), reported 179 cases registered against juveniles within a seven-month period in 14 districts of Tamil Nadu. Under the provisions of the JJCPA, the child welfare officer from the nearest police station was the only authority permitted to make arrests of children. It was noted, however, that police officers frequently used their own discretion and made random arrests (Krishnaswamy, 2010). In a sample of 73 of these juveniles, only 10 were delegated to the respective child welfare officers. Many child arrestees reported the following abuses at the hands of police officials: hanging by hands from beams and being beaten with *lathis*, trampling over legs with heavy boots, and beatings with bamboo poles by multiple officers.

The JJCPA stresses education and counseling for police officers who work with children and allows volunteers to work with police as a buffer against police brutality. The creation of the "Special Juvenile Police Unit" (introduced by Section 63) was proposed for the police who work with juveniles as a way of performing their function more efficiently through specialty training and instruction. Unfortunately, the role of social service agencies and other NGOs in implementing such training programs has been weak since passage of the JJCPA. Further, despite the egregious behavior of abusive law enforcement officials, little, if no, action has been taken against the police. These accounts may appear to be isolated incidents with little validity on how the JJCPA has been implemented. Vincentnathan (2006) maintains, however, that juvenile abuse incidents are widespread, and have been documented through statements by child-centered NGOs, press releases, opinion pieces, and letters to editors of newspapers.

The issue of bail for children in conflict with the law also presents a quandary for the Indian juvenile justice system. As noted earlier, the provision of bail is mandatory for children who have been apprehended by the police for criminal violations (Kethineni & Klosky, 2005), except in cases where the child's release would be likely to bring the child into association with "any reputed criminal or shall expose him or her to moral danger or where his or her release would defeat the ends of justice" (UNICEF, 2007, p. 48). The decision of bail resides with the JJBs, which are typically made up of one magistrate and two social workers, which, in general, do not follow the provisions concerning bail. Magistrates tend to grant bail to schoolchildren and those with parents who can provide surety, but less likely to allow bail to children of day laborers or to children where family members, other than parents, come to claim them (Rickard, 2008). A number of court cases (both at the trial and appellate levels) have examined the issue of bail as applied to juveniles. For example, in *Dattatray G. Sankhe v. State of Maharashtra and Ors.* (2003), Section 12 of the JJCPA was upheld, in that when it is found that the juvenile is involved in any criminal offense, and the normal rule would be to grant bail, the JJB is empowered to release the juvenile on bail unless it comes to the conclusion that by releasing the juvenile, she or he would come in contact with known criminals or that her or his life would likely be in danger. Though bail is mandatory, JJBs often cite the grounds of the severity of offense or fear of absconding—grounds that, although relevant to adult criminal cases, have limited applicability in juvenile cases. In addition, despite the fact that the JJCPA has eliminated the necessity of surety, JJBs continue to demand large sureties for bail. Given that many juveniles have no organizational support, they are frequently unable to find

a person to stand surety, and are thus denied bail. This leads to longer waiting periods in observation homes, despite the JJCPA's mission to release children as early as possible. In 2003, approximately one-third of juvenile cases were still pending by the end of the year (Rickard, 2008). The alarming number of delayed proceedings illustrates a disregard for proper bail provisions for children.

Legal Proceedings Concerning Age of Juvenility

The JJCPA afforded several rights to children in conflict with the law, which had a crucial impact on legal proceedings and final disposal of juvenile cases. Perhaps the most monumental change was the change of the age of juvenility, which was set at 18 years for both males and females. To date, the Supreme Court of India has been proactive in ensuring that state governments enforce this clause of the JJCPA. The first case since the passage of the JJCPA that addressed the age of juvenility was *Pratap Singh v. State of Jharkhand & Another* (2005). This case brought about an important amendment to juvenile legislature (i.e., the Amendment Act of 2006). The amendment stipulated that a juvenile in conflict with the law was to be defined as a "juvenile who is alleged to have committed an offense and has not completed eighteen years of age as on the date of commission of such offense" [3 SCC 551]. This important revision allows a claim of juvenility to be raised before any court and that such claims would be recognized *at any stage, even after final disposal of the case*. Moreover, this provision allows for the continuance of trials that had been in process prior to the passage of the JJCPA. In other words, the Act provided retroactive justice for children in conflict with the law. In *Mohan Mali & Another v. State of Madhya Pradesh*, the Supreme Court of India authorized the release of Dhanna Lal, a man who had been serving a life sentence in prison following a conviction for murder. The decision for his release derived from Lal's claim of juvenility at the time of his offense, which should have made him eligible for judgment under the JJCPA. Lal had been originally tried with two other defendants who were not juveniles at the time of the offense, in violation of Section 18 of the JJCPA, and he had been imprisoned for nine years following his conviction. The JJCPA proscribes life imprisonment for juveniles and established a maximum sentence of three years. In accordance with these rulings, Lal was found to have served the maximum sentence dictated by the JJCPA, and was released.

In a similar case, *Hari Ram v. the State of Rajasthan & Another 3* (2009), it was ruled that the only criteria necessary for determining the juvenility of

a person is whether, on the date of the offense, she or he was below the age of 18 or not. If that is the case, then she or he is to be treated as a juvenile, and the provisions of the JJCPA would apply to her or him. In this case, the appellant was also granted release. In *Arnit Das v. State of Bihar* (2005), it was ruled that hyper-technical approaches should not be adopted when addressing questions of claims of juvenility in trial cases. In this case, the accused did not present a claim to juvenility to the JJB at his earliest opportunity. This cast doubt as to whether the defendant was a juvenile. The Supreme Court ruled that a claim of juvenility could be raised at any time, provided evidence for such a claim is produced (usually in the form of school certification).

Correctional Contexts

Although the JJCPA was intended to foster a rehabilitation-oriented approach for the treatment of child offenders, the current correctional measures display a decided trend toward institutionalization (Desai, 2009). Lundman (2001) mentions the traditional reasons for the institutionalization of children, which hold that such incarceration is rehabilitative, reflecting the notion that children would be less delinquent if they received academic and vocational training in those institutions. As Rule 26 of the Beijing Rules dictates: "juveniles in institutions shall receive ... all necessary assistance—social, educational, vocational, psychological, medical and physical" (UN General Assembly, 1985). Although this altruistic agenda is spelled out in the preamble of the JJCPA, in general, juvenile institutions in India merely pay lip service to this philosophy.

When children in conflict with the law are denied bail, they are commonly institutionalized in observation homes for the duration of the pretrial period. Thus, in accordance with the JJCPA's mandate of a speedy resolution of cases (a maximum of four months is specified under Section 14), it is preferable for JJBs to hold its sittings at the observation home to prevent delays. It is hoped that the period of incarceration in an observation home would be as short as possible (Jaiswal, 2005; Kethineni & Klosky, 2005; UNICEF, 2007). The reality, however, is quite different. Observation homes are frequently filled beyond maximum capacity with children who have been denied bail. These are typically migrant children, without a familial or monetary support system. Due to the inordinate number of juvenile cases that undergo full formal processing (see Rickard & Szanyi, 2010), JJBs rarely dispose of cases within four months. As a result, children suffer long waiting periods in pretrial detention. Due to such long periods of incarceration, the JJCPA

emphasizes the importance of educational and vocational training within observation homes (Jaiswal, 2005). Such correctional programming, however, has not yet been created, due to the misguided belief that a child's stay in an observation home will not be a long one.

It should be noted that there are wide variations in the ethic of care that homes are expected to provide. Although some scholars have suggested that care, protection, and rehabilitation of juveniles in the homes (for both delinquent and neglected individuals) are mandated conditions of the JJCPA (Vincentnathan, 2006; Jaiswal, 2005; Winterdyk, 2002), others have found a degree of ambiguity when determining what qualifies as successful implementation of these principles (UNICEF, 2007). In keeping with the JJCPA's goal of providing children with rehabilitative care, institutionalized children in India are guaranteed certain rights and safeguards, the most basic of which ensures children will not undergo physical, sexual, or emotional abuse during incarceration. Recently, many special homes (for children in conflict with the law) and children's homes (for children in need of protection) have come into the spotlight for particularly heinous treatment of juvenile residents.

Recently, a home for mentally ill children, *Satkarma Balgriha*, located at Shahpur in Thane district of Maharashtra, came under investigation by the Mumbai High Court. Over a three-month period, five children died due to malnutrition and the extraordinarily unhygienic conditions of the facility. In addition, subsequent allegations of sexual abuse involving two female inmates were revealed, one of whom suffered severe post-traumatic stress disorder. A division bench of Chief Justice Mohit Shah and Justice D. Y. Chandrachud of Bombay High Court remarked: "It would be necessary to note that many of the salutary provisions, which have been made in the Act, have not been implemented by the state" (Kothari, 2010a). In September 2010, the Asian Centre for Human Rights filed a petition with National Committee for Protection of Child Rights in response to atrocious physical and sexual acts inflicted on child inmates at the Berhampur Observation Home. A report noted that "juveniles in the Berhampur Observation Home in Orissa are routinely subjected to violence that constitutes torture and other forms of ill treatment while younger ones are routinely subjected to sexual abuse both by the staff and adult inmates" (*Oneindia.com*, 2010). Further inspection also revealed the Home to have only one working toilet, two bathrooms, and 40 poorly maintained beds for 88 residents. Finally, evidence showed that different categories of children (e.g., children in conflict with the law, children in need of protection, orphans) were housed together in the Home, even though the JJCPA mandates the segregation of children in need of protection versus children in conflict of the law (Kumari, 2004).

Asha Bajpai, a senior professor at the Tata Institute of Social Sciences, stated, "there is a need for proper review of the licensing system for children's homes. ... It is important that people working in such establishments are fully capable of catering to the special needs of the children" (Kothari, 2010b). Unfortunately, this "proper review" (i.e., social auditing) is only required at children's homes, and not at special homes or observation homes. Given the abuses that occur in children's homes, where social auditing is supposedly being conducted, the horrific acts that occur in unmonitored facilities are likely even worse in terms of severity and frequency.

Technical Issues with Implementation

One commonly cited reason for minimal implementation of the provisions of the JJCPA is the lack of funds necessary to execute the territorial operations and widened utility of adjudicatory bodies (e.g., JJBs) and various juvenile institutions (Kumari, 2004). In September 2010, the Mumbai High Court ruled that the state must establish district advisory boards, as well as child protection units and inspection committees. This ruling directed the state government to take assistance from UNICEF in order to implement the compulsory provisions of the JJCPA (Kothari, 2010a). UNICEF has expressed complete willingness to provide assistance in helping state governments properly implement provisions of the JJCPA. If more state governments become willing to accept the help of UNICEF and other global justice organizations, it is likely that we will see more widespread implementation of the JJCPA.

Another major reason for the significant lag between passage of the JJCPA and enforcement of its provisions is the lack of empirical research on macro-level implementation. In the past 10 years, there has been little research examining the measures undertaken for children in conflict with the law—specifically, in examining the strengths and weaknesses of JJBs, the efficiency of juvenile courts, and rehabilitative, vocational, and educational programming for offenders. Without frequent monitoring of these measures, it becomes impossible to determine if these measures are effective and if they are conducive to the goals and provisions of the JJCPA. Not only is it crucial for state governments to engage in such evaluative research, it may also be beneficial for states to study the juvenile justice systems of other nations. Such research may provide insight on recent developments in juvenile justice policy and provide a general idea of "what works" in juvenile rehabilitation. In a comparative study of Goa and Singapore, Desai (2009) found that Goa's juvenile justice system was functioning on a miniscule scale compared

to Singapore, which provides a remarkable continuum of multi-agency programs, including preventative, educational, guidance, and counseling at individual and family levels. One program in particular, Project HEAL, facilitates victim-offender dialog's (including discussions on restitution and compensation), community service, and reformatory training for chronic offenders. These measures could serve as an appropriate model for India. The role of NGOs in conducting evidence-based research could also prove invaluable to the study of the implementation and execution of provisions.

Discussion

The JJA was a comprehensive, national law that created a legal framework to address the plight of juveniles who have committed crimes or are neglected. At the core of the several provisions of the JJA (e.g., separation of institutionalized children from institutionalized adults, the utility of a welfare model as opposed to a punitive model) lies the ultimate goal of rehabilitation. In addition, the JJA introduced a range of dispositional options for both delinquent and neglected children, including noncriminal justice terminology, a child-friendly approach in adjudication and disposition, separate procedures for handling neglected and delinquent juveniles, separate institutions to house delinquent and neglected juveniles, and an emphasis on rehabilitation. Because of noncompliance issues and the lack of enforcement of some of the important provisions, lawsuits have been filed in several state courts as well as the Indian Supreme Court. The courts found that many states disregarded the provisions set forth by the JJA, including housing juveniles in adult jails. As a result, the Indian Supreme Court passed orders directing that children be released from adult jails.

In order to meet UN standards and improve the status of children, the JJCPA was passed. The JJCPA was an attempt to revolutionize juvenile justice policy in India. At the heart of the Act are the ideals of care, protection, treatment, and rehabilitation. Among the expected results were proper training for reformation and resettlement into society, protection against moral danger and exploitation, and the all-around development of good moral character so that juveniles would not continue on a trajectory of adult criminality. These guidelines, though seemingly intuitive and simple to craft and execute, have displayed significant shortcomings since the Act's passage, particularly when one examines the brutality and egregious behavior of police and correctional officials. In light of the blatant disregard for the JJCPA's terms, India has recently come under public scrutiny for undermining the

provisions of the JJCPA and failing to make changes in existing juvenile justice structures, including police authorities, adjudicatory bodies, and institutional settings. The following quote from Rickard and Szanyi (2010, p. 112) summarizes the status of the Indian juvenile justice system:

The recent reforms to India's juvenile justice system hail a new commitment to the country's international obligations to its children and a change in the philosophy guiding the treatment of some of India's most marginalized youth. However, there is evidence that these reforms have yet to trickle down to the local level where they would actually have real impact on the children in the system. For many of India's children, therefore, the promise of a more just and equitable system remains elusive.

Shantha Sinha, Chairperson of the National Commission for Protection of Child Rights, states, "Childhood only comes once. Denying children of their basic entitlements has lasting implications for them and the society at large" (National Commission for Protection of Child Rights, 2010, p. 1). Not until state governments (or, possibly, the central government of India) begin to effect meaningful changes in the existing infrastructure of the juvenile justice system will the plight of children in conflict with the law finally be remedied. Accountability of juvenile justice personnel, including police, probation officers, members of the judiciary or adjudicatory boards, is often overlooked. For example, periodic review of police performance in juvenile cases will bring to light mistreatment of juveniles in police custody. In addition, clarifying the role of probation officers will enable them to provide timely assistance. The adjudicatory bodies should also be aware of shortcomings in the system so that they can provide guidance to other juvenile justice personnel. Implementing evidence-based practices, fostering a system of accountability, enlisting the help of NGOs and global justice organizations, and, most important, judicial monitoring of the enforcement of the provisions of the JJCPA will remedy the current problems.

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Plea Bargaining: A New Law Adopted by the Indian Criminal Justice System

Mathai Vairamon Mathew

Abstract

A provision enabling defendants to plead guilty to ensure a lesser sentence was adopted by the Indian government as a new law in the criminal courts after considering the popularity of plea bargaining in the US. This concept was introduced into the Indian criminal justice system (despite opposition from the Supreme Court) through the Criminal Law (Amendment) Act in 2005. By this amendment, a new chapter, XXIA, was added to the Code of Criminal Procedure, 1973. Plea bargaining is defined in this chapter as pre-trial negotiations in a criminal case between the defendant through his or her counsel and the prosecution, during which the accused agrees to plead guilty in exchange for lesser punishment from the court. It is applicable only for those offenses for which the punishment of imprisonment is up to a period of seven years. This new law does not apply to all criminal offenses. This chapter explores the history, types of plea bargaining, salient features, advantages, disadvantages, and criticisms in the implementation of plea bargaining by criminal courts in India.

History

The origins of plea bargaining are obscure. One of the earliest indications of plea bargaining was a 1485 English statute, which authorized prosecutions for unlawful hunting before the justice of the peace (Palmer, 1999). It is therefore

not a new notion. When an accused honestly pleaded guilty in ancient times, in some cases, he or she received lesser punishment from the king or other authorities. For example, in 1633, the astronomer Galileo accepted house arrest from the Inquisition in exchange for reciting penitential psalms weekly and recanting the heresy of Copernicus. Only occasional incidents of plea bargaining have been reported prior to the 19th century, and recorded in the judicial history of the West and East. Plea bargaining is common in England, Australia, Canada, and most other nations of the British Commonwealth. In 1967, in the midst of high criticism, both the American Bar Association and the President's Commission on Law Enforcement and Administration of Justice approved the concept of plea bargaining. In 1970, the constitutional validity of plea bargaining was challenged in *Brady v. United States* and the court readily acknowledged that it was not unconstitutional to extend a benefit to a defendant who in turn extends a benefit to the state. In *Santobello v. New York*, in 1971, the court described plea bargaining as an essential component of the administration of justice and that properly administered plea bargaining should be encouraged. In the American legal system, there are essentially three types of pleas: guilty, not guilty, and *nolo contendere* or no contest. In the US, plea bargaining has proved to be highly problematic. In some common law countries, such as England and Wales, and Australia, plea bargaining is permitted only to the extent that the prosecutors and the defense can agree that the accused will plead guilty to some charges and the prosecutor will drop the remainder. Thus, no bargaining occurs on the penalty and the courts make that decision independently.

"Plea bargaining must be seen as a cooperative venture between two parties, each with limited knowledge, attempting to piece together an acceptable picture of criminal reality" (Matheny, 2004, p. 445). The use of plea bargaining in the US stems back to the period after the Declaration of Independence. It is widely prevalent in the US and Europe, and helps expedite the legal process. The plea bargain was a prosecutorial tool used only episodically before the 19th century. In America, since the 20th century, courts have accepted plea bargaining as an important part of the criminal justice process (Shelden & Brown, 2003). An estimated 96% of convictions are reconciled through a guilty plea in the plea bargaining process in America before actually proceeding to the trial phase in any given year (Reaves, 2001). However, plea bargaining was frowned upon by justice system officials and, as a result, only a small percentage of cases were resolved in this manner in early American history (Gabbidon & Greene, 2009). It is America's well-established practice that inspired India to experiment with the concept of plea bargaining.

Plea bargaining in neighboring Pakistan was introduced through the National Accountability Ordinance, 1999, as an anti-corruption law. As per this law, an accused who applies for pleading guilty will be asked to return the proceeds of corruption as determined by the investigator or prosecutor. Several countries have incorporated plea bargaining into their criminal justice systems. However, these countries also have functioning justice dispensation systems, where investigating agencies and the courts have sufficient safeguards to prevent gross miscarriages of justice.

The Supreme Court of India was against plea bargaining before its introduction. In 1980, the Supreme Court in *Kachhia Patel Shantilal Koderal v. State of Gujarat and Another* held that negotiation between the wrongdoer and the aggrieved party or with the state was unconstitutional and illegal, terming it to be against public policy. The idea of a plea bargain is to avoid expensive, unpredictable trials and the potential for harassment in all small and medium crimes where the harm to society is relatively small. In 1980, in *Kasambhai v. State of Gujarat*, the Supreme Court of India resisted a plea of guilt based on plea bargaining as it would be opposed to public policy if an accused were to be convicted by inducing him to plead guilty by holding out a light sentence as an allurements.

This was evident in the decision made by the court in *State of Uttar Pradesh v. Chandrika* in 2000. In this case, the apex court held that it is settled law that a court cannot dispose of criminal cases on the basis of plea bargaining. The court has to decide cases on their merits and an appropriate sentence should be given to the accused even if he or she pleads guilty. The mere acceptance or admission of guilt should not be grounds for reduction of sentence. However, in *State of Gujarat v. Natwar Harchanji Thakor*, the Gujarat High Court observed in 2005 that the very object of law is to provide easy, cheap, and expeditious justice by resolution of disputes, including the trial of criminal cases and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, therefore, fundamental reforms are inevitable. The court also recognized the concept of plea bargaining as an alternative measure of redress to deal with huge delays in the processing of criminal cases.

The centuries-old legal system operating in India is currently in a mess, for which lawyers, investigating agencies, judges, and politicians may all be blamed (Sirohi, 1983). There are over 10 million criminal cases pending in the courts (Alexander, 2002). Thus, plea bargaining was introduced in India due to prolonged trials and many cases that had piled up over the years. In 1976, Supreme Court Justice Bhagwati observed in *Thippaswamy v. State of Karnataka* that it would clearly violate Article 21 of the Indian Constitution

to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly. In 1981, the Supreme Court in *Kadra Pehadiya v. State of Bihar* held that it is shameful for India's adjudicatory system to keep people in jail for years without a trial. The state, as the guardian of the fundamental rights of its citizens, is duty bound to ensure speedy trial and avoid excessively long delays in the trial of criminal cases that could result in grave miscarriage of justice and the idea of "justice delayed is justice denied" is applicable to the Indian context.

The government of India introduced the concept of plea bargaining in a landmark step that many believe will reform the legal system. There were misconceptions about the introduction of plea bargaining in the beginning amongst the courts and people. Justice V. S. Malimath (Malimath Committee) submitted a report to the Ministry of Home Affairs of the government of India in March 2003 to recommend that a system of plea bargaining be introduced in India's criminal justice system to facilitate earlier resolution of criminal cases and reduce the burden on the courts (Recommendation 106). The Malimath Committee endorsed the recommendations previously made by the Law Commission of India in its 142nd and 154th reports regarding plea bargaining. In 1991, the Law Commission of India had prepared a pragmatic study on the adoption of plea bargaining and it is mentioned in their 142nd report. As per the recommendations of the Law Commission the scheme would be applied in phases after having settled the preliminary phase. The 154th report of the Law Commission first recommended the introduction of plea bargaining as an alternative method to deal with the huge arrears of criminal cases. Plea bargaining was recommended by the Law Commission for the speedy disposal of criminal trials in the Indian courts as the cases take considerable amount of time for disposal and in many cases trial does not even commence for three to five years after the accused was sent to judicial custody. But this recommendation was not adopted by the government in the Criminal Procedure Code. Actually, an accused has the right to speedy trial under Article 21 of the Indian Constitution. The 177th Report of the Law Commission, 2001, also sought to incorporate the concept of plea bargaining. The report of the Committee on Reforms of Criminal Justice System, 2003, stated that the experience of the US was evidence of plea bargaining as a means for disposal of accumulated cases and expediting the delivery of criminal justice. The move has been announced by the government as part of a process to reform the country's archaic criminal code, with many of its laws dating back to colonial times. Based on the analysis of plea bargaining as it exists in the US, the report stated that the practice was not inconsistent either with the

Constitution or the fairness principle and was, on the whole, worthy of emulation with appropriate safeguards. The Law Commission conducted a survey to ascertain whether the legal community was in support of plea bargaining and also to gather opinions on the applicability of the practice.

A plea bargain is a contractual agreement between the prosecution and the accused concerning the disposition of a criminal charge. As per the agreement, an accused pleads guilty in exchange for a reduced sentence. A new chapter, XXIA, has been incorporated in the Code of Criminal Procedure, 1973, to include plea bargaining by the enactment of the Criminal Law (Amendment) Act, 2005. Sections from 265A to 265L in this chapter deal with plea bargaining. The Act, which was formulated in December 2005, was passed on January 11, 2006, by the legislatures, and the provisions were notified and came into effect from July 5, 2006 (Mitta, 2006). According to the provisions of this chapter, plea bargaining can be defined as pre-trial negotiations between the accused and the court during which the accused agrees to plead guilty in exchange for certain concessions from the court. In plea bargaining, both the prosecutor and accused make an agreement to settle a criminal case against the accused. The defendant agrees to plead guilty or does not contest the case in exchange for some concession from the court. These concessions include reducing the original charge or charges, dismissing some of the charges against the defendant, or limiting the punishment a court can impose on the defendant. It is a device to ensure that victims receive acceptable justice in reasonable time without risking the prospects of hostile witnesses, inordinate delay, and non-affordable costs. It helps to ensure that hard crimes are not rewarded with soft justice because of the pressure of work of the criminal justice apparatus. The device of plea bargaining also exists, though unofficially, for example, in accident compensation cases. Lok Adalats use variations of the same technique.

The benefits of plea bargaining can be extended to an accused under two circumstances. The first is in the event of a report being forwarded by a Station House Officer of a police station, after the completion of investigation, to the Magistrate. The second is when the Magistrate has taken cognizance of an offense on a complaint under Section 190(a) followed by examination of a complainant and witness under Section 200, and issued the process under Section 204 (Misra & Misra, 2008). This occurs after commencing proceedings based on a private complaint under Section 190(a) of the Code. One positive aspect of the Act is that offenses for which a mutually satisfactory agreement can be reached are limited. Further, the judge is not excluded from the process and exerts supervisory control. Therefore, at least hypothetically, administrative control of the process of granting concessions to those who plead guilty is ensured.

Types of Plea Bargaining

There are four types of plea bargaining: charge bargaining, fact bargaining, specific fact bargaining, and sentence bargaining. Charge bargaining can be further divided into multiple charge and unique charge bargaining. In multiple charge bargaining, some charges are dropped by pleading guilty; in a unique charge bargain, a serious charge is dropped in return for pleading guilty. For example, where a defendant is charged with both drunk driving and driving with a suspended license, he or she may be given an opportunity to plead guilty to only drunk driving. In fact bargaining, there is an agreement with the prosecutor for a selective presentation of facts in return for pleading guilty. In specific fact bargaining, there is an acceptance of sanction without pleading guilty, which is known as the *nolo contendere* plea. In sentence bargaining, trial judges ordinarily will opt to impose sentences not more severe than those recommended by the prosecutors or else afford the accused an opportunity to withdraw their guilty pleas (Schulhofer, 1984). The accused has an option in sentence bargaining for admitting guilt and settling for a lesser punishment. For example, if he or she is facing serious charges and is afraid of being hit with the maximum sentence, he or she may plead guilty and be punished with an acceptable sentence.

In international jurisprudence, two kinds of plea bargaining, express and implicit, are recognized. Express bargaining occurs when an accused or his lawyer negotiates directly with a prosecutor or a trial judge concerning the benefits that may follow the entry of a plea of guilty. But implicit bargaining occurs without face-to-face negotiations. In implicit bargaining, the trial judges establish a pattern of treating the accused who plead guilty more leniently than those who exercise the right to trial. The accused therefore comes to expect that the entry of guilty pleas will be rewarded. Plea bargaining has been the subject of considerable debate over the last few decades. Over the years, many objections grew against designating the practice in a way that implied justice could be purchased at the bargaining table. The Supreme Court of India has observed that this practice affects society's interests by modifying pre-determined legislative fixing of minimum sentences by substituting a situation wherein the prosecutor and the accused assemble to settle a case. While the accused agrees to plead guilty or not to contest the charges, the prosecution concedes leniency in punishment in exchange for the plea.

Features of Plea Bargaining in India

The Criminal Law (Amendment) Act of 2005 mentions the salient features of plea bargaining as follows:

Plea bargaining would not apply to serious offenses punishable with death or life imprisonment, but it can be availed against offenses punishable with a sentence not exceeding seven years (Misra, 2008). It does not apply in cases where the victim is a child under 14 years or where the crime committed is against a woman or the offense affects the socioeconomic conditions of the country.

The Central Government issued a notification cataloguing 19 statutes as affecting the socioeconomic conditions of the country and the offenses in those statutes now stand excluded from the plea bargaining process. No plea bargaining is permitted with respect to the following laws:

1. The Dowry Prohibition Act, 1961.
2. The Commission of Sati (Prevention) Act, 1987.
3. The Indecent Representation of Women (Prohibition) Act, 1986.
4. The Immoral Traffic (Prevention) Act, 1956.
5. The Protection of Women from Domestic Violence Act, 2005.
6. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
7. Provisions of the Fruit Products Order, 1955 (issued under The Essential Commodities Act, 1955).
8. Provisions of the Meat Food Products Order, 1973 (issued under the Essential Commodities Act, 1955).
9. Offenses with respect to animals that find place in Schedule I and Part II of Schedule II, as well as offenses related to altering of boundaries of protected areas, under the Wildlife (Protection) Act, 1972.
10. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
11. Offenses mentioned in the Protection of Civil Rights Act, 1955.
12. Offenses listed in Sections 23–28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
13. The Army Act, 1950.
14. The Air Force Act, 1950.
15. The Navy Act, 1957.
16. Offenses specified in Sections 59–81 and 83 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.

17. The Explosives Act, 1884.
18. Offenses specified in Sections 11–18 of the Cable Television Networks (Regulation) Act, 1995.
19. The Cinematograph Act, 1952.

In the Indian criminal justice system, a guilty plea that is the result of coercion or force is not acceptable to the court. The court can either release the accused on probation under the provision of Section 360 of the Code of Criminal Procedure or under the Probation of Offenders Act, 1958, or under any other legal provision in force, or punish the accused, passing the sentence (Misra, 2008). The savings provisions under Section 265J have extended an independent existence to the chapter, in case of inconsistency with other provisions of the Code. Under Section 265L the provisions of plea bargaining are not applicable to any juvenile or child as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000 (Misra, 2008). If the court finds that the benefit of probation is not available to the accused, then the court may sentence the accused to one-fourth of the punishment provided for such an offense. In cases where the minimum punishment has been provided under the law for the offense committed by the accused, the court may sentence the accused to half of the minimum punishment.

“A person accused of an offense may file an application for plea bargaining in the court in which the offense is pending for trial” (Misra, 2008, p. 386). The application should be filed before the beginning of the trial. The application should be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred plea bargaining in his or her case and that he or she has not previously been convicted by a court in a case in which he or she had been charged with the same offense. The court has to draw a distinction between voluntary confession and one made under pressure. The court may also *suo motu* make an offer of plea bargaining to the accused, and if he or she accepts it, he or she has to make an application.

Then the complainant and the accused are given time to work out a mutually satisfactory disposition of the case, which may include giving to the victim, compensation and other expenses incurred during the case, by the accused. Where a satisfactory disposition of the case has been worked out, the court disposes of the case by sentencing the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offense. In short, the “mutually satisfactory disposition” envisaged by the amended Code of Criminal Procedure requires the culprit to pay compensation as part of the deal, under which the accused is imprisoned for no more than

half of the minimum sentence he is liable to serve. The Act ensures that plea bargaining will not be available to habitual offenders.

After notice to the prosecutor or complainant, the court shall examine the accused *in camera* to satisfy itself that the accused has filed the application voluntarily. The opposite party shall not be present during that time (Misra, 2008). The judge will decide if the plea bargaining was resorted to with *mala fide* or *bona fide* intention. The court will also examine the prosecutor and the aggrieved party and if it is convinced that the accused was forced to plea bargain, it will reject the application.

The court will then issue a notice to the public prosecutor and the police official who investigated the case, if a case was instituted on a police report. The court will also issue a notice to the accused and the victim of the case if a case was instituted other than on a police report, to ask them to participate in a meeting to work out a mutually satisfactory disposition of the case. The negotiation of such a mutually acceptable settlement is left to the prosecution and the accused. If a settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. The accused may also avail of the benefit of Section 428 of Code of Criminal Procedure, 1973, for setting off the period of detention undergone by the accused against the sentence of imprisonment in plea-bargained settlements. The court delivers the signed judgment of the presiding officer in open court according to the terms of the mutually agreed disposition and the formula prescribed for sentencing including victim compensation (Misra, 2008). A court has all the powers in respect of bail, trial of offenses, and other matters relating to the disposal of a case.

In *Rajinder Kumar Sharma and Another v. The State and Another* (2006), the Supreme Court of India observed that the purpose of plea bargaining is to see that a lenient view should be taken while awarding punishment to criminals who admit their guilt and repent. But the legislature has not thought it proper to give the right to the individual to compound any offense and every offense in which a loss to an individual is also involved. If the accused really repents, he or she must undergo some punishment for the crime committed and the suffering caused to society. If the plea bargain succeeds, the criminal case is disposed of in terms of the agreed settlement. If the plea bargain does not succeed, the criminal case proceeds from the stage when the plea bargain application was filed. An application for a plea bargain can be withdrawn at any time before the disposal of the case. An applicant is entitled to the presence of a lawyer throughout the plea bargain proceedings.

The statement or facts given by an accused in an application for plea bargaining shall not be used for any other purpose other than for plea

bargaining. The judgment delivered by the court in the plea bargaining case under Section 265G shall be final and no appeal (except a special leave petition under Article 136 and writ petitions under Articles 226 and 227 of the Constitution) shall lie in any court against such judgment (Misra, 2008). The possibility of threats or improper inducement having been offered in a clandestine manner is eliminated as the scheme visualizes ascertaining as to whether the application was made voluntarily without any inducement or threat, by making an inquiry in the open court.

The scheme does not mention any provision or procedure for withdrawal of pleas. The bargain is recognized explicitly as a transaction in which the often-unrelated objectives of the defendant and the state are both served. The defendant wants to minimize his or her punishment, often without regard to its possible effect on society, while the state wants to avoid a trial. The Delhi judiciary is using it now to clear cases with chances of a quick and mutually satisfactory settlement. Through the provisions of the Code of Criminal Procedure, magisterial courts have been empowered to deal with plea bargaining. Under the High Court's guidance, the Delhi Chief Metropolitan Magistrate has developed a plan to earmark courts in all five district court complexes to specifically deal with plea bargaining applications. Further, the plea bargaining system in which the undertrial accepts guilt and the court records conviction and releases him or her by sentencing him or her to the period of imprisonment already undergone, expedites the cases by holding trial on a day-to-day basis, and holding court proceedings inside the prison premises or through video-conferencing.

The introduction of plea bargaining has been welcomed by the country's legal community and they have expressed their desire that it will reduce pressure on the courts. India has a notoriously slow legal system under which prisoners can spend several years in jail without trial. Karnataka became the first state government that used plea bargaining for speedy disposal of criminal cases (*Observer*, 2005). The Orissa state government has stressed the plea bargaining scheme as a panacea for the huge backlog of court cases. Plea bargaining gives an option to the criminal defendant to accept his guilt and avoid the trial proceedings, which would be instituted against the accused as it happens in a normal trial proceeding.

Considering this, the move of the Law Ministry to release nearly 200,000 undertrials who have spent more than half of the maximum prison time they could have been sentenced to if convicted, is not only laudable but also introduces reforms within the overcrowded prisons. There have been objections to the attitude adopted by the judiciary in releasing those undertrials who had overstayed their punishment period (had they been found guilty

and ultimately punished by the courts). It may also be mentioned here that the period of sentence already undergone by the accused during investigation and trial of the case shall be set off against the sentence imposed by the court under Chapter XXIA of the Code of Criminal Procedure. The plea bargaining law mandates the court to order payment of compensation to victims of crime once the plea bargaining process is complete and then hears the parties on the amount of punishment and possibility of probation.

The Asian Human Rights Commission (AHRC) is deeply concerned about the introduction of plea bargaining in India. Human rights experts allege that many confessions in Indian cases are made under duress from the police. The purpose of the new provision is ostensibly to reduce the long waits for trials endured by most accused, because thousands of under-trial prisoners are languishing in prisons throughout India.

Advantages of Plea Bargaining

The incorporation of plea bargaining will enable decisions to be made in a manner that advances the underlying goals of the Indian criminal justice system. The principal benefit of plea bargaining for an accused is to receive a lighter sentence or one that is less severe than that which might result from taking the case to trial and losing. Plea bargaining may help the courts to reduce their burden of cases. Resolving a case quickly, cutting out of further jail time, avoiding hassles and publicity are some of the other advantages of plea bargaining. A very significant merit of plea bargaining is that it involves both the accused and the victim in the whole process of the trial. While working out a satisfactory disposition, there is ample scope for both the accused and the victim to discuss, if needed, the grounds of the case with each other. It is also a factor in possibly reforming the offenders by accepting responsibility for their actions and by submitting themselves voluntarily before the law, without having an expensive and time-consuming trial. Moreover, plea bargaining can take effect only when the consent of all three parties, that is, victim, prosecutor, and judge has been obtained. It provides greater choices to the victim in satisfactory disposition of the case, and also lays down a scheme for providing compensation to the victim as soon as the process of plea bargaining is complete.

The public prosecutors are relieved of the burden of examining fragile witnesses such as children. Another fairly obvious benefit that the accused can reap from plea bargaining is that he or she can save on lawyers' fees.

It almost always takes more time and effort to bring a case to trial than to negotiate and handle a plea bargain. An accused who is held in custody and does not qualify for release on his own recognizance or who either does not have the right to bail or cannot afford bail may get out of jail immediately following the judge's acceptance of a plea. Plea bargaining also spares the victim from the anxiety of having to give evidence in the court, along with the unpleasantness of hearing all the details of the crime analyzed at length in public. The process of bringing a defendant to trial is a costly and complex endeavor. The use of plea bargaining is not only beneficial to all concerned in the judicial process; but may be preferable to a formal trial. Clearly, both the accused and prosecutor benefit directly from the plea bargain system.

Plea bargaining seeks to provide relief to many of those who are accused of criminal offenses, but are unable to secure bail. In India, many languish in jails as undertrials for years. It is also an alternative method to settle criminal trials and appeals. Speedy trial is the essence of criminal justice and delay in trial by itself constitutes denial of justice. A long delay also has the effect of defeating justice. As a result of such delay, the possibility cannot be ruled out of loss of important evidence, because of a fading of memory or the deaths of witnesses. Plea bargains help the accused with more lenient punishments by avoiding the ignominy of adverse publicity of prolonged trials and help both the police and the prosecution receive higher rates of conviction with lesser use of time. Plea bargaining also allows prosecutors to settle cases without forcing a victim to endure a lengthy court process. In particular, undertrials confined to jails benefit from the possibility of earlier resolution and release. Plea bargaining secures significant advantages to the accused, in the form of time, energy, and court expenses.

Disadvantages of Plea Bargaining

The practice of plea bargaining has several disadvantages. Prosecution pressure may cause innocent people to yield and forgo their right to a trial. The innocent will plead guilty due to a feeling of hopelessness at attempting to rebut the evidence of the police, the weariness of the case dragging on, and the attractiveness of the current offer in plea bargaining. The incidence of crime may possibly increase due to criminals being let off easily. Criminals may escape their due punishment. The Indian police are well known for booking poor innocent victims for crimes that they never committed, often after being paid off by the actual perpetrators (Paranjape, 1980). It undermines

public confidence in the criminal justice system and as a result of this it will lead to the conviction of innocent, inconsistent penalties for similar crimes, and lighter penalties for the rich. The role of police in the plea bargaining process may be coercive and may lead to further corruption of police officers. Prosecutors may plea bargain when judicial discretion is lax. Bargaining under uncertainty forces the prosecution and defense to make exchanges or concessions that are difficult to weigh for their equivalence. Plea bargaining undercuts the requirement of proof beyond a reasonable doubt and plea negotiation is substantially more likely than trial to result in the conviction of innocent. The innocent accused would capitulate to wrong compromises and wrong convictions that are being offered to them by the prosecution in order to escape the ordeal of a prolonged and expensive trial.

Although the client has to make a decision about pursuing a plea bargaining offer, in practice, the defense lawyer may speak of "client control" as an important part of the plea negotiation process. When clients are reluctant to follow their advice, these lawyers may use various forms of persuasion. Conceptually, the plea bargaining process reduces the administration of the criminal justice to a barter system, where the haggling is between legal punishment and gains for the wrongdoer. Moreover, the involvement of police investigators in the plea bargaining process also makes it questionable. Further, since the details of plea agreements are not disclosed, the public only sees what in its eyes is a criminal receiving a lenient sentence, rather than the possibility that the only way to convict the criminal was through the use of plea bargaining.

A Comparison of Plea Bargaining in the US and India

In the US, plea bargaining is available for all crimes and offenses. It is a significant part of the criminal justice system; the vast majority of criminal cases are settled by plea bargain rather than by a jury trial. An offender will approach the court in a situation where the prosecution is agreeable to concessional treatment as well as the extent of the same. Thus, in the US, the offender is assured as to the extent of the concession that is likely to be secured in the event of the court agreeing to the bargain. In India, however, the offender would be facing an unknown hazard, and may prompt him or her to avoid availing of the scheme. Plea bargaining is also not available for all criminal cases in India.

The provisions of Chapter XXIA extend the scheme of plea bargaining to a limited extent only by giving discretion to the court, restricting excess power to the prosecution. Only sentence bargaining is applicable to the judicial system in India. In the USA, plea bargaining is initiated by the prosecutorial agency and it gives a great amount of responsibility and power to the agency to deal with the case. In India, only the accused can initiate plea bargaining.

In the US, the charge and the sentence are open to bargain well before the commencement of the trial. In other words, the US system is in effect trading a lenient deal in exchange for a guilty plea. The role of the judge in plea bargaining in the US is relatively insignificant and is limited to the observance of constitutional procedures. So much so that in American criminal justice, plea bargaining is the norm rather than the exception. But the role of the judge in Indian criminal justice system is relatively significant under the plea bargaining provisions. The scheme would not be successful in India due to pervasive illiteracy, much higher than in the US, and thus people may not adequately understand the consequences of pleading guilty. The provisions of plea bargaining do not allow for any negotiation between the accused and the State or the prosecutor or with the court itself, which is a fundamental difference the scheme maintains from the practice as it exists in the US. The Indian scheme does not mention any provision or procedure for withdrawal of pleas.

Criticisms

Plea bargaining was expected to resolve court congestion, alleviate the risks and uncertainties of trial, and lauded for its information gathering value. However, this is not being used effectively in India. If the undertrials had used this plea bargaining route, the criminal justice delivery system would have been decongested and the number of undertrials in confinement would have been brought down drastically. Presently, the police take their own time and dither on the investigation deliberately to fleece the accused.

In an ironic twist, Pakistani-American David Headley, a terrorism suspect and Lashkar-e-Toiba (a terrorist organization active in Kashmir) operative who played a key role in the Mumbai attacks of October 26, 2008, will plead guilty before a US court in Chicago after presumably striking a deal with US authorities. This means that he may get a lighter sentence than the maximum death penalty. The current Home Minister of India, P. Chidambaram had earlier stressed India's need to get access to quiz Headley regarding details

of other attacks. Unfortunately, this case shows that plea bargaining in the US by the accused in a criminal case can be used to defeat the provisions of plea bargaining added to the Code of Criminal Procedure in 1973.

However, the main and primary drawback of the plea bargaining process is the possibility of rejection of application to plead guilty. In a case where the accused has confessed his or her offense and the application of the accused is rejected, it would become very difficult for the accused to prove his innocence when normal trial proceedings would be instituted against him consequently. The final goal of criminal law is protection of right to personal liberty against invasion by others, protection of the weak against the strong, the law abiding against the lawless and the peaceful against the violent.

The plea bargaining process may be unfair to criminal defendants, because plea agreements are troublesome and they are something less than a victory for all involved. Some criminal defendants are less than enthusiastic over the prospect of openly admitting criminal behavior without the benefit of a trial. Plea bargaining has led to poor police investigations and lawyers do not take sufficient time to properly prepare their cases. Instead of pursuing justice through trial, lawyers rely on making a deal with the court and the details of what happened and the legal consequences for those actions are less important to them. Given these concerns, therefore, the practice of plea bargaining may not achieve the scale and magnitude in India that it has in the US.

Conclusion

It can thus be said that plea bargaining is really a measure and redress and it will add a new dimension in the realm of judicial reforms. The concept of plea bargaining is an alternative remedy to the long and tortuous process of trial in courts. It has been introduced to ensure speedy disposal of cases and to reduce congestion of prisons. Plea bargaining, as most criminal justice reformers believe, is more suitable, flexible, and better fitted to the needs of society, as it might be helpful in securing admissions of guilt in cases where it might be difficult to prove the charges against the accused. It is expected that this provision will be utilized sincerely and honestly so as to achieve the desired result of reduction in delays and expeditious disposal of criminal cases. Not only was it expected to expedite the disposal of the cases, plea bargaining was also to result in adequate compensation for the victim of the crime, since the victim along with prosecutor would be in a position to bargain with the accused. However, this also means that the legally weak

position of an accused without competent counsel could be exploited, even when the prosecution is aware that its case is a weak one. The outcome of a plea bargain may depend strongly on the negotiating skills and personal demeanor of the defense lawyer, which puts persons who can afford good lawyers at an advantage.

The present system of criminal justice in India is not very sensitive toward the rights of victims in that it does not provide them with many opportunities to participate in the proceeding apart from being a witness. Thus, through plea bargaining, the victim gets an opportunity to participate. In our less-than-perfect world, plea bargaining may be the lesser of the evils. Though there are some inherent problems and drawbacks associated with the provisions of plea bargaining, it still remains one weapon to combat the problem of heavy backlog of criminal cases in the Indian courts. Apart from that it is possible the practice may enhance the faith of the public in the criminal justice system by clearing this backlog of cases.

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SECTION FOUR

Punishment and Corrections in India

Introduction

Corrections is the last sector of the criminal justice system and is devoted to the punishment and treatment of offenders. On this issue, societies have moved among and experimented with several philosophical objectives such as retribution, deterrence, incapacitation, isolation, rehabilitation, restoration, restitution, and reintegration (Mays & Winfree, 2009). Similar to other sectors of the formal criminal justice system, corrections in India, as presently understood, began during British rule (Roy, 1989). Currently, India utilizes both institutional and non-institutional forms of corrections. Possible punishments include monetary fines, property confiscation, "simple" imprisonment (where physical labor is not required), "rigorous" imprisonment (involving hard physical labor), life imprisonment, and the death penalty (by hanging). There is a lively debate currently going in India regarding life sentences. The debate centers on whether it should be interpreted to mean imprisonment to the end of a convict's natural life (termed "life without parole" in the US) or whether it should be for a 14–20 year term as generally understood earlier. Corrections departments are run at the state-level, but also headed by Indian Police Service (IPS) officers who may move back and forth between policing and corrections.

The terms, "jail" and "prison" are used more or less interchangeably in India. Sharp distinctions between maximum, medium, and minimum security institutions are not in place. At the state level, adult institutions

are the responsibility of the Inspector-General of Police, and juvenile facilities usually under the Director of Social Welfare. In addition to separate correctional facilities for women and juveniles, probation (staffed by state government employees), and parole (usually run by jail welfare officers) are also available. One notable aspect of juvenile corrections is the continuance of Borstal schools in India, institutions with a focus on education and discipline for those between the ages of 16 and 21 even though they have been abolished in Britain, which pioneered them.

There are four contributions in this section. First, Geetha Suresh, L. Allen Furr, and Aylur Kailasom Srikrishnan assess the mental health of street-based commercial sex workers in Chennai, and note that many of these women express a great deal of fear of the police. They conclude that these sex workers have major mental health needs that are unrecognized and are not provided for in terms of treatment. Given the problems we have already learned about in how the criminal justice system responds to gender-based justice issues, this should not come as a surprise. The devalued status of sex workers adds another ingredient to the correctional sector's inadequate response to their unmet needs. Second, in Chapter 17, David T. Johnson describes India's uneven history in the implementation of the death penalty. He examines a number of explanations for why India remains a "retentionist" nation unwilling to do away with the death penalty while actually carrying it out only rarely. Johnson suggests that two factors, "the capital jurisprudence of India's Supreme Court, and the clemency practices of its executive branch of government" have led to this state of affairs. At the same time, he points out that the killings of offenders outside of the death penalty occur frequently in India, as we have seen in the "encounters" reported in Chapter 10 by Jyoti Belur.

Chapter 18, the third contribution to this section, comes from Divya Sharma who examines the correctional impact of the Juvenile Justice (Care and Protection of Children) Act, 2000, especially its more protective and rehabilitational thrusts, using actual case studies of juveniles. This adds a correctional component to the legal discussion that Sessa Kethineni and Jeremy Braithwaite provided in Chapter 14 on the same legislation. Sharma reports, using case studies generated from the state of Jharkhand, that the implementation of this important and far-reaching (at least in terms of its intent) statute has not met expectations. It is found to be especially neglectful of adequate disposition of cases involving child sexual abuse. The fourth and last contribution from S. George Vincentnathan and Lynn Vincentnathan uses comparisons of repeat offending among released prisoners from three countries: India, Japan, and the US. They highlight the crucial effect of the

parent culture of a society in creating conditions that may either aggravate or mitigate the possibility of recidivism. In the case of India, the recidivism rate is very low. Their contribution speaks to the importance of recognizing the overwhelming impact of cultural norms regarding offending, shame, and reintegration (Braithwaite, 1989).

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An Assessment of the Mental Health of Street-Based Sex Workers in Chennai, India

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Abstract

Prostitution, which is considered to be a public order crime in India, is a way of life and employment for a large number of Indian women. Most enter the trade to earn a living in the absence of other opportunities for employment. The psychological costs of this work, however, are high. Violence against sex workers is common, and these assaults are believed to impact psychological well-being in general and affective disorders in particular. To date, little empirical research on this subject exists. This cross-sectional study attempts to fill this gap in the literature by investigating the relationship between experienced workplace violence and mental health among sex workers in Chennai (formerly, Madras), India. The study sought to analyze the social pathways to depression and suicidal ideation and found that workplace violence was the key variable that predicted higher depression scores. We conclude that this group of marginalized women has major mental health needs that are currently unidentified and unmet.

Introduction

One of the latent consequences of the forces of Westernization, urbanization, and capital brought to India by colonization was the displacement and economic disenfranchisement of women. An indication of this history is the dramatic growth in the prostitution industry over the last century. The traditional institutions of *devadasi* and harems that provided conversation, cultural presentations in dance and music, and sexual services to the elites began to transform into a more pedestrian sex trade in the colonial era as brothels were organized to profit from the sex market created by British and domestic soldiers. Beginning in the late 18th century, prostitutes in India came increasingly from lower caste communities and rural areas as they converted to the new economic system imposed by the British (Banerjee, 1998). Economic hardships resulting from the decline of the traditional Indian social order pushed many women into prostituting themselves for survival, and this dynamic continues in contemporary Indian society. According to the Indian Community Welfare Organization (ICWO), 93% of Indian commercial sex workers enter the trade out of economic necessity, due to lack of education, multigenerational poverty, family debts, and desertion by husbands or lovers (Kannan, 2002; Jaishankar & Haldar, 2006).

Prostitution in India

The current laws in India that legislate sex workers are fairly ambiguous and do not give special recognition by way of registration, documentation, or license for the sale of one's own body in the private premises or in public places on one's own free will. Several legislative and judicial measures are used to control prostitution in India. First, under the Indian Penal Code, 1860, prostitution is considered a public-order crime similar to drug sales, and gambling, and is often used to charge sex workers with vague offenses such as "public indecency" or being a "public nuisance" without explicitly defining them. Second, within 10 years of independence in 1956, the Indian government passed the Suppression of Immoral Traffic Act (SITA), 1956, the primary law dealing with the status of sex workers. Under SITA, sex work in India is neither legal nor illegal; prostitutes can practice their trade privately and remain within the law, but cannot solicit customers in public.

In particular, the law forbids a sex worker from carrying on her profession within 200 yards of a public place. In 2006, SITA was amended as The Immoral Traffic (Prevention) Act or PITA (Jaishankar and Haldar, 2006).

Organized prostitution is clearly illegal under Indian law. The text and spirit of the existing body of law does not allow persons to profit from the prostitution of others. Therefore brothel keeping, procuring women and children for prostitution, living off the earnings of prostitutes, giving one's premises for the business of prostitution, and detaining anyone in brothels are illegal and punishable (Patkar & Patkar, 2005, p. 4). The general lack of enforcement of these laws, however, is well documented.

Estimates suggest about 2.5 million women are engaged in prostitution in India (Bureau of Democracy, Human Rights, and Labor, 2002). Prostitution is a particularly large industry in south India, the location of the present study. The states of Karnataka, Andhra Pradesh, Maharashtra (which includes Mumbai, or Bombay), Tamil Nadu, and Uttar Pradesh are primary supply zones for women in prostitution. More than 100,000 women are employed in prostitution in Mumbai alone, which has become Asia's largest sex industry center. The red light district known as Dharavi in Mumbai generates at least US\$400 million a year in revenue from women who service men 365 days a year, averaging six customers a day at US\$2 each (Freidman, 1996). Outside the cities, commercialized sex workers are widely available. In the state of Andhra Pradesh, for example, many *dhabbas* (roadside cafes) provide commercialized sex workers and small-scale brothels. These exist along the Sholapur-Hyderabad highway as an "additional service" to truck drivers and motorists. In Chennai, Tamil Nadu, profitable mobile brothels offer "pick and drop" facilities that shift sex workers to a place of the client's choice.

Violence, Mental Health and Sex Work

While sex slave trafficking flourishes in modern India, most women who prostitute themselves in that country do so "voluntarily" in that they are get into the business due to economic need rather than physical coercion by others (Evans & Lambert, 1997). Given the large number of women involved, the welfare of sex workers constitutes a significant public health issue. By its very nature, sex work carries severe occupational risks, hazards that many authors have conceptualized as traumatic. The psychological impact of both entering the sex trade and the sex work itself, which often includes violence,

drugs, deception, and forced captivity, among other risks, is presumed highly injurious with potentially lifelong consequences.

Studies have long demonstrated that mental health problems and treatment needs among sex workers and rates of mental disorders among prostitutes are higher than those of the general population. In addition, the mental health sequelae of prostitution have been documented empirically in culturally diverse samples. These studies have reported a higher prevalence of distress, loneliness, isolation, and fear among street sex workers in Hong Kong (Ling et al., 2001); Post-Traumatic Stress Disorder (PTSD) and drug abuse in Sydney, Australia (Roxburgh, Degenhardt, & Copeland, 2006); drug and alcohol abuse in Mexico City (Gutierrez & Vega, 2003); depression and anxiety among street-based workers in Miami (Surratt, Steven, Weaver, & Inciardi, 2005); and PTSD and depression among trafficked women in eastern Europe (Chudakov, Ilan, Belmaker, & Cwikel, 2002). Only one study on the mental health of sex workers in India was found in a literature search. Kumar (1961) demonstrated that sex workers there presented various psychological problems such as depression, amotivation, guilt, loneliness, and a host of psychosomatic symptoms. In contrast, only one study, which examined a sample from New Zealand, has found little difference between the psychological well-being of sex workers and non-sex worker controls (Romans, Potter, Martin, & Herbison, 2001).

The stress-inducing circumstances, for example, sexual and physical abuse, substance abuse, and poverty, that often give rise to women's entry into sex work and the hazards of the occupation are typically cited as the general precipitating factors associated with the mental degradation that result from such stress (Gutierrez & Vega, 2003; Savin-Williams, 1994; Young, Boyd, & Hubbell, 2000). Although the literature has been very thorough in associating the social environment of prostitution to psychological well-being, few studies have attempted to determine specific variables that link the broad social context to psychological outcomes. Surratt et al. (2005) concluded that depression among sex workers is related to sexual and physical abuse associated with entry into sex work and the knowledge of the health risks, particularly STDs, involved in prostitution. Dominelli (1986) suggested that depression among sex workers results from stigmatization and due to negative social labels of sex work as immoral and deviant. Internalizing the stigma, according to this view, undermines women's sense of empowerment and leads to feelings of submissiveness and further self-degrading behavior.

Violence and Mental Health

The World Health Organization (2000) considers violence against women the leading cause of gender-related depression among women. Numerous studies among non-sex worker women have linked violence, most notably intimate partner violence, to depression (Alsaker, Moen, & Kristoffersen, 2008; Helfrich, Fujiura, & Rutkowski-Kmitta, 2008; Ludermitz, Schraiber, D'Oliveira, France, & Jansen, 2008). No study has been conducted to determine the empirical connections between workplace violence and depression among sex workers. Exposure to violence is among the more severe stressors confronting sex workers, and previous research estimates that 50% to over 75% of sex workers report having been victimized by work-related violent acts (Church, Henderson, Barnard, & Hart, 2001). Rates of violence vary depending upon the venue of the work: street-based workers, the subjects of the present study, face particularly high risks of violence due to the locations where they provide services and the nature of interaction with clients (Kurtz, et al., 2004). For example, getting into a car with a client and having sex have been associated with violent victimization among street workers (Roxburgh, Degenhardt, & Copeland, 2006).

Violence is commonly experienced by sex workers in India and is an ever-present component in the web of stressors incumbent to their work. Violence has been associated with psychological problems such as PTSD, especially among trafficked women, at levels similar to soldiers in combat (Kaysen, Resick, & Wise, 2003; Farley et al., 1998; Chudakov et al., 2002; Ling et al., 2007; Mayfield-Schwarz, 2007). In India, actual violence or the anticipation of violence is a daily occurrence among street-based sex workers. Clients are rarely trusted not to rob, beat, burn, or rape the women who provide them sexual services. The risk of being harmed or even killed looms as a constant threat to a group that is offered little protection from family, friends, or the police who, in fact, are frequent perpetrators of violence against sex workers. Further, female victims have virtually no recourse against their attackers; the stigma against sex workers is such that crimes against them are typically not taken seriously by police and the courts. Consequently, there are no reliable statistics on this form of gendered violence. There is general agreement, however, that the problem is widespread and constitutes a core feature of the social fabric of street-based sex work (Samuels, Ravi, & George, 2006; Jayasree, 2004; Sinha, 2002).

Although anecdotal data suggest the negative consequences of workplace violence on prostitutes' mental health, very little research has been conducted.

This study attempts to address the issue by investigating the relationship between violence experienced by sex workers and their mental health in Chennai, India. Of particular interest are the social pathways to depression and suicidal ideation.

Methods

Cross-sectional data drawn from 57 women through personal structured interviews were collected between November 2007 and January 2008 in the city of Chennai. Participants for the study were recruited randomly through an agency that has ongoing contact with female street-based sex workers. Participants were aged 20 years and over and engaged in street-based sex work for their sole or primary source of income. To maintain confidentiality, no identifying details of the sex workers or the agency were recorded on the questionnaire or reported in the analysis. Information on demographics, family background, depression and PTSD index measures, suicidal ideation and attempts, health status, and work-related violence were collected. The interviews were conducted in Tamil by trained social service workers. Questionnaire items were translated into Tamil and then translated back into English to maximize reliability. Colloquial phrases in the indices were carefully translated to maintain the intent and meaning of the items.

Characteristics of the Sample

The descriptive profile of the sample of street-based sex workers in Chennai indicates a sufficiently diverse group for study (See Table 16.1 for main descriptors). Respondents' average age was 34 years ($SD = 6$) and ranged from 20 to 47 years. A slight majority, 51%, had secondary school education (grades 6 through 10). The mean years of schooling was 6 ($SD = 3.5$). Approximately 75% of the respondents reported having no conventionally viable work abilities; the remainder reported tailoring, driving, and basic computer usage as marketable skills. Religious composition of the sex workers was 77% Hindus, 9% Christians, and 14% Muslims. Nearly 80% of the sex workers interviewed were city residents and 20% were from rural areas. All respondents spoke Tamil, but about 30% also reported fluency or proficiency in Kannada and Telugu, languages that are widely spoken in south India.

Table 16.1 Demographic Profile of Street-Based Sex Workers in Chennai

(N = 57)

Characteristics	Number	Percentage	Mean	Standard Deviation
Age				
20-25	4	7	34.40	6
26-30	11	19		
31-35	16	28		
36-40	17	30		
41-45	8	14		
46-50	1	2		
Education				
No Education	10	17	5.9	3.5
1-5 years	18	32		
6-10 years	29	51		
PTSD				
Not at all	0	0	3.5	.85
A little bit	6	11		
Moderately	24	42		
Quite a bit	20	35		
Extremely	7	12		
Depression				
Less than a day per week	0	0	3.1	.63
1-2 days per week	8	14		
3 to 4 days per week	34	60		
5 to 7 days per week	15	26		

Source: Authors' findings and calculations.

Dependent Variables

The dependent variables for the study were *depression* and *suicide ideation and attempts*. Depression was measured by the Center for Epidemiologic Studies Depression Scale (Radloff, 1977), a widely used 19-item index emphasizing frequency of symptoms. Using a four-point measure, *depression* items were measured as feeling: not depressed = 1; depressed 1 to 2 days a week = 2; depressed 3 to 4 days a week = 3; depressed 5 to 7 days a week = 4. A high score indicates the presence of more symptoms identified as clinical depression. Table 16.1 shows the distribution of the sample on the index. The 19 depression items were combined as a one-dimensional scale with an alpha reliability of .78. The mean for the days per week of feeling depressed by the participants in the study was 3.1 with a standard deviation of .63 days. Nearly 60% of the participants reported feeling depressed three to four days a week, 14% as one to two days, and 26% as five to seven days. *Ever having*

thoughts of suicide at the level of forming a plan or having attempted suicide were self-reported and coded as either yes = 1 and no = 0.

Independent Variables

The primary independent variables for this study concerned *workplace violence* and the *psychological outcomes* of that violence (see Table 16.2). Severe work violence was self-identified as being hit by open or closed hands or object, kicked, burned, raped, gang raped, and involuntarily restrained while performing commercial sex work by clients, pimps or madams, and the police. Severity was indicated by respondents' own interpretation in order to capture events that they considered significantly serious. Approximately 67% of the respondents reported that they had experienced one or more episodes of serious violence in their work.

Post-Traumatic Stress Disorder was assessed by the PTSD Checklist (Weathers, Huska, & Keane, 1991). This 17-item index uses the following five-point scale: not at all = 1; a little bit = 2; moderately = 3; quite a bit = 4; extremely = 5. Items in the Checklist signify symptoms associated with PTSD. Study participants were asked how much they have been bothered by symptoms in the last month. These include *repeated, disturbing memories, thoughts, or images of a stressful experience from the past* and *physical reactions (e.g., heart pounding, trouble breathing, or sweating) when reminded of a stressful experience from the past*. The possible range of scores is 17 to 85, higher scores representing more self-identified trauma. The 17 items were combined as a one-dimensional scale with an alpha reliability of .89. The mean PTSD scale (ranging one through five) was 3.5 with a standard deviation of .85. Approximately 11% of the participants reported having PTSD a little bit, 42% having moderate PTSD, 35% said quite a bit, and 12% reported symptoms at the extreme level; 89% of the sex workers, therefore, stated moderate to extreme levels of PTSD.

Table 16.2 Distribution of PTSD Composite Scores

<i>Index range</i>	<i>Number</i>	<i>Percentage</i>
17-28	0	0
29-35	7	12
36-45	18	32
46-55	11	19
56-65	12	21
66-76	9	16

Source: Authors' findings and calculations.

Interpreting the PTSD Checklist results varies. Whereas Smith, Read, DuHamel, Vickberg, and Rickettes (1999) used a score of 50 to define someone exhibiting PTSD in bone marrow transplant patients; Ruggiero, Veb, Scotti, and Rabalais (2003) used a cut-off score of 44 in a study of participants with no common traumatic event. Most of the literature suggests a range of 35 to 50 as a threshold for the presence of clinical PTSD (Dobie, Kivlahan, Maynard, Bush, McFall, & Epler, 2002). The composite scores of the PTSD index for the respondents in the present study ranged from 29 to 76. Approximately 56% of the respondents had a composite PTSD score over 45, and 44% had a score between 29 and 45. Table 16.2 shows the distribution of the PTSD scores among the participants in the study.

Findings

All sex workers interviewed said that their socially and economically disadvantaged situations forced them to enter into prostitution. Poverty, coupled with a lack of education and skills, and family problems were major reasons for entering sex work. Approximately 37% reported family of origin problems including parents' deaths, chronic unemployment, violence, and extreme poverty. Nearly 10% of the respondents mentioned they had to face multiple problems from their parents prior to entering sex trade. Further, a majority of sex workers (51%) reported that they faced more recent domestic problems such as husband's death, violence, alcohol abuse, and/or failure to support domestic problems. Nearly 45% reported multiple problems from their husbands. All research participants stated that with no education and marketable skills, they were compelled to enter into sex work to offset their poverty and lack of family support, and that they had no clue how to get out of the profession.

The PTSD and depression scales' means for those who experience violence is higher than for others not experiencing violence in their work. Table 16.3 shows the mean depression and PTSD for those who think they experienced severe violence and those who think violence was lesser. Sex workers who encountered more violence while in the profession have higher means of depression and PTSD. These respondents noted that the sex work itself is not depressing or stressful, but the violence they encounter is most depressing and painful for them, especially when it is experienced more frequently.

The majority of the sample (86%) reported the presence of depression more than three days a week (Table 16.1) and approximately 30% of the

Table 16.3 Difference in Depression and PTSD Means for Groups Who Encounter Violence and Those Who Do Not Encounter Violence at Work

Measures	Violence		Mean Difference	T-statistics
	Less (N = 19)	Severe (N = 38)		
	Mean	Mean		
PTSD	2.64	3.14	.50	2.42**
Depression	2.27	2.69	.41	2.63**

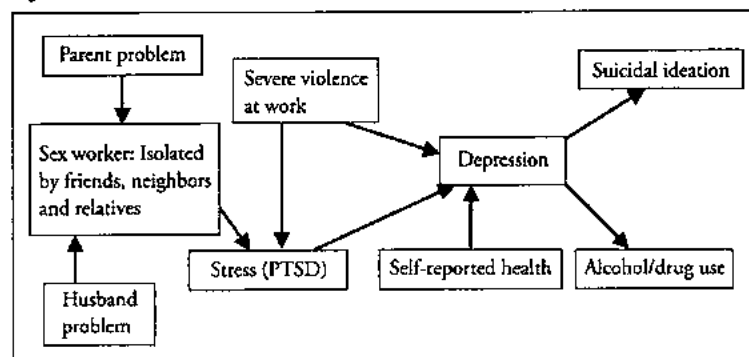
Source: Authors' findings and calculations.

Note: ** $p \leq .001$.

sample reported that they tried to kill themselves. The statistical analysis of the data indicates that violence at work is the major contributory factor for PTSD. Figure 16.1 explains the respondents' social pathways to depression, suicidal ideation, and alcohol and drug use. Violence and depression also moderately correlate with $r = .33$ (significant at $\alpha \leq .01$).

Violence at work came from two sources: the police and other outsiders, and from clients. All the respondents volunteered their constant fear of the police, as beatings from them are commonplace. A person engaged in sex work is socially stigmatized and looked upon as a disgrace, and she is discriminated against at all social events and gatherings. Relatives, friends, and neighbors often abuse them verbally. This isolation and loneliness has a negative impact on their psychological well-being.

Table 16.4 indicates that the major cause for the respondents' stress is violence at work. Violence at work explains 11%, stress 45%, and health-related issues 6% of their depression. Severe depression is the major reason for suicidal ideation, and alcohol and drug use. Severe depression in the

Figure 16.1 Social Pathways to Depression and Suicidal Ideation

Source: Authors' findings and calculations.

Table 16.4 Results of the Simple Regression Analysis

Dependent Variable	Independent Variable	R ²	B	T-value
PTSD	Violence	.10*	.31	2.42
Depression	Violence	.11**	.33	2.63**
Depression	Stress	.45***	.67	6.77***
Depression	Self-reported health	.06 [†]	-.24	1.85 [†]

Binary logistic regression model

Dependent Variable	Independent Variable	Wald Statistic	B	Exp B
Suicide	Depression	6.98	1.66**	5.27
Alcohol use	Depression	3.61	.97*	2.64

Source: Authors' findings and calculations.

Note: * = $\alpha \leq .05$; ** = $\alpha \leq .01$; *** = $\alpha \leq .001$; [†] = $\alpha \leq .10$.

sample is 166 times more likely to explain suicidal ideation and 97 times more likely to explain alcohol and drug use (statistically significant at $\alpha \leq .05$ level). Suicidal ideation and alcohol use have a weak correlation ($r = .13$) in this study. The women who are identified as having PTSD and severe depression reported constant trauma in their life, violence at work, serious childhood neglect, severe poverty, and adult sexual assault. The majority of the respondents, nearly 95%, experienced neglect by their husbands, lack of support from husbands, death of a husband, violence by husband, and alcohol- or drug-addicted husbands. Those respondents who experienced higher violence at work and at home had a higher measure of depression ($\chi^2 = 7.27$ with $\alpha \leq .01$). Those respondents who experienced childhood neglect, in addition to neglect by husband and violence at work had a higher measure of depression ($\chi^2 = 7.54$ with $\alpha \leq .05$). We also find that compared to sex workers with high scores of depression, women who scored low on the depression measure had lesser childhood trauma, neglect by husbands, and less violence at work.

Discussion

The diagnosis of depression and PTSD symptoms develop in response to exposure to extreme traumatic stressors involving direct personal experience of an event and/or witnessing an event (Perkins, 1991; Roxburgh, Degenhardt, & Copeland, 2006). In the case of the study participants, these events include witnessing serious death or separation of parents (one or both) and/or husband, violent behavior of parent and/or husband, alcoholism and

lack of support by parent or husband, abuses, extreme poverty, child sexual abuse, child neglect, physical assault, threats using weapons, torture, and rape. Symptoms among these participants include re-experiencing trauma, reminders of painful events, crying and weeping, feeling lonely and deprived, feeling useless and fearful, and suicidal ideation.

There are two major reasons as to the question of why these women chose sex work as their occupation. Parental problems included the death of one or both parents, economic conditions of parents, and parents not working. Husband-related problems consist of death of the husband, separation with the husband, violent and alcoholic husband, lack of support from husband, and/or infidelity of the husband. One topic related to Indian social customs is referred to as "love marriage" (self-selection of one's partner/husband). This is also stigmatized socially (and considered a family disgrace) leading some parents to disown their daughter. Love marriage leads to a cycle of parents disowning daughters, and later husband disowning them as wives. These women have nowhere to go with their children; with no education or skills, they choose sex work as their profession.

Sex workers in the study reported that when they wanted to find a job, some friends or neighbors directed them to enter into sex work and they had no choice. All the participants reported facing problems on their job from the police, "rowdies" (cruel and brutal individuals possibly disturbing the public peace loudly and roughly), and drunkards. They often experience violence in their occupation, which is their major concern and worry. Most of the sex workers were isolated by neighbors and characterized as "socially unacceptable" characters. All the participants reported that their neighbors as well as distant and close family members are unaware of their profession as sex workers. Their constant fear is that they might be identified while at work or getting into cars with clients. This is a major depressing factor.

This study examined participants' exposure to work-related violence and traumatic events, which were their major reasons for their depression. A majority of women reported multiple traumas at work caused by police, rowdies, and drunken clients. Most experienced violence at home by husbands and parents and violence at work by clients. Their severe depression and suicidal ideation are associated with the risk of developing PTSD. These findings are consistent with the findings of Roxburgh, Degenhardt, and Copeland (2006) in their study of PTSD among female street-based sex workers in Australia. They reported in their paper that these women continue to be exposed to the risk of sexual assault and trauma through their work and are exposed to more risk; as long as they are in the street-based sex industry, their PTSD symptoms are unlikely to recede.

Commercial sex workers are a marginalized group. The social stigma, health risks of the profession, and barriers to taking care of their health make them even more marginalized. The street-based sex workers appear to be the most at risk (Jeal & Salisbury, 2004). Although the majority of them consult health services for HIV, STD, and other diseases, none of them has consulted mental health professionals for their trauma and depression. It is important to provide some mental health care and services. Any psychological intervention for PTSD needs to be addressed.

Drug use associated with suicide attempts among this group suggests the need for more PTSD intervention. Previous research confirms that the history of child sexual abuse and adult sexual assault indicate elevated risk. Further, risk of suicide and drug use is higher. There is an urgent need for educating sex workers on their mental health problems and to reducing financial pressures on them through intervention and policy.

What Are Their Needs?

Possible interventions at four different stages are recommended to reduce the stress and depression among sex workers. The first stage of intervention is identification of vulnerable girls and women who are forced to seek employment as a result of by their lack of education and skills. When girls and women are exposed to violence by their parents or husband, they should be identified and given comprehensive training, education, and counseling so that they do not seek sex work as their occupation, however much they are attracted by external forces and money. They should be educated about the future effects of the trade. Social workers, nongovernmental organizations, police, and law enforcement officials can contribute to this effort.

The second stage of intervention is at the point where sex workers experience violence in their occupation by police and clients. The police are one of the major fears of all participants interviewed. They reported police beatings and harassment when they spot a sex worker in business. The role of police should be defined. Instead of arresting a sex worker, they could be placed at an intervention center where training, education, and counseling could be provided.

The third stage of intervention is providing mental and general health counseling. Mental health professions need to be aware of the issues that are pivotal for this group with respect to their work-related trauma, lack of trust, and difficulty in disclosing their identity. There are also issues of various stigmas, which are social, cultural, economical, and personal. Except

two participants, all others reported that they could share their problems and issues with someone in confidence and that they never had been exposed to any mental health services. Their addiction to alcohol, suicidal ideation, fatalistic attitude, depression, and isolation are complex indicators of PTSD among these women. Education for safe sex and drug use needs to be addressed sooner to these participants. They also commented that could not choose to use condoms since clients objected to it. Conventional PTSD intervention is an urgent need to address major issues of these street-based sex workers. Increased awareness of the mental health services and help will also be useful. Organizations and agencies providing outreach mental health services are needed to deal with the mental illness of these workers before they are beyond treatment.

The fourth intervention stage is when the sex workers are highly depressed and have suicidal ideation. The first and second interventions focus on prevention of vulnerable girls and women from choosing and continuing sex work. The third and fourth interventions are geared toward treatment and cure of the psychological problems of sex workers. Research in the US suggests that the provision of psychological interventions for women sex workers is effective in reducing drug use (Nuttbrock, Rosenblum, Magura, Vilano, & Wallace, 2004). There is a need for mental health intervention and programs to help female sex workers reduce stress and associated risks.

Psychological interventions for female sex workers should be tailored to their needs, and should be flexible as many of these women live in isolation, poverty, and other instabilities (Roxburgh, Degenhardt, & Copeland, 2006). First, the risk and exposure to various traumas should be identified and mental health treatment provided based on their individual needs and stress levels. All participants reported conflict with and fear of the police. Creation of liaisons or help lines with personal distress alarms through outreach services may minimize their risks of repeated exposure to work-related trauma. A serious multi-phase intervention is the urgent need of this at-risk section of the population in Chennai.

Limitations

The number of women in this study is relatively small. Of the different types of sex workers, this study concentrated only on the mental health aspect of street-based sex workers. A representative sample of marginalized populations engaging in stigmatized activities is difficult to achieve. Finally, this data is

self-reported and there may be class biases given the focus on street workers (Roxburgh, Degenhardt, & Copeland, 2006).

Conclusion

By highlighting the relative importance of mental health of sex workers, this study is one of the first to emphasize the importance of mental health aspects and the need to provide appropriate care within the current services available. These groups of marginalized women have major mental health needs that are currently not identified and met. Despite the legality of street-based sex work in India, a fair proportion of women are in this occupation, with attached social and moral stigma, and are significantly more psychopathological. Here, two possibilities could be examined: First, there is the likelihood that these women were already psychopathological before they engaged in commercial sex due to parents' and husband's neglect, poverty, and deprivation. Second, these sex workers develop psychopathological symptoms as a result of their involvement in commercial sex work and associated violence. Very limited or no studies have been carried out on the mental health of street-based sex workers in India. Based on the occupational hazards, and pre-existing socio-economic-health aspects of the street-based sex workers, there is an urgent need to protect the mental health of this at-risk population. A new economic policy or intervention that would: (a) discourage young girls entering the commercial sex industry (b) that would deal with the degree of unemployment; (c) that would reduce their financial handicap, and (d) that would provide comprehensive mental health screening and care is needed.

It is ironic that while researchers and educators debate limiting the activities of commercial sex workers, the *Times of India* (2004) published an article entitled "I sold myself for ₹5000." The article explains that it is old news that many massage parlors, dating clubs, matrimonial and modeling agencies, and escort services provide sex workers to interested clients. Now sex work like any other business is packaged at different rates for different clients without any personal or telephonic identification. Sex workers are treated more as commodities. The ultimate result of moving up the value chain and commoditization of sex work is mental breakdowns and psychopathological symptoms, which need to be addressed immediately.

Some steps have been taken by government agencies. Think Change India (2008) reports that the Life Insurance Corporation (LIC) of India recently introduced a life insurance scheme for sex workers. In April 2008, 250 sex

workers in Sonagachi, Calcutta, were given life insurance policies with plans to expand to other regions of India. The report further emphasizes that there are debates and misleading promises. But, this is the first time that a company as big as LIC has recognized sex workers as professionals.

The law governing prostitution in India is ambiguous. Prostitution is considered as a "victimless crime" and antisocial act. Studies have shown that the police have used every means possible to harass sex workers on charges of soliciting and to enrich themselves by taking petty bribes in lieu of dropping criminal charges (*Times of India*, 2007). Jean D'Cunha's study in Mumbai between 1980 and 1987 showed that the worst victims of PITA were prostitutes. The number of women rounded up for soliciting under the Bombay Police Act of 1951 and PITA far exceeded the numbers of brothel keepers or pimps arrested under the same laws. AIDS activists and peer educators are also harassed by police while distributing condoms and educating sex workers about HIV prevention (*Times of India*, 2007). The question arises, are these sex workers criminals or victims? Are the clients of sex workers not criminal for offending and victimizing them? From the legal point of view the law governing prostitution should be clear and define what is illegal about prostitution in India. From the social point of view they need social justice and treatment for all their mental and psychological agony. From an economic perspective they need financial justice and a decent living. Unless justice is provided, their mental torture and depression is unlikely to recede. AIDS activists, peer educators, voluntary health organizations, and NGOs educate sex workers on general health. What these women need above all is counseling for the mental health problems and depression they experience as they battle the police, clients, family, friends, community, and the public.

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The Death Penalty in India

David T. Johnson

I cannot in all conscience agree to anyone being sent to the gallows. God alone can take life because He alone gives it.

—Mahatma Gandhi¹

Rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. That, I think, is the proper course to follow, so that it will end this non-controversy. After all, this country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death penalty altogether.

—Dr B. R. Ambedkar²

Abstract

India's death penalty policy is extraordinary. State officials in the world's largest democracy often kill extra-judicially, but in the 14 years between 1998 and 2011 the country performed only one judicial execution. This chapter begins with a brief

¹ Quoted in Rajindar Sachar (2008).

² Constituent Assembly of India, Vol. 8, June 3, 1949. Ambedkar was the chief architect of India's Constitution.

description of capital punishment in Indian history. It then describes execution patterns in contemporary India and argues that capital gridlock helps explain India's near-zero rate of judicial executions. Two institutional actors—courts and the executive branch—play key roles in producing that gridlock, largely through the mechanisms of the "rarest of the rare" legal doctrine and the frequent use of executive clemency. India stopped relying on the death penalty for crime control many years ago. In the future, the question India's leaders must confront is why they want to retain an institution that is no longer needed, especially when it is inconsistent with their country's best values.

Introduction

Among nations that retain death as a criminal sanction, India is as extraordinary in its policies and practices as the People's Republic of China or anyplace else. In the 14 years between 1998 and 2011, the world's largest democracy performed one judicial execution (in 2004), giving it a rate of less than one execution per 10 billion people per year. Over the same period, the execution rate in China—Asia's other giant and the world's most aggressive executing state—was 50,000 times higher. Execution rates in the two developed democracies that retain capital punishment were higher as well: by 2,000 times in the US, and by 300 times in Japan. If the rest of the world shared India's execution rate over the course of the most recent decade, there would have been—worldwide—an average of less than one execution per year. And if one applies the usual definition of "abolition de facto" to India's 28 states, 27 of them would now belong in that category because they have gone more than a decade without execution.

This chapter explores these extraordinary aspects of India's death penalty policy and practice—and some ordinary ones as well. The first section provides a brief description of capital punishment in India before the nation gained independence in 1947. Like most Asian nations, India has a long history of using death as a criminal punishment, and the execution of offenders was common throughout much of it. The second section estimates and explains trends in judicial execution in India's post-independence period. The most striking pattern is decline over time, and the two key causes are the capital jurisprudence of India's Supreme Court and the clemency practices of its executive branch of government. The third section examines the symbolism of capital punishment in a country with an execution rate that hovers

barely above zero. Despite the near cessation of executions, the death penalty remains a salient issue in some respects. Finally, the fourth section speculates about the future of capital punishment in the land that has been called an "unnatural nation" and an "improbable democracy" because it embraced representative government long before it had a sizable middle class or majority literacy among its voters (Dahl, 1998, p. 151; R. Guha, 2007, p. 7).

A Brief History

It has been said that "the history of punishment is the history of the death penalty" (Schmidt, 2009, p. 9). This was often the case in Indian history too (Upadhyaya, 1982, pp. 197–201), though there were exceptions, the most important of which centers on Ashoka, who is still revered as one of India's greatest rulers. A key aspect of this emperor's emphasis on nonviolence (*ahimsa*) in the "golden age of Buddhism" that he fostered in the second century BC was a policy that greatly restricted the use of capital punishment, making India one of the first jurisdictions in the world to significantly curtail the use of death as a criminal sanction (Horigan, 2001, pp. 87–106).

But capital punishment rapidly recovered after Ashoka died and his empire decomposed. Until the Mughal dynasty swept down from central Asia into north India in the early 16th century, the story of the Indian state is one of almost continual fragmentation and warfare, and capital punishment and other forms of official killing were ordinary occurrences. After the Mughal invasion, the death penalty remained a normal punishment in the period of Indian unity that prevailed during two centuries of Muslim control and two centuries of rule by the British. Following the fall of the Mughal Empire in 1857, Britain frequently used capital punishment (and other forms of state killing) to control its colonial subjects and to proclaim and reinforce its sovereignty—sometimes through elaborately staged dramaturgical performances, and at other times informally and outside the law (Dalrymple, 2006).

Capital punishment was not only common throughout much of Indian history, it was closely connected to divisions of caste and class. When a Chinese visitor recorded his observations about a trip to India in the fifth century AD, he concentrated on caste, noting that India's sacred texts prescribed different punishments for the same crime depending on the offender's position in the prevailing hierarchy. Among other distinctions, a Sudra (farmer, servant, or foot soldier) who insulted a Brahmin (priest)

faced death, whereas a Brahmin who murdered a Sudra was given the same light penalty (usually a fine) as he would have received for killing a dog or cat (Luce, 2007, p. 107). For centuries after this observation was made, the death penalty in India remained a punishment strongly inflected by considerations of caste and class. It still is today.³

The Death Penalty in Independent India

Counting executions is almost as difficult in independent India as it is in authoritarian states such as China, Vietnam, and Singapore. In India, though, the obstacles to reliable counting have less to do with governmental secrecy (and the fear of scrutiny that motivates it) as with the logistical complexity of collecting decent data in the nation's highly fragmented political system, and the low priority that India's central government attaches to counting of this kind. But several execution estimates have been made in recent years, and they are summarized in Table 17.1.⁴

³ In a 1961 floor debate on the abolition of capital punishment in the upper house of Parliament, one MP said that of the 145 condemned prisoners he had interviewed, 93 (64%) came from the Scheduled Castes and Scheduled Tribes (see Gupta 2000, p. 342). In 1980, Supreme Court Justice Bhagwati wrote: "There can be no doubt that the death penalty in its actual operation is discriminatory for it strikes mostly against the poor and deprived sections of the community and the rich and affluent usually escape from its clutches" (*Bachan Singh v. State of Punjab*, 1980). More recently, Bikram Jeet Batra (2007), the leading authority on capital punishment in India, observed that there is "no research which can prove such caste-class discrimination, but given that competent legal representation is rarely available to the poor, it will be no surprise if they form the large chunk of those on death row" (see also Amnesty International India and People's Union for Civil Liberties (2008, pp. 117–120), Muralidhar (1998, p. 143), and Clifford (2004).

⁴ Indian governments seem to have difficulty finding and facing the facts in many policy spheres. As a recent newspaper editorial put it, "statements made by ministers in the highest forum of Indian democracy—Parliament—are frequently 'misleading, if not entirely made up'" (*Times of India*, 2008). It is unclear how many of the execution numbers reported in Table 17.1 are misleading or made up, but at least the ones since the 1990s do seem reliable (interviews by the author with legal professionals and scholars in New Delhi, March 2008, January 2009, and March 2010). Before the People's Union for Democratic Rights discovered the execution figures for 1953–1963, Indian officials frequently said the country had executed only 55 persons since gaining independence in 1947—a lie, mistake, or guess that was off by at least a factor of 25 and probably by a factor of 60 or more (see Batra, 2005). India badly needs baseline research on the empirical contours of capital punishment. To make that happen, Indian officials will have to be more cooperative with researchers and NGOs than they have been so far.

Table 17.1 Judicial Executions in India, 1953–2011

Year	Executions
1953	21
1954	108
1955	150
1956	151
1957	153
1958	144
1959	181
1960	174
1961	150
1962	107
1963	73
Total: 1953–1963	1,422
1974–1978	68
1970–1983	45
1982–1985	35
1995–1998	24
1996–2000	5
1998	0
1999	0
2000	0
2001	0
2002	0
2003	0
2004	1 (West Bengal)
2005	0
2006	0
2007	0
2008	0
2009	0
2010	0
2011	0

Source: Johnson and Zimring (2009, p. 430) (updated).

Note: Bikram Jeet Batra estimates a total of 3,500 judicial executions for the first 60 years of Indian independence, 1947–2007 (interview by the author, March 11, 2008).

Execution Patterns

Four main patterns are evident in Table 17.1. The most striking is decline over time. From an average of 140 judicial executions per year between 1954 and 1963—a figure that may well be low because the source for these years did not canvass all Indian states—the annual average drops to one execution

per year for the period from 1996 to 2000, and to only one execution in the 14 years between 1998 and 2011. The most recent execution (in 2004) was in the city of Kolkata in the state of West Bengal, a jurisdiction with more people than Thailand and one that was ruled by a Communist party for three decades, making it the longest-serving democratically elected Communist government in the world. The execution occurred when the ruling power in Delhi was the left-of-center Congress Party. The man hanged, 39-year-old Dhananjay Chatterjee, had been convicted in 1991 for the rape and murder of a 14-year-old girl who lived in the building where he worked as a security guard. It was a heinous crime, to be sure, but there was little about the offender or the offense to distinguish this case from the 500 or so persons who were then on death row and who have continued to escape execution.⁵

The second execution pattern is regional, though here the data are old. Of the 1,422 judicial executions that were recorded in 16 Indian states between 1953 and 1963, 86% (6 out of every 7) occurred in five states that collectively comprised just one-third of the national population, and 62% took place in only two states—Madras in the south, and Uttar Pradesh in the north—that together accounted for less than one-quarter of India's people (Batra, 2005). By these measures, executions were more geographically clustered in India than they are in the US, where executions have long been concentrated in a handful of southern states. It is unclear how long this Indian pattern persisted—and in any event it makes little sense to speak of executions "clustering" in a country that has conducted only one in the last

⁵ Chatterjee's hangman was 83-year-old Nata Mullick, assisted by his 21-year-old grandson. Five years earlier the executioner had joined a citizens' group fighting for the abolition of capital punishment, explaining: "I performed an inhuman job for four decades. But I have realized that hanging is no answer for crime. The death penalty has been abolished in 104 countries and India too must stop hanging criminals. We must find an alternative to killing the killers" (quoted in *Hands Off Cain*, 1999). Mullick's capital conversion (which occurred after he had tied the noose and pulled the lever at least 22 times) was impermanent. He became something of a celebrity prior to Chatterjee's hanging, and before waxing the rope with soap and ripe bananas in 2004, he told the Associated Press that "criminals like Chatterjee ought to be hanged so that others don't commit such crimes. I'm only making society safer" (quoted in *Hands Off Cain*, 2004). After that execution, Mullick fell ill and had to be carried home on a stretcher; prison officials said he had been drinking heavily during the previous three days. For a documentary account of this execution, see Joshy Joseph's film, "One Day from a Hangman's Life," which was released in 2005 but withdrawn by the then Chief Minister of West Bengal (Buddhadeb Bhattacharjee), apparently because he objected to the content (*Hands Off Cain*, 2005). For a work of fiction that explores the emotional and practical dilemmas of an Indian executioner and that is based on the life of Janardhanan Pillai, who became the hangman in the early 1940s for the king of Travancore (present day Kerala, in southern India), and who performed 117 executions over the subsequent three decades, see Warrier (2000).

12 years. Still, some informed observers believe death sentence and execution rates in India's southern states (which tend to be more developed) have long been lower than in other parts of the country.⁶

The third fact that stands out in Table 17.1 is the low aggregate total of judicial executions in independent India. The estimated total of 3,500 executions over a 60-year period is about the same number of executions as occurs in a typical six-to-eight-month period in China, and it is, on an annual per capita basis, the same rate of execution as Japan experienced over the same six decades. In the three decades after 1977, when executions resumed in the US after a 10-year moratorium, India executed (in absolute terms) only one-fourth or one-fifth as many persons as America. In per capita terms this means the world's second most populous democracy (Japan) has been executing at a rate that is 10 to 15 times higher than India for the past 30 years.

The final feature of India's death penalty record is a present execution rate that comes very close to zero. No retentionist nation in the world executes at a lower rate than India, and the only way India's rate could go lower is if it falls out of the retentionist category altogether.⁷ The next two subsections explain why this low execution rate is a puzzle and how it has fallen so far.

⁶ On June 13, 2001, the newspaper *Times of India*, summarized death sentencing patterns for India's four largest states: two in the north (Uttar Pradesh and Bihar), one in the east (West Bengal), and one in the west (Maharashtra). Of these, Uttar Pradesh and Bihar—the two most illiterate and impoverished states in India and also the two with the most recorded murders—issued the largest number of death sentences. The annual death sentence totals ranged from 4 to 38 in Uttar Pradesh (population 166 million), from 4 to 37 in Bihar (83 million), from 1 to 9 in West Bengal (80 million), and from 2 to 11 in Maharashtra (97 million). As one observer commented: "The correlation between 'higher frequency' death penalty states and poverty has not gone unnoticed in Indian politics" (Clifford, 2004, p. 42).

⁷ On the whole, the nations of South Asia use capital punishment less aggressively than the nations of East and Southeast Asia. Two out of seven South Asian nations have formally abolished the death penalty: Nepal in 1997 and Bhutan in 2004. Two more have abolished de facto: Sri Lanka has not conducted a judicial execution since 1976, and the Maldives—the most developed country in South Asia—has not had one since 1952. And two of the three South Asian nations that retain capital punishment—India and Bangladesh—have performed judicial executions much less frequently over the past decade than have the developed democracies of US and Japan. The only nation in South Asia that uses the death penalty aggressively is Pakistan, which has the largest death row population in the world, with more than 7,000 persons condemned to death as of 2010. But even in Pakistan executions vary greatly from year to year. The country's annual average execution rate per million population from 1996 to 2000 (0.07) was less than one-tenth the rates in China and Singapore over the same five-year period, but then executions began to increase, from 18 in 2003, to 21 in 2004, 52 in 2005, 83 in 2006, and 135 in 2007, before falling to 36 in 2008 and to 0 in 2009 and 2010 (see Johnson and Zimring, 2010, pp. 20, 312).

India's Execution Puzzle

India's low execution rate requires explanation for at least three reasons. First, the country has serious problems with lethal violence and a large supply of potentially capital cases. Its homicide rate at the turn of the 21st century—3.6 per 100,000 population—was about six times higher than Japan's, three times higher than Singapore's, and twice as high as China's (Johnson, 2006, p. 77). What is more, India has major problems with insurgencies, insurrections, terrorism, and communal violence,⁸ thereby producing a steady supply of poster boys for execution, such as Mohammad Afzal Guru, who was condemned to die for attacking the Indian Parliament in December 2001, and Mohammad Ajmal Kasab, the lone surviving Pakistani gunman who was sentenced to death for his role in the November 2008 attacks in Mumbai that killed 166 people and injured 244.⁹ Beginning in the mid-1980s, the Indian Parliament expanded the scope of capital punishment to cover a number of new capital offenses, from acts of terrorism and organized crime to drug offending and kidnapping for ransom. One result has been the expansion of death row, which grew from 110 in 2001 to more than 400 in 2012.

Second, the large supply of heinous offenses combines with an independent and sensationalistic media to make "law and order" concerns highly

⁸ During the riots that rocked Mumbai in 1992–1993, killing 1,400 persons, printing presses ran overtime producing two sets of name cards for worried residents, one with a Muslim name and the other with a Hindu name. As one analyst put it, "When you were out in the city, if you got stopped your life depended on whether you answered to Ram or Rahim." But hardly anyone was punished for this orgy of communal violence. As of March 1998, the criminal justice system had produced only eight convictions—one for every 175 murders (Mehta 2004, p. 45, 109). Impunity also prevailed after the mass violence perpetrated against Sikhs in Delhi in 1984 (killing 3,000 members of this minority group), and after the communal violence in Gujarat in February 2002 that killed at least 1,000 persons, most of them Muslims.

⁹ In March 2008, two advocates working in the Patiala House Courts in New Delhi told me that in that jurisdiction alone, about 10,000 cases out of the 500,000 then "pending" (on trial, waiting to be tried, or on appeal) were "potentially capital" in the sense that they involved offenders who were eligible to receive a death sentence. Nationwide, about 13.2 million criminal cases are pending in India's subordinate courts, to be tried or otherwise disposed of by 12,200 judges—a backlog of more than 1,000 cases per judge. On the average, India's lower courts can dispose of about 19% of pending criminal cases each year—around 2.5 million cases—but in recent years about 5 million new crimes have been registered each year. The net effect is long and growing delay in processing cases and very low conviction rates. By one report, fewer than 45% of persons charged with serious IPC offenses are ultimately convicted, and a considerably lower percentage of criminal offenses are even registered in the first place (see Nariman, 2006, p. 85). Two former Chief Justices of the Indian Supreme Court have lamented that the nation's criminal justice system has "already collapsed" or is close to "collapsing" (Nariman, 2006, p. 83).

salient in the court of public opinion. Although systematic surveys of public attitudes toward capital punishment have not been done, the available evidence suggests public support at levels comparable to other Asian jurisdictions. As one analyst observed, human rights activists in India "stand largely alone in their opposition to capital punishment" (Eckert, 2005, p. 196). Before Dhananjoy Chatterjee was executed in Kolkata in 2004, there was widespread enthusiasm for his hanging, both in the state of West Bengal where the execution occurred (and where the local government pressured the central government *not* to provide clemency), and in the rest of the country where the issue attracted media attention. Similarly, a small-scale survey conducted in India in the mid-1980s found "strong support [for capital punishment] among university and college teachers, doctors, and, to a lesser extent, lawyers" (Hood, 2002, p. 244). Unless support for the death penalty in India is much weaker than the levels of support found everywhere else in Asia where this issue has been studied,¹⁰ the interaction of heinous crime, lurid reporting, and public opinion would seem to constitute a recipe of demand for the death penalty that elected leaders in India's highly populist democracy might be eager to satisfy (R. Guha, 2007, p. 681). Nonetheless, when India's major party of the right—the nationalist Bharatiya Janata Party (BJP)—held the reins of central government for six years between 1998 and 2004, not a single judicial execution occurred even though there were more than 500 people on death row at the end of that period. The infrequency of execution cannot be attributed to India's anti-death penalty movement, which is as weak, unorganized, and underfunded as many other progressive movements in the country (Epp, 1998, p. 90). One fact that does help explain the absence of executions under the BJP was the presence of a Congress Party politician—the liberal Kocheril Raman Narayanan—in the presidency between 1997 and 2002. Many clemency decisions are made by the President in India's system of government, but since presidents are required to consult with members of the Cabinet before making such decisions, Narayanan's presence in this key position does not fully explain why there were no executions during those years.

¹⁰ A recent study of Indian death penalty views found that opinion was evenly divided among undergraduates ($N = 434$) at a large metropolitan public university in the southern state of Andhra Pradesh, with 44% opposing capital punishment and 43% supporting it (see Lambert et al., 2008, pp. 207–218). But as the authors of this study acknowledge, their sample is far from representative, and it is uncertain how the level of death penalty support among college students at one university compares to opinion in the general public. Most informed observers believe the majority of Indians support capital punishment for murder and offenses such as terrorism (see Batra, 2007, p. 1).

The third aspect of India's execution puzzle is that the state shows little reluctance to kill extrajudicially—and for the most part there is “no reaction from the public, no outrage” when it does so (Mehta, 2004, p. 173). Few governments can match the willingness to kill that is found among parts of the Indian state (Subramanian, 2007). In 1999 and 2000, the Indian National Human Rights Commission reported that at least 1,143 persons died in police custody; the numbers are similar for other years, and the true total may well be higher. Many if not most of these people died from police torture.¹¹ In addition, hundreds of Indian citizens “disappear” each year, abducted by police or military officials and detained in secret and without due process. Many are feared dead. Hundreds of Indian civilians also die each year in what are euphemistically called “encounters” between the police and citizens. Some police forces even maintain “encounter specialists” whose kill totals number in the dozens or hundreds and whose murders are authorized by high-ranking officers. Between 1998 and 2001, police in Mumbai killed at least 305 purported “gangsters,” giving the “thin khaki line” of this city of 14 million an annual extrajudicial execution rate of 5.4 per million population—and this figure excludes killings in police custody. The Wikipedia entry for “Encounter Killings by Police” even has a heading (“Mumbai”) under which the names of five officers are listed along with their “encounter killing” totals—112, 87, 77, 63, and 51—counts that are consistent with those reported by other sources (Wikipedia, n.d.). And these figures are for the Mumbai police, “still fairly considered the best in India” (Mehta, 2004, p. 160). In 2000, more than 100 civilians were killed by police in India's largest city, yet not a single policeman was killed in these “encounters” (Eckert, 2005, p. 214). These state-paid assassins do little to hide the nature or scope of their work, perhaps because the police, the courts, and the media help to maintain the fiction that the bad guys always fire first while the police shoot only in self-defense.

¹¹ It is believed that at least 200 people were tortured to death in 1997 in the state of Maharashtra (where Mumbai is the capital), a record for police brutality that outstrips those of many military dictatorships around the world. Thirty years earlier the Bhagalpur police in the state of Bihar blinded at least 31 suspects in their custody with needles and acid. When Professor Upendra Baxi (1982, p. 348) documented these abuses in his classic *The Crisis of the Indian Legal System*, he concluded that chroniclers of governmental lawlessness in India are “condemned to labours as arduous and fruitless as those of Sisyphus.” Baxi was even more pessimistic in 2008. “The more things change the more they stay the same,” he said. “Almost everything I said about government lawlessness [in my 1982 book] remains true today, and many problems are significantly aggravated. ... The basic structures of exploitation and lawlessness have not changed” (interview by the author in New Delhi, March 19, 2008).

The enabling environment for extrajudicial killing helps explain why some police are candid about their conduct. One Indian policeman in Mumbai who has confessed to participating in "about fifty" extrajudicial killings claims that this number is "not very many" compared to some of his colleagues, and he says he has "never been involved in a killing that hasn't either been approved or requested by the senior commissioner of police." He stresses: "We do not break the chain of command."¹² In Uttar Pradesh, a policeman well known for his success in encounter killings admits:

Yes, I am trigger happy—but, I am completely confident in what I have done, and no one has ever questioned it. ... I do not kill for personal gain, but *for the greater good*; when there is no other way out, it must be done. And the people will praise you for it. When my team finished off [a notorious gangster], the people in the towns and villages he had been terrorizing were so happy! They threw marigolds on me and put me on their shoulders and carried me around. They queued up by the thousands at the station to *thank me for doing what the courts could not ... this man had been arrested and charged and acquitted dozens of times, because he could pay off the judges and police! This time he was not acquitted*. I received thousands of boxes of sweets. ... [T]he *really bad criminals, they cannot be disciplined. And the legal system has completely degenerated, so it cannot stop them. But they must be stopped.* (Emphasis in original)¹³

As the penultimate sentence of this passage suggests, the explanation preferred by police—and by outside observers as well—is that encounter killings and other forms of extrajudicial execution are common because India's criminal justice system does an ineffective job of convicting and punishing offenders. In Mumbai in 2000, for example, the conviction rate was 4%, and conviction rates elsewhere in the country are notoriously low as well (Mehta, 2004, p. 175; Nariman, 2006, p. 85). So, too, is the proportion of crime that gets reported to the police in the first place. According to Dr Kiran Bedi, a former high-level officer in the Indian Police Service, only about 5% of crimes in India are ever registered with the police, and the registration rate for murder is less than 20%.¹⁴ Sociologist Donald Black has demonstrated that crime often functions as a means of informal "social control" in locations where state controls are weak or absent (Donald Black, 1983, pp. 34–45). This maxim helps explain the large volume of extrajudicial killings in India.

¹² Quoted in Luce (2007, p. 96).

¹³ Quoted in Jauregui (2009, pp. 176–177).

¹⁴ Author's interview in New Delhi, March 20, 2008.

In sum, there are good reasons to wonder why India does not carry out significantly more judicial executions. What explains the gap between expectation and reality?

Capital Gridlock

Two institutional actors play a key role in producing India's near-zero rate of judicial execution: courts, which are required to impose capital punishment only in the "rarest of rare" circumstances, and executive clemency, which is routinely used at the state and central levels to delay executions indefinitely and to reduce death sentences to something less than death. These two obstacles to execution have created a kind of capital gridlock over the last 20 years—a profoundly inertial death penalty system that generates remarkably few executions.

Consider courts first. The Indian Constitution of 1950 did not abolish capital punishment, and several parliamentary attempts to eliminate the death penalty failed in subsequent years, but until a new Code of Criminal Procedure took effect in 1973, the death penalty remained so much "the natural and preferred punishment for murder" that sentencing judges had to record special reasons when they chose to impose *noncapital* sentences, as had been done under the British before independence (Batra, 2007, p. 5). The new Code reversed this presumption by turning death into an exceptional punishment and by requiring judges to record "special reasons" only when they awarded a capital sentence. The Code also introduced a special sentencing hearing to be held after conviction. Today, capital cases in India begin in trial courts at the state level and proceed in two stages, first determining guilt, and then sentence.

The Indian legal system is federal, and under a constitutionally mandated system of "lists" that delineate the law-making powers of the state and central governments, the power to legislate criminal law rests in the hands of both. This means there is no such thing as an abolitionist Indian state, because state-specific legislation is not required for a state to employ capital punishment, as long as the central government retains death penalty statutes. If an Indian state did try to abolish capital punishment by passing a law to prohibit it, the act might have no legal effect.¹⁵

¹⁵ See Clifford (2004, p. 11).

The vast majority of capital cases in India begin at the local level, though local prosecutors do little of the screening that their counterparts do in countries such as Japan, South Korea, Taiwan, Singapore, and the US. In murder cases, for example, Indian prosecutors "routinely" and "mechanically" seek a death sentence after the defendant has been convicted at trial.¹⁶ In contrast to criminal justice systems in which prosecutors play the primary role in deciding which cases are capital, in Indian criminal justice it is courts that decide who deserves death, and they impose the sanction sparingly. In the four years from 1999 to 2002, Indian trial courts issued a total of 94 death sentences—just 16 to 30 death sentences a year during a period in which the country had more than 30,000 murders per year. Over the same period, trial courts in the US produced 19 to 35 times more death sentences per murder (Clifford, 2004, p. 17). In 2007, Indian trial courts imposed only 25 death sentences, 12 of them in one bombing case in Mumbai (*Times of India*, 2007). And on a single day in October of that year, trial courts in Uttar Pradesh, Tamil Nadu, and Delhi awarded more than 60 sentences of life imprisonment—and not a single sentence of death.¹⁷

Additional filtering is done by India's appellate courts. One study found that between 1980 and 1990, High Courts upheld 65% of death sentences, while the Supreme Court upheld 40% of the capital sentences it reviewed during the same decade.¹⁸ Another study found that between 2000 and 2011, the Supreme Court affirmed 37% of the death sentences it reviewed (Deva, 2011). If Indian appellate courts confirm death sentences at similar rates today—and many observers believe they do—then only about one-quarter ($.65 \times .40 = .26$) of first instance death sentences survive the appeals process, a degree of selectivity that may be matched only by the appellate courts in South Korea and the US.

The jurisprudential roots of the judicial reluctance to impose and uphold death sentences can be found in appellate court decisions, especially the 1980 landmark case of *Bachan Singh v. State of Punjab*, which held that "A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the

¹⁶ Interviews by the author with legal professionals in New Delhi, March 2008.

¹⁷ India does not have life-without-parole, and offenders who receive a sentence of life are frequently released after 14 years in prison (interviews by the author with lawyers in New Delhi, March 2008 and January 2009; interviews by the author with lawyers in Chennai, March 2010; see also Yahoo India, 2007).

¹⁸ See Clifford (2004, p. 29). Another study found that more than 100 of 728 death penalty appeals heard by India's Supreme Court ended in acquittal; see Amnesty International India and People's Union for Civil Liberties (2008, p. 225).

rarest of rare cases when the alternative opinion is unquestionably foreclosed" (emphasis added).¹⁹ In this decision and subsequent ones, the Indian Supreme Court tried to define the "aggravating circumstances" and "mitigating circumstances" that would distinguish the "rarest of the rare" crimes from more run-of-the-mill offenses. The 1983 case of *Macchi Singh and Others v. State of Punjab* held that the "rarest of the rare" requirement is satisfied when the "collective conscience" of the community has been "shocked" and when the balance sheet of aggravating and mitigating circumstances indicates that a sentence of life imprisonment would be "inadequate" because it would denigrate the seriousness of the crime. In more common-sense terms, a case qualifies as the "rarest of the rare" when the crime in question is seldom seen and it is deemed especially heinous and egregious.

India's framework for discerning which crimes are the "worst of the worst" is partly borrowed from the US, where "aggravating" and "mitigating" categories were elaborated in the aftermath of the US Supreme Court's *Furman*²⁰ and *Gregg*²¹ decisions of the 1970s. In fact, the creation of the "rarest of rare" formula in 1980 was partly a reaction by India's Supreme Court against the state-level backlashes that had occurred in the US when the US Supreme Court held (in 1972) that the death penalty as then administered was unconstitutionally "cruel and unusual" because it was applied so haphazardly. Having observed the controversy that this decision sparked in America—and having watched the US Supreme Court reverse course four years later—India's Supreme Court (which was then quite progressive) deemed it imprudent to attempt the judicial abolition of capital punishment, electing instead to curtail the circumstances in which death can be imposed. In this respect, many analysts regard the Supreme Court's "rarest of the rare" doctrine as a "pragmatic compromise."²²

The attempts by Indian courts to impose substantive standards on death penalty decision-making have had mixed results. On the one hand, death sentences are now imposed infrequently, and at least some of that judicial caution can be attributed to the Supreme Court's leadership. As one account concludes, "India is choosy with the death penalty and truly executes only the 'rarest of the rare'" (Clifford, 2004, p. 44). On the other hand, India pays a high price for this achievement, for a system with capital statutes as broad as India's that conducts less than a handful of executions per year

¹⁹ *Bachan Singh v. State of Punjab* 1980 IR 267 (1980).

²⁰ *Furman v. Georgia*, 408 U.S.238 (1972).

²¹ *Gregg v. Georgia*, 428 U.S. 153 (1976).

²² Interviews by the author with lawyers in New Delhi, March 2008.

(out of more than 30,000 murders) is *lawless* in the sense that nothing about the nation's capital jurisprudence can explain who gets sentenced to death or hanged when hundreds of equally or more culpable offenders escape the death penalty altogether. In this sense, the first cause of India's capital gridlock—the judiciary—not only helps prevent many executions, it does so in a manner that undermines the doctrinal predictability that the "rarest of the rare" formula is supposed to serve. In the end, India's jurisprudence of death leads to outcomes that are inconsistent, arbitrary, and governed by the personal whims of individual judges.²³

The second cause of India's capital gridlock is executive clemency. Indian legislatures favor capital punishment, and Indian courts continue to uphold the constitutionality of the practice, but the executive branch of government speaks in a different voice—largely in the languages of mercy and silence. In India, all convicted criminals have the right to submit petitions for clemency to the governor of the state in which they were convicted and to the president of the country. But by law, neither of these executives can exercise clemency power on their own initiative; they must act on the aid and advice of the ministers in their respective governments, and in some circumstances their clemency decisions may be subject to judicial review. Still, the scope of executive clemency in India is broad, and it is often used to prevent executions in the same two ways that the King of Thailand prevents most executions in his country: by proactively granting sentence reductions to death row petitioners, and by passively withholding decisions about how the petitioner's request will be decided—often for many years. Since there is no limit to the number of mercy petitions that can be filed, and since the law forbids execution while such petitions are pending, some condemned inmates can postpone indefinitely an appointment with the hangman by submitting repeated requests for mercy (Batra, 2007, pp. 5, 77).

In sum, the proximate cause of India's low execution rate is the roadblock to the gallows that has been created by judicial decision-making and executive clemency. Although more research is needed about the ultimate causes of this capital gridlock, there is one feature of Indian political culture that does help explain it: the aspiration—however imperfectly realized in practice—to be a democracy in which rights are respected, government powers are limited, and the rule of law is observed. As described above, India is in some ways as lawless a state as can be found in Asia or the world (Baxi 1982), but in another contradiction of the subcontinent, it is also a democracy that "in its adherence to legal forms and loyalty to legal procedures" remains "quite

²³ See, for example, Bindal and Kumar (2011), Deva (2011), and Pande (2011).

unique among Third World countries" (Galanter, 1989, p. 279). These legal and democratic aspirations shape India's execution policy.

The Culture of Capital Punishment and the Puzzle of Retention

The previous section explained the puzzle of India's low execution rate, but now another puzzle emerges: Why does India keep capital punishment when it executes so infrequently? Answering this question of retention requires consideration of India's culture of capital punishment—the beliefs, attitudes, assumptions, and values that shape the nation's death penalty practices. Some analysts believe "there is practically no 'cultural life' of the death penalty" in India because "there is almost no public discussion" there (Sarat and Boulanger, 2005, p. 26). This view is mistaken. Capital punishment in India is grounded in a variety of cultural values and assumptions, and it expresses culturally conditioned emotions as well. Capital punishment in India is also the site of important cultural performances, and it has consequences that go well beyond whatever crime control effects it might have. In these ways and more, Indian capital punishment has a vibrant cultural life.²⁴

With capital punishment, as with many governmental practices, politics is often a matter of "words that succeed and policies that fail" (Edelman, 1977). If 70 or more executions a year in Singapore—a city state with fewer than five million people—achieved no more homicide deterrence than was gained solely through imprisonment in Hong Kong, a closely similar city which has not executed since 1966, then it seems imprudent to suppose that one execution in 14 years in a country with 2,000 times more people than Singapore has a marginal deterrent effect (Zimring, Fagan, & Johnson, 2010, pp. 1–29). With respect to homicide deterrence, India's death penalty policy must be called a failure. But deterrence is hardly the only function of capital punishment. In this age of human rights, capital punishment is so widely considered inconsistent with democratic aspirations—and judicial executions are so widely regarded as unbecoming of a civilized nation state—that students of the subject should ask what symbolic functions the institution of capital punishment performs. In India there are several.

²⁴ See Garland (2009; 2010, p. 14), defining the "capital punishment complex" as "the totality of discursive and nondiscursive practices through which capital punishment is enacted, represented, and experienced." See also Ramanathan (2010).

First, Indian support for capital punishment is rooted in the cultural perception that some crimes are so horrible that killing the perpetrator is the only correct response. On this view, there must be ultimate punishment for ultimate evil: it is a matter of moral proportion. This conviction is not universally shared—many Americans hold it (Turow, 2003, p. 63), and many Buddhists do not (Hananuntasuk, 2004)—nor is it endorsed by all Indians. But many Indians do believe in moral proportion, and their convictions generate demand for the ultimate punishment in some cases. The maxim of moral proportion is also what India's Supreme Court stresses when it states that for especially heinous crimes—"the rarest of the rare"—any sentence less than death would "denigrate" the seriousness of the offense.²⁵ One important role of capital punishment, therefore, is as an organ through which law and society can make unequivocal moral statements about the most malevolent conduct.

Capital punishment also reflects and refracts salient social issues, such as terrorism, caste violence, and violence against women. After Ajmal Amir Kasab was sentenced to death for his role in the 2008 Mumbai terror attacks, there was such enthusiasm for condemning his savagery that Mammu Singh, the hangman in Meerut (in the state of Uttar Pradesh, some 900 miles from the jail in Maharashtra where Kasab was held), volunteered his services with this explanation:

I am as eager to hang Kasab as eager the country is to see him hang till death. I want to say one thing that neither Kasab is my enemy nor is he my friend. My enemy is crime. And the person who commits crime becomes my enemy. ... I don't hate him, but I condemn the heinous crime he has committed. He killed so many people. That is why I feel he should be hanged at the earliest. (*Calcutta News*, May 10, 2010)

Capital punishment reflects caste concerns as well, often by reducing and distorting them, as the mirrors in a carnival funhouse do. India's caste system began several thousand years ago as a way of categorizing groups according to the division of labor, but over the years it has "degenerated to become one of the most inflexible and institutionalized tyrannies of any society" (Varma, 2004, p. 21). Caste remains a central dimension of Indian society today, especially in rural regions where two-thirds of residents still live. About one-sixth of Indians—more than 200 million people—belong to the "untouchable" (Dalit) under caste, a nation within a nation that is branded

²⁵ *Macchi Singh and Others v. State of Punjab* 1983 SCR (3) 413.

as impure from the moment of birth and subject to extreme exploitation and violence (Mines, 2009, pp. 1–93; O'Neill, 2003, pp. 2–31). Arguably, “caste violence—the daily humiliation and killing of *dalits*—is the central faultline of contemporary Indian society” (Menon 2006, p. viii). Yet despite the continuing power of caste to shape human relations, and despite the fact that considerations of caste strongly shape the administration of capital punishment (see footnote 9), caste has *not* been a prominent feature of sentencing discussions in capital cases, largely because “in most cases involving individual crimes of murder, there is little record of caste being a factor in the factual matrix leading to the offense.”²⁶ The few capital cases in which caste is recognized tend to be mass killings based on caste, where courts have been unable to ignore the issue. In this respect, India’s culture of capital punishment frequently elides or erases this central social fact. If it did not—if the caste distortions of capital punishment were made more manifest in law and media—there might be less public support for the institution.

India’s culture of capital punishment speaks ambivalently about violence against women as well. The women’s movement has brought issues of gender-based violence into the national spotlight, and one effect is that the Supreme Court now includes *dowry murders* in its interpretation of the “rarest of rare” doctrine. But while the top court often speaks about the evils of dowry and the need for severe punishment for dowry murder, as of 2008 it had not upheld a death sentence in any dowry murder case brought before it. Similarly, despite many strong statements about the issue, the Supreme Court has never upheld a death sentence in any case of *rape and murder* of an adult woman (though it has done so in some cases where the victim was a child, such as the Dhananjay Chatterjee case in West Bengal, which the apex court decided in 1994). Dowry and rape–murder cases make up the majority of gender violence cases that result in a death sentence, but there have also been cases involving *sexual jealousy or infidelity*. In almost all of them, the Supreme Court has refused to uphold sentences of death.²⁷

Cultural sensibilities about caste and gender interact in cases of honor killing. No accurate figures are available, but honor killings in India seem to be widespread. In one typical case, a young journalist in New Delhi named Nirapuma Pathak was found murdered in her own house. She had been smothered by her mother for being in a relationship with a man from a different caste. On the average, this kind of killing occurs at least twice

²⁶ Amnesty International India and People’s Union for Civil Liberties (May 2008, p. 117).

²⁷ This paragraph and the next two rely on pages 91–101 of the report by Amnesty International India and People’s Union for Civil Liberties (May 2008).

a day in India,²⁸ yet few offenders are ever sentenced to death—and those who are usually get their sentence reduced on appeal. Here, too, the culture of capital punishment reflects ambivalent attitudes about a crime that has captured much media and public attention.

The most comprehensive study of judicial judgments about violence against women has found that the Supreme Court frequently goes “out of its way to find cause to commute death sentences” to something less than death while at the same time condemning violence against women in its *obiter dicta*. In this way, India’s Supreme Court—one of the most powerful courts in the world—reflects public ambivalence about both domestic violence and state-killing.

Finally, the ambivalence that is evident in India’s treatment of caste- and gender-based violence can be seen in the large gap between how many persons are sentenced to death and how many are executed. The number of capital crimes in India’s penal laws continues to increase, and Indian courts still sentence offenders to death on a regular basis. In 2009, at least 50 persons were condemned to die, thereby adding to a death row population that already exceeded 500. Yet no one has been executed since 2004, and only one person has been executed since 1998. In this respect, India resembles California, which has the largest death row in the US (720 and counting), but has only executed 13 persons since it reinstated the death penalty in 1974 (compared with 709 executions in the previous 124 years of statehood). In India as in California, some people complain about the low level of executions, but by and large the status quo is tolerated in both places because most people realize that executions are unnecessary to achieve any important crime control purpose. In both jurisdictions, people often say they want capital punishment but acknowledge they do not really need it. This raises questions about the cultural politics of capital punishment. If leaders know they do not need a death penalty for public safety, then why do they take chances with an irreversible punishment? Why play with symbols (Zimring, (2005, p. 122)? What do they have to gain, especially when the argument for moral proportion that underlies the state’s commitment to capital punishment places a heavy burden of precision on a criminal justice system that is notoriously imprecise?

²⁸ A study by the Indian Population Statistics Survey estimated 700 honor killings per year in India, but women’s groups and NGOs say the true figure could be far higher. See Bhaskaran (2010).

The Future

India knows better than it does with respect to capital punishment. As the opening epigraphs of this chapter suggest, the death penalty gridlock of the present is evidence that Indian governments realize judicial executions are inconsistent with the nation's highest ideals. Significantly more executions might transform India's death penalty ambivalence into the political force it has never been, but a hard push for more executions could also generate backlash from public and political opponents. Thus, Indian leaders seem to have little to gain by trying to break through the death penalty gridlock that prevents almost all executions, especially in a political context where multiparty coalitions are the norm and a deeply fragmented political culture makes it difficult for governments to take decisive action.

Yet the death penalty persists in India, and abolition seems unlikely to occur anytime soon. For one thing, popular support for capital punishment can be expressed through the death sentences that continue to be imposed, even if they do not lead to execution. In a democracy as populist as India's—and in a society with so many security problems—this is an important form of expression. For another, there is no significant institution in India with a commitment to abolition that can parallel what the Catholic Church did in the Philippines before capital punishment was abolished there in 2006. Indeed, the National Human Rights Commission of India—the country's premier body for protecting human rights—has not taken any public stand on the abolition of capital punishment, and in 2010 its Chairperson even said that he personally feels “the death penalty should continue” because it has “a very great deterrent effect on society” (Balakrishnan, 2010). Nor is there a legislative constituency for abolition in India to parallel the situation that now exists in South Korea (where a majority of Ministers of Parliament say they oppose capital punishment, and where no executions have occurred since 1997). A transition from India's near moratorium on executions to formal abolition would require a kind of “leadership from the front” on capital punishment with no precedent in contemporary Indian politics. Since another critical feature of contemporary India is that its impressive democracy is peopled, for the most part, by “unimpressive” and “complacent” politicians, the final steps toward formal abolition seem unlikely to be taken anytime soon (Luce, 2007, p. 349).

If capital punishment is likely to be around in India for some time to come, what are the prospects for administering it in a manner that is fair,

just, and accurate? As explained above, India's legal framework for deciding which crimes are the "worst of the worst" was largely borrowed from the US, where "aggravating" and "mitigating" circumstances were elaborated in the aftermath of the US Supreme Court's *Gregg* decision of 1976, which reinstated capital punishment after the Court had declared it unconstitutional four years before. The original source of that framework was the American Law Institute's Model Penal Code of 1963, which offers guidance to the juries that make life or death decisions in American capital trials. But in the spring of 2009, the ALI—the leading independent organization in the US producing scholarly work aimed at improving the law—withdrawed its support for the death penalty standards that it had created half a century before. This reversal reflects the ALI's recognition that America's experiment with capital punishment has failed (Liptak, 2010; Traynor, 2010; Zimring, 2009).

No nation has tried longer or harder than the US to construct a system of capital justice that reaches only the rare, right cases without also condemning the innocent or the undeserving. As the ALI's reverse course suggests, no nation has failed more conspicuously. India's Supreme Court has expressed reservations about capital punishment on many occasions, and it has called for the central government to empower organs such as the Law Commission of India and the National Human Rights Commission to do research on the death penalty that would facilitate informed discussion and debate about its future. As a student of law and society, I usually welcome calls for more research—but in this case I am not sure it is needed. The evidence that capital punishment in the US has failed is clear and abundant.²⁹ Less research has been done about capital punishment in India, but what has been done points in the same direction.³⁰

India's death penalty policy makers need political will more than they need new research. Like the US, India stopped relying on capital punishment for crime control long ago. The question leaders in both democracies must confront is why they want a punishment they no longer need, especially when it is inconsistent with their own best values.³¹

²⁹ See, for example, Turow (2003), Acker et al. (2003), and Baumgartner et al. (2008).

³⁰ See, for example, Amnesty International India and People's Union for Civil Liberties (2008), Batra (2007), and Muralidhar (1998).

³¹ As this book was in press, Mohammad Ajmal Kasab, the sole surviving attacker from the Mumbai siege of November 2008, was hanged at Yerwada Jail in Pune on November 21, 2012. It was India's first judicial execution since 2004, and time will tell whether it marks a new beginning or the beginning of the end for India's death penalty. See Zimring and Johnson (2012).

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The Juvenile Justice (Care and Protection of Children) Act, 2000: Protection, Rehabilitation, and Reform

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Abstract

This chapter presents an overview of the reformatory justice model being applied to juveniles in India. With much of the social and political focus, concern, and even rage, geared toward the Indian criminal justice system, the juvenile justice is relegated to a place of neglect. Child labor laws being openly flouted is the most visible and disconcerting example of the same. The Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted to deal with juvenile delinquency in India, both in terms of delinquents and non-delinquents in need of care, almost a decade ago. The Act entails provisions for more tailored responses in dealing with children who have come in conflict with the law versus those who are orphans, beggars, and runaways. That is, the system is expected to incorporate protection and care while dealing with juveniles. This is a significant improvement on the Juvenile Justice Act of 1986. Critics, however, argue that not much has changed even after the passage of the law, due to legal and political lethargy and social apathy toward children's basic rights to education and protection. The law also does not specifically address the issue of sexual abuse.

Introduction

This chapter discusses basic provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000, in the specific context of cases handled by Adarsh Seva Sansthan (ASS) based in Jamshedpur, Jharkhand. It concludes with a discussion on correctional policy challenges and recommendations.

India has a population of 1.15 billion people; more than a third of that is below 18 years. Children are exposed to a number of risk factors, including child labor, trafficking, sexual exploitation, etc. The 2001 Census of India estimates that nearly 12.6 million children are involved in hazardous occupations, that is the highest number of child laborers under the age of 14 in the world UNICEF (n.d.). Research shows that a number of children who end up in conflict with the law are runaways and child laborers, and have faced other stressors and risk factors that eventually lead to the path of crime and deviance. In this regard, the provisions of providing protection to children under the Juvenile Justice (Care and Protection of Children) Act, 2000, are quite significant.

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJCPA)

Gap between the Law and Practice

The Juvenile Justice Act enacted in 1986 had no comprehensive provisions for rehabilitation. Jaamdar (1995) notes that it is particularly important in juvenile justice as children are released back in the community and essentially left to fend for themselves. Most of them do not come from stable family environments to begin with. According to him, as few progressive states such as Maharashtra, Gujarat, and Karnataka established "district after-care hostels where some needy ex-inmates live on a contributory basis" (Jaamdar, 1995, p. 1833). However, in order to have an effective policy, it is important for the juvenile justice system to incorporate means of reintegration into the society.

The JJCPA, passed in 2000, has provisions for two bodies, namely the Child Welfare Committee (CWC) and the Juvenile Justice Board (JJB). The CWC is responsible for handling cases where children need protection and care, while the JJB is required to process cases where children have come in conflict with the law. In practice, however, the line between the functions of the two bodies is often blurred. The JJCPA also mandates that every child

who is apprehended must be produced before the JJB within 24 hours. It provides for specific bail provisions and requires that the child be released on bail at the earliest possible opportunity, unless doing so would put him/her in harm's way, including the likelihood of associating with criminals.

In practice, however, most children do not have any proof of identity or residence. It makes it very difficult to release them right away, and keeps them in a non-family environment. Most children who come in contact with the law are from poor families, including but not limited to day laborers, rag pickers, beggars, and prostitutes, who are least likely to afford bail or go to claim them. In case of runaway children, as reflected through cases studies discussed later in the chapter, it could take the systems months or even years before their families can be identified and notified. In her study on sex workers in Kerala, Jayasree (2004) notes that the rehabilitation programs for sex workers are usually not effective; for instance, the Social Welfare Department in Kerala initiated a program that includes a provision that while sex workers go through rehabilitation, their children should be kept in juvenile homes until they are admitted to schools. This exposes children to further risk factors while also increasing the stigma of being held in a juvenile facility. The same study (Jayasree, 2004) also notes that most state and nongovernmental organizations (NGOs) are reluctant to release children to their mothers who are sex workers as they see them as immoral. This not only damages the remaining sense of family a child may have, but also creates a sense of abandonment. Many NGOs that are run by religious charities further this alienation and hamper the goal of reintegration and rehabilitation. The interpretation of morality within the religious realm makes it all the more difficult for juveniles to reintegrate into the society. Instead, they are labeled as juveniles and/or children of immoral mothers, and leads to a defiant attitude. The legal systems exist within the society, and rely on the society to carry out functions of reintegration, community building, etc. The isolation of certain sections of the society, including juveniles, makes this task all the more difficult.

There are also a large number of children who are either orphans or have not maintained any contact with family for years, also making it difficult to reunite them at the earliest. However, irrespective of the economic status, children who are enrolled in schools are most likely to get out on bail at the earliest. Jaiswal¹ indicated the same problems in ASS' attempts to reunite runaway kids with their families, in particular, lack of proof of identity.

¹ Phone interview by the author with Prabha Jaiswal, Member, JJB, Jamshedpur; Secretary, ASS, in October 2010.

Vadiraj (2008) also notes that many of these children do not know the whereabouts of their parents. The problems only increase with the passage of time. Jaiswal (see footnote 1) also notes that there have been cases where children are unable to reunite with their family but are required to leave ASS after they turn 18. It is particularly challenging for them due to lack of adequate educational and vocational training during their stay at the ASS.

The JJCPA has been amended twice (in 2006 and 2010) and attempts to cover all procedural aspects of interaction between children and the legal system, but the philosophical intent is often left short due to paucity of resources, and lack of social and political will. Many critics of the JJCPA argue that though it was long due, it still does not cover the whole range of abuse and victimization that the children face. For instance, Subramanian (2010) notes that "The Indian Penal Code does not spell out the definition of child abuse as a specific offense; neither does it offer legal remedy and punishment for child abuse" (Subramanian, 2010, para. 5). The law also falls short of identifying inappropriate touching, fondling, and abuse of children, or pornography as sexual abuse. According to Jaiswal (see footnote 1) in most cases it is difficult to get counselors to understand the nature of victimization that the children may have faced. As a result many of them remain untreated and problems may increase over time. Bajpai (2006) also argues that the JJCPA fails to address issues of delinquency and exploitation in a comprehensive manner as it utilizes the interventionist approach rather than integrating preventive approach. Similarly, Rickard (2009) notes that probation officers responsible for investigating facilities for juveniles, including observation homes, are often overworked and lack adequate training. There have also been a number of cases where children are abused and re-victimized by police and in observation homes. The JJCPA also does not contain any specific provisions toward the right to lawyer and speedy trial. As a result many children face even more severe victimization and neglect in police custody and observation homes as compared to their life on streets. In his report Dubey refers to the JJB (Delhi) report noted that the government-run observation home in Delhi was providing an inadequate and often abusive environment. The children at the observation home told horrifying stories of abuse and neglect, including lack of food and security. Many children had symptoms of insomnia, depression, body pain, etc.

Case Studies

This section highlights a few case studies involving children who were processed by the JJB, Jamshedpur, Jharkhand.

Name: Brajesh Yadav

Village: Dhanbad

Brajesh Yadav was nine years old when his mother left him alone at home to visit one of her relatives. Brajesh did not want to be left alone and boarded a train thinking that it will take him to his mother. The train took him to Mumbai where a beggar got hold of him and got him a job to wash dishes at a small eatery. The two shared whatever money Brajesh made. He did not know his address, had no avenue to return home, and lived on the railway platform. The Mumbai police picked up Brajesh from there and put him in a juvenile observation home in Ranchi. He was later moved to Jamshedpur, where JJB member Jaiswal helped him connect with his parents. The observation home also gave him books and stationery to start at school again. The whole ordeal for the child lasted for about a year.

Name: Deepak Prajapati

Village: Latehaar

District: Baliya

Deepak Prajapati was just about 15 years old when he and his friend left home to go to Mumbai to see the shooting of a Salman Khan (a popular Indian actor) movie. All that they knew was that the Hindi films are shot in Mumbai. In Mumbai, they actually saw the film being shot, during which a few people reported them to the police who took them to an observation home for children. The boys were then moved to Jamshedpur and were reunited with their parents. The whole ordeal lasted for about 13 months.

Name: Rajendra Tuddu

Location: Devghar

Rajendra Tuddu was working as a child laborer with a construction worker in Devghar when he and his five friends decided to go to Delhi and work there to earn more money. In Delhi a local contractor put them at work to fill water tanks at the railway station. He was held for violation of the child labor law and sent to a local observation home for juveniles. From there he was moved to Patna, followed by Ranchi, Bokaro, and eventually to Jamshedpur. In Jamshedpur, JJB Member Jaiswal inquired about his hometown, but got only sketchy information. She sent a letter with all the information that she had received from Rajendra and put a note that the JJB needed help to reunite him with his family. After about a month, she received a phone call from a postman in Mungeir who acknowledged receiving the letter, but said that the address was not complete to locate his family. Jaiswal asked him to call again so that he could talk to Rajendra as he may be able to understand

some of the locations that the child remembered. By now, Ranjendra had been away from his home for nearly six years. Jaiswal's instinct was correct and the postman was able to identify the village that Ranjendra came from. It was about six km from Mungeir. The postman inquired about Ranjendra in his village and was able to contact his parents who were overjoyed. Rajendra's family members contacted Jaiswal in Jamshedpur and they were reunited.

Name: Sunny

Location: Dhanbad

There is not much information available regarding how and when Sunny left home. When Jaiswal came in contact with him, she saw a depressed young boy, who was about 14 years old, and was missing a finger on his right hand. The only information in his record was that he was from Dhanbad and it listed his father's name. Jaiswal contacted another ASS member, Budhiman Shrivastav, in Dhanbad and provided him the limited information that she had. Initially Shrivastav was not able to find any leads, but after meeting with Sunny in Jamshedpur, and carrying the drawings that he had made of his house and surroundings (including a dilapidated old palace and a jackfruit tree), people told him about Sunny and his parents. His father had died and his mother had since then remarried and moved to Chhattisgarh. But people were unwilling to share details about his mother's exact whereabouts as they thought that the government officials would require them to come and testify, and that it is always a hassle to deal with the government. After much effort one of the individuals was convinced that it is not a government agency, but a social organization that was seeking information. Jaiswal and others were initially concerned that the couple may not accept Sunny, but they quickly learned that Sunny had two more brothers and his mother's second husband had adopted them as his own sons. He, in fact, had been looking for Sunny ever since. Eventually, after four years of being moved from one observation home to another, Sunny was reunited with his family.

Name: Rohit Kumar Singh

Location: Ranchi

Rohit's father was an alcoholic and his mother left him even before Rohit was born. She lived with her parents, who after Rohit's birth, decided to get her married again. Her second husband did not want Rohit's responsibility, and he ended up living with his maternal grandparents. One day his maternal uncle scolded him and he ran away. He boarded the train to Mumbai and started working at a small restaurant near the train station. His employer did not pay him any salary, and only gave him food to eat in return for his work.

After about six weeks Rohit stole ₹500 (about US\$10) from the restaurant and ran away. He roamed around at the Kurla train station in Mumbai for a few days from where the police apprehended him. He was sent to an observation home where he told the officials that he was from Ranchi. After five months he was moved to an observation home in Ranchi, and the very next day moved to Jamshedpur. Another worker there understood where Rohit was from and helped reunite him with his grandparents.

Name: Aabid Hussain

Location: Kerki

Aabid Hussain was 13 years old when Jaiswal met him at ASS. He was not keen on sharing any details about his home or family. After much ado, he told Jaiswal that he was from Hazaribagh, but that he did not want to go back as both his parents were dead. ASS sent a letter at the address in Hazaribagh, but did not follow up on it. After about a month, when Aabid saw Jaiswal talking to other children, he approached her and gave her a piece of paper. He said that the address that he had given earlier was incorrect, and that he had lied about his parents. The piece of paper contained his correct address along with names of his parents, four brothers, two uncles, and a phone number. After some prodding he told Jaiswal that he had lived in an observation home in Kanpur for about 15 months. Then he was moved to Ranchi, followed by Jamshedpur. He said that when he was living at the Kanpur train station for a few days, one of his friends told him never to give his correct address to any police and/or government official, as they would harass his parents and ask for bribes. His friend suggested that once they are old enough, they would find their way back to their homes on their own. Aabid also confessed that he felt confident that Jaiswal would not harass his parents and decided to share all the details. During his stay at the ASS, Aabid had already seen five children being reunited with their families, and he was also keen on returning home. Later Jaiswal learned that Aabid was studying in a madrasa (Islamic school), but he did not like studying. One day his mother beat him up for missing school. He got angry and decided that he would go to Delhi, work, and earn money. But when he got off the train at the Kanpur station, he missed his train, and ended up living at the train station for few days, from where police picked him up and sent him to the observation home. Jaiswal called the number that Aabid had provided and left a message for his uncle. She also instructed them to bring all the documents that would prove that they are Aabid's parents. Aabid's father Shahzaad Hussain brought government-issued ration card, but the problem was that in more than one government file with ASS in Jamshedpur:

and elsewhere, Shahzaad Hussain was listed as "dead." After much effort, people at ASS, Jamshedpur, were able to complete the formalities of declaring him "alive," and let Aabid go back home. Aabid's ordeal lasted for about two years and six months.

The above-mentioned cases and information gathered through the phone interview with Jaiswal indicates that there are many children who end up in observation homes and other juvenile facilities across India are runaways. The longer they are left on their own, the higher is the risk of them getting involved in criminal activities. Many of these children are exploited and made to join gangs of pickpockets, beggars, traffickers, etc. Organizations associated with the JJIB are working toward reuniting children with their parents at the earliest, but there is always a concern that these children, who need care and protection, are often left in the company of juveniles who have committed crimes. Vadiraj (2008) refers to the case of 13-year-old Sonu who was left in an observation home in Pune on the charges of theft. Sonu complained of being beaten by the caretaker and the older boys, and pleaded to be sent to a hostel where he could go to school and play like other children. Jaiswal also supports this sentiment, where after a while children do realize the importance of family, school, etc., but not many of them are able to get back on track right away, exposing them to risks of deviance and crime.

Increase in Juvenile Delinquency in India

There has been an increase in juvenile delinquency in India (Jaiswal, 2010, Govind, 2009, Paul, 2009; IANS, 2008; Chadha, 2008, Jaamdar, 1995). Jaamdar (1995) sees the growing population and the unplanned, rapid, rural-urban migration leading to development of slums. He notes that it adds to the underclass where children are at the highest risk. In many instances, due to extreme poverty and social disorganization, young children are expected to either work with their parents, or support them. This mindset is also reflected in the above-mentioned cases where children run away from home to earn more money. This is true even in cases where a child may have received some education during his/her stay at any social welfare agency, but then has to return to provide for the family (Jaamdar, 1995; Jaiswal, 2010).

Jaamdar (1995) notes that the breakdown of traditional joint families, which provided a safety net to children, is one of the factors leading to an increase in juvenile delinquency. Other scholars including Chambliss (1978)

and Hartjen (1982) also see rapid and often unplanned urbanization and industrialization in countries such as India as a major contributor to increase in juvenile delinquency. Traditionally, joint families fulfilled the need to discipline children, and provided emotional support and stability, especially when either or both parents worked outside the home.

Goyal (1996) notes that those implementing development projects often do not pay attention to displacement of the poor and the need for their resettlement. As a result many people have been reduced to a life of persistent and extreme poverty and destitution. Sah (1995) highlights a similar concern about the displacement and argues that any resettlement plan needs to take into account the loss of social networks and relationships along with the physical dislocation.

There are a number of cases where children are put in observation homes for stealing an apple, a slice of bread, etc. That is, their offenses do not warrant punishment or holding in a juvenile facility, but due to limited resources in being able to contact their families, and overall lack of concern about juveniles in general, there are not many measures to help these children reintegrate into the society, or for that matter, to provide them with avenues for education and vocational skills. Many scholars indicate that often a shortage of resources leads to the primary concern being to provide these children with shelter, food, and clothing, instead of education and counseling (Jaiswal, 2010; Bajpai, 2006). Jaiswal (2010) also recognizes the fact that the longer these children stay away from home and school, the more difficult it is to reintegrate them into society as they fall behind in education, and the stigma of being a juvenile offender also becomes permanent.

This is not to suggest that all juveniles are forced into difficulties due to their circumstances. There have been an increasing number of cases where juveniles are involved in nefarious criminal activities, including acts related to terrorism. Table 18.1 in shows the number of juveniles apprehended for crimes under the Indian Penal Code, 1860 (IPC) and Special and Local Laws (SLL) from 1998 to 2008. The data indicate that there has been a sharp decline in the arrests of female delinquents after the passage of the JJCPA, 2000. During the course of this research, I communicated with three individuals in India who have been evaluating the JJCPA, 2000, but did not get any answers with regard to this sharp decline.

Table 18.2 shows juveniles apprehended under IPC and SSL by age, sex, and type of crime. The table shows only selected crimes, not all crimes committed by juveniles.

Table 18.1 Juveniles Apprehended under the Indian Penal Code (IPC) and Special and Local Laws (SLL) from 1998 to 2008

<i>Year</i>	<i>Boys¹</i>	<i>Girls</i>	<i>Total</i>	<i>Percentage of Girls</i>
1998	13,974	4,949	18,923	26.2
1999	13,088	5,372	18,460	29.1
2000	13,854	4,128	17,892	23.0
2001 [*]	31,295	2,333	33,628	6.9
2002	33,551	2,228	35,779	6.2
2003	30,985	2,335	33,320	7.0
2004	28,878	2,065	30,943	6.7
2005	30,606	2,075	32,681	6.3
2006	30,375	1,770	32,145	5.5
2007	32,671	1,856	34,527	5.4
2008	32,795	1,712	34,507	5.0

Source: National Crime Records Bureau (2008, p. 511, Table 10.6).

Note: ^{*}As per the revised definition under JJCPA, boys in the age group of 16–18 years have also been considered as juveniles.

The challenge for the juvenile justice system is to have enough of a support structure for children who need care and protection, while also processing those who have come in conflict with the law as effectively and swiftly as possible. Tanksale (2009) notes that there has been an increase in the incidence of crimes such as rape, murder, house break-ins, theft, robbery, and dacoity by juveniles in the age group of 13–16 years. Most of these children come from broken families, poor economic backgrounds, and have one or both parents with criminal records. It does not imply that there is little delinquency among the economically better groups, but is simply emblematic of poverty being a strong predictor of crime and delinquency. Mukherjee (2010) notes that though there are many layers and factors related to juvenile delinquency, but there is far greater prevalence of violence among the lowest strata of society. The children in the lowest echelons have a deeper sense of frustration, deprivation, and lack any support structure. Mukherjee (2010) highlights the recent case of a five-year-old girl in Kolkata who went to play with her brother's friends, aged 12 to 14. The boys molested and strangled her to death, and went back to play soccer in a completely nonchalant manner. Govind (2009) finds that there has been a significant increase in the number of juveniles who are involved in political clashes. Reports evaluating the economic backgrounds of juveniles show that about 68% of juveniles that come in conflict with the law are from poor families that have annual income of below ₹25,000 or \$550 (iGovernment 2008).

Table 18.2 Juveniles Apprehended for Crimes under the Indian Penal Code (IPC) and Special and Local Laws (SLL) by Age, Sex, and Type of Crime in 2008*

Heads of Crime	7-12 years		12-16 years		16-18 years		Total
	Boys	Girls	Boys	Girls	Boys***	Girls	
IPC crimes							
Murder	9	0	250	24	593	26	902
Attempt to commit murder	7	2	205	8	474	5	701
Rape	7	0	284	10	550	12	863
Kidnapping and abduction	3	0	79	8	293	32	415
Dacoity	5	0	58	1	172	8	244
Robbery	15	0	214	0	428	1	658
Theft	356	31	2,772	70	3,967	88	7,284
Auto chefr	25	0	546	0	1,231	1	1,803
Other theft	331	31	2,226	70	2,736	87	5,481
Riots	25	11	507	43	1,574	73	2,233
Molestation	18	1	176	2	411	2	610
SLL crimes							
Arms Act	4	0	64	0	197	0	265
Narcotics Drugs and Psychotropic Substances Act	2	0	8	2	57	1	70
Public Gambling Act	12	0	172	0	595	0	779
Excise Act	1	0	91	6	255	21	374
Prohibition Act	0	3	85	23	236	61	408
Explosives and Explosive Substances Act	0	0	2	0	5	0	7
Immoral Traffic Act	0	0	2	3	11	17	33
Registration of Foreigners Act	4	1	31	2	9	1	48
Copyright Act	0	0	10	0	17	0	27

Source: National Crime Records Bureau (2008, p. 513, Table 10.8).

Notes: (i) **The table shows only selected crimes, not all crimes committed by juveniles.

(ii) *** As per the revised definition under JJCPA, boys in the age group of 16-18 years have also been considered as juveniles.

Mukherjee (2010) expresses concern about the lack of shock that such cases cause in the society today. That is, juvenile delinquency has been increasing, and has perhaps created a level of desensitization. Bajpai (2006) comments that public officials responsible for implementation of the provisions of the JJCPA have been both apathetic and unconcerned. For instance, the law has a provision to establish separate institutions for custody, adjudication, trial, and treatment of juveniles. But most states have failed to achieve this goal. Jaiswal (2010) also raised similar concerns about the lack of ability to separate children who have no criminal record from those who are repeat offenders.

Media and Politics

The news media, in particular the cable news channels, are usually lacking in professional ethics and are found vying for TRPs instead of maintaining journalistic standards. Though English news channels are often perceived as more professional, it is largely only due to the perception of the English language as a symbol of modernism and professionalism, but behind the gloss it is the same story of sensationalism and sound bites. Ratna (2007) notes that the mainstream media in India is fast becoming a mouthpiece for select political parties, and there is blatant disregard for children's rights. On any given day, it is not surprising for the news channels to give detailed information, including pictures and videos, of children who have been abused, or those who have come in conflict with the law. The news channels in India also have a long history of disregard for victims' rights, including right to privacy, and there is no effective way to monitor or regulate these excesses. Though there are some concerns raised from time to time, but as with any other sound bite, it dissipates in a short time. There is even greater indifference when dealing with children, especially those coming from socially and economically disadvantaged groups and have no voice. Though many social organizations are actively working to protect children, it is argued that often the loudest ones are only exploiting their own 15 minutes of fame. Many children in such vulnerable settings are also exploited for everything from religious conversions to being sold into the sex trade. There have been some changes in the media policy about showing victims' images, but the juveniles are pretty much paraded for all to see under the assumption that by coming in conflict with the law, they have lost their right to privacy. In a country where politicians run on the agenda of appeasement rather than empowerment, children are seen as a useless group to fight for. They are not part of the vote-bank politics and are treated as an unnecessary diversion. Yadav (2007) notes that justice for juveniles is often delayed. For instance, in 2006 the Dongri Remand Home (Mumbai) was overcrowded, and nearly 35% of the inmates had crossed the age of 18, but were still awaiting trial. Mukherjee (2010) also argues that restitution, community service, and rehabilitation must be integrated into the juvenile system, in the absence of which juveniles in observation and correctional homes will remain isolated and alienated.

Conclusions

Based on the above discussion, there is a need for setting aside enough resources aimed at providing educational and vocational opportunities while juveniles are held in observation homes and/or with social agencies. The juvenile facilities must be equipped to evaluate children for mental, emotional, physical, and sexual abuse, and/or neglect. The JJCPA needs to address the specific issue of child sex abuse, and accordingly incorporate provisions of treatment and rehabilitation. It would help if the juvenile justice system maintained a central database containing information on all children who are apprehended to make it easy to communicate with various agencies, and expedite the process of reuniting them with their families. There is a need for specific guidelines to regulate the media and protect children's right to privacy, irrespective of whether they are victims themselves, or have come in conflict with the law. Lastly, a larger sociocultural goal includes changing the social and political apathy and indifference toward children's rights. It would include making education more accessible to children across all strata of society, while also prosecuting those who violate children's rights. It is a given that India cannot resolve the concerns and challenges surrounding juvenile justice without addressing the issues of poverty, but it cannot be used as an excuse to overlook these concerns along the way.

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Prabha Jaiswal is a member of the Juvenile Justice Board (JJB) in Jamshedpur, Jharkhand, and also serves as the Secretary of the Adarsh Seva Sansthan (ASS). I interviewed her in October 2010, and received a number of case studies for the purposes of this chapter. She has been a great help in providing the necessary information relevant to the topic.

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Prisons, Corrections, and Recidivism in Indian Culture and Society

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Abstract

Statistical and qualitative information gathered reveal that offender recidivism is much lower in India than in societies such as Japan and the United States, despite harsh prison conditions in India. History has shaped India to have a culture that has made Indians develop a weak ego, receptive to following social norms which are largely influenced by the Indian cultural principles of dharma—right morals, duties, and behavior. Although caste dharma would be considered divisive and discriminatory in the modern Indian context and is slowly fading away, a general or higher sense of dharma that applies to all equally, helping promote societal integration, has been evolving. Modern laws, which include this higher sense of dharma, sometimes generate dissention in Indian society due to prevailing social inequalities of caste and class, but currently the laws are not seriously questioned, as happens in more individualistic, pluralistic modern societies, such as the United States. Further, Indian political parties and the political administration function under the guise of promoting the common good, dampening discontent. In addition, the higher sense of dharma and law are well taught in the family, caste, and community, as law violation can bring shame to oneself and the groups in which one is enmeshed. Consequently the small proportion of Indians who commit crime and return from correctional institutions often become apologetic, alienate themselves from public life, and refrain from recidivating. Overall crime and recidivism rates in India are the lowest. In Japan, a more

economically developed and modern society, the crime and recidivism rates are somewhat higher than in India, but yet much lower than in the United States. As in India the Japanese are socialized in a collectivistic society to conform to the law, while Americans are socialized to be individualistic, which reduces salience of others, society, and the law.

What is most striking about corrections in India is that the recidivism rate is remarkably low in comparison to rates in many other countries, such as Japan and the US, in spite of the fact that correctional environments of custodial institutions are much worse and intolerable by Western standards. This is even more striking, considering India is an economically developing country with extreme inequalities and abnormal poverty levels, with a population of about 1.15 billion, which is four times higher than that of the US and nine times higher than that of Japan. This essay focuses on developing an explanation for why the recidivism rate, measured by reincarceration of released prisoners, is so low in India when compared to rates in Japan and America, and explain this in terms of India's cultural and social influences that also contribute to its lower crime rates. It is proposed that correctional outcomes vary among societies depending upon the particular nature of their cultures. The cultural differences among societies can be understood by certain ideologies, philosophies, or beliefs that people hold and express in their social lives. Studying individuals, in this case offenders, requires sociocultural understanding.

Using available statistics, India's recidivism rate in 2007 (per 100 released prisoners who were reincarcerated) was 8.6, while Japan's in 2005 was 48.9, and that of the US in 1983 was 67.1 and continues to be around that level even now (see Table 19.1). Similarly India has much lower crime rates than those in many countries; for a comparison with such rates in Japan and the US see Table 19.2. Even though crimes are underreported and India's crime statistics are not as reliable as they are in these other countries, they are, especially for property crimes, orders of magnitude lower, suggesting a significant and large difference.

While violent crime rates in India are somewhat higher than in Japan, they are much lower than in the US (using figures for 2007): with 2.8 homicides per 100,000 population for India and 5.6 for the US; 24.0 assaults in India and 283.8 in the US; 1.8 rapes in India and 30.0 in the US. As for property crimes, India has much lower rates than those in both Japan and the US (using 2007 figures for India and the US, and 2005 figures for Japan): with 2.1 robberies per 100,000 population in India, 4.7 in Japan, and 147.6 in the US; 8.0 burglaries in India, 27.0 in Japan, and 722.5 in the US; 25.1

Table 19.1 Incarceration Rates (per 100,000 Population) and Recidivism Rates (per 100 Released Prisoners^a)

<i>Year:</i>	<i>India (2007)</i>	<i>Japan (2005)</i>	<i>US (2007)</i>
Total Population ^b	1,124,134,801	127,537,189	301,579,895
Jail/Prison Population	376,3936 ^c	77,932 ^d	2,293,157 ^e
Incarceration Rate	33.5	61.1	760.4
Recidivism Rate	8.6 ^f	48.9 ^g	67.1 ^h

Sources: (i) ^b US Census Bureau (2010).

(ii) ^c Ministry of Home Affairs (2009b, p. 9).

(iii) ^d Ministry of Justice of Japan (2006); statistics are for 2005.

(iv) ^e West and Sabol (2008, p. 6).

(v) ^f Ministry of Home Affairs (2009a, p. 139).

(vi) ^g Ministry of Justice of Japan (2006).

(vii) ^h Beck and Shipley (1989, p. 2).

Notes: (i) ^a Recidivism here refers to reincarceration of convicted prisoners who were released from prison.

(ii) ^f This is the total recidivism rate in India for 2007.

(iii) ^e This is the re-incarceration rate in Japan by the end of 2005, for prisoners released in 2000.

(iv) ^h Recidivism profile of prisoners released in 1983 in 11 states of the US and still alive in 1987, and reincarcerated with prior incarceration experience (in federal, state, and local prisons/jails).

Table 19.2 Crime in India, Japan, and the US

<i>Crime:</i>	<i>India^a (2007)</i>	<i>Japan^b (2005)</i>	<i>US^c (2007)</i>
Homicide	32,318	139	16,929
Homicide rate	2.8	1.1	5.6
Assault	273,067	25,815	855,856
Assault rate	24.0	20.2	283.8
Rape	20,737	2,074	90,427
Rape rate	1.8	1.6	30.0
Robbery (and dacoity)	23,713	5,983	445,125
Robbery rate	2.1	4.7	147.6
Burglary	91,218	34,518	2,179,140
Burglary rate	8.0	27.0	722.5
Thefts (and auto thefts)	285,443	1,725,072	7,664,341
Theft Rate	25.1	1,350.3	2,541.1

Sources: (i) ^a Ministry of Home Affairs (2009a, 195).

(ii) ^b Ministry of Justice of Japan (2006).

(iii) ^c Federal Bureau of Investigation (2009).

Note: ^h These are statistics for 2005.

thefts (including auto thefts) in India, 1,350.3 in Japan, and 2,541.1 in the US. It should be noted that while India has a higher homicide rate than that in Japan, this will likely decrease as current trends show: in 1996 it was 4.0 (Ministry of Home Affairs, 1998, p. 161) and by 2007 it had declined to 2.8. Furthermore, increasing economic development in India may bring down its violent crime rate, as greater development has been shown to correlate in general with lower crime rates, the US being a glaring exception (Shelley, 1985).

India, like Japan, has an integrated jail system (see Table 19.3 for the various types of jails in India and their inmate populations), unlike the complex system of federal and state prisons and local jails in the US. In 2007 India had 1,276 custodial institutions, 1,266 jails and 10 Borstal schools. It is the responsibility of the states to administer and manage jails by receiving guidelines and sometimes funding from the central government. Within a state, there are central jails, district jails, and sub-jails. Serious and dangerous offenders and recidivists are often confined to the central jails. There are very few separate jails for women and Borstal schools for juveniles, and women and children are sometimes kept in men's prisons in separate locations.

As Table 19.3 indicates, most jails are overcrowded, creating pressure on limited space. In her visit to a prison, Mangsatabam (2004) found a cell housing three times its capacity, with the prisoners having to sleep in shifts. Around 65% of jail inmates are "undertrials" (awaiting their trial). Of 376,396 prisoners confined to jails in 2007, one-third of them were illiterate, 95.9% were male, and most inmates were below 30 years of age (Ministry of Home Affairs, 2009b, pp. i-iv). The incarceration rates are gradually increasing. In 2002 it was 31.09 per 100,000 population (Ministry

Table 19.3 Types of Jails and Jail Populations in India

Type	Number	Capacity	Inmate Population	Occupancy Rate	Percentage of Total Inmate Population
Central jail	113	123,079	166,047	134.9%	44.1
District jail	309	103,853	157,731	151.9%	41.9
Sub-jail	769	37,532	42,263	112.6%	11.2
Women's jail	16	3,047	2,777	91.1%	0.7
Borstal school	10	1,602	737	46.0%	0.2
Open jail	28	3,076	2,346	76.3%	0.6
Special jail	25	4,649	4,038	86.9%	1.1
Others	6	466	457	98.1%	0.1
Total	1,276	277,304	376,396	135.7%	100.0

Source: Ministry of Home Affairs (2009b, p. 9).

of Home Affairs, 2004), which increased to 33.5 in 2007. The recidivism rate, on the other hand, has actually decreased over the decade. In 1996 it was 8.6 (Ministry of Home Affairs, 1998, p. 118), the same as it was in 2007, fluctuating slightly up and down over the years (Ministry of Home Affairs, 2009b, p. 139).

The main proposition here is that the lower crime and recidivism rates in India are due to a past emphasis on nonmaterial goals and values, which are still to a large extent present in modified forms and interface with the materialistic and democratic goals that are arising in the developing economy. Indian culture and society in the past shaped the thinking and behavior of individuals to adhere to principles of *dharma* from Hindu scriptures and emphasize serving one's caste and society in achieving the main goal of religious salvation. Attachment to these principles has weakened in the modern time, but still persists. Consequently individuals put greater emphasis on duty, serving others, and self-control, making their contribution to crime and recidivism much lower. This cultural focus will be presented before further discussing India's prisons and prison conditions, then it will be contrasted with Japanese and American cultures to highlight how such differences may contribute to varying crime and recidivism outcomes.

Culture, Society and the Individual in India

The *Vedas*, *Upanishads*, *Puranas*, epics (*Mahabharata*, *Ramayana*), and *Bhagavad Gita* are the essential Hindu religious scriptures that explain the origin of the universe and humankind, and what a person should do to prepare for religious salvation, emphasized as the main goal of life. In this regard the notion of *dharma* describes what life should be and how it should be led in accompaniment with religious goals. *Dharma* in Hinduism means principles of righteousness or moral and virtuous paths that individuals should follow (Harris and Levey, 1975, p. 756). It applies to righteous behavior and duties according to an individual's variously situated statuses of age, gender, and caste, and though it cannot be easily translated into English, it gives the broader meaning to some extent of religion, duty, and law, which in traditional society is sacred law, the ethical principles behind the duties that one owes to others. *Dharma* also speaks of what is right and wrong for all, irrespective of people's social statuses and distinctions, which can be construed as "higher *dharma*." The contrast that Dworkin (1977) makes

between rights-based ethical codes, which justify individual satisfaction and lead to assertive behavior in social relations, and duty-based ethical codes, which normalize fulfillment of social expectations, is useful here. Unlike the rights-based social relations in America, India has duty-based social relations that make significant differences to behavior in social contexts. Inasmuch as *dharma* means duties, and this concept is well imbued in most Indians' thinking, India highly exemplifies such a duty-based, social-oriented society. In line with this stronger sense of duty in India, Miller, Bersoff, and Harwood (1990) found in a moral reasoning study that Indians regarded the failure to aid others in all situations, even in those of minor needs, as morally improper, while Americans did so only in situations of life-threatening cases.

As for caste or *varna*, *varna dharma* specifies the right conduct and duties of individuals according to requirements of the castes which constitute the society, with the Brahmins (priests) at the top and Kshatriyas (warriors, rulers), Vaishyas (merchants, craftsmen), and Sudras (manual laborers) occupying descending levels of statuses, with the Panchamas (untouchables, Dalits) living outside the caste system, and yet part of it, by performing "polluting" roles to take away other castes' pollution. Castes are expected by *dharma* to perform their particular roles in service of other castes and society with selfless devotion and without attachment to the fruits of material rewards of those roles (Mahadevan, 1967, pp. 161-164), and the Brahmins are expected to exhibit this selfless detachment the most. Also, as the person develops and ages, *dharma* is expected to foster greater self-control and detachment from selfishness and the mundane and nonreligious aspects of life, and enable a philosophical and stoic orientation of accepting hardship. This is unlike in America in which upper class persons flaunt their wealth, and adulthood and retirement are supposed to bring greater freedoms to do whatever one wishes.

In India, birth in a caste is said to result from *karma*—the various good and bad deeds performed in previous births. It is believed that selflessly following caste roles (*caste dharma*) in the service of society, pursuing what is sacred and pure, and avoiding the profane and polluting will improve one's caste position in the next birth. Life as it is in one's situation, whether full of problems or happiness, is accepted as a *karmic* outcome (a cumulative result of deeds and adherence to, or deviation from, roles in previous births). *Karmic* effects are philosophized as natural, deserving, and accepted. Shweder and Miller (1985, p. 42), based on their years of ethnographic field work among Oriyas in India, point out that to Indians the natural order is a moral order, and events that happen, even those considered natural or accidental in Western thinking, are seen as outcomes of bad or good *karma*:

To be reborn is a sign of prior sin. To be born a woman is a sign of prior sin, as is giving birth to a daughter, dying a widow, or suffering a lingering death... It is a sign of prior sin to die prematurely or suffer any major calamity. Oriyas believe that, in the long run, nature punishes vice and rewards virtue.

In this vein, being born in *Panchama* untouchable castes—considered the lowest, most polluting castes, and today referred to as Dalits—is a painful experience, yet a resourceful and abiding logic was provided for them as for others in the caste hierarchy to accept their caste status and cope with it. Painful and economically unrewarding roles and even mistreatment were often accepted by muttering, it is my *karma*, or it is my “head-writing” (fate). This manner of thinking helped lower castes, especially at the *Sudra* and untouchable levels, to accept life as is, without developing stresses that could result in dissident outbursts. The relationship that developed between Hindu philosophy and its psychologically transforming effect and practical application in all spheres of daily life is noted by Radhakrishnan and Moore (1957, pp. xxiii–xxiv, italics in original):

Every doctrine has been turned into a passionate conviction, stirring the heart of man and quickening his breath, and completely transforming his personal nature. In India, philosophy is for life; it is to be lived. It is not enough to know the truth; the truth must be *lived*.

Dharmic principles and ultimate purpose of salvation led to practices directed toward self-purification, giving up violence, following self-discipline through meditation and yoga, which promote mental concentration, reasoning, and abilities to withstand temptations and distractions of life (see Nikhilananda, 1967, p. 136). Discipline is needed to free oneself from temptations and the suffering that worldly desires cause, and unite one with one's environment to achieve ultimate peace (Murti, 1967, p. 320). In a similar vein, Moore (1967, p. 13) notes that Westerners seek and search for truth, while Indians want to live the truth. Consequently, Indians frequently speak in religious metaphors and interpret life situations in religious and *dharmic* terms. Shweder (2008, p. 63) notes: “In India even the most enlightened of medical scientists will tell you that ‘religion is observed for better health.’”

The scripts, guidelines, and maps provided about living an austere religious life by following *dharma* created a general uniformity in thinking and behavior that kept the Indian society largely inflexible to social changes. The waves of rulers and regimes, including even the Muslim and British, could not seriously change the Indian way of life and thinking. The individual

born in caste and society learns to be self-effacing, and carry out duties of the collectivity as one's own religious mission. This way of life discouraged indulgence and self-seeking that dilute the requirements of morality and law.

Modern Indian Culture, Society, and the Individual

Modern Indian society is in transition; traditional ways of thinking and living, funneled through colonial control, have become aspects of the postcolonial, modern society. For instance, caste persists, but has taken new directions. As Dirks (2001, p. 314) notes:

Caste can only be embraced ambivalently; although it is impossible to treat caste as the object of nostalgia, it can hardly be the marker of a satisfactory present. Inasmuch as caste is a sign of the past, it is also a vehicle for the construction of a different future.

In modern India the traditional and the modern mix, coexist, and interpenetrate, and even when oppositions surface they are reconfigured in new forms. The traditional sense of hierarchy as exhibited in the caste system is under attack, generally by the lower castes. A new form of *dharma* based on equality (opposed to *varna-ashrama-dharma*) is developing. Such *dharma* is accepted in society, and yet the inertia of social habits stand in the way, engendering a variety of responses not totally aligned with egalitarianism. For instance, organized efforts both to protect and to eradicate caste hierarchy have emerged, leading to inter-caste strife and violence (Vincentnathan, 1996). Even though such conflicts show that the traditional caste system is disturbed, they also help to strengthen caste and group consciousness, at least temporarily in the evolving democracy. Many higher caste persons want to hold on to their higher position without allowing lower castes to become equal to them. Similarly, lower castes find satisfaction in being superior to castes inferior to them, but at the same time try to achieve equality with superior castes. Contradictions in the search for equality and superiority have therefore surfaced. Even though hierarchy and equality are opposed to each other, they are delicately intertwined, creating both personal identity and satisfaction, and at the same time dissatisfaction when people are unable to be equal or superior to other castes. Such attachment to caste and more recently Hindu fundamentalism (Hansen, 1999, pp. 60-89), to a large extent, blind people from perceiving class inequalities, as economic contentment with less

is supported by religion and the caste system that largely emphasizes caste role performance rather than ambitiously seeking economic goals, and is also supported by prolonged habituation to poverty. Many Indians perhaps also feel that the economic conditions they have now with more job opportunities and somewhat better wages are better than what they used to have, and feel satisfied. Furthermore, the perception of class inequality is less, because caste groups politically organize and negotiate for support from the central and state governments, which are sensitive to public needs and introduce reforms to satisfy group demands, especially as the governments are following socialistic principles to uplift the people in general (Verma, 2008, pp. 260–269). Communists and Naxalites (a far left Maoist group) in India do speak of class inequalities in society, but because the central and state governments and political parties follow socialistic principles, these groups are not as influential as they could be in arousing class-consciousness and conflict. However, when they do bring class issues to the forefront, governments give concessions, often caste-based (such as giving caste groups affirmative action benefits), making caste rather than class more salient. In other words, dissident class-consciousness or anti-upper class sentiments, antisocial views, or reasons to justify crime are not as well developed in India as they are in other societies.

Other changes have also occurred in the caste system. For instance, an Indian in order to present politically correct behavior might not follow caste etiquette in public, but in private he would give his daughter in marriage only to a man of his own caste. Another man, somewhat modernized, may give his daughter in marriage to a person of a slightly lower caste, if that person is economically well off. With rapid economic development and education, many people have given up their traditional caste occupations, and have moved away from their villages and taken up new types of jobs, seeking economic improvement, and these trends coupled with egalitarian notions have contributed to an increasing level of self-focus and individualistic orientations. Contrary to the traditional values of nonmaterial and nonegoistic orientations of serving society and self-effacement, Indians are becoming more economically oriented, individualistic, and sometimes non-hierarchical in search of an egalitarian way of life. However, these behavioral changes have not led to serious levels of deviant and criminal responses. This is because modern goals often find meaning within the context of traditional moral principles and do not yet override them seriously.

Furthermore, social life founded on the traditional sense of *dharma* and modern trends toward egalitarianism and individualism are promoting a new form of *dharma* that encompasses relationship, integration, honesty,

moral life, purity, and nonviolence. Srinivas (1966, pp. 1–45) considers this type of trend Sanskritization. Lower castes in general in their attempts to raise their caste statuses and reputation, take on higher caste views and follow practices of purity by giving up activities considered polluting, such as meat-eating, being violent, unclean, and criminal. In other words, becoming gentle, decent, and living a dignified life is part of the new *dharma* that is desired (Béteille, 2005, pp. 207–231). Consequently many lower castes, including the Dalits, have begun to gain the religious knowledge and practices of higher castes (Vincentnathan, 1987), although raising their caste statuses is quite difficult. Even “criminal castes” have begun to discipline themselves in this regard (see Pandian, 2008). Thus the moral ethics of *dharma* of the modern time show a new direction toward forging a new character in society along a democratic track. The evolving morality can have constructive consequences, if it does not go in socially irresponsible directions that engender individualism in opposition to social concerns, with ascendance of self over others, who could be viewed as detested obstacles and competitors. If these disintegrative developments can be avoided, there likely will not be a large-scale increase in crime and recidivism. This depends on how the traditional cultural values are reinterpreted and integrated with democratic values. The leaders of the nation and the media have a significant role in fostering a new *dharmic* morality that is altruistic and socially directed.

Before discussing correctional outcomes in India in the context of Indian culture, society, and psychology, it is necessary to describe prison conditions in India, which seem as much, if not more, to hinder rehabilitation, than foster it.

Prison Conditions in India

Prison conditions in India have been noted by researchers and human rights organizations to be deplorable and abusive, worse than such conditions in developed countries such as the US and Japan (Bureau of Democracy, Human Rights, and Labor, 2010). Prisoner management is founded on punishing the offender for the purpose of deterrence. This punitive philosophy, with roots in India’s history and colonial legacy, undermined the evolving philosophy of offender rehabilitation that arose in 19th century British India. Even though by around the middle of the 20th century rehabilitation became a well-accepted philosophy, it is still under suspicion. Most prison staff are attached to the Prisons Act, 1894, and the Prisoners Act, 1900, and follow

old, punitive practices created to break the spirit of the offenders by making them suffer, thinking that offenders deserve such treatment and it would discourage recidivism (Mangsatbam, 2004). Custodial staff torture prisoners and demand bribes from their families to refrain from torturing them (Bureau of Democracy, Human Rights, and Labor 2010; Human Rights Watch, 1993, p. 86). In other words, there is a vast disconnect between correctional philosophy, laws, and guidelines in the books, and the actual practices in the prisons (see Bandyopadhyay, 2007).

The 2009 Human Rights Report on India by the US State Department's Bureau of Democracy, Human Rights, and Labor (2010) found that "[p]rison conditions continued to be life threatening and did not meet international standards. Prisons were severely overcrowded, and food and medical care were inadequate." Lack of sanitation noted by many (see Bandyopadhyay, 2007, pp. 397-398), provides ripe conditions for the spread of infectious and contagious disease. Financial allocation for prison management is a lot lower than in developed countries, and that, along with corruption, such as custodial staff pilfering prison supplies, leads to severe inadequacies in necessary dietary, health, and other educational and rehabilitative services (Chakraborty & Okita, 2004, pp. 159-197; Bandyopadhyay, 2007, pp. 387-416). Juvenile offenders are not spared from such ill-treatment, and they are sometimes incarcerated with hardened adult offenders (Human Rights Watch, 1993, p. 29).

As for women in police custody and in prisons, the conditions and circumstances are pathetic. Women are targets of police rape (Bureau of Democracy, Human Rights, and Labor, 2010). Some female rape victims are detained in prisons as witnesses in their own rape cases, sometimes up to four years, because the justice system fears they will not show up to testify (Human Rights Watch, 1993, p. 5). Kaushik and Sharma (2009) in their study of the Jaipur Central Prison for Women found that conditions were inadequate and unhygienic, and women's special needs were not met; many women prisoners told how the custodial staff physically abused them. Kaushik and Sharma (2009) found that most of the women did not know their rights, did not think they had rights or deserve better treatment, and did not complain to authorities or inspectors.

Due to various court orders and damning government and nongovernmental organizations' human rights reports about India's prison conditions (see Human Rights Watch, 1993), efforts have been made to improve prisons, addressing these problems and providing vocational training, educational opportunities, and rehabilitative services, including meditation programs

and access to religious programs. However, Bandyopadhyay (2007) found in practice that custodial staff selectively and arbitrarily used these support services and better conditions not for rehabilitation of all eligible prisoners, but to make prisoners obey them, give them bribes, and do favors for them. Kaushik and Sharma (2009) found also that while medical and other supplies and programs were available in the prison, these were only made available to a few prisoners, not all. "Open prisons" (less restrictive and community based) are another positive solution to the horrendous prison conditions. These include prisoners living outside prisons in a small community with other prisoners and their families, and engaging in agriculture or their own occupations (Hill, 2008). However, only 0.6% of prisoners in 2007 were in open prisons.

As mentioned above, over 65% of prisoners in most years are undertrial prisoners (awaiting their trial), and many have languished in prisons for many years, often having spent more time in prison than the maximum sentences attached to the crimes for which they were charged (PRAJA, 2010; Human Rights Watch, 1993, p. 6). Realizing this, various governmental bodies have made efforts to speed up the trial process and reduce pre-trial detainees. For instance, in various prisons in Tamil Nadu, "Prisoners' Adalats" or courts "to render quick justice to the prisoners through speedy disposal of their cases" have been established (Tamil Nadu Prison Department, 2010a). In 2008 some 12,780 undertrials, mainly charged with petty crimes such as ticketless train travel, were suddenly released from prison under a little-known provision in the Criminal Procedure Code of 2005 that allows those unable to furnish bail to be declared indigent and be released within seven days on their own recognizance; other undertrials can also be released on bail if their charged crime is not a capital or life-sentence one, and they have spent half of the sentence time (attached to that crime) in prison (Sahu, 2009). However, the problem of undertrials languishing in prison is still a very serious problem. It should be noted that reform-minded prison policies and top-level prison officials are beginning to make a difference by providing appropriate training to prison guards and introducing liberalized visits by family members, visitors, the media, and NGOs. In some states judicial oversight and visits to prisons has been introduced to make sure prisons are in compliance with basic rules, laws, and human rights (e.g., see Tamil Nadu Prison Department, 2010b).

Indian prisoners tolerate the adverse prison conditions noted in Indian prisons because of the overbearing influences of culture and society. Indians, especially the poor who comprise most of the prison population, are used to living with less in a caste-based, hierarchical, and economically

underdeveloped society. Kaushik and Sharma (2009, p. 263) note that the majority of prisoners "were from poor families and lived in environments lacking proper facilities at home; hence, their expectations were also minimal." Most are inured to pain, subordination, and difficulties of life year to year, from which they do not see possibility of liberation. They accept life as a *karmic* consequence or fate. They do not have the experience of living in a free, egalitarian, and rich society. Rather they are used to higher-caste control and authority, servitude, and poverty. Therefore, they do not make much fuss, but accept prison conditions. Additionally, the sense of *dharma* they possess acts as a moral force to stimulate guilt for one's crime, making one apologetic with an orientation to change and become good.

Crime and Recidivism in India

In spite of the fact that the volume of reported crime, and crime rates calculated based on it in India are not fully reliable to understand the extent of crime in the society, it can be said that overall crime rates are remarkably lower in comparison to many countries, including the US and Japan. As mentioned above, this is likely due to the encouragement in India to pursue traditional nonmaterial goals, such as following the *dharma* of Hindu religion in one's actions to find salvation, being more social role-oriented than materially goal-oriented, and following a duty-based rather than a rights-based moral code. In the modern times this is somewhat altered by emerging economic and material goals, and an emphasis on equality of all, downplaying caste hierarchy, but these still seem to be overshadowed by traditional ideas and goals. Indians in modern culture and society are influenced in both directions of hierarchy and equality, and the individual is left to form a specific configuration of both in this transitional stage. Further, it is because of traditional culture and society that there is still an orientation to be a part of and serve society, community, and one's caste. Economic development and democratic focus may have weakened the caste hierarchy and caste group interdependence of traditional times, but ironically in a group-oriented society such as India, these modern trends, along with government policies (such as castes reservation affirmative action), have increased attachment to one's caste, making it more important than attachment to the larger society (Galanter 1984; Kolenda 1978). Social and group affinities continue to exist in India, bringing individuals under social control. In this way, India

is still a *gemeinschaft* society, using Tönnies' term. Applying a Durkheimian view it can be said that Indians are moralistic because they are highly social. They are *dharmic*, role-oriented, or ritualistic to use Merton's (1938) term (see Vincentnathan, 1985), combined with a developing economic orientation, as the economy is fast developing in the capitalistic direction, which nevertheless for now is couched in terms of moral development or progress in a fusion of old and new (Pandian, 2008). In other words, economic goals by themselves have not overtaken traditional goals, only modified them, and individual motivations are not forcefully economic in the individualistic sense to the extent that they are in America.

Following *dharma* is a continuing goal, with its moralistic regulation of behavior evident in the lower crime and recidivism rates. *Dharma*, clarifying what is right and wrong, is well built into the conscience by socialization of children in their families, castes, and communities. Children are taught to submit to elders in the family, the caste, and community, and this becomes possible as the individual has already a social appetite and is socially dependent on them for nurture, support, and safety. Families, castes, and communities exercise greater control over the individual as their reputation depends on the behavior of their members. In addition, because the individual in India is closely dependent on social groups and does not have a strong sense of personhood, the individual has a weak ego. Markus and Kitayama (1991, p. 226) speak of the interdependent Asian self in which "the *individual*... may cease to be the primary unit of consciousness. Instead, the sense of belongingness to a social relation may become so strong that it makes better sense to think of the *relationship* as the functional unit of conscious reflection." Such an individual does not feel the need for self-importance. This is because of being enmeshed in the group and putting more importance on the group than on the self, and the elders assuming greater authority, sometimes ill-treating and punishing their youngsters, causing fear, requiring obedience and submission to them. Shweder (2008, p. 64) tells of Indians he interviewed expressing how *lajya*, roughly translated as "shyness," is a highly valued quality in a person, which actually means "a civilized person who displays the emotion and virtue of respectful self-restraint and gracefully submits to the authority of others."

In addition to these structural arrangements for socialization and fears that keep people in line, including the *dharmic* sense and the weak ego, there is also an urge to do morally right things to avoid *karmic* punishments with the belief that something bad might happen to the person or family members, if they

misbehave. There is also the fear that evil spirits will attack a person if he or she does harm to others; the belief is that these evil spirits come in the night, dwell on some trees, and jump on that person while he or she passes under the tree, causing physical and mental illnesses. Perhaps it is because of this few people go out late at night, including potential criminals. Fear of ghosts is another factor in social control, and such dangerous ghosts are conceived to be those of persons who died before their time or without satisfaction of their desires (Shweder, 2008, p. 67); the ghost of a murdered person would be most dangerous, and perhaps the fear of creating such a ghost might be a factor behind the lower murder rate. Compliance with the law is enhanced because of these goals, social arrangements, and fears. Consequently, the distribution of crime is small in a country with a population of over a billion.

Similar goals, social arrangements, and fears that help to keep the crime rates lower also help to reduce offender recidivism. Those who repeat offenses are extremely few in comparison to countries such as the US and Japan. Explanations provided for the lower crime rate also explain why offenders tend not to repeat crimes. Indians, including Indian offenders, live in a culturally constructed moral order in which even the natural order partakes in "an equitable distribution of rewards and punishments" (Shweder and Miller, 1985, p. 42), and all the triumphs and tribulations in one's current life are explained as consequences of one's good or bad deeds in the past, and all current behaviors have serious repercussions in the future. Shweder (2008, p. 76) contrasts certain types of Americans with Indians regarding moral responsibility:

...[W]hen troubled Americans ... consult with a therapist to "recover memories" from early childhood they tend to recall themselves as victims and blame others for their current distress ... [but] when troubled Hindus in Orissa, India consult with a *poothi* (an oracle) to "recover information" about their earlier incarnated lives they invariably discover some fault of their own.

Although prisoners in India may not be satisfied with the extremely poor prison conditions, they tend to accept their harsh fate, feel that the custodians and judicial system are within their rights to impose it, tend not know about their own rights according to the rules and laws on the books, and do not feel in general that they have or deserve rights (see Kaushik & Sharma, 2009, pp. 260–261). Speaking of women prisoners in the Jaipur Central Prison, Kaushik and Sharma (2009, p. 261) point out how both the public and the prison population see harsh treatment as justified: "It is commonly believed

that prisoners deserve bad treatment; the prisoners themselves believe that they do not deserve to be treated better." In her study of the central prison in Bengal, Bandyopadhyay (2007, p. 398) found that even after some prison reforms owing to imprisonment of educated Naxalites during their uprising, who demanded improvements according to the jail code, most prisoners today still did not know about their rights, and "[f]or them whatever the staff does and asks them to do is right." Again, as with the general population in India, offenders tend to think more in terms of a duty-based than a rights-based moral code.

The reason Indian offenders do not repeat offenses at a high level, we suggest, is not mainly because the correctional programs or correctional institutions are effective, but because the offender more or less shares similar cultural values of the conformer. While he or she may have weaknesses in certain areas of his or her personality that led to the commission of crime, when that is made understandable to him or her, the person picks up the learned cultural resources within to give up criminality and reorient the self toward what is moralistic and legal. Therefore, simple arrest or brief jailing with adequate reorientation to change would likely change most offenders.

However, correctional programs like mediation and yoga that are frequently offered in custodial institutions would help to create a consciousness that what one has done is bad, and that one should atone for what one did, apologize, and use the help given to change and rehabilitate. Meditation and yoga programs are again based on Hindu religious beliefs and practices of *dharma*. This modern sense of *dharma*, which is a combination of traditional beliefs influenced by democratic ideals, is consistent with the Christian and Muslim sense of morals, even though they are of different religions. This could help rehabilitate prisoners, whatever their religion, as long as it is presented in an inclusive manner, allowing the prisoners to follow their particular religions. These programs help the individual to engage in self-analysis, introspection, and reflection. Furthermore, the shame that came upon the individual because of committing crime and the shame caused to his or her family, kin group, and community help the person think of what he or she has done, and change. In Tamil Nadu, as in many places in India, nongovernmental organizations and sometimes government-sponsored programs provide for meditation and yoga for prisoners (Tamil Nadu Prison Department, 2010c). About half the prisoners who attended meditation sessions in the Jaipur Central Prison said that they felt they had benefited from attending the sessions (Kaushik & Sharma, 2009, p. 265). Correctional institutions and private agencies also help the offender to read, receive

education diplomas, and learn trade skills, as most prisoners are illiterate and poor, and can make use of these skills to better themselves when released.

As is, the belief that exists in *dharma* seems to generate belief in the law, and lacks any serious opposition to it. Caste differences and animosities have not led to serious questioning of this modern sense of higher *dharma* in a society that is diverse and becoming democratic. Class differences are not seriously perceived to promote dissident and antisocial views that contradict morality. People are still hung up on caste issues and improving their caste positions. Further, the central and state governments have become sensitive to the needs of caste groups, and help them with economic improvements, without the people having to engage in serious forms of continued protest. Consequently, views such as crime being a result of social inequalities and the rich becoming richer and the poor becoming poorer have not gained a strong foothold. In general, it seems even poor people in India tend to be more satisfied with what they get and are happier with slight improvements in life than people in economically advanced societies. The subterranean ideas and values (those that are part of the culture, and yet oppose conformity) that encourage and justify crime by opposing morals and law are uncommon. It is these views and attitudes that are suggested here as inhibiting crime and reducing recidivism among prisoners, as reflected in the much lower crime and recidivism rates, as offenders are made up of similar cultural *dharmic* substance as conforming people, but at a weakened level.

In spite of the hardships and ill-treatment in Indian prisons, offenders possess abilities to identify with *dharma* and see the harm they have done to the victims, and become apologetic, and take steps to amend their behavior. Friendships with prison inmates may exist, but they have not generated negativistic inmate subcultures, found in American prisons. Prisoners tend to be obedient and conforming, in spite of ill-treatment and illegitimate use of authority by custodial staff. It can be concluded that lower rates of recidivism occur in India because of the inner repertoire of justifications and reasons to conform to rules and not repeat offenses.

From the forgoing discussion, most offenders in prisons change their behavior and give up crime upon release, even under deplorable prison conditions, and often poor or no rehabilitative support services. It is suggested here that the primary change occurs because of personality characteristics formed by culture, which sometimes are activated in programs like meditation and yoga. The cultural sense of *dharma* of Indian culture is within the individual, and helps to inhibit the offender from committing further crimes.

Crime and Recidivism in India in a Comparative Context

The different crime and recidivism rates of India, Japan, and the US are explained here as outcomes of the nature of their specific cultures. Cultural and social arrangements in India that inhibit crime and reduce reoffending are different from those prevalent in the US and Japan. In the US people are encouraged to achieve economic and personal goals that promote personal happiness and self-importance, but social controls are generally weak, as is self-control, resulting from a weak connection between the individual and social entities. In the pursuit of these goals another American goal—freedom—encourages individuals to seek any opportunity, including illegal opportunities, without facing any obstacles or sanctions (Hsu, 1983, p. 4; Vincentnathan, 1995, p. 334). However, when social actors impose obstacles on the individual, resentment surges up, which often results in the person engaging in a defiant and rebellious response toward those social actors, and going against their expectations. This happens to regain the self-importance lost to society through social censure, and to again be under one's own control, and not that of others. Those who recidivate partake in these same motivating forces, but extend them beyond the boundaries of law. They reject the rejections. The rebellious orientation that emerges is one of the significant reasons, apart from the benefits achieved, in repeating offenses (Vincentnathan, 1995, p. 339). Consequently the prisoner and the released offender in America are both antisocial, and tend to resort to crime. As noted earlier about 67% of American offenders in prisons and jails had a prior imprisonment record.

American society is economically developed and literacy rates are higher than in economically less developed India. American economic motivations and education both sustain the economy and also at the same time facilitate avenues for criminal achievements. Crimes that result from economic motivations are justified with the resourcefulness that literacy and education provide. Such justifications have become a part of the culture, and a product of the cognitive repertoire of individuals. The cultural supports for crime and reoffending are enormous, compared to those in India and Japan, and individuals know them. No one wants to be a "sucker," but a winner in the competitive "dog-eat-dog" world. It is said that crime pays and anyone would do it when put on the spot. No one is totally good. The rich get richer and the poor get prison, because of the greed and the exploitation of the poor.

This reasoning provides the motivation and justification for crime and reoffending. Therefore, crime and reoffending have become widespread and situational for many in the context of certain life situations faced—poverty, greed, pleasure seeking, anger, and such others.

Unlike Indian prisoners, American prisoners cannot easily endure the pains and stresses of imprisonment, as they come from an affluent and free society where individuals are supposed to live well and seek personal goals and self-importance. Not submitting, but opposing prison conditions and the authority of custodial staff is common, and this again nullifies being remorseful for the crime committed and inhibitions to reoffending. Because they have less endurance and patience, American prisoners become angry and negativistic. They often become a part of the inmate subculture, which opposes prison administration and rehabilitation, and helps to justify crime (Vieraitis, Kovandzic, & Marvell, 2007). The Indian prisoners, who go through worse prison conditions and ill-treatment, endure all these, but still feel apologetic, experiencing guilt and shame, as they have an ingrained understanding of *dharmic* requirements, and at the same time possess self-effacing, weak egos. The prison experience for most offenders in America results in recidivism, while in India it helps to reduce repetition of crime. When released from prison, American offenders tend to experience rejection from society, join antisocial groups, and associate with other ex-cons, furthering their disconnection from, and rejecting, society, but in India and Japan the offender often reconnects with society, though with greater alienation to avoid public gossip and personal shame, and at the same time refrains from repeating offenses.

While we were in India doing research on topics connected with Indian culture, *panchayats* (village courts), caste conflict, and crime, we noticed three cases that illustrate the thoughts and behaviors of released prisoners and offenders. One person committed a murder for which he was arrested and prosecuted. Later he was released on his own personal recognizance, pending trial. While out, he maintained an extremely low profile in his village, and at the same time was very remorseful for what he did and the shame it brought upon him and his family. On our last inquiry several years after his release, we were told he had not committed further crimes. Another person, his friend, who collaborated in the murder, committed suicide out of guilt and shame, and fear of punishment in prison. The third case involved a person accused of attempted rape; he was convicted and sent to prison, but said he did not do it. Upon release from prison, he was not in the public eye at all, and when we asked to see him, we were told that he was ashamed to see us.

In many ways Indian criminals, prisoners, and ex-convicts are like those in Japan, who regret their criminal actions for not being good. This is because Japanese society is founded on individuals feeling good when they are emotionally engaged with others and interdependent, in contrast to American society, which is founded on individuals feeling good when they are independent and emotionally disengaged from others who present obstacles to their goals (see Kitayama, Markus, and Kurokawa, 2000). It is known that Japanese give importance to economic achievement, but this is subordinated to their collective orientation (Bellah, 1957, p. 188; Nakane, 1970). Economic development in Japan happened with an orientation more to improve society than to advance personally. Doing one's duties to, or performing one's roles in, society or social groups is paramount, and in this aspect the Japanese, like Indians, are somewhat ritualistic, and yet economically successful. This collective orientation calls for integration of the individual and the offender with society, which promotes conformity by giving up antisocial behavior. Social controls and self-control are strong, and discourage crime and recidivism (Durkheim, 1961, p. 64; Vincentnathan, 1995, p. 336). Furthermore, as attachment to society and law is commonly present, divergent views to oppose them are minimal. A view that society is good is a common belief in Japan, and criminals, prisoners, and released offenders atone for doing "bad" in a good society. Because of this there is an urge felt to change and unite with society. Opportunities provided for rehabilitation are not that important for rehabilitation, as most offenders will not repeat. Simple blame, insult, or at the most arrest is enough for most offenders to give up crime (Vincentnathan, 1995, pp. 336-339). However, opportunities given for rehabilitation are higher in Japan than in India, but much less than in America. The Japanese prisoners and released offenders, like their Indian counterparts, change with less correctional assistance to become conformers. In Japan, as crime and reoffending are considered to result from lack of adequate integration of the offender with society, efforts are made to facilitate this by invoking self-observation practices for rehabilitation (Takeuchi, 1965; Clifford, 1976, p. 95). In other words, offenders more easily change in India and Japan because of the nonmaterial and nonegoistic goals followed—in Japan a collective orientation with subordination of self, and in India a *dharmic* orientation with effacement of self. The urges to pursue material and egoistic goals for personal advancement or in "character contests," in which a person seeks to establish or maintain "face" at another's expense (see Goffman, 1967, pp. 239-258 and Luckenbill, 1977), are less than those found in America. Even though crime and recidivism rates are lower and similar between India and Japan, they are notably lower in India

than in Japan. This is understandable because Japan is an economically developed society and individuals would have greater urges to pursue economic and personal goals, resulting in a greater number of people committing and redoing crime at a higher rate than in India. However, it should be mentioned that recidivists in Japan are largely habitual offenders, a large portion belonging to organized criminal groups (Ministry of Justice of Japan, 1985, pp. 54–55), and now joined by Chinese criminal gangs (Onishi, 2003).

In India and Japan correctional education is geared toward reactivating and reinforcing their own respective cultural repertoire—in India *dharmic* notions of life, and in Japan a collective orientation—which seem to help in offender reform. Even though in the US, the cultural values of economic and personal-goal achievements are inducing higher crime rates, they are not deemphasized in the correctional process to curb the crime-committing urges of prisoners. Furthermore, opportunities for personal success are also not adequately created for prisoners to relocate in the community successfully. This does not help reduce recidivism, especially in a situation where prisoners are dissidents and they neither want to yield to moral or legal requirements, nor are they helped to learn supports for social requirements, morality, or law.

Conclusion: Future Prospects

What implications do current crime and recidivism rates have for the future? From the economic developmental history of societies and unique conditions of Indian society, what could happen is reduction in violent crimes (Shelley, 1985)—as disappointing relationships would likely be handled without strong emotions, like anger and passion—and an increase in property and pleasure-oriented crimes. This is because of a greater value placed on economic goods and goals than on human relationships, which would somewhat free people from close human entanglements, reducing interpersonal friction, anger, and revenge. Indian religious and moral principles are changing gradually with the invasion of secular views and economic and individualistic foci founded on democratic values. The change toward these new conditions of life would likely be faster in the future. The economic takeoff for accelerated growth and capitalistic development is happening still under the guise of Indian traditions and values, but these would be seriously weakened in the future, when the economic takeoff that now produces beneficial consequences will promote a different set of economic, egoistic, and pleasure-seeking values. Such changes may encourage property crime and

recidivism, especially with increased economic and personal aspirations and perception of economic inequalities. People would become politicized and polemic in developing justifications for crime and redoing it, and this would weaken moral supports for conformity to the law. Education will produce many good effects, but may also help to promote accumulation of antisocial reasoning that supports crime and reoffending. For India to protect itself from such developments, it needs to enrich its *dharmic* base that is inclusive of all and integrative of people to engender attachment toward society through non-divisive political and religious platforms, and promote social and economic reforms that are addressed toward the common good. In this regard Japan is an example of a society that is economically developed, and yet continues to maintain a collective focus through a concern for the common good, which generates positive views of society for making great strides in all aspects of life, including controlling crime and recidivism.

The political leaders and the intelligentsia in India, in addition to the media, should help to develop a new *dharma* suitable for the modern society, in which all are included without prejudice and oppression. As crime is a problem that arises from lack of altruism and from being antisocial, the attachment to society that the new *dharma* could create could help to reduce crime and recidivism. Development of such an attachment also depends on how the economic distribution adheres to principles of social justice and promotes shared prosperity. If these can be done, the constructive aspects of human nature will arise, leading to good feelings toward society. Empathy, sympathy, and mutual help will develop, which would help prevent crime and reoffending.

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Conclusions

Khan and Unnithan (1984, p. 14) after examining the state of criminal justice in India in terms of its capacity for incorporating policy-relevant research, expressed their disappointment in this manner:

[Various sectors of the system] rarely enter into collaborative interaction, let alone into any coordinated functioning. Nor does there exist any institutional arrangements for this. Apparently, the criminal justice system sectors more or less function in a compartmentalized manner, and are bound together by a highly generalized and abstract objective of "crime prevention." This apart, the criminal justice system in its working has been clearly precedent-bound. In recent years, it has changed only marginally.

Nearly three decades later, we cannot report that criminal justice system integration and coordination in India have improved markedly. Reading through the 19 substantive chapters in this book and the empirical realities they describe, the reader will find little that suggests that the three sectors of the criminal justice system meet or cooperate any more than in the past. Nor, for the most part, are other important segments of society such as the local community, families, religious organizations, and educational institutions consulted or involved in the struggle against crime as they should be (Sherman, Farrington, Welsh, & Mackenzie, 2002). For example, would it not be possible for India's vaunted multi-religious tradition and secularist ideals of living together amicably despite differences in beliefs to be pressed into service against violence and terrorism along the lines suggested by Raghu Naath Singh and Dharam Pal Singh in Chapter 6? Indian citizens have expressed a preference, for example, for the police and private security to work together (Mahesh K. Nalla, Kiran Ommi, and V. Sreemannarayana Murthy's Chapter 11). Yet, why do they not do so? Perhaps, the answer lies in the aggrandized perceptions of themselves many system personnel appear to hold regarding their own infallibility coupled with a sense or even certainty that no one will question them.

Laws are formulated and enacted that legislatures expect to be enforced by the police who often fail to do so. Or they may comply but in partisan

or authoritarian ways. Arvind Verma's contribution in Chapter 1 makes this clear. The police deal with ordinary members of the public arbitrarily and coercively and sometimes even stage killings of targeted "high value" offenders and believe that courts have turned a blind eye to these abuses. Correctional agencies fail to meet the needs of vulnerable sections of the population (see Sheetal Ranjan's Chapter 12; Meghna Bhat and Aimee Wodda's Chapter 13; Sesha Kethineni and Jeremy Braithwaite's Chapter 14; Geetha Suresh, L. Allen Furr, and Aylur Kailasom Srikrishnan's Chapter 16; Divya Sharma's Chapter 18), yet continue to function as though societal expectations about the roles of, and responsibilities toward, these citizens, whether they be women, juveniles, or members of subordinate classes, have not changed. While one sector of the criminal justice system may criticize and make negative judgments about the other (e.g., courts about the failings of the police or police about the corruption of those in corrections), the ground-level details described in these pages do not suggest that they coordinate or collaborate with each other or with anybody else to achieve the goals of reducing and preventing crime.

At the same time, we must note there have been changes that are particularly momentous, and possibly exemplary. Measures that seem especially promising are those that seek to improve the criminal justice system's responsiveness to various groups, particularly those previously marginalized based on caste, class, and gender and to expand the possibilities for it to interact fairly with more stakeholders in society. These include the *intent* (if not always the implementation) underlying expanding criminological and criminal justice education (N. Prabha Unnithan's Chapter 5; Julia Scott, Douglas Evans, and Arvind Verma's Chapter 9), the possibility of increased private security work (Mahesh K. Nalla, Kiran Ommi, and V. Sreemannarayana Murthy's Chapter 10), legislation against gender violence (Sheetal Ranjan's Chapter 12; Meghna Bhat and Aimee Wodda's Chapter 13), services to women (Sesha Kethineni and Murugesan Srinivasan's Chapter 8), protection and rehabilitation of juveniles (Sesha Kethineni and Jeremy Braithwaite's Chapter 14; Divya Sharma's Chapter 18), and plea bargaining (Mathai Vairamon Mathew's Chapter 15). This optimism could also be extended to the issue of death penalty (David T. Johnson's Chapter 17) where although Indian criminal justice continues to retain the practice, it has been carried out less and less. This is in keeping with historical trends whereby a majority of countries across the world have either ended capital punishment, are in the process of doing away with it (Hood & Hoyle, 2008), or are reducing the number killed. It is these hopeful changes that Graeme Newman perhaps seizes on in his Foreword to this volume when he suggests that many

of the shortcomings of Indian criminal justice "are but extreme examples of common problems that befuddle even the most developed countries and democracies."

One needed element of change that is reflected in several of the chapters is a reduction in the current larger role of the police in Indian society and the criminal justice system. We have learned in these pages that the police are involved in the politics of coercion on behalf of those who are in power. We know that they run the correctional sector in the states while not specifically trained to do so and even though law enforcement and order maintenance are not the same as punishment and corrections. We have also found out they are either feared (e.g., by sex workers, juveniles, female victims of violence) or viewed with disdain by many members of the public for their perceived corruption and brutality. Perhaps it is too much to expect some members of any one organization in society not to overstep its stated boundaries when given so much responsibility and authority without vigilant oversight. The reform and regulation of the police sector should be an important item in any future agenda for criminal justice in India. This is not to say that attempts have not been made or that changes have not been suggested in the past. However, they have just not been taken seriously or were subjected to paralysis by analysis and postponed to another day (see Verma & Subramanian 2009).

As we survey the larger and swiftly changing political, economic, and social landscape within which the Indian criminal justice system operates, the possibility for it to proceed in a state of inertia, doing business as usual, has certainly been lessened. Serious concerns that ordinary Indian citizens have with events of public disorder (T. K. Vinod Kumar's Chapter 2), instances of public corruption (Gilbert Geis's Chapter 3; Mahesh K. Nalla and Manish Madan's Chapter 7), and the treatment and punishment of criminals (Sudershan Pasupuleti, Eric G. Lambert, Shanhe Jiang, Jagadish V. Bhimarasetty, and K. Jaishankar's Chapter 4; S. George Vincentnathan and Lynn Vincentnathan's Chapter 19) will magnify and increase. We have recently seen large-scale public demonstrations against the seeming prevalence of blatant favoritism and financial kickbacks in high places and government inaction in the face of egregious crimes against women. The time for patience and forbearance (or the infamous "*chalta hai*" attitude of ordinary Indians) toward such shortcomings in India's system of criminal justice may be coming to an end. Calls for the system to be responsive and inclusive and "to secure to all its citizens: justice; social, economic and political" (in the stirring opening words of its Constitution) are only likely to grow louder and more assertive in the coming decades as India rises.

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