

Perspectives on Crime against Women¹

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Crime and Punishment

Seven persons are alleged to have raped a 23-year old woman in a moving bus in Delhi at about 2130 hours. The gentleman accompanying the lady was brutally beaten up and ultimately he and the lady, who was unconscious because of repeated assaults on her, were stripped naked and thrown out of the bus. The victim of this crime has suffered serious internal injuries and was battling for her life in a hospital. The extent of trauma she must have suffered is yet to be assessed, but it would not be surprising if she is mentally and physically scarred. The gravity of the offence, the sheer barbarity of the behaviour of the seven accused, has shocked the nation and brought angry demands in Parliament and on the streets to make rape a capital offence so that people are deterred in future from committing this crime. The Indian Penal Code provides the death penalty for a number of offences. Under section 194 IPC for fabricating evidence which can lead to the conviction and execution of an innocent person, under section 121 for waging war against the State, for murder under sections 302 and 303 and for an offence under section 27(3) of Arms Act, the death penalty can be awarded. In cases under section 303 IPC and 27(3) Arms Act this is mandatory. The question is how effective has been the death penalty to deter murder, treason, etc.

Except in the two types of cases where the death sentence is mandatory, the trial court has the option of awarding imprisonment for life on conviction. Generally speaking the courts avoid awarding the death penalty and the Supreme Court itself has ruled that death penalty should be imposed only in the rarest of rare cases. The offence should have been premeditated, preplanned, motivated by extreme personal greed, committed with savagery which indicates the vengeful nature of the perpetrator of the crime, or have resulted in such outrage in the

community that such a criminal should not be allowed to escape the noose. The case of Ajmal Kasab is one of the rarest of rare circumstances and the death penalty was rightly imposed and executed. In the case of Afzal Guru the circumstances are even worse. He masterminded an attack on Parliament, the very institution which symbolises our democratic polity. Nine innocent persons, including policemen, were killed by the terrorists and Afzal Guru was rightly given the

death penalty, a sentence upheld by the High Court and subsequently by the Supreme Court. Despite this, for political reasons, he has still not been executed. A delayed execution, if it ultimately comes about, is no deterrent and it can lead to political exploitation by the nation's enemies against our interests.

Rape is horrible because it violates the body, the mind, the honour and the dignity of the victim and thereby is a direct attack on all womanhood. The offence of rape is defined in section 375 IPC and is punishable under section 376 IPC. Section 376 provides a minimum prison sentence of seven years, though the court may award an enhanced penalty of anything between ten years to life imprisonment. The penalty for rape is already just short of death and because life imprisonment for rape is equivalent to the penalty awarded in the vast majority of murder cases raising this penalty one notch to death is hardly likely to make any difference. Because a sentence of death and its execution thereafter is irrevocable the courts would be very reluctant to award it. Murder, that is, permanently depriving a person of life, will always be a more serious offence than rape, regardless of what women activists might say. Despite this, generally speaking, in murder cases life imprisonment is the norm and death penalty is the exception. Is rape so much more serious than murder

¹ This perspective section is a compilation of five articles written by Dr. M. N. Buch in the context of Nirbhaya incident that rocked the nation in December 2012. It also covers a reflection on these articles.

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that we should insist on a mandatory death penalty in rape cases?

What deters a person from committing a crime? Is it the quantum of punishment or is it the absolute certainty of punishment in the shortest possible time after commission of the offence? Let us take the case of a traffic offence, say, jumping a red light. If a traffic offence brings immediate punishment the habit of obeying traffic laws becomes ingrained. Most British drivers follow the law faithfully, partly because this is now a part of their character but also partly because they know that there is a very strong possibility of their violation being noticed and punished. In other words, the fear of penalty does act as a deterrent and ultimately leads to obedience of law becoming a habit. If the law is enforced strictly and the offence is punished soon after it is committed, the penalty will have a deterrent effect. If detection of the offence, its trial and outcome of the trial are all long delayed, respect for law reduces, the delay may itself result in evidence being destroyed or tampered with and the deterrent effect of penalty would be lost.

After the Delhi rape everyone is shouting for fast track courts to try rape cases. I have carefully gone through the Code of Criminal Procedure and the Rules and Orders (Criminal) of the Madhya Pradesh High Court. The general tenor of the Code of Criminal Procedure

is that cases should be tried with due dispatch. Under section 309 Cr.P.C. it is provided that "In every enquiry or trial the proceedings shall be held as expeditiously as possible and, in particular, when the examination of witnesses has once begun, the same shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded". Every court in India is supposed to follow the same procedure as a fast track court, that is, it must hold a day-to-day trial. If, however, as is being demanded, there should be separate fast track courts for rape, it only means that we accept that our trial procedure is defective and that our courts are incapable of dispensing justice. It is alright for murder cases, or a trial for treason, to be indefinitely delayed. It is only rape cases which must be tried swiftly. This is not a proposition acceptable to me because all trials must be expeditious. That is what the law provides.

Rape cases must be detected and prosecuted vigorously and swiftly and an effort should be made to obtain a conviction within three months of the offence. The law already provides for a minimum sentence of seven years imprisonment. Awarding the death penalty will not stop rape, but swift and harsh punishment will certainly deter would-be rapists. That should be our objective.

An Object Lesson in Government Incompetence

When salmon swim against all odds to reach their spawning grounds no obstruction can stop them. The huge number of rape cases now being reported in India reminds me of this annual migration of salmon. Was India free of rape till fairly recently and has the crime become suddenly endemic? Is it a question of rape victims now becoming more vocal about the crime against them and more ready to come forward and report it? Have social mores and behaviour changed so much that suddenly there is an upsurge of rape against woman and is there both a qualitative and quantitative difference between the past and the present? Are women suddenly more unsafe than before? As a young District Collector and several years later, both in a senior capacity and after retirement while working in the rural areas,

I often asked villagers why they insisted on marrying off their daughters as soon as they attained puberty. The universal answer given to my question was that the parents of girls felt that as their daughters approach puberty they become vulnerable to sexual assault and rural society was not organised to control this phenomenon. Therefore, parents tried their best to have prepubescent girls engaged and to be immediately married at puberty. The argument that the law prohibited the marriage of girls below the age of eighteen was not accepted by the villagers who countered that because the law was unable to protect the girl child, therefore, family honour demanded that the girl be given into legal matrimony. The fact that this virtually amounted to legalised rape of a young child who had not achieved

full majority left most people cold. Here I might point out that the region where most child marriages took place was and is northern and central India. Kerala does not have this phenomenon at all. Considering how the northern mindset works, the khap panchayats of Haryana and the generally subordinated position of women in society, one is inclined to believe that there is a kernel of truth in the argument that as a girl matures she should be handed over to a husband through marriage, even if the girl was below the legal age of marriage. I would take this as a clear indication that India is not a society in which gender equality is the rule and that in fact there is a great deal of gender discrimination practised both overtly and covertly in this country.

Can a country survive and prosper if half its population is discriminated against? As it is, the Hindu desire for a male child has already skewed the sex ratio adversely against women. When we look at different forms of discrimination within this country, including on account of caste, a social activist could argue that India is a highly exploitative society in which the fortunate few are able to build their own areas of influence by using those against whom they discriminate as stepping stones on to which they climb for their self-aggrandisement. This, however, is not an essay on equality equity and discrimination per se and I shall leave the argument here, but with the remark that the sexual exploitation of women is only one of the results of having a society which is not based on equality. This is a matter which should cause great concern to our politicians, administrators, academicians and social activists.

Let us take the recent rape in a moving bus in Delhi, which has left the victim at death's doorstep and has virtually acted as the last straw on the camel's back in that it has breached the bounds of tolerance of our people and united them in revulsion against such crimes. The ongoing protests in Delhi are evidence of the people at large being fed up with the deteriorating law and order situation and the sheer ineptitude of government in dealing with it. The fact that crime against women is on the increase and government has been unable to contain it is a major factor behind public anger. It expressed itself at a spontaneous gathering of the young

at Vijay Chowk at India Gate and through virtual blockade of Raisina Hill, the seat of government. What the demonstrators were demanding is the quick arrest of the accused, swift trial and condign punishment. There was an element of lynch law in the demand of the demonstrators, but that is only to be expected when tempers are running high. That does not mean that government should succumb to pressure exerted in the streets, but certainly the government is expected to listen to what people are saying. Unfortunately that is not what is happening.

The sequence of events is that perhaps twenty-five thousand people gathered at Vijay Chowk and along Rajpath. This gathering was spontaneous and certainly it did not have a political organisation behind it. The police barricaded the streets and deployed a large number of policemen equipped with anti-riot gear. This included a number of Vajra Vans which are equipped with water cannon and tear gas launchers. This is the stage at which the President should have walked out of Rashtrapati Bhawan and down to Vijay Chowk. He should have invited the demonstrators to gather around him, he should have heard them and then assured them that he would persuade government to take swift action to apprehend the accused, bring them to trial and vigorously prosecute them so that they could be convicted and sentenced in the shortest possible time. The Prime Minister, the Home Minister and the Lieutenant Governor of Delhi should have assisted the President in this behalf. It should not have been left to Mrs. Sheila Dixit, Chief Minister of Delhi, to be virtually the only person to plead the case for quick justice. The young demonstrators would have been reassured if this had happened and I am absolutely confident that the agitation could have been contained there.

There is another area in which swift action was called for. I spoke to the Cabinet Secretary and the impression I gathered was that the movement of the bus in question had not gone altogether unnoticed. Apparently a police patrol vehicle had sighted the bus, but despite its erratic movements it had not been thought fit to stop and inspect the vehicle. The dark film on the windows of the bus and the drawn curtains both violated the rules in this behalf framed under the Motor Vehicles Act and

that was sufficient ground to stop the bus and board it. Obviously there was gross dereliction of duty by Delhi Police personnel on the ground and this is inexcusable. An alert government should have called the District DCP, Sub-Divisional ACP and the Station Officers of the police stations through whose jurisdiction the bus passed to account and taken drastic action against them. Obviously the DCP had not instructed his officers properly on how to deal with violations of rules by bus owners, nor were members of the patrolling staff properly directed in the performance of duty. Unfortunately in India we only act against minions and not against the superiors under whom they function. Action against errant officers does not demoralise the police force if there is evenhanded justice. Inaction which leads to deterioration in police performance certainly demoralises people at large and in the ultimate analysis government is there for the people and not for some officials. The excuse that action against police officers demoralizes the Force is neither justified nor acceptable.

There was total political mishandling of the situation because no senior minister cared to communicate with people in the streets of Delhi. Its officials did not do so either. In 1966 I was the District Magistrate of Ujjain when a serious bout of students' unrest arose, which culminated in violence in which stern action was taken, resulting in twenty-three students and twenty-one policemen being admitted to hospital with fractures, etc. The Superintendent of Police had five fractured ribs and I had a dislocated knee and a head injury from stone throwing. There was great anger in the student community and amongst the police, but I walked into Madhav College, the epicenter of rioting, the very next day and in the canteen I asked the gathered students to get me a cup of tea. When the students reacted angrily I asked them how many more of them would like to join their colleagues in hospital and on this a sullen student brought me a cup of tea. I then gathered the students around me and allowed them to vent their anger. After they ran out of steam I told them that a week from that day I would take them on a picnic to an irrigation tank near Ujjain and would also have a hockey match with them. I said that whilst enjoying my hospitality they were free to heap abuse on the

Superintendent of Police and on me. In due course the picnic took place, the students beat my hockey team by four goals, went through all the food that we had prepared and ultimately we all parted as very good friends. The moral of the story is not that I am a great guy but rather that if people who wield power interact with and listen to citizens almost every problem can be solved. Had our leaders and officers been more sensitive the Delhi situation could have been defused within a day. It is the sheer ineptitude and inability to govern of our present government that is responsible for its own woes.

The matter is now mired in filthy controversy. The angry Chief Minister of Delhi has openly criticised the police, especially because she has no control over it. The Police Commissioner, an IPS officer who should have kept his mouth shut, has chosen to go public. If a subordinate officer had done something wrong he would have been charged with violation of the Conduct Rules. Neeraj Kumar should know that the rules apply to him also and for any civil servant anonymity is of prime importance. There are charges and counter-charges, with a stupid statement by Neeraj Kumar that if sacking the Police Commissioner improves the situation he should be sacked every day. Does it mean that stringing him up by his thumbs would be an even better solution? The fact is that Delhi is perhaps the only city which has a police force adequate in number as a proportion of the total population. Obviously the police is not as sensitive to its duties as it should be, with the result that crime against women is not taken as seriously as it should. The police has to be very proactive in ensuring that the dignity of women is protected and proactive policing demands intervention by the police in every case in which there is any element of sexual harassment. The malady is an old one. I remember that in 1978 the daughter of Dr. Sneh Bhargava, who went on to become the Director of AIIMS told me that when she went to college using a public bus she wore extra thick jeans or trousers, despite which her bottom was often black and blue because would be Romeos never hesitated to pinch it. I was head of the Delhi Development Authority and Delhi was a smaller city and we were still a conservative society. Today things are worse, which is all the more reason why the police must be proactive

and society must insist on this.

On the one hand is the victim of this particular rape who probably will not survive, which means the offence would be of murder if she dies. If this happens and the court convicts and sentences the accused to death, I suppose the blood thirst of the people would be assuaged, though it would not bring the victim back to life. On the other hand we have a government which even today is handling things in a highly ham-handed manner. The lathi charges, tear gassing, use of water cannon perhaps became inevitable once the crowd had become restive and, subsequently, violent and uncontrolled. However, what led up to the situation was the fact that no responsible person spoke to the crowd and this led to lumpen elements entering the fray. Now there is an unseemly fight between the Chief Minister of Delhi and the Police Commissioner and the allegations have rendered the air thick with an impure fog. What is going on? Do we have no government worth the name today? We need to take the following steps immediately.

1. The Delhi Police should be transferred lock, stock and barrel to the National Capital Territory Government

and the Chief Minister should be made directly responsible for law and order.

2. Because Delhi is a Union Territory some powers may be reserved for the Lieutenant Governor in the matter of law and order just as it is in Nagaland and Arunachal Pradesh.
3. The Delhi Police Commissioner should be told that he is supposed to silently do his duty of administering the police force, maintaining law and order and controlling and prosecuting crime. He is not allowed to open his mouth in public.
4. The Ministry of Home Affairs should restrict itself to general policy guidelines, but leave superintendence over the police to the Lieutenant Governor and the Chief Minister of Delhi.
5. The entire police force should be sensitised to protecting the dignity of women and any officer of any rank who fails in his duty should be immediately subjected to severe disciplinary proceedings.
6. Government must even now engage the people in dialogue, take strict action to ensure that the present case ends in successful prosecution and the situation is defused and normalcy restored.

Systemic Failure or Organ Failure?

The Chambers Twenty-first Dictionary, which is quite an authoritative lexicon, describes 'system' in the following words, "A set of inter-connected or inter-related parts forming a complex whole". The word 'systemic' is defined as "referring or relating to a whole organism. 'Organ' is defined as, "A part of a body or plant which has a special function, e.g. a kidney, a leaf". Therefore, when an organ fails it is an individual part which becomes inoperative and, perhaps, with proper treatment the organ, or part, can either be repaired or made functional, or it can be replaced. A systemic failure, however, would be much more serious because in such a situation the entire system, or the complex whole consisting of individual organs, begins to give way and this can lead to what can only be called termination which is irreversible. Here all the organs either seriatim or collectively fail. The situation can still be retrieved by repair or replacement. The question which faces India today is whether our body politic is

facing organ failures or is it that we are looking at a system failure?

The total system under which India operates is what is provided in the Constitution. The body politic consists of three major subsystems, the Executive, the Legislature and the Judiciary which together constitute the whole system called the Indian State. Within the overall system and the sub-systems there are a number of organs which are required to perform specific functions. Schools and colleges are required to impart education, medical institutions are meant to look after the health of citizens the Income Tax Department is supposed to collect taxes levied by the Legislature, the Agriculture Department is meant to promote agriculture and the Police are required to create an overall environment of security and for that purpose to maintain law and order, prevent, detect and prosecute crime, guard the country against externally sponsored acts of terrorism and generally reassure people that they can go about their normal

vocations in peace. This functional distribution or responsibility applies to all the organs of the State and to all levels of public servants, elected or appointed. Sometimes a particular organisation or department fails to live up to our expectations. Some civil servants do not carry out their duties faithfully. Quite often even at subsystem level there is failure, such as the virtual lock out of Parliament that we have witnessed for the last few months. Sometimes the citizens themselves are so annoyed with a particular organ of the State that they react strongly and, therefore, there is a hiatus between public servants and people at large. These are aberrations which will crop up from time to time in any system, but the system itself has to be resilient enough to apply self-correcting measures so that the organ which is faltering is brought back on track. Organ failure is correctable but when the self correcting mechanism fails it can have a cascading effect on the functioning of organs and an unchecked failure of one organ can cause other organs to come under stress and fall. This can lead to systemic failure, which has to be avoided at any cost.

How sound are our systems? Because the republic is founded on democracy and the fact that every five years people do exercise their franchise in an environment which is basically free of fear means that democracy has taken very deep roots in India. Democracy, therefore, becomes the very base, the very foundation on which is the system rests and this foundation cannot be destroyed. This does not mean that the superstructure, which corresponds with organs of a system, cannot be damaged, but systemic failure cannot take place unless the foundations themselves crack. The foundations of Indian democracy are stable and safe and this can be categorically proved by the failure of the State of Emergency which Indira Gandhi declared in 1975 and had to hastily withdraw in 1977. This is one side of the story, but the other side is that if organs fail and corrective measures are not taken in time, cumulatively this can lead to a system failure. There are many critics, many pessimists, who say that this is beginning to take place increasingly and that we are in danger of systemic failure. People with extremist views go to the extent of saying that the systems themselves are rotten and

we should scrap them and create new systems. In Russian the Tsarist Government and the Tsarist system had become rotten and, therefore, the Russian Revolution took place and Imperial Russia became the Communist ruled Soviet Union. Every organ of the old regime was destroyed.

The problem with revolutions is that they quite often go against the established nature of things and, in turn, they themselves fail. Two glaring examples of this are Russia today and the modern Peoples Republic of China. Within seventy years of establishment the Soviet Union broke up and disappeared, to be replaced by the Federated Russian Republic which has moved away from one party rule of the Communist Party of the Soviet Union to something which is attempting to resemble western multi party democracy. The Eastern Republics have broken away from the Soviet Union and its successor State, Russia, as have Ukraine, Belarus, Latvia, Estonia, the Caucasian Republics of Georgia and Armenia. The system failed and the country split. The second example is of China, where Mao's revolution transformed a rotten Kuo Min Tang governed China by the Peoples Republic, which consolidated the country but also brought it under harsh one party rule. Today, however, the picture has changed and is continuing to change. Under Deng Tsiao Ping and his successors China has moved away from an extreme Left Wing form of communism and instead wholeheartedly embraced the capitalist economic system. Politically China has remained under one party rule and the tension is apparent between an economic system which is liberal and a political system which is still rooted in the shibboleths of Marx, Lenin and Mao. Yet this country has accepted Hong Kong and Macau, former British and Portuguese colonies, as part of China but following their old political systems. Here revolution has turned to evolution, which has kept the country intact and will probably drive it closer to liberal ideas of political organisation, though not necessarily the Westminster or the American model of democracy. This country is to be watched very carefully, not so much because it is now an economic powerhouse but because political changes are taking place which may have very far reaching effects globally.

It is in the context of what the holders of extreme views on how the Indian State functions have to say about scrapping the system that I have brought up the position prevailing in Russia and China. The Indian system of change is evolutionary rather than revolutionary and, therefore, the change tends to be seamless, painless and very long lasting. For those with short memories I would like to draw their attention to what Jawaharlal Nehru and S.K.Dey achieved through the Community Development Programme. Colonial India with its highly regulatory administration was launched on the path of development, especially rural development, by co-opting the people of our villages into an effort to galvanise rural society and unleash people oriented, people driven rural development. Without anyone realizing it India evolved the system of development blocks, each headed by an officer specifically dedicated to the development agenda. The regulatory mechanism of the tehsil and district remained, but a new unit of administration, the block which was coterminous with tehsils in States which had small tehsils and with more than one block per tehsil where the tehsil was large and could be segmented into more than one block. Extension officers in various disciplines were posted in each block. The BDO was equivalent in rank to the Tehsildar, but because the development administration structure was separated from revenue administration, which could be called coercive to an extent, we had a new cadre of officials who were accountable to the people at block level and whose only agenda was improvement of the rural economy. Setting up a parallel development administration without reducing the importance of the regulatory administration was a remarkable achievement and India can take great pride in this. It is on this foundation that the subsequent panchayat Raj system has been created. This evolutionary form of passing real power to the people through the Panchayats is the an achievement of which India can be justifiably proud. Had we abolished the tehsil and had created only a development administration we would probably have had the chaos that now prevails in Pakistan where half baked reforms which virtually destroyed the district administration without a parallel Panchayat system to take over, disconnected the police from accountability

to the Magistracy and converted the Deputy Commissioner of a district to a District Coordinating Officer with virtually no coordinating powers, has led to administrative chaos. Our method is better.

The recent debate has originated from the unfortunate rape of a young woman in a moving bus in Delhi and her subsequent death, which has led to an outburst of horror and rage against the manner in which the Indian State is functioning. People are absolutely fed up with crime, especially against women and the rape of the young lady has led to widespread public revulsion and demand for action. People want modified lynch law to apply, they are attacking the police, the judiciary and the legislature for failure to enact tough laws and to enforce them and they want sweeping changes in the organs of the State which would amount to systemic changes. Any attempt to tell people that whereas the anger is justified it is the law which must take its own course, not only because people demand it but because the law is on the statute book and it is the duty of the Executive to enforce the law. The anger of the people is understandable, but what is not understandable is the manner in which government has handled the whole matter. What the people needed was reassurance from the highest officials of the State, including the President and Prime Minister, that in the instant case there would be swift justice, in general there would be a tightening of security and law enforcement in such a way that law breakers begin to have fear of the law and that the general security environment would be improved so that everyone in India, especially women, has the right to protection of laws. This demand is absolutely justified and had government taken steps immediately which could convince the people that government is serious, the things which happened in Delhi when the protests started would not have taken place. If the President, the Prime Minister or the Home Minister, as also the Lieutenant Governor of Delhi had not sheltered behind police barricades and had come to Vijay Chowk to talk to the protesters, not only the would the people be reassured but the agitation itself would have ended. None of these functionaries thought it fit to meet the people, not within the four walls of their own office but in the open where people could congregate around

them. A little courage shown by the leaders would have defused the situation immediately, but then we are ruled by insensitive people who are also cowards. This is a prime example of the executive organ of the State not performing its duty and to some extent this amounts to an organ failure. However, it is remediable if for the future the lesson is learnt and the administration goes out of its way to meet people, hear them and then provides suitable remedy and takes suitable corrective steps.

There are a few signals about organ failure or at least organ stress on which I would like to comment. The first goes beyond an organ and forms a sub-system which is a vital constituent of the Indian State. I refer here to the Legislature. Whether it be Parliament or a State Legislature, the legislative organ of the State is really the most important constituent of the democratic system because the House is elected by all the people and, collectively and individually, it and its members represent the people of India. The representatives of the people have at all time to be accountable to the people and, therefore, behave in a responsible manner. The people's mandate to the Legislature is to deliberate and legislate, that is, give us a system of laws which makes India a society based on law rather than arbitrariness or whimsicality of the ruler. It is the custodian of the public exchequer in that it votes grants and the budget in its totality, which authorises the Executive to draw funds from the Consolidated Fund of India and make accruals to it through revenue and capital receipts. The Executive can neither impose a tax nor an impost, nor can it spend even a single naya paisa without the approval of the Legislature. In turn the Legislature can call the Executive to account on how the money has been spent and in this it is assisted by the Comptroller and Auditor General of India. The Executive has to account for every expenditure and, therefore, the parliamentary convention is that if government is defeated on a Money Bill and, in particular the Appropriation Bill, it must resign.

The Legislature also calls the Executive to account in its executive functioning through questions, call attention motions, adjournment motions, motions of no confidence, debate, discussions and resolutions. This

can only be done if the Legislature meets for extended periods of time, each day's session lasts the whole day and discussions and debate take place in an environment of peace and normal give and take. If the Legislature meets for just 50 to 60 working days in an year, as is the case with most State Legislatures, or proceedings are held up for days and months because the opposition and the ruling party do not see eye to eye on issues and nonissues, then the legislative subsystem comes under more stress. This can affect the working of the Executive and then there is a real danger of a systemic failure.

There are remedial measures which can be adopted. India does need more than more party and, as I have written in the past in extenso, ideally we should have a centrist party, a left of centre party and a right of centre party in which the centrist party becomes a pivot, but also a role model which prevents an excessive swing either to the Left or to the Right. Splinter groups and purely regional outfits should either have no presence in Parliament or a very subdued presence. If we adopt one single political reform, that is, no independent candidate stand for Parliamentary election unless he has won at least one local government election and one assembly election, with a condition applying to regional parties or splinter groups that unless they, as a party, hold at least five seats each in the Legislature of three States, they cannot contest an election to Parliament. The smaller parties would then either have to merge into larger parties, or they would have to expand beyond the narrow confines of their State boundaries, or they would have to confine themselves to State Legislatures only. They would then not be able to exert pressure in Parliament which would be far more in proportion to their numerical strength. If the larger parties are no longer at the mercy of these small groups one can definitely expect more responsible behaviour by them, both in government and in opposition.

Moving from a whole subsystem to organs of government within subsystems, I would like to comment on three of them. The first is government. As a part of the Executive organ of the State the government is required to function within the mandate given to it by the people, that is, the approval given by the people during elections and the agenda and programmes of the

party which is voted to power. The party manifesto, the party ideology and the party agenda cannot and must not be altered case by case and government must adhere to the policy guidelines provided to them by the manifesto and agenda of the ruling party. This will guide future legislation and it will certainly guide policy formulation on specific issues. Within these parameters, however, those instrumentalities of the State which are responsible for implementation of policy will take the orders from the law, the people's mandate and the decisions of the Council of Ministers. The problem in India is that government itself vacillates and dithers, with the result that its officers do not have clear-cut orders or a clear-cut policy which they are supposed to implement. This is an organ failure, but if it enlarges itself to encompass the whole range of executive action, then organ failure here can lead to failure of the subsystem and this must be guarded against. The Constitution in Part XIV already gives the Civil Services protection against arbitrary action, the Preamble, Articles 14, 19, 21 and 38 of the Constitution lay down the fundamental duty of government to promote a welfare state and the Rules of Business framed under the Constitution categorically provided for the manner in which public servants will function, impartially and without fear or favour. If we can go back to a system in which every functionary is not only allowed but actively encouraged to do his duty according to the mandate given to him, we would be able to stop the downward slide of the efficiency and efficacy of our public servants. This is well within our means and if there is to be public protest, it should not be confined to an individual case of rape but must take the form of insisting that government functions effectively.

The second organ I would like to pick up is the judiciary, which is one of the constituent organs of the State and forms a complete subsystem. People talk of judicial reforms. Even the Supreme Court keeps emphasising this, but no one has really articulated what they mean by judicial reforms. Any reform which aims at reducing or in any way curbing the independence of the judiciary enshrined in Chapter 5, Part V and Chapter 5 and 6, Chapter VI of the Constitution has to be firmly rejected. If the judiciary, from the court of first instance upto the

Supreme Court, becomes in any way amenable to pressure by the Executive or the Legislature, it can neither function independently nor can it be a guardian of the Constitution and the rights of the people against Executive or Legislative highhandedness. Having said this one has also to recognise that there is a great deal of inefficiency and even corruption in the judiciary today and that this has to be cleansed with a heavy hand. The cleansing process, however, must be a part of the judicial system, with no say of the Executive or the Legislature. The judicial reforms should take the following form.

1. An objective assessment of the strength of judges and magistrates from the court of first instance upto the Supreme Court which should be approved to deal with the huge number of cases now pending or likely to be instituted in future.
2. A process of selection of judges which safeguards the independence of the judiciary, but is transparent, open to examination and time bound in the matter of selection and appointment.
3. A clear-cut understanding by the judiciary at all levels that the provisions of section 309, Cr.P.C, which call for speedy disposal on a day-to-day basis will be applicable to every court in India and every judge and magistrate will be held accountable for delays. In this the High Courts and the Supreme Court must interact with the Bar Council of the State and Bar Council of India to ensure that these Councils lean hard on their members to help in speedy disposal of cases rather than act as obstructions which indefinitely delay trials.
4. The High Courts and Supreme Courts must exercise self-restraint in the admission of appeals and petitions so that trivia is thrown out at motion hearing. Today many petitions are entertained, especially Public Interest Litigation, where the issue is high profile that the judge can garner free publicity. This hits at the roots of the anonymity of judges. Today a normal petition or appeal before a High Court or the Supreme Court remains unheard for years at a time, but Public Interest Litigation gets priority. The Supreme Court must take a good hard look at what really constitutes public interest and must issue suitable directions to

the High Courts so that normal cases received due attention. Of course in order to achieve speedy trial there has to be the cooperation of the prosecuting agency and of the police in ensuring that process is served and presence of witnesses ensured.

The third instrumentality I would like to speak about is the police. At one level it is the coercive arm of the State because it is utilised for putting down public violence and maintenance of law and order. This is a legitimate role, provided that the police is not used selectively. We need to strengthen the Executive Magistracy and the Police in tandem so that, faced with a particular law and situation, the Police and the Executive Magistracy will react in an uniform and predictable manner. Minimum necessary force will be used at the first instance of a law and order situation developing, with the emphasis on preventive action, followed by physical force when that becomes necessary. Neither government nor any other functionary should be allowed to interfere in this part of the duty of the Police, that is, immediate intervention to prevent a law and order situation spiralling out of hand. If such a philosophy has been built into the Gujarat Police and Maharashtra Police the post Ayodhya riots in Maharashtra would have been brought under control very quickly, as would the post Godhra riots in Gujarat. The coercive arm of the State, in exercising force, must do so in the interest of the people at large, which means that necessary force will be used to curb lawlessness at the earliest juncture, with no one having the power to stop the police from doing its duty.

Another area in which the Police operates is in the prevention of crime, its detection, investigation and prosecution without delay and in maintaining surveillance over criminals, which would prevent them from indulging in criminal activities. Under Chapter XI of the Code of Criminal Procedure the Police is not

only authorised but is required to take preventive action so that cognisable offences may be nipped in the bud. Under Chapter XII of Cr.P.C the Police is required to investigate every cognisable case and to carry the investigation forward upto the stage of filing a challan before a competent court. Under law the power of the investigating officer to investigate a cognisable offence is unlimited. His superior in the police hierarchy can guide him or even take over the investigation himself, but he can neither order him to drop an accused against whom a prima facie case is made out nor order him to falsely implicate someone against whom no case is made out. However, as we have seen in innumerable cases investigated by CBI, interference at political levels in the investigation of offences is quite frequent and this is one reason why CBI has such a dismal record of conviction. If the Police is unable to investigate offences or is unwilling to do so, it is inevitable that lynch law will prevail, as happened at the time of the infamous Bhagalpur blinding case. If we are to be a society of laws then lynch law has no place in India. This means that for our own sake we have to make the Police an effective instrument of crime control and for this purpose we must give the police freedom of action. I do not agree with a great deal of what Prakash Singh says in the matter of details of police autonomy, but I am in total agreement with him that the operational freedom of the Police must be restored, strengthened and enhanced. Whatever legal changes are necessary in this behalf should be brought on the statute book with great speed.

There is no doubt that the superstructure of the State is under considerable stress. Different organs are distressed and weakened and there are signals about current or potential organ failures. As yet there is no danger of systemic failure, but it is about time that we took note of what is happening to the organs of the State and to apply remedial measures now.

Propriety and Appropriateness

This paper will probably be considered politically incorrect. One is bored of excessive propriety and one sometimes should make politically incorrect statements. This is one such occasion. There is a story about the British Army of the Rhine, which is how the British

occupying forces were called in Germany after the defeat of Germany in 1945. A British major was seen running stark naked down the corridor of his hotel chasing an equally naked woman. He was court martialed for conduct unbecoming of an officer and a gentleman. His

defense was that as per King's Regulations an officer was required to be appropriately dressed for the pursuit in hand, which he was on that particular occasion. He was acquitted.

I relate this because for every occasion and in every pursuit everyone, men and women, must dress and behave appropriately. Let me start with men. One would not play tennis dressed in an overcoat, nor go swimming dressed in an achkan. There is a dress appropriate for office, another for walking in the streets and yet another for a formal function or a party. I am normally dressed in a white half sleeved shirt and white trousers, summer and winter, but for an investiture in Rashtrapati Bhawan I wore a formal bandh-gala suit. I do not feel deprived of my rights because I wear clothes appropriate to a particular occasion. There is a time for being dressed casually, another for being dressed formally and yet another for playing games. What applies to men applies equally to women, despite the fact that many women activists say that any comment on the clothes a woman may wear amounts to a direct attack on her freedom of choice. Does this mean that a woman may go to a place of worship dressed in a swimming costume?

Generally clothes are worn for comfort, for protection against the weather and to suit the purpose or occasion for which one dresses. Working women should normally go to work somewhat formally dressed, as is the case in the western world. A casually dressed woman executive would certainly be told by her superiors that what she wore was contrary to propriety and appropriateness and that she should not dress like this in future. Casual dressing is for comfort but it is not exhibitionist and the purpose is to allow the lady in question to walk, work in the house or attend to other casual activities in clothes which help her in doing so. However, there are occasions when western women dress skimpily and other occasions on which they dress up in finery. Normally this would be in accordance with the occasion, but there are some occasions on which women dress provocatively. Here the purpose is to emphasise one's body, draw attention to it and thereby attract a male or males, the ultimate purpose of which may be to develop a relationship. A lady in a single's bar dressed provocatively is obviously looking for a

male companion and this is not frowned upon. At the same time she is free to repel unwanted attention and males accept this as normal. The social mores of the west are different, but nevertheless there is a code by which unwanted attention can be repulsed and welcome attention accepted without the woman in question being considered as being of loose morals. That is how society is constructed there.

In India the situation is different. We are still a fairly conservative society, which is why, thank God, even Goa at its worst is not a pale shadow of Pattaya in Thailand. There and in other Thai resorts foreign tourists come to have short duration liaisons and for this purpose many local women are willing. Even the best of hotels accept this arrangement. In India it does not happen like this and sex tourism, therefore, is a virtually unknown phenomenon in India. I welcome this and hope that we never degenerate to a state where the exploitation of women through so-called emancipation takes place.

The difference in the way in which the western society is organised and our society functions should be recognised if we really want to try and understand why there is such spate of crime against women in India. Because India is a society in transition from the orthodox to what passes as modern there is bound to be both confusion in the manner in which we think and conflict between the traditional and what passes as modern. This dichotomy is more visible in urban India than in the villages, but as education and electronic media penetrate rural areas village society is bound to be affected by what, for example, the television programmes depict. The khap panchayats of Haryana have gained notoriety in recent years because of their pronouncements against changing behavioural patterns, often being depicted as a sign of orthodoxy and the medieval mindset of rural Haryana, but in reality they are a reaction of a traditional society to changes which are occurring and are still not clearly understood, appreciated or even liked in rural society. The veneer of modernity is superficial and based on imitation of westernised society in large cities, but this change has not penetrated the comprehension of rural people. Orthodoxy has to be combated by an alternative

philosophy or method of thinking, which liberates the mind from ritual and blind orthodoxy, but this cannot be done overnight through symptomatic changes. We look upon khap panchayats as tyrannical bodies which try and impose their own orthodox ideas on people, whereas they are in fact symbolic of the response of traditional society to modern society which is not necessarily in the interest of that society.

This is not an argument in favour of the traditional being better than the modern. Crime against women is as rampant in the rural areas as it is in urban India. In a largely paternalistic agricultural society the girl is considered a liability in more ways than one. There is first the question of protection of the chastity of the girl, leading to early marriages. There is secondly the question of protecting the family property by giving the girl in marriage, settling a dowry on her, but retaining land for the sons so that it remains within the family. Thirdly there is the question of the girl being considered a liability in traditional Hindu society, especially in the land owning class and, therefore, the burden of a girl child is avoided by practicing female infanticide. This is a mindset which is not a figment of my imagination but is a very real ground reality in India, evidence of which is the skewed sex ratio in the country as a whole and in certain States very specifically. Where female infanticide is not practised, for example in Kerala, the sex ratio is much more balanced. Unfortunately the women who are agitating in Delhi following the recent gang rape in a moving bus are unable to understand that they speak for an India which has perhaps not penetrated very far into the heartland of the country.

Rural society has the advantage of being fairly homogenous, but urban India, especially in its large cities, is very heterogeneous. The efforts of the Shiv Sena to preserve Bombay as a Maratha enclave notwithstanding, a city is multilayered. There are the original inhabitants of the city who have been there for a few generations. These are the inhabitants who tend to be ethnically similar, with similar traditions, language, social organisation and culture. Then there are people who come from outside, who speak different languages and have different cultural strains, but who are long settled in the city and may form second or third

generation citizens of the city. For example, in Bhopal there are a number of Keralee families who came searching for jobs with government and with BHEL, who have grown old and retired in Bhopal and whose children and grandchildren may be of Malayalee origin but are very much Bhopalis also. They also form separate homogenous groups but who assimilate well with local society. The third group is of recent migrants who come in search of jobs and they tend to represent rural-urban migration of people with low educational and skill development levels. They are a heterogeneous lot, they provide labour to local society, they are fast losing their rural roots but have not been able to assimilate themselves in the old and traditional society of the city. Because they are rootless, because they neither belong to a traditional culture nor fit into a modern culture, because they are not inhibited by the social mores of traditional society but have also not been able to develop new values in the urban environment, they are often the people who are blamed for urban crime, disrespect for women, molestation and worse. They are also the people who find it difficult to accept the behavioural pattern of modern urban women and, perhaps, this is one of the reasons why there is an increasing number of cases of crime against women. This is an issue which needs to be addressed very seriously, studied in depth and should lead to specialised organisations of government, the police and of society at large to help in the assimilation of these people in urban society.

A while ago Sheila Dixit, the Chief Minister of Delhi, responding to the brutal rape and murder of a young woman, sounded a note of caution in which she advised women to use their discretion to dress properly and to avoid going alone to places where safety was of some concern. She was heavily attacked by activist groups for daring to suggest that women should be discerning of dress and movement. Sheila Dixit had not excused the police in the matter of action, nor condoned rape, but I really have not been able to understand why the activists were so annoyed with her. Should a mother not advise her child on how to dress and behave? Should a woman not understand the ground realities and, whilst demanding better policing and assurance of safety, herself take necessary precautions to ensure that she

is safe? I saw some placards stating, "Change your mindset, not our dress". A fine slogan with which I have no quarrel, but a mindset is not like pair of clothes which one can shed in an instant and one can change into something else equally quickly. The Indian social structure is complex, in a state of flux and subject to many externalities and internal conflicts and our way of thinking will not change overnight on account of slogans being shouted by activists. Till we have a change of thinking should our women not take necessary precautions themselves to ensure that they avoid a situation in which they are in some danger? I am a man, an old man, who has enjoyed power and authority and have never been afraid of anyone or any situation. Nevertheless if I have inkling that a particular place is a haunt of goondas or criminals I would avoid it. I would not go into the street nude, unless I am a Jain Digambar Sadhu, I would not wear the clothes suited to a teenaged hippy and I would certainly try and keep my behaviour such that I do not deliberately provoke misbehaviour towards me. Why should women feel deprived of their rights if they are given sane advice?

Let me give one more example. Kailash Vijayavargiya, the industries minister of Madhya Pradesh said that there is a Laxman Rekha, or line of proper behaviour which can only be crossed at peril. He being deeply religious gave the example of Sita crossing the line drawn by Laxman behind which she was protected by divine power and beyond which she would be vulnerable. When she crossed it Ravan, who lay in wait for her, immediately abducted her. What he was trying to state is that vulnerable sections of society should bear this in mind so that at no time do they expose themselves to an attack by antisocial elements. He has been subjected to personal vilification and contempt for his statement, which has been condemned as being sexist. If parents caution a small child against putting his or her hand too near an open flame would this be interpreted as interfering with the freedom of the child to experiment?

The Constitution of India mandates equality for all, both men and women. I presume there would be equality for the third sex also. Every Indian is entitled to equal protection of the law under Article 14 of the Constitution. The entire scheme of the Code of Criminal Procedure

is that in order to provide security and protection under law the Executive Magistracy and the Police are designed to take action to prevent the commission of offences and to take the quickest possible action both to prevent crime and to investigate and prosecute crime if it does occur. Article 51 A in sub-clause (i) makes it the duty of every citizen of India, "to safeguard public property and to abjure violence". The same Article in sub-clause (e) states that it is the duty of every citizen "to promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic and regional and sectional diversities: to renounce practices derogatory to the dignity of women". My submission is that this Article states the fundamental duty of every citizen and not only of men. Men are specifically required to give up any practice which is derogatory to the dignity of a woman. Equally every woman is duty bound not to do anything which reduces her own dignity and, with great respect to women activists, I would submit that this includes the use of discretion in dress, manners and behaviour. I draw their attention to what George Bernard Shaw once said when referring to the suffragette movement, "Millions of women rose and said that they would not be dictated to, and promptly two millions of them became stenographers".

We do need better policing, which means that the entire police force has to be sensitised to the fact that women are more vulnerable to violent crime against them than are men. Indian women tend to be more submissive and less aggressive than western women, largely because of the legacy of paternalism in which society became male dominated and women remained submerged in the household. Increasing numbers of women are emerging from the cocoon and are beginning to both recognise their own rights and become aggressive in exercise of these rights. Indian society, however, has not quite broken away from its orthodox belief in the subordinate status of women and, therefore, in some sections of society an assertive woman is also one who is considered sexually available. We need very stern police action in order to deter men from violence against women whom they neither respect nor consider entitled to determine their own mating pattern. Police

intervention in every case of male disrespect for a woman by gesture or word must become the norm so that police pressure itself acts as one of the means of changing the Indian male mindset. Mayor Giuliani of New York made that city safe by insisting that the police adopt a zero tolerance attitude towards all crimes, however minor. We do need to make women feel safe by zero tolerance of any offence, however minor, against the dignity of women. In other words, we need to put the fear of law into all would be molesters, eve-teasers and rapists. If would be criminals know that their crime will not go unpunished, then this will have a healthy deterrent effect in reducing crime against women. Investigation and prosecution of offences must be fast and courts should pay special attention to disposal of such cases. It is not the quantum of punishment which is the deterrent but rather the speed of investigation and judgement which acts as a deterrent. The Police and judicial system must ensure this.

Educating men on proper behaviour towards women is another factor to which we must pay great attention. We need to orient our men to distinguish between

mating signals which are specific to two consenting adults and a total misreading of a statement of modernity made through dress and apparently uninhibited speech by a young woman pretending to be emancipated to the point of free love. She obviously does not mean this to be interpreted as a sign of availability and certainly should not invite physical assault and rape. A great deal of sexual violence, especially in large cities, takes place because superficial external signals are interpreted wrongly. We need to train a whole generation of men and women to correctly make and read signals in a changed idiom where the language is modern but where the old morality still acts as an inhibitor. We need to make a three pronged attack on the problem. The first is the stepping up of security and quick investigation and prosecution of offences as a deterrent. The second is educating the young to develop respect for traditional values and mores. The third is appropriateness of dress, language and behaviour on the part of young women. Combine the three and we move towards a society where men and women respect each other and crime against women takes a nosedive.

The Police, Too, Have A Case

Coming from the pen of a retired IAS officer this paper may appear to be a little strange, but as a young officer in the districts I have interacted with the police in happy times and in times of stress. I have witnessed the strength and the weakness of the police, observed its shortcomings, but also experienced the difficult duty of a policeman, his loneliness, his devotion and his willingness to take even those risks which endanger his life. Therefore, despite all the salvos of abuse that a police man has to face from so-called civil society, I thought it deem and proper to try and present a policeman's perspective also --- just to set the record right.

Do we need the police? That question was answered for me about 53 years ago when I was a young Assistant Collector in Morena, then the very epicentre of dacoity in India. This was the land of Man Singh, Lakhan, Rupa, Gabbar, Amritlal and Putli, all dacoits of ill-famous renown or notoriety. There is a remote police station at Birpur (now in Sheopour District) which formed the

constant focus of complaints by the local MLA, one Nawal Kishore. Every complaint had been inquired into, including through a magisterial enquiry conducted by the Sub-Divisional Magistrate and all had been found to be exaggerated, false or worse.

The MLA obviously wanted to dominate the police and the complaints continued. One morning E.B. Reinboth, the D.C. and D. M., who was my boss, told me to sit in his jeep and we drove off for Birpur, about 180 kms from the district headquarter. On reaching Birpur Police Station he sent for the MLA, who again launched into a tirade against the Station Officer. Hearing him out Reinboth told the Inspector, "Thanedar Saheb, it is obvious that you and your men are not welcome in Birpur. Therefore, I am ordering the police station to be closed. You and your men should pack your things and report to the Police Lines in Morena. Meanwhile announce by beat of drum in all the villages in your jurisdiction that the D. M. has closed the police station and now Birpur will have no police presence". When

it sank into the MLA that Reinboth was really serious he said that this was an open invitation for dacoits to pour in to Birpur because there would be no police presence there. He then virtually fell at Reinboth's feet and begged him not to shut the police station. The drama ended only when Nawal Kishore promised never again to make false complaints. But for me the lesson become indelibly printed in my mind --- civilised society needs the police. The question is, does society realise this?

The recent rape and murder of a 23 year old girl in a bus in Delhi has, very rightly, aroused anger, focused attention on the fate of women, on sexual offences and the feeling of insecurity in our towns and villages and the extreme callousness of large sections of society towards women and disregard for their dignity. Sexual crime is symptomatic of a deep rooted malaise, of disregard of law and the rapid growth of a feeling that we can do what ever we want, free of both a sense of guilt at wrongdoing or fear of dire consequences for misdemeanor and worse. Where sin does not invite retribution how does one build a society of laws? Anger has spilt on to the streets and government has been forced to take action. Whether the anger will last and action will be sustained remains to be seen.

Almost coterminous with the rape case was the ambushing of a routine army patrol on the LoC in the Mendhar sector of J and K and the killing of two jawans by Pakistani troops. The body of one soldier was mutilated and one corpse was beheaded and the head taken away in an act of barbarity which one could attribute to Genghis Khan's Mongols, but not a 21st century army which accepts the Geneva Convention. Naturally the nation was outraged and up in arms to an extent that it would have supported government if it decided to go to war on this issue. Even the usually reticent Manmohan Singh gave a strong message to Pakistan and we put further confidence building measures on hold. One felt happy that India stood behind its soldiers. Even activists from so called civil society, except for a few who have always put India in the dock and have advocated abject surrender by us on all issues, expressed their horror.

However, one did note four discordant notes. When

Parliament was attacked by terrorists and nine persons, including five policemen, were killed in defence of parliament, the accused who masterminded the attack were arrested, tried and sentenced. Afzal Guru, the ringleader, was awarded the death penalty, which was upheld by the Delhi High Court and the Supreme Court. Activists led by Arundhati Roy mounted a campaign to save Afzal Guru and he has not been executed to date. This shrill campaign on behalf of a convicted terrorist had not one word of remorse, nor condolence, nor sympathy, nor compassion for the policemen who died defending parliament or for their widows and children. 76 CRPF men were killed in Bastar in a single ambush by Naxalites. Did civil society activists sympathise with the victims? One of them had the nerve to tell me that policemen should know that when they join the police they are inviting death. It is only because the gentleman was a guest in my house that I refrained from strangling him.

No act of barbarity is acceptable and one against a soldier doubly so. But what about the recent killing of 11 C.R.P.F jawans in Latehar District of Jharkhand? Their bodies were booby trapped and when the relief force picked up one it exploded, injuring many jawans. In one case the stomach of a corpse was cut open, stuffed with explosives and resown. The body was sent for post mortem examination and but for the alertness of a doctor who noticed the tampering of the body and notified the police the body would have exploded in hospital and more people would have been killed or wounded. Is what the Naxalites did to bodies of the slain policemen not an act of vandalism and barbarism at par with what the Pakistanis did to the jawans murdered near the LoC? But our civil society members did not bat an eyelid and they certainly did not utter a word of sympathy.

The fourth incident besides the three cases stated above is of the brutal murder of two policemen deputed for the security of the Collector of Sukma when he was abducted by Naxalites. One was a Muslim and the other a tribal. I am sure they must have had families and loved ones who must have survived on the wages of these two men. Do they not bleed when they are cut, feel the cold in the winter and heat in the summer? Are they

not human? My stomach turns with revulsion at the utter callousness of our activists, who look on the policemen as Untermenschen, or lesser beings. If this is civil society give me the savage state any day.

Why is the police looked upon this way? I have already given an example of how much people really need the police for their own protection from anti-social elements. Therefore, the police must introspect on why so many people are either indifferent to the police or positively dislike it. There is a general perception that a police station is an unfriendly place, policemen are rude and corrupt and that they torture people. Starting with the negatives, I agree that many police stations are best avoided. Let me give a personal example from 1979, when I was head of the Delhi Development Authority and was, therefore, a man of some consequence and authority in Delhi. On an evening walk near Tuglakh Road Police Station I found a person lying in a gutter. Not knowing the state of the person I walked into the Police Station and went to the desk of the Head Constable Moharrir, or station writer. I reported the matter to him and requested him to send someone to find out if the man was dead, drunk or otherwise incapacitated and to render necessary aid. The policemen's reply was, "Tu ney mara hoga" (You must have hit him.) I was furious at this and shouted at the man.

Hearing the commotion the Station Officer came out to see what was happening and, recognizing me, asked how he could help. I narrated the Head Constable Moharrir's behaviour and told the Inspector that if this is how his officers behaved how could he ever expect people to help the police. Of course the Station Officer was apologetic, sent a constable to look at the man in the gutter, who reported that it was a drunkard and that the police would look after him. The fact remains that not only are Police Stations places to be avoided, but also that there is a command failure because senior officers do not educate their subordinates about how they should behave with citizens. More on this later.

The cutting edge level of the police is the police station. Under Chapter XII Cr.P.C. the entire scheme of investigation of offences centres around the police station. The Station Officer is the most visible symbol of the police, which is why the Thanedar, or Station

Officer, is so feared, especially by wrong doers. The Thanedar is the backbone of the Police, just as the Tehsildar is of general and revenue administration. One example will illustrate the point. The place of landing of the ten Pakistani terrorists who held Bombay to ransom in 2008 was in the jurisdiction of the Colaba Police Station. The terrorists were sighted by a fisherman, but being unchallenged they dispersed to their designated destinations, resulting in 166 deaths and several hundreds of injuries. Had the Colaba Police Station been adequately manned, trained and equipped with transport and communication facilities, with proper modern weapons and a proper beat system, the terrorists would probably have been seen and questioned by the beat constable. Sensing something suspicious he would have called up the police station which, if it had responded swiftly, could have brought the terrorists to encounter at or near the place of landing. The history of 26.11.2008 would then have been different. Our neglect of Colaba Police Station, of all police stations throughout India, cost us dear then and costs us even more now. It is only Andhra Pradesh which fortified its police stations in Naxalite areas, which is why a successful attack on a police station there is a rarity and Naxalism has been brought under control.

Behaviour apart, the Police has to face a really critical shortage of manpower. Even against existing vacancies there are approximately 4.5 lakh posts which have to be filled. Internationally perhaps the standard strength of the police is approximately one policeman for 160 people. Delhi is the only city in India which has an approximate strength of one policeman for 168 people. In Madhya Pradesh the proportion is approximately one policeman for 834 citizens. The total strength of the Madhya Pradesh Police is about 89,000 whereas if we were to aim at one policeman for every 250 citizens the State would need a Force of approximately three lakh policemen. The cities of Indore and Bhopal should have a strength of 8,000 each, whereas there are just about 3,000 personnel per city. The position in most States is that the Police Force just does not have the numbers to provide for adequate policing. Rural India, by and large, is still peaceful, which is why in a State such as Madhya Pradesh a police station can look after

approximately 100 villages with a standard strength of one Station Officer, two Head Constables and twelve Constables. Nevertheless, whether it be a city, a town, a cluster of villages, there is hardly any police presence. Without an adequate force the district head of police cannot organise proper beat patrols, manage traffic, have men posted to sensitive or critical locations and patrol the public transport system with sufficient manpower in order to deter crime.

The question is not that rapes, dacoities and murders take place. The question really is why the number of heinous crime is still manageable despite the fact that there is inadequate police presence. I can think of two reasons, the first of which is that by and large we are a law abiding nation. The second, equally important reason, is that our police is a great deal more efficient than civil society credits it to be. To quote just one case, in 1963 when I was D.M. Betul, a lad of about nineteen years made some indecent advances at a teenaged girl, who was the daughter of a leading local advocate, as she was returning home from school. A passing Constable immediately caught him and brought him to the police station. The Station Officer, a wise experienced officer, saw to it that the challan was put up within twenty-four hours and the Magistrate remanded the man to judicial custody. Three days later, without any provocation, a local trouble maker tried to foment an agitation in which he roped in the students of a college. The Superintendent of Police and I were sitting in my house having a cup of tea when we heard that there was trouble in the bazaar and shop keepers were downing their shutters. We immediately rushed to the site and what we saw greatly reassured us. There was a menacing crowd of about 300 people being confronted by a single unarmed Head Constable. He warned the crowd to stay put and angrily told the ring leaders that if they advanced one more step he personally would break their heads. No one dared to advance because this single jawan, confident in his moral and legal authority, stood like a rock

Today the position is that we have systematically engendered disobedience of laws, contempt for laws and constant disempowerment of the forces of law and order. In section 188 of the Model Police Bill drafted

by the Soli Sorabji Committee the following words have been *Untermenschen*, used, "The State Government shall take effective steps to ensure that the average hours of duty of a police officer do not normally exceed eight hours a day provided that in exceptional situations the duty hours of a police officer may extend upto twelve hours or beyond. In such cases adequate compensation and facilities shall be provided to the police personnel". What is the ground reality? In 1978 there was an unusually heavy monsoon in Delhi and there was fear that there would be large scale flooding. I was head of DDA and the Lieutenant Governor asked him to take charge of large parts of Delhi, especially East Delhi. Near the DDA headquarters (then at Vikas Minar) a Constable stood on duty at the crossroads from where one moved towards the IP Bridge. The Constable stopped my vehicle and requested information about the flood situation in Kingsway Camp Police Lines where his family lived. He told me that he had been continuously on duty for forty-eight hours, without food and in the wet clothes that he wore and he was completely out of touch with his family. I told my own security personnel to take the man to my office, let him have a shower, give him change of clothing and feed him, whilst deputing one of the policemen with the DDA to take over the man's duty. His officers had not bothered about him and I told the Police Commissioner the story later on. However, this dedicated officer stood at his post regardless of the fact that he had neither eaten nor had news of his family. That is a picture of a policeman that the activists refuse to see or acknowledge.

If the police force is woefully short of requirements policemen will have to work long hours. On law and order duty when men have to stand around virtually waiting for something to happen they are bound to become tired, hungry and irritated. Rameshwar Nikhra, a Member of Parliament who had been Chairman of the State Bar Council, once told me that as a student leader in Jabalpur he frequently led student agitations, to control which the police was deployed. On one occasion when the students became violent the police had to use force to disperse them. One of the lathi wielding policemen was laying about him with gusto, shouting, "Because of you I have been standing here, thirsty and

hungry, for the last three days. Now let me teach you a lesson". Nikhra said that at that time he was naturally upset with the police, but on introspection he realised that the policeman had a point. I state this story not because I appreciate or condone brutality by the police, but we would be foolish to overlook the stress and tension under which our policemen operate. Society does nothing to make life easier for a policeman. The Soli Sorabji Committee has recommended that a police station should be neat and clean, with a comfortable room for visitors. There should be separate toilets for men and women, a women and child protection desk, separation of normal police duties and investigation of crimes. All this is possible only if the police strength is sufficient to deploy the manpower for performing all these separate functions. The fact is that adequate manpower is not available and, therefore, the average policeman, especially below the gazetted ranks, will always be under immense pressure and will have to function in an environment in which he will never have adequate facilities. Till this is remedied the police will not function in the manner in which a good police force does.

I stated earlier that there is a command failure. When the Central Reserve Police mutinied some years ago one officer of the rank of DIG from the Madhya Pradesh Cadre tried to reason with the men at Neemuch, where the Force was created by the British. The men told him that they personally respected him but requested him to step aside because they said that he could not in any way help the men and, therefore, they had decided that they would confront government. In other words, the men have lost their faith in their officers and this can only happen when there is failure of command. There are many reasons why this has happened, the first of which is that in appointment of the State DGP every Chief Minister opts for a pliable officer rather than an efficient one. Obviously a pliable officer will take orders from politicians even in matters where under law he is the only person who has the mandate. For example, under the Code of Criminal Procedure, in the matter of investigation it is only the Police who have the authority, which has to be exercised under judicial supervision. The Executive has absolutely no authority

in this behalf, but whether it is Delhi Special Police Establishment (CBI) or the State Police it is a well known fact that investigation is definitely influenced by politics and politicians. If the DG Police will not resist how can the investigating officer at police station level show independence? In fact in all departments of government there is the ever increasing malaise of officers operating not according to law but according to whims of politicians. A law is framed by the Legislature and every person involved with implementation of law has a legal mandate. Despite this in the current political scenario officers take orders, including illegal ones, from politicians without pointing out to them why a particular thing cannot be done in law. Our answer to political interference is the setting up of committees and framing of Model Police Acts. For example, the model law drafted by the Soli Sorabji Committee, in section 6 speaks of the selection of the Director General of Police from three senior most officers empanelled by the State Police Board, with the DG being given a minimum tenure of two years. Let us compare this with how Vice Chancellors of universities are selected. In Madhya Pradesh (this system prevails throughout the county) the Vice Chancellor is selected from a panel of two or three persons whom a high powered search committee has identified and recommended. The Search Committee consists of representative each of the Chancellor, the Executive Council of the University and the Universities Grant Commission, all three completely different and independent authorities. Despite this some of the worst persons one can think of are empanelled as Vice Chancellors, are appointed as such and have a tenure of four to five years. At least in Madhya Pradesh some of the worst scoundrels have been appointed as Vice Chancellors. That does not mean that we should not introduce complete honesty in the selection of the DG Police, but till we take drastic steps to rid the All India Services of deadwood and dishonest officers we shall not have the best people being promoted to head the police.

One major cause of breakdown of command is the almost total disempowerment of senior police officers by the politicians. In any organisation, but especially in a uniformed service, the hierarchical structure has

to be clearly defined and the disciplinary authorities have to be given sufficient power to maintain discipline. Now even in the matter of postings and transfers even the D.Gs.P. have been let at the mercy of politicians. In Madhya Pradesh Arjun Singh centralised all transfers and Digvijay Singh gave all powers of transfer of even the lowliest functionary to the Minister incharge of a district. In all departments, particularly in the police, officers suddenly found that they had lost control over their subordinates. When policemen found that the S.P. and other superior officers could no longer shift them, even on compassionate grounds, they naturally sought political patronage and this absolutely destroyed the command hierarchy. Under these circumstances, there was bound to be a command failure and this has put paid to effective policing. It is in the interest of the police, of people at large and of the nation that senior officers are once again empowered, command restored to them and then they are held accountable for effective, honest, citizen friendly policing.

We have to find a way of creating more K.F. Rustomjis and totally eliminate the Rathores of Haryana ill-fame from the Service. In this behalf I would strongly suggest to the IPS Association, Central and in each State, to understand that they are one of the three foremost Services in India and that no one has a greater responsibility than they themselves to cleanse their ranks of the corrupt, the inefficient and those who use flattery to promote themselves.

A person who has achieved a level of command has the onerous task of actually commanding. A Superintendent of Police who takes a bribe from his Sub Inspectors cannot be expected to either lead the Force or to motivate it to truly serve the citizens. An IG or DGP who has achieved the rank through political manoeuvring can neither expect the respect of his Force nor can he

command and guide the Force to serve the people. That makes it all the more important that the Force should cleanse itself at its own initiative.

Unlike the so-called civil society I like policemen and I admire the fact that they perform very difficult tasks under daunting circumstances and are the guardians of the security of the nation. There are more Omblesys in the Police than civil society gives credit for. Let us honour the policemen who dedicate their lives to our security. Let us not constantly attack the police as being anti people, but let us try and understand why the police image has taken such a beating. It is the duty of society to create an environment in which the police can do its duty. Once that happens I am for hanging rogue policemen, but I am not prepared to collectively call the Police rogues.

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