

Crime & Justice

PERSPECTIVE

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Recently, a seminar on sexuality minorities was conducted in the campus. Representatives from the Aravani's or hijra's (transgender community) shared their views in the seminar. They focused on the rights of the transgender, which do not exist in the country and highlighted that either they should be considered in one gender or a provision of third gender should be provided to them.

Aravani's or hijras are the underprivileged people of the country who are exploited in all grounds. They are denied the basic right of being a part of the identification systems such as Ration card, Voter's identity card, Driving licence, Passport and Bank account. They are the group which are most exploited physically, sexually, financially, and more importantly emotionally.

Transgender communities are prevalent across the globe with their own local identities, customs, and rituals. There are an estimated 6,60,000 Transgender in India and more than two lakhs in Tamil Nadu and they eke out a living by begging, dancing or prostitution. Transgender in India have virtually no safe spaces,

not even in their families, where they should have been protected from prejudice and abuse. The transgender community is deprived of several rights under civil law because Indian law recognises only two sexes. Legal scholar *Upendra Baxi*, in the foreword to the PUCL (K) Report on Human Rights Violations Against the Transgender Community (2003), highlights: *"The dominant discourse on human rights in India has yet to come to terms with the production/reproduction of absolute human rightlessness of transgender communities.... At stake is the human right to be different, the right to recognition of different pathways of sexuality, a right to immunity from the oppressive and repressive labelling of despised sexuality. Such a human right does not exist in India."*

When someone's gender identity does not conform to the majority, they are often seen as a vulnerable target for discrimination or abuse. All people, regardless of their gender identity, should have access to all human rights described in the Universal Declaration of Human Rights, 1948. However, human rights provision to the transgender alone will not be sufficient. Human rights norms are useful when it

comes to contesting abuses which occur in the public sphere, but when discrimination is more subtle and depends on the existing social framework then it becomes much more difficult to contest. Societal attitudes and prejudices, which cause discriminatory behaviour, should change, so that transgender can walk free without any discrimination based on their gender identity. The complexity of issues facing the transgender can only be addressed by broad changes in justice system and extensive education over the needs of this community.

- K. Jaishankar



No, he hasn't run away, Sir.
He is not that type.
Look he is over there !

R.K.Laxman, Times of India.

Thirukkural's
Criminal Justice
Outlook
Mens rea, Knowledge & Crime

Article
Policing the Police:
Need for Special
Inspection Unit

Opinion
Why the President Should
Grant Clemency?

The present article is the fourth in the series of viewpoints of *Thiruvalluvar's Thirukkural*, (a classic book of code of ethics in Tamil language) on Criminal Justice.

எனத்தானும் எஞ்ஞான்றும் யார்க்கும் மனத்தானாம் மாணாசெய் யாமை தலை.

**Enaitthanum ennanrum yarkkum manatthanam
Manaacey yamai thalai.**

இன்னா செய்யாமை - Inna Seyyamai
(Against inflicting suffering)
Chapter 32, *kural* 317

Translated Verse

It is the chief (of all virtues) not knowingly to do mean things, in the least degree, at any time towards any person.

Explanation:

Many laws punish only violators who "knowingly" engage in illegal conduct. Knowledge means naturally personal knowledge. The "knowingly" requirement indicates that a crime involves "mens rea," (Latin for "guilty mind") and prevents people who make innocent mistakes from being convicted of crimes.

What a person has to "know" to be guilty of a crime depends on the behavior that a law makes illegal. A drug law makes it illegal for a person to "knowingly" deal with illegal drug (often referred to as a "controlled substance"). To convict a defendant of this

crime, the prosecution would have to prove that a defendant knew that what he dealt with was an illegal drug. In United States for example, a school safety law makes it illegal for a person to "knowingly possess a firearm in a school zone." and a perjury law makes it illegal for a person to testify to any material matter, which she or he "knows" to be false.. To prove a violation of school

safety law, the prosecution would have to prove both that the defendant knew that he was carrying a gun and was in a school zone. and to prove perjury, the prosecution would have to prove that the defendant knew at the time he testified that his testimony was false.

Laws also do not provide impunity for partial knowledge. When a

MENS REA, KNOWINGLY, AND CRIME



man who is about to do a thing has a suspicion that what he is going to do may have been prohibited (for instance selling food grains at exorbitant prices in days of food scarcity in the State), but then deliberately omits to make further enquiry, because he wishes to remain in ignorance, he is deemed to have knowledge. Lord Howart C.J. characterized such attitude when he said in a case, "*The respondent deliberately refrained from making enquiries, the result of which he might not have cared to have*" (Evans v. Dell 1937, 1 All Eng.R.349). The above *kural* rightly fits the element of "knowingly" doing any act that might be considered as illegal.

- E. Enanalapperiyar &
K. Jaishankar

Integrity, honesty, and professionalism are the foundational elements of Indian police departments. The department's reputation with the public depends on developing and maintaining trust. The courteous receipt of complaints, thorough and impartial investigation, and just disposition are critical in maintaining the confidence of citizens. Indian Police are committed to monitor the actions and performance of their personnel. However, the present mode of announced and unannounced way of inspecting the department's function is not very effective. In an announced inspection, there is a chance of manipulation of records to satisfy the inspecting officials and in an unannounced inspection a total check of all records may not be possible. To avoid such situations a special inspection unit is needed.



POLICING THE POLICE Need for Special Inspection Unit

The special inspection unit, will have the responsibility of thoroughly investigating complaints brought

against officers as well as conducting inspections to insure that the members are providing professional police service. This unit will ensure that there are no errors in the records maintained, and try to prevent wrongful detention. The goal of this unit will be to provide the best possible system for the objective and thorough examination of all complaints. It is also suggested that the special inspection unit can have a team of members including an Inspector, two sub inspectors, and two police constables, under the leadership of a deputy superintendent of Police. This unit will be the watchdog of the Police Department.

- R. Sathesh Kumar

Why the President should grant Clemency?

Part-2



C. Raj Kumar*

III. Human Rights Dimensions of Death Penalty

The human rights implications for death penalty is profound. It violates the right to life and indeed would amount to cruel and inhuman form of punishment. Since 1997, every year the United Nations Commission on Human Rights has passed a resolution calling on countries that have not abolished the death penalty to establish a moratorium on executions. The most recent resolution, adopted in April 2004, was co-sponsored by 76 UN member States, one more than in 2003 and the highest number ever. This demonstrably proves that global thinking is moving towards recognising that death penalty violates human rights and societies ought to move towards abolition of death penalty if human rights are to be protected and promoted. When the South African Constitutional Court banned death penalty, Justice Chaskalson observed in his historic opinion, "The rights to life and dignity are the most important of all human rights...And this must be demonstrated by the State in everything it does, including the way it punishes criminals" (Makwanyane and Mchunu v. The State, 16 HRLJ 154 (Const.Ct. of S. Africa 1995)). The President of India has a unique opportunity to recognize this right to life by granting a clemency, not because Mr. Chatterjee deserves one, but because of the fact that the Indian state would hesitate to order the killing of a human being as a form of punishment. Further, the United Nations Office of the High Commissioner for Human Rights has noted that since the loss of life is irreparable, the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order to fully respect the right to life.

IV. Setting Standards for a Progressive Society

It is important that the President of India grants clemency to Mr. Chatterjee and ensure that death penalty is not enforced against him. The President can indeed set certain human rights standards which are truly progressive so that violence of any form is not inflicted by the state for achieving any legitimate purpose or goal, it may have in mind. Imposition of death penalty besides perpetrating a culture of vengeance and retributive justice among victims, also does not allow for any meaningful reformation or rehabilitation of the offender. Rather, the society become far more violent as it discover one more reason for taking away life, which ought to be considered precious and to be protected by all means. The imposition of capital punishment on Mr. Chatterjee by all means is bound to result in further victimization due to its negative impact on his family. While Mr. Chatterjee should be given the harshest form of punishment and an opportunity to reform and rehabilitate by giving him life imprisonment, the state by taking his life away is not going to serve any determinable purpose for the family of the victim or for crime prevention strategies in general or for that it is going to deter any potential offenders.

[Concluded]

*This Article was accepted for publication before August 5, 2004.

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Crime Quiz

1. Murdering one's own child is known as
2. Gestapo is the name of
3. How did Cleopatra commit suicide ?
4. Robert Louis Stevenson's famous novel *Dr. Jekyll and Mr. Hyde* was inspired by a notorious criminal. Who was he?
5. The traditional Japanese method of ritual suicide, either as a voluntary act or as a form of capital punishment is called as

(Source: 1000 Crime quiz by Anil Aggrawal)

1. Proicide
 2. Nazi Secret Police (Geheime Staatspolizei)
 3. By letting a snake bite her
 4. Deacon Brodie
 5. Hara-Kiri (This is a western word, in Japanese it is 'Seppuku')
-

CJF's Special Lecture Series...

Dr. R.K. Raghavan, former Director-CBI delivered a lecture to the students of DOCCJ, on "Criminology and its future prospects", on 10th August, 2004. He highlighted various issues emerging in the field of criminology and how the students should develop skills to keep in pace with the students of the developed countries. Earlier, Mr. R. Satheesh Kumar, Secretary, CJF, welcomed the gathering and Mr. N. Sreenivasan, Member - CJF, thanked the gathering. Dr. P. Madhava Soma Sundaram, Head, DOCCJ & President, CJF presented a memento to the guest speaker.

● **International Journal of
Criminal Justice Sciences**

Online

CALL FOR ARTICLES

The CJF is launching the International Journal of Criminal Justice Sciences (IJCJS). IJCJS is a peer reviewed online multi-disciplinary journal focussing on contemporary issues in the field of Criminology, Criminal Justice and Victimology. The Journal welcomes articles (4000-5000 words) on any aspect of Criminology, Criminal Justice, and Victimology for its first issue to be released in November 2004. The Last date for the submission of articles for the first issue is October 30, 2004. However, articles are welcome throughout the year for subsequent issues. For further details, please email Dr. K. Jaishankar, Managing Editor, IJCJS at cjf_india@yahoo.com



Five Cheating per hour occur in India, according to "Crime in India", (2001) the official publication of National Crime Records Bureau, India.

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I appreciate mailing me a copy of the CJP. I congratulate you for this important venture. I wish the CJF a success



*Prof.S.P.Srivastava, Department of Social Work,
Lucknow University, Lucknow, INDIA*

Congratulations on the publication of your newsletter Crime and Justice Perspective. I found the contents both interesting and insightful. Please keep me on your electronic mailing list for future publications.

*William Brown, Criminal Intelligence Analyst, Edmonton Police
Service, Edmonton, Alberta, CANADA*

Thank you for sending me the CJP. I appreciate its innovative manuscript, which comprises of some special features viz., Crimeton, Crime Quiz, Crime Clock etc., I aspire that your department will work hard with greater vigour and enthusiasm for this laudable purpose.

*Prof. H.S. Maheswari, Head,
Department of Criminology and Forensic Science,
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We welcome your feedback and contributions in the form of success and failure stories, new initiatives, short articles (300 - 400 words) of contemporary issues, announcements, interviews of persons working in Criminal Justice and related areas.

Editor

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