



Vol. XXXX No. 2

April-June, 2021

COMMON CAUSE

www.commoncause.in

POLICY-ORIENTED JOURNAL SINCE 1982



STATUS OF POLICING IN INDIA REPORT 2020-2021, (VOL. 1)

Policing in Conflict-Affected Regions

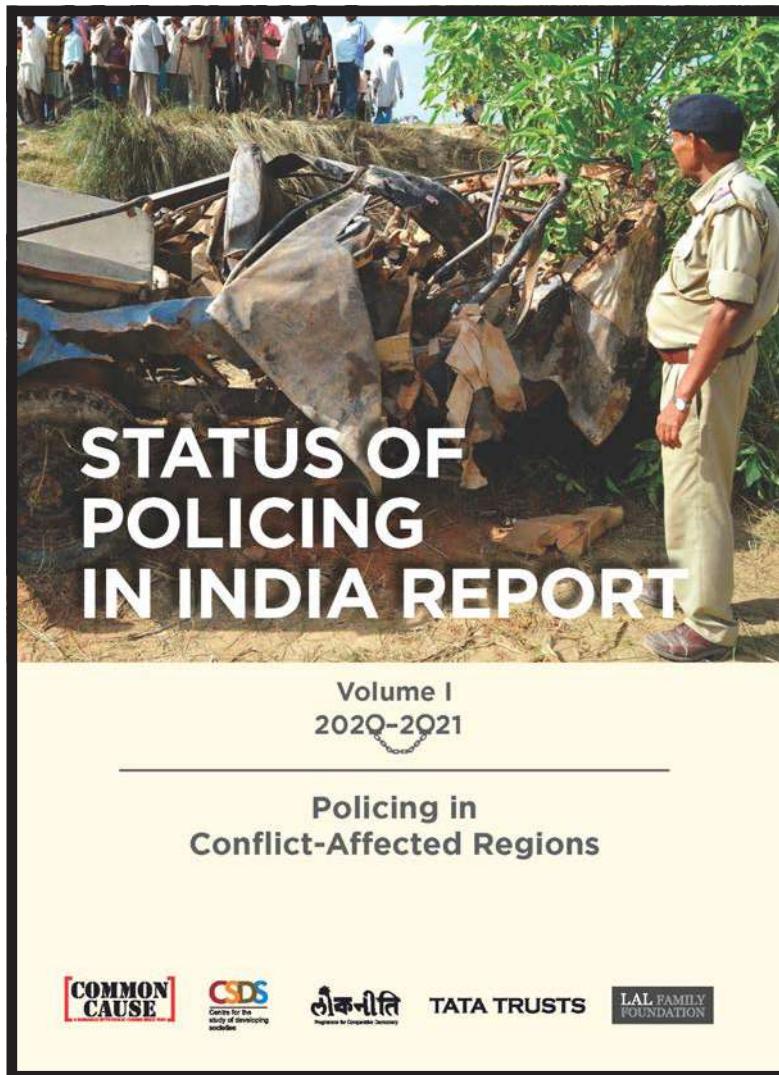
Editorial	03	Patricia Mukhim, Editor, The Shillong Times	24
SPIR 2020-21 (Volume I):		Sudhir Krishnaswamy, VC, NLSIU, Bengaluru	26
Policing in Conflict-Affected Regions	05	Meeran Borwankar, Former DG and	
Keynote Address: Justice Madan B Lokur	16	Police Commissioner	29
Panel Discussion:		Common Cause Updates	32
Prakash Singh, Former DGP	21		

Price: Free distribution to members

Regn No. 39331/1982



Please email us at commoncauseindia@gmail.com if you want a soft copy of the report.



Jointly prepared by Common Cause and its academic partner, CSDS, the report is a study, focussing on 'Policing in Conflict-Affected Regions.' It studies the nature and practice of policing in areas that are facing forms of extremism, insurgency or militancy.

SPIR 2020-21 is in two volumes. The first volume studies how policing in violence-affected regions is perceived by common people and the police personnel. It conducted face-to-face surveys at 27 districts in 11 states and Union Territories, including four North-Eastern states, and large parts of central India affected by left-wing extremism. The study also analyses official data released by government agencies. (The Second Volume on policing during the pandemic is to be released soon.)

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report. A PDF can also be downloaded from commoncause.in

Cover Photo: A Naxalite cadre in Dantewada district of Chhattisgarh.

Cover Photo Credit: Outlook/Tribhuvan Tiwari

Designed at GENESIS genesisadvt@hotmail.com 9810033682



POLICING IN DISTURBED AREAS

Status of Policing in India Report 2020-21 (Volume-I)

'A Romance with Public Causes' the mission statement of Common Cause was coined by our legendary founder Mr. H D Shourie. While forming the civil society watchdog in 1980, Mr. Shourie and his public-spirited cohorts resolved to strive for an India where every citizen is respected and fairly treated. A mission like this required strengthening the rule of law, accountability in governance, and probity in public life. The Status of Policing in India Reports (SPIRs) are a step in that direction.

The SPIR studies were conceived mainly to measure the problems of policing in India by creating a series of baseline literature and to highlight the need gaps for policymakers. The first report was a study of performance and perceptions of policing and the citizens' trust and satisfaction. The next report was about police adequacy, attitudes and working conditions. The third report SPIR 2020-21 is being brought out in two parts, Volume-I, which is being discussed here, is about policing in conflict affected regions and Volume-II (forthcoming) is about policing during the Covid-19 pandemic across India. Both pertain to policing under extraordinary circumstances.

In the present issue of your journal, we feature the salient points of the SPIR Vol-I on Policing in Conflict-affected Regions. The study explores how we police the disturbed areas and if there are any lessons for policymakers. Conflict-affected areas also have the presence of the Army or the para-military forces and stringent, even draconian, legal provisions in force. The activities of the armed underground outfits also pose a great challenge for the security forces and stretch the limits of the criminal justice system. We have tried to collate a cross section of views around these themes.

The SPIR 2020-21 (Vol-I) was released on April 19, 2021, at an online event attended and watched by more than a hundred people. This issue of your journal carries excerpts of the keynote address delivered by the retired Supreme Court judge, justice Madan B Lokur on "Is the Rule of Law Backsliding in India; Challenges for 2020s." The event also featured a panel discussion on "Can Extra-judicial Killings be a State Policy?" The discussants were former DGPs Mr. Prakash Singh and Dr. Meeran Borwankar, Editor of Shillong Times Ms. Patricia Mukhim, and the Vice Chancellor of the National Law School of India University, Bengaluru, Dr. Sudhir Krishnaswamy. You can download the entire report from commoncause.in or by writing to us at commoncauseindia@gmail.com

The Scope of the Study

In areas under the influence of armed, underground movements like militancy, insurgency and terrorism, the society gets conflicted and polarised. It is common for the innocent civilians to be killed in violence and counter-violence. The security forces often arrest or repress them on the suspicion of sympathising with extremists while the latter target them with brutal violence on the suspicion of being police informers. Both sides tend to describe their violent campaigns as a war against injustice. In a seminal book The First Casualty, on the perils of media reporting during conflicts, American journalist Philip Knightly says that truth is the first casualty during conflicts and wars.

The real challenge in the conflict-affected regions is to safeguard the rule of law without compromising democracy. The present study analyses the rule of law under such situations along with the investigation



and resolution of ‘normal’ crimes, the state of human rights and the predicaments of the vulnerable people. It involves 27 districts in 11 states covering large parts of Central and North-Eastern India. (We were not able to conduct face to face interviews in Jammu and Kashmir due to the prevalence of violence, curfews and internet shutdowns)

It was by no means easy to conduct surveys in other parts of India because of the lockdown, which also triggered an unprecedented migration of workers from the metro cities to villages. All this multiplied the problems of policing and disturbed areas were no exception. Pilots and training sessions were also conducted to make sure that we get valid and candid responses from the people interviewed. The surveys were finally conducted in the months of October and November 2020, when the first wave of the pandemic was on a decline leading to a relaxation of the lockdown.

Police Reforms: A Long-Term Commitment

Common Cause got involved in police reforms since the nineties. It was a co-petitioner in the breakthrough Supreme Court case, Prakash Singh Vs Union of India, along with its Governing Council member Mr Singh, a persistent campaigner for police reforms. The case was filed in 1996 and the landmark judgment came in 2006. It laid down seven groundbreaking guidelines which were to be operative until Parliament passes an effective legislation. Of course, such a legislation is nowhere to be seen to this day.

The guidelines were about the establishment of the State Security Commissions with the leader of the Opposition, judges and independent members to guard against unwarranted government control, influence or pressure; fair selection of DGPAs and a national commission to select the chiefs of Central Police Organisations; minimum tenure for officers on operative duties; a separate wing for the investigation of cases; Police Establishment Boards for transfers, promotions, postings and service matters; and the establishment of the Police Complaints Authority at the state and district levels to hear complaints against the police.

The judgment was a watershed moment for police reforms in India but it soon became clear that the political class, across party lines, was bent upon circumventing the court’s guidelines. The state governments which are empowered to enact their own laws seem to be in no hurry to modernise the force or to rationalise its functioning as a citizen-centric service. They are happy using archaic and colonial laws which keep the police subservient to the rulers of the day. Almost all state governments in India are guilty of the contempt of court in terms of implementation of the Supreme Court’s order in letter and spirit.

This is a good reason for us to believe that the idea of police reforms is a continuous process and not a one off event. If anything, the cause is even more urgent today when extra-judicial killings are rising across the country and police accountability is shrinking. Political interference is touching new heights and one of its visible signs is that the scum is beginning to rise to the top. The SPIR 2020-21 (Volume-I) is brought out with all this in mind as an independent collaboration between academic and civil society institutions. This issue brings to you the salient points of the report, the excerpts of the keynote address, and the discussion at its release. As always, your feedback would be welcome.

Vipul Mudgal
Editor



SPIR 2020-21 (VOLUME I): POLICING IN CONFLICT-AFFECTED REGIONS

Summary and Key Findings

The Status of Policing in India Report (SPIR) 2020-21 (Volume I): Policing in Conflict-Affected Regions, gathers and evaluates original data on policing under extraordinary circumstances. It has been divided into two parts: First, a study of policing in conflict-affected areas and second, a study of policing during the Covid-19 pandemic. The studies present policy-oriented insights into everyday working of the police in India. It is brought to you by Common Cause and the Lokniti Programme of the Centre for the Study of Developing Societies (CSDS) and is backed by our philanthropic partners, Tata Trusts and the Lal Family Foundation.

The first part of the SPIR 2020-21 is focused on districts and states affected by some form of conflict, extremism, or insurgency while the second part looks at the preparedness of the cops against disasters in general and health emergencies in particular. Both the studies combine perceptions and performance about policing, in essence, a continuation of the SPIR 2018 and 2019. The earlier reports were focused on citizens' trust and satisfaction with the police and their adequacy,

attitudes and working conditions. The present study also surveys both the police personnel and common citizens using separate teams and questionnaires in different geographies.

It is well-known that everything about policing at the conflict areas—from jurisdictions to the line of command—is affected by the presence of the Army or the para-military forces under stringent legal provisions. It is equally true that the presence of armed underground outfits changes the nature of politics and society in conflict areas. This report aims to understand how policing is carried out in disturbed areas and if there are any lessons in it for policymakers. The study also looks at how conflict situations affect normal crime, its investigation and resolution. It unravels the attitudes of police personnel, their working conditions, training and preparedness as also their relationships with various stakeholders of the conflict.

For this study, a total of 6,881 individuals (2276 police personnel and 4605 civilians), across 27 districts in 11 states and Union Territories were surveyed. The conflict-affected districts were selected from amongst the list of disturbed

areas provided by the Ministry of Home Affairs and where incidents of violence have been reported consistently in the presence of the Army or the paramilitary forces. The report also analyses official data released by government agencies. In this section, we present some of the key findings from the report. For the sake of brevity, the findings have been thematically divided and presented in bullet points. For a more detailed understanding, please visit <https://www.commoncause.in/> to view the entire report.

Analysis of official crime data in conflict states

The first chapter, 'India's Conflict in Numbers' analyses official data on conflict states. It examines the existing quantitative literature on the subject and presents a bird's eye view of the official statistics collated by the National Crime Records Bureau (NCRB).

- The rates of cognisable crimes in the conflict-affected districts and states surveyed are lower than the national average, when seen as an average of five years. While the average rate of IPC crimes in the selected districts is 178 crimes per lakh of population, the

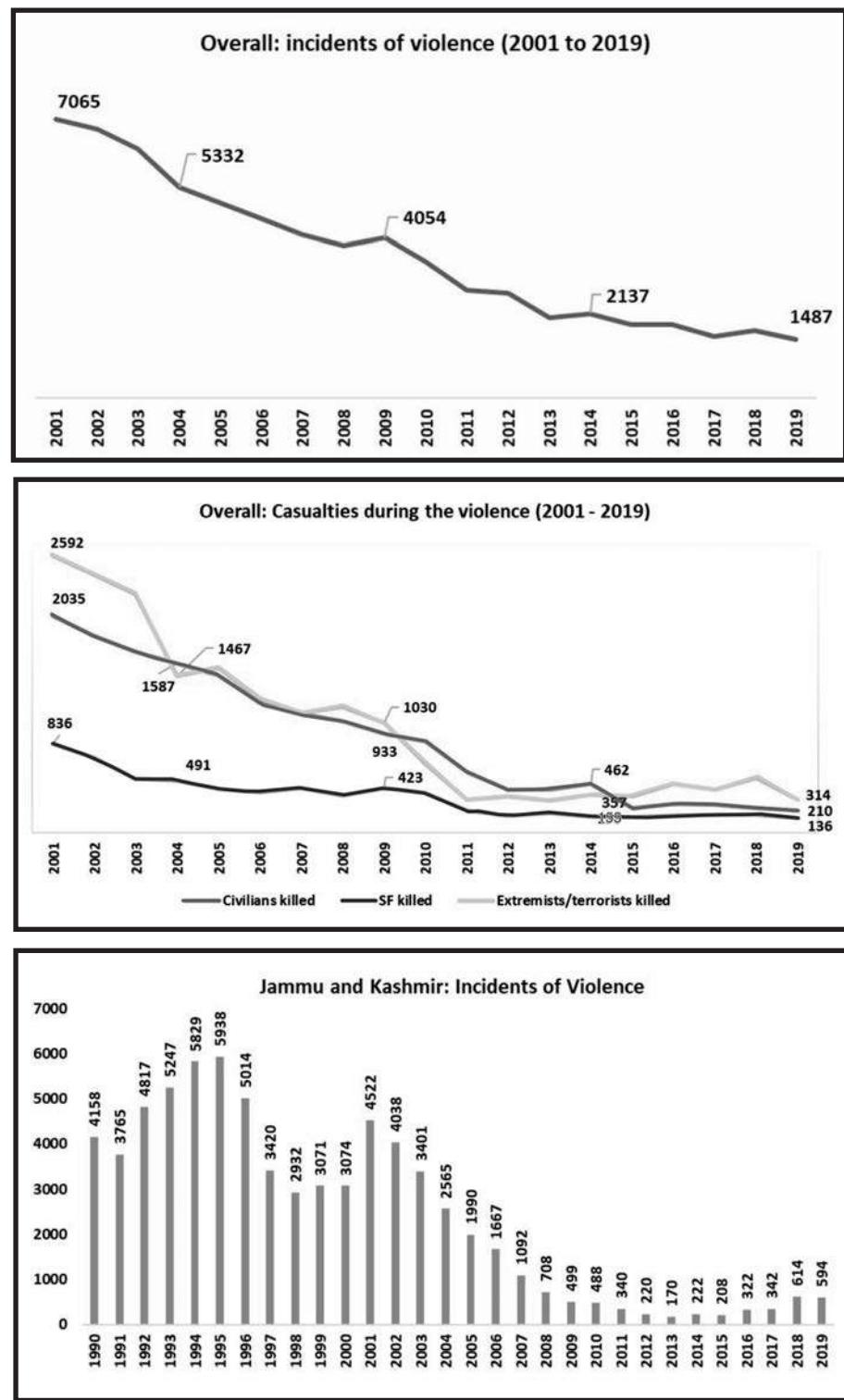


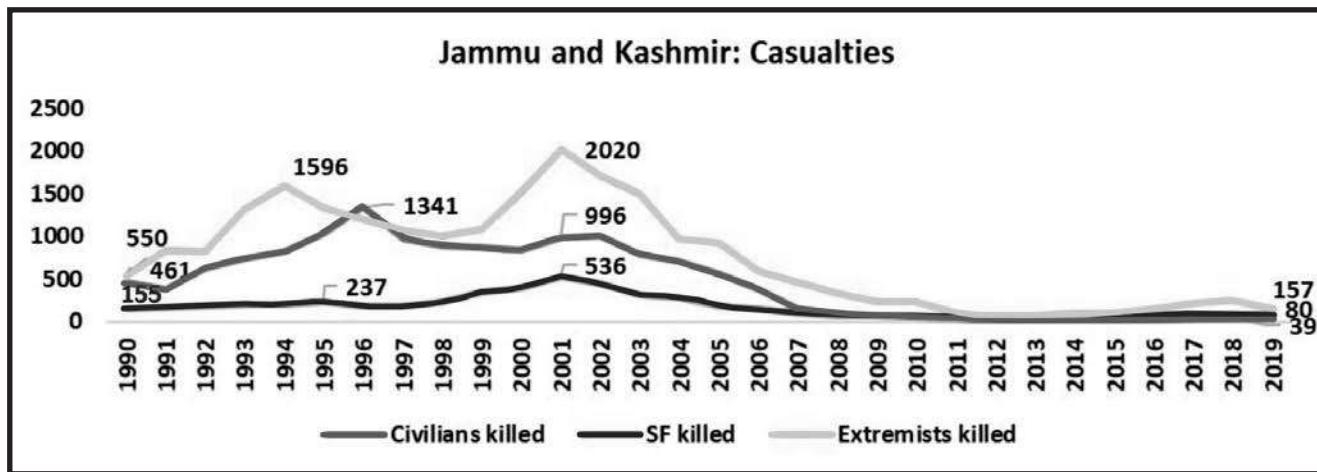
corresponding all-India figure is 237 crimes per lakh. Assam, however, has a significantly higher crime rate than any other selected state or the national average, with 328 IPC crimes per lakh of population.

- The conflict-affected districts have an over four times lower rate of 33 SLL (Special and Local Laws) crimes per lakh of population against the all-India average of 146 SLL per lakh.
- The rates of violent crimes (murder, grievous hurt, kidnapping and abduction) are much higher in the conflict-affected districts compared to the national average. While the national rate of kidnapping and abduction is 7 per lakh population, the corresponding rate for the selected districts is 10 per lakh. In the insurgency-affected states, the rate is thrice the national average, at 21 incidents of kidnapping and abduction per lakh population.
- Between 2001 and 2019, over 68,500 incidents of violence were reported from Jammu and Kashmir region, northeastern states and Left-Wing Extremism (LWE)-affected regions of the country in which 23,283 civilians and security force personnel lost their lives. About 75 percent incidents were reported in the first decade i.e., between 2001 and 2010 and nearly 45 per cent of them were reported in the first five years of 2000s.
- The level of violence and tension in J&K region has

significantly come down as compared to 1990s and early 2000s. There was a perceptible decline in the

number of incidents and also in the number of civilians, security forces personnel and terrorists killed.



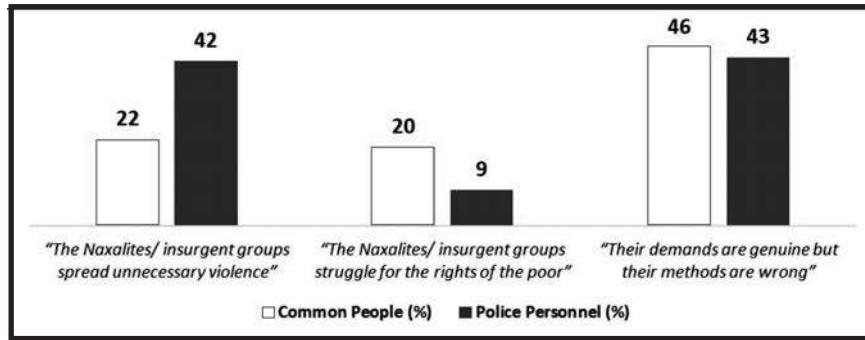


- Post 2012, insurgency in the northeastern states has declined rapidly and the violent incidents have dropped from 1025 to 223 in 2019. In 2019, as many as 21 civilians and four security personnel lost lives in the North East region compared to 97 and 14 respectively in 2012.

Perceptions about conflict

The second chapter examines the attitude of the police and the common people towards the conflict, their perceptions about the violent groups and the state's response to them. It also attempts to understand the citizens' levels of trust in the parties of the conflict and brings out the range of opinions on the problems of the regions and how to deal with them.

- In conflict-affected regions, 46 percent common people and 43 percent police personnel believe that the demands of Naxalites/insurgents are genuine, but their methods are wrong. The scheduled tribes are more likely to believe



Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: (1): The Naxalites/insurgent groups spread unnecessary violence; (2): The Naxalites/insurgent groups struggle for the rights of the poor; (3): Their demands are genuine but their methods are wrong. Which statement do you agree?

Major reason for Naxalism activities in your area	Common People (%)	Police Personnel (%)
Inequality/injustice/exploitation/discrimination	14	11
Poverty/hunger	13	15
Unemployment	11	17
Education	5	10
Corruption	4	4
To protect their land/identity	3	3
Demand for autonomy/freedom	3	2
Unsettled political issues	2	4
Atrocities against people by the Government	2	2
Any other	6	14
No Response	37	18

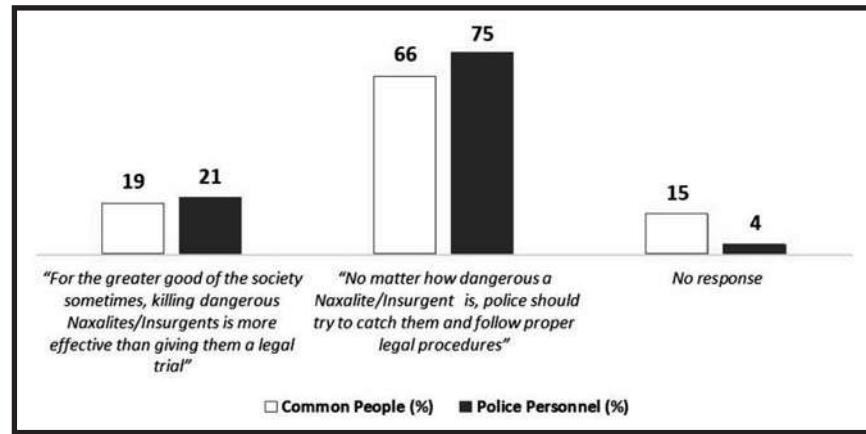
Note: All figures are rounded off.

Question asked: In your opinion what is the major reason for Naxalism/ insurgency related activities in your area?



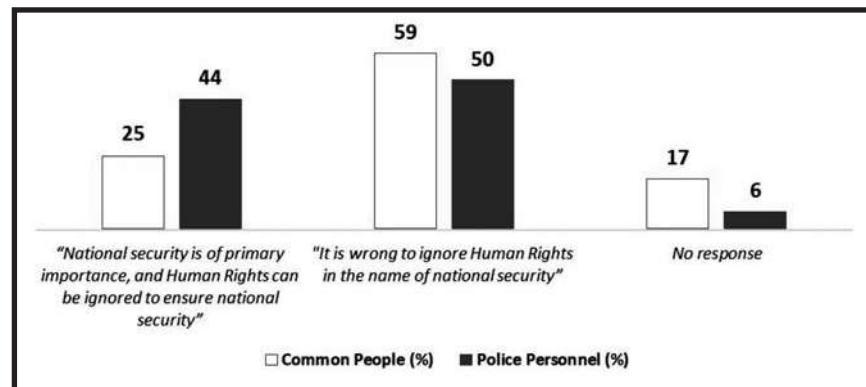
so, with one out of two ST persons agreeing with the statement.

- According to common people, inequality, injustice, exploitation, discrimination are the biggest reasons behind Naxalite/insurgent activities, followed by poverty and unemployment.
- Thirty-seven percent common people fear physical assault by the Naxalites/insurgents; 35 percent by the police; 32 percent by the paramilitary forces/Army.
- One out of five common persons as well as police personnel feel that killing a dangerous Naxalite/insurgent is better than a legal trial. Support for direct elimination was higher in LWE-affected regions among both the police personnel and common people as compared to insurgency-affected regions. One fourth of the police personnel and one-fifth of the people in the LWE-affected regions recommended the elimination of dangerous Naxalites for the greater good of the society. Only 15 percent police personnel and 18 percent common people supported the direct elimination of insurgents.
- Fifty-nine percent common people and 50 percent police personnel believe that it is wrong to ignore human rights in the name of national security. However, 34 percent common people and 42 percent police personnel also fully agree with the



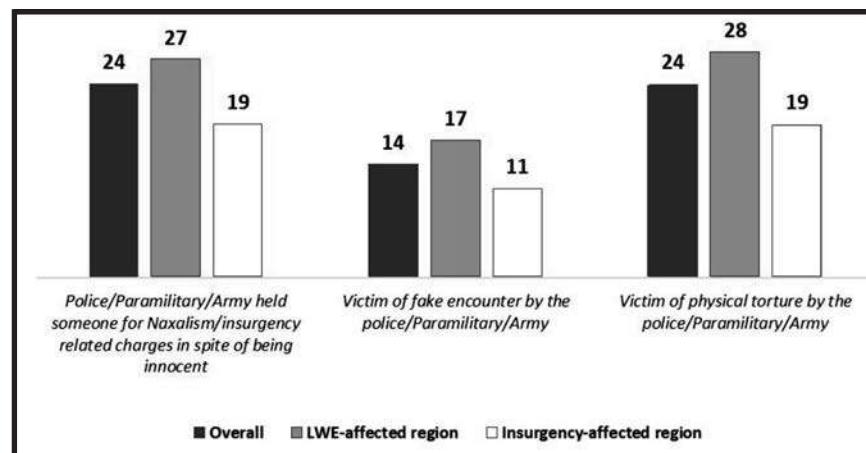
Note: All figures are rounded off.

Question asked: (1): For the greater good of the society sometimes, killing dangerous Naxalites/insurgents is more effective than giving them a legal trial; (2): No matter how dangerous a Naxalite/insurgent is, police should try to catch them and follow proper legal procedures. Do you agree with 1 or 2?



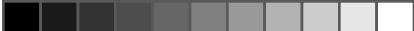
Note: All figures are rounded off.

Question asked: (1): National security is of primary importance, and Human Rights can be ignored to ensure national security; (2): It is wrong to ignore Human Rights in the name of national security. Do you agree with 1 or 2?



Note: All figures are rounded off.

Question asked: Do you know of anyone who was...?



statement that the police should eliminate criminals while dealing with Naxalites/insurgents.

- Nearly one-fourth (24%) of the people knew someone who was a victim of physical torture either by the police or paramilitary/armed forces. The same proportion (24%) of people said that they knew about an innocent person being held by either the police or the paramilitary forces/Army for Naxalism/insurgency-related charges.
- People living in the LWE-affected districts were more vulnerable to violence by the police and paramilitary forces, as compared to people living in the insurgency affected districts. One out of five people from the LWE-affected regions personally know of cases of physical torture by the police; one out of five people from LWE-affected regions also know of cases of minors being arrested/detained by the police or of police being violent towards minors.

Police's perceptions of the legal framework

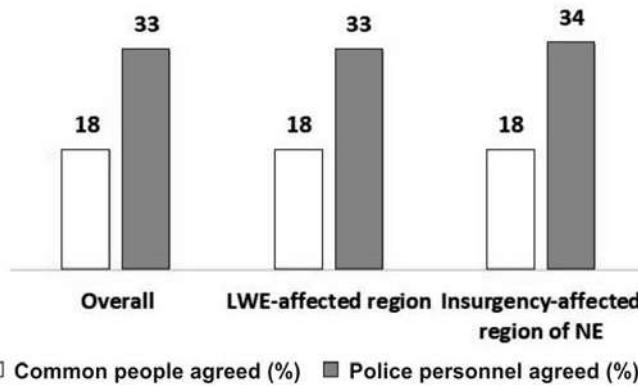
Devoted to the adequacy of the police and security forces, their training, resources, equipment, and the legal cover available to them, the Third Chapter examines their overall preparedness in the conflict regions. It also looks at the perceptions of the common people about the above-mentioned challenges. It further delves into the perceptions of

Violence towards minors	Common People (%)		
	Overall	LWE-affected region	Insurgency affected region
Been arrested/detained by the police	16	18	13
Faced violence by the police	15	20	7
Been detained by the Army/paramilitary	7	8	6
Faced violence by the Army/paramilitary	6	8	4
Been abducted by the Naxalites/Insurgents	10	12	6
Faced violence by the Naxalites/Insurgents	10	13	5

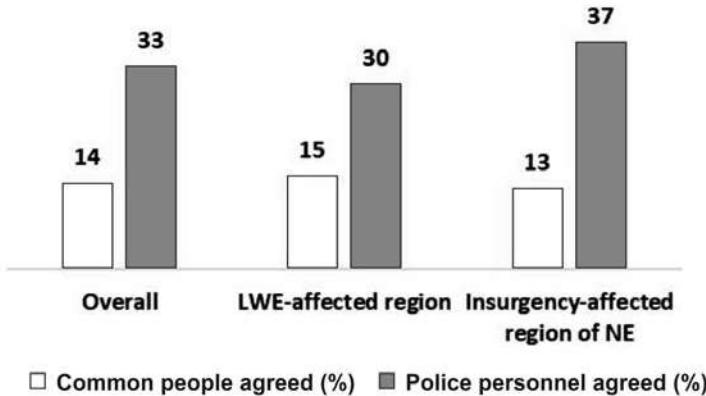
Note: All figures are rounded off.

Question asked: Do you know of any child below 18 years who has....?

Do Naxalites/insurgents illegally collect money/tax from people in this area?



Do Naxalites/insurgents run their own rules and laws?



Note: Rest of the respondents either said 'Perhaps it happens', No, or did not answer. All figures are rounded off.

Question asked: In this area, do the Naxalites do the following? a. Illegally collect money/tax from people b. Run their own rules and laws



the police personnel about the laws which are commonly used in conflict regions, such as the Unlawful Activities Prevention Act, 1967 (UAPA), the National Security Act, 1980 (NSA) etc.

- A big majority of the police personnel surveyed (60%) believe that strict laws like UAPA, NSA etc. are important for controlling Naxalite/insurgent activities. Significantly, however, only 30 percent of the common people believe so.
- Forty-two percent of the common people from the insurgency-affected areas of North East believe that security laws such as UAPA are very harsh and should be repealed.
- One in three police personnel believe that Naxalites/insurgents run a parallel taxation or justice system. However, only 18 percent and 14 percent common people respectively believe that Naxalites/insurgents run a parallel taxation system and a parallel justice/law and order system.

Discrimination by the police

Chapter four analyses the relationship between the police and people in conflict regions. It examines people-police confrontations around public protests and civilian demonstrations. It also looks at the perceptions around fairness and discrimination by the police and the sense of fear and lack of trust among the civilians

Police discrimination against...	Common People (%)		
	Yes	Not much	Not at all
Poor	36	17	42
Adivasi	24	17	48
Non-literate	31	18	45
Rural	29	21	45
Dalit	20	17	50
Muslims	16	17	55
Christians	12	18	58

Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: Often people say that while taking action against the Naxalites/Insurgents/militants, the police discriminate against some people. In your opinion, how much do the police discriminate against the following: poor, non-literate, ST, rural, SC, Muslim, Christian -a lot, somewhat, not much, not at all?

How likely are the following groups to be falsely implicated in Naxalism/insurgency related cases?	Common People (%)			
	Very	Somewhat	Not much	Not at all
Dalit	9	13	19	46
Adivasi	8	19	18	44
Muslims	3	12	15	52
Indigenous People*	2	11	12	39

Note: Rest of the respondents did not answer. All figures are rounded off. *Asked only in Assam, Manipur, Nagaland.

Question asked: It is alleged often that some people are falsely implicated by the police on Naxalism/Insurgency related charges. In your opinion, how likely is it for the following groups to be falsely implicated in such cases by the police-very, somewhat, not much or not at all?

Fear of...	Common People (%)		
	Yes	Not much	Not at all
Being beaten up by the police	35	20	39
Being arrested/detained by the police for no reason	33	19	43
Police coming to your house	27	19	46
Being falsely implicated in Naxalism/insurgency cases by police	24	17	49
Police destroying your belongings or property	21	14	56
Being killed by the police	20	15	55
Sexual harassment by the police	19	16	54

Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: Often people have fear of police for what they might do on the pretext of searching for Naxalites/Insurgents. How much do you fear of the following-a lot, somewhat, not much or not at all?



regarding police surveillance and excessive use of force.

- Thirty-six percent common people believe that the police discriminate against the poor in their drive against Naxalites/insurgents. Among the communities, Adivasis (24%) face more discrimination followed by Dalits (20%) and Muslims (16%)
- More than one out of four (27%) common people believe that Adivasis are likely to be falsely implicated in Naxalism/insurgency-related charges.
- Amongst the common people from the LWE-affected regions, 40 percent believe that during criminal investigation the police would favour a rich person against a poor person, 32 percent feel that they would favour an upper caste against a Dalit; 22 percent feel that they would favour a non-Adivasi against an Adivasi; and 20 percent feel they would favour a Hindu against a Muslim.
- About one out of three common people are afraid of being beaten up by the police or being arrested or detained by the police for no reason; Nineteen percent of the people from the insurgency-affected regions have a lot of fear of the police.

People's perceptions about the police vis-à-vis the armed forces

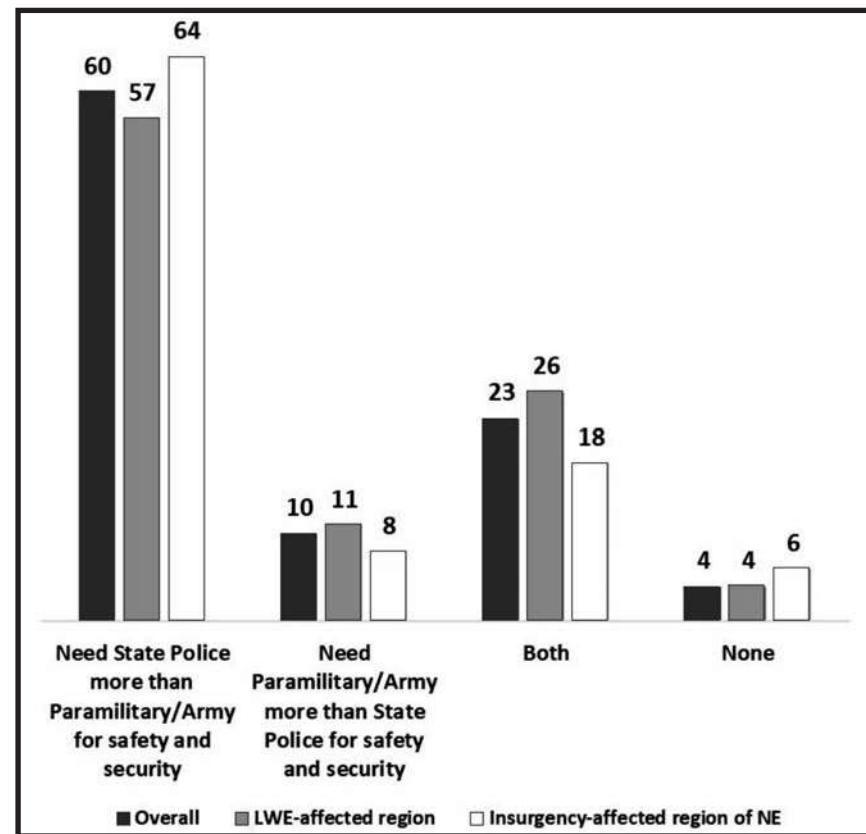
People in conflict regions have different opinions about and

experiences of dealing with different law enforcement agencies deployed there. Chapter Five, 'Perceptions about the police vis-à-vis paramilitary forces or the Army', brings these out through a survey of both the common people and police personnel. It tries to capture the perceptions of the local people and police personnel, levels of their trust in each other and differential treatment given by the government to different agencies.

- A significant majority of the common people (60%) believe that for their safety and security, they need the

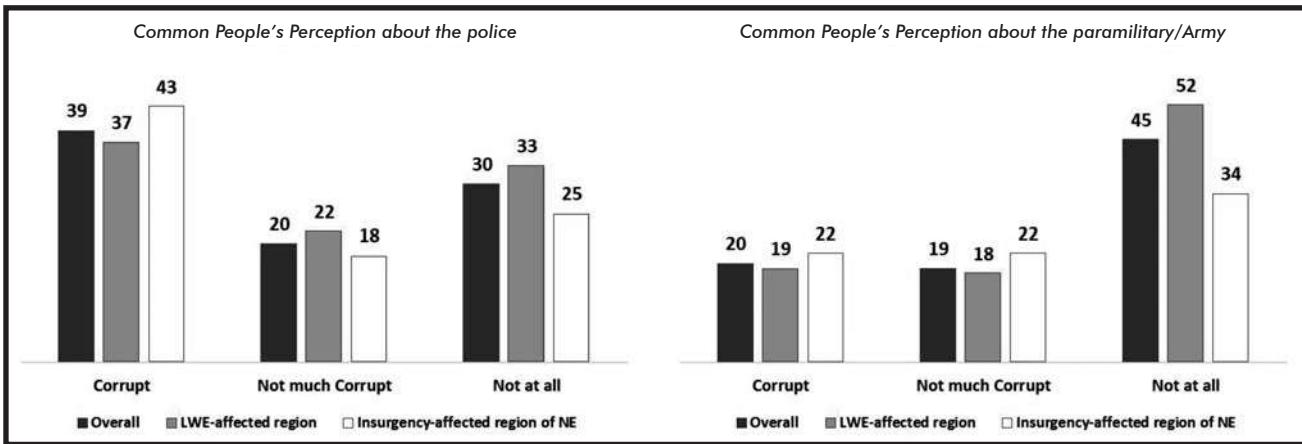
state police more than the paramilitary forces/Army; Common people who feel unsafe living in the region are more likely to believe so.

- Nearly two out of five people (39%) believe that the police is corrupt in conflict-affected regions, while 20 percent believe that the paramilitary forces/Army is corrupt in such regions. This difference in perception was true for both the insurgency and LWE affected regions, although the difference was starker in the former. The poorer assessment of the police vis-à-vis the paramilitary forces/Army on



Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: For the safety and security of the people living in this area, who do you need more - State Police OR Paramilitary/Army?



Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: In your experience, in such Naxalism/insurgent affected areas, how corrupt are the following - very, somewhat, not much or not at all? a. Police b. paramilitary/Army

the corruption parameter could again be attributed to higher frequency of day-to-day interaction between the police and common people, compared to the paramilitary forces/Army. Owing to frequent interactions, the chances of people having experienced police corruption are higher.

Working conditions of the police

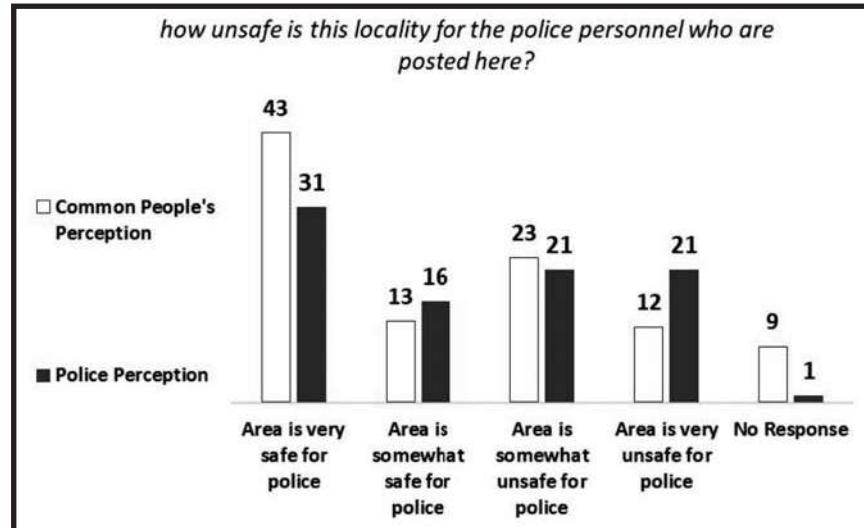
Chapter 6, 'Posting to a Conflict Region: Opinions of Police and Common People', captures the risks (both physical and mental), anxieties, and special needs of the personnel deployed in these regions, by their own assessment.

- Common people living in conflict regions are more likely to consider the area as being safe for police, as compared to the perception of safety of the police personnel themselves. At the same time, common people are also more likely to

consider the region as being safe for their own living— 70 percent believe that the area is very safe for living.

- Difference in perception regarding the safety of the area between ST respondents and respondents belonging to

other caste groups, particularly in the LWE-affected areas was clearly noticeable. Nearly 73 per cent Non-ST respondents from LWE region reported that the area is very safe for living. However, only 53 per cent ST felt that the area is safe for living. This could be



Note: All figures are rounded off.

Question asked: (To civilians) In your opinion, how unsafe is this locality for the police personnel who are posted here – very, somewhat, not much or not at all? (To police personnel) Considering your own safety and your family's safety, how risky do you find this area – very, somewhat, not much or not at all?



on account of the fact that the both Left-Wing Extremism and insurgency activities have usually been more rampant in tribal areas than others. Hence, it is only natural for tribals to be more likely to feel unsafe, being located at the centre of the conflict.

- A majority of the people (53%) believe that lack of development is the biggest problem in the region. However, 13 per cent people living in the conflict area reported that unemployment is the biggest problem for them.
- When asked 'how much does being posted in a Naxalism/insurgency affected area affect you mentally?' 16 per cent police personnel answered 'a lot'. Overall, one out of two police personnel (49%) admitted that their current posting is affecting their mental well-being adversely.

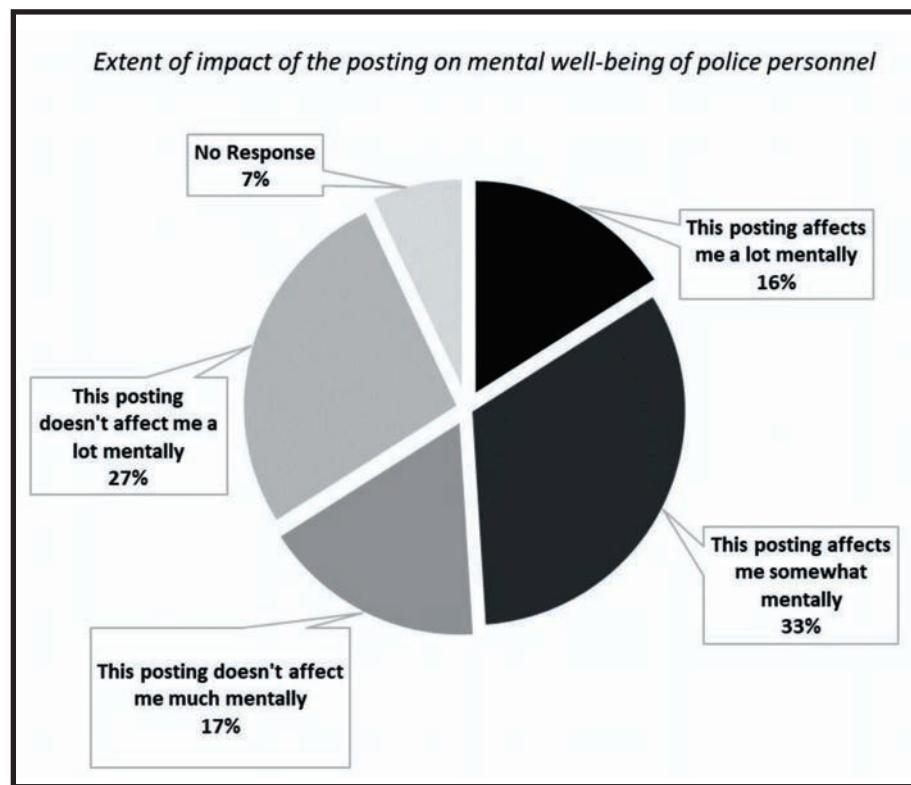
Crime in conflict-affected regions

Chapter 7 talks about common crimes occurring in the conflict-affected regions and their frequency. It analyses the opinions of the people and police on whether crimes in conflict-affected areas have increased or decreased. It also discusses in detail the extent to which the ongoing conflict affects general policing in these regions and some important steps suggested by the police personnel to control crime in these specific regions.

Biggest problem in their area of residence	Common People (%)		
	Overall	LWE-affected regions	Insurgency affected regions
Lack of development (school, roads, water, hospitals etc.)	53	54	53
Unemployment	13	13	14
Naxalism/Insurgency/Underground cadres	7	10	1
Poor law and order/crime/theft/lack of safety/poor policing	3	4	2
Inefficient/corrupt government and police	4	3	4
Other reasons < 1% each	9	8	9

Note: Rest of respondents did not answer. All figures are rounded off.

Question asked: What is the biggest problem for the people living in this area?



Note: All figures are rounded off.

Question asked: Considering that this is a Naxalism/insurgency affected area, how much does being posted here affect you mentally - a lot, somewhat, not much or not at all?

- Police personnel and common people from LWE-affected regions are more likely to believe that normal policing suffers because of conflict
- Hindu upper castes and OBCs were more likely to contact the police, while Adivasis were

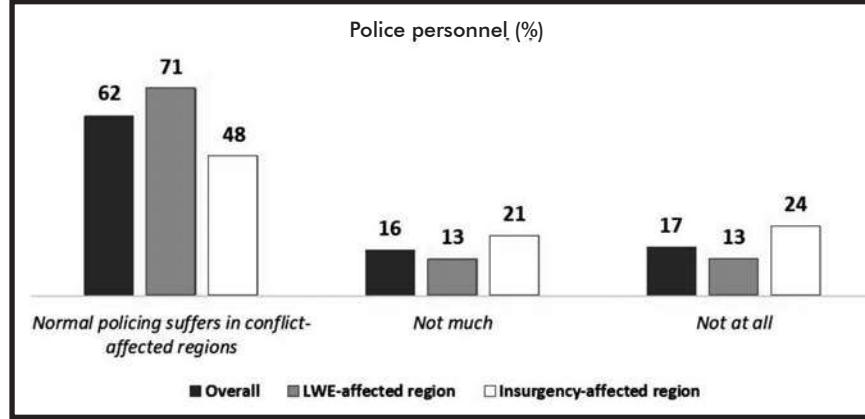
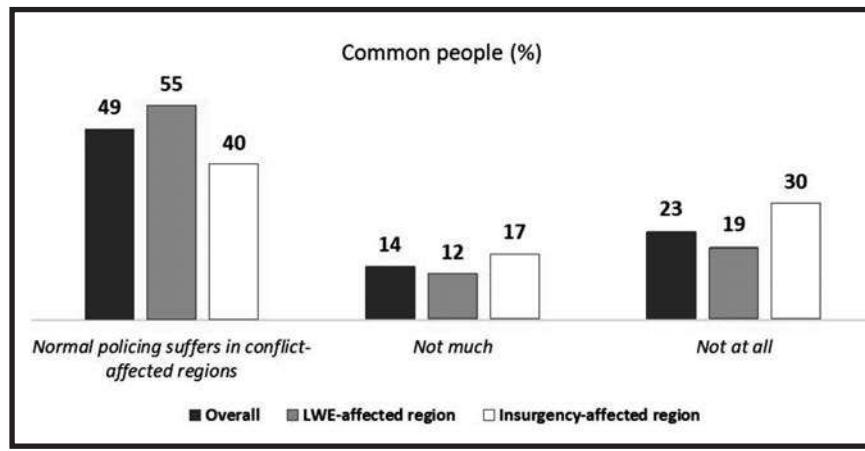


more likely to be contacted by the police. Nearly seven out of 10 Hindu upper castes and OBCs reported that they contacted the police. Whereas, 22 percent Adivasi respondents and 24 percent people from other religious minorities living in the conflict-affected regions said that police had contacted them. Similar trends were found in SPIR 2018 as well.

Strategies for resolving the conflict and the ways ahead

Chapter 8 discusses the perception of the citizens on what should be the best way to control the conflict, while highlighting the key steps required for improving the present situation. It further looks at the perception of police personnel on the efficiency of their local colleagues. It also studies the perception of the common people on issues of increasing the strength of the paramilitary forces or the Army in such regions.

- An overwhelming majority of police personnel (75%) and common people (63%) felt that addressing development and providing better facilities in the area would be very useful for reducing the conflict.
- Nine out of 10 police personnel believe that increasing the number of police personnel would be a useful measure for reducing Naxalism/Insurgency activities,



Note: Rest of the respondents did not answer. All figures are rounded off.

Question asked: Because of the presence of Naxalites/Insurgents in your area, how much does the normal policing, such as maintaining law & order and crime investigation suffer- a lot, somewhat, not much or not at all?

whereas only about 75 per cent common people agreed with this.

- More than one out of three police personnel (35%) feel that the government should improve the working conditions of the police. Almost a quarter also said that the government should ensure that they receive adequate training and facilities to be able to handle conflict situations.
- When police personnel were asked who is better suited for

or is more effective in conflict-affected areas — those from the same district or those from another — they were three times more likely to prefer the former. While 40 percent said a local police person would be more effective, only 14 percent preferred an outsider. However, 41 percent police personnel answered that it doesn't matter if the police person is from the same district or another. They felt that both will be equally efficient in their job.



IS THE RULE OF LAW BACKSLIDING IN INDIA? OUR CHALLENGES FOR THE 2020s

Excerpts from SPIR 20-21, (Volume 1) Keynote Address



The online release event of SPIR 2020-2021, (Volume 1), Policing in Conflict-Affected Regions

The online launch of the Status of Policing in India Report (SPIR) 2020-2021, (Volume 1), Policing in Conflict-Affected Regions, took place even as a furious second wave of the coronavirus devastated the country. Despite several of our colleagues getting infected with the deadly virus, we managed to organise the online release of the report on April 19, 2021. Owing to the swelling numbers of attendees, we had to stream the release event on both Zoom and YouTube. Representatives from the civil society, academia, activists, retired and serving police officers and students

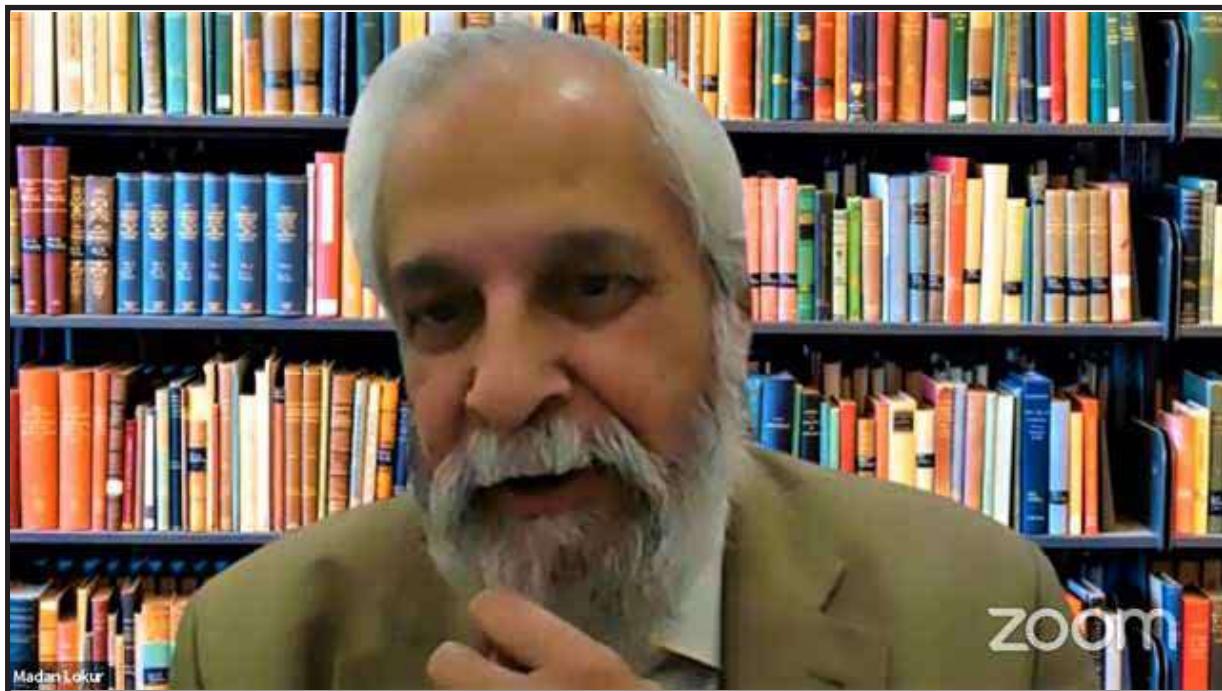
attended the event. The report release occasion also featured a Keynote Address on 'Is the Rule of Law Backsliding in India? Our Challenges for the 2020s,' by Justice Madan B Lokur as well as a panel discussion on 'Can Extra-judicial Killings be the State Policy?' Participants of the panel discussion included Mr. Prakash Singh, former DGP and Chairman, Indian Police Foundation, Ms. Patricia Mukhim, Editor, The Shillong Times, Dr. Sudhir Krishnaswamy, VC, NLSIU, Bengaluru, and Dr. Meeran Borwankar, former DG and Police Commissioner.

The edited excerpts of the keynote address and panel discussion are given here:

“People have the right to protest. How do the police curb the right to protest or what are the checks on the right to protest? ”



Justice Madan B Lokur, former Supreme Court Judge



On law and order

I would like to give policing a wide or broad interpretation on the topic "Backsliding of the Rule of Law." I want to start from the beginning, right from the maintenance of law and order, including the registration of FIRs, investigation, prosecution and post-prosecution. But let me look at it from the point of view of the primary function of the police in maintaining law and order. Over the last couple of years, I have been noticing – to my dismay – that the law is being used in a manner that I could never have imagined as a student of law in the 1970s. There are gaps and silences in the laws which are being taken advantage of by the police.

People have the right to protest. How do the police curb the right to protest or what are the checks on the right to protest? The police tend to manage these protestors through non-violent means. One is through the implementation of Section 144

“Over the last couple of years, I have been noticing – to my dismay – that the law is being used in a manner that I could never have imagined”

of the CrPC. It is implemented by the district magistrate but the police are also involved. We have had this Section implemented in a couple of places within a district, maybe in the entire district. But in a state like UP - which is huge – Section 144 has been declared in the entire state. This is remarkable. Not just in UP, but in other states as well! Here is one area in which - according to me - Section 144 has been misused.

The value of Section 144 and the right time of its application were issues discussed by the Supreme Court in the Ramlila Maidan incident, when we had the India Against Corruption movement. It's an urgent measure - not a preventative one. It should not



be used for weeks or a month to impose a lockdown situation in a state. For example, during the Citizenship Amendment Act (CAA) protests in Delhi, the metro stations were shut down, inconveniencing people going about their daily work. What for? Is it not possible to manage the protests and maintain law and order without inconveniencing people? Barricades were put up. People coming from Haryana would take two hours to reach Delhi. Why? Because the police did not want traffic to come towards Mandi House or wherever the protest was taking place.

So, the police put up barricades in the name of security. This in turn slowed down the traffic. By the time somebody came out of the traffic jam, two hours had passed, and the protests were over. Protestors were also picked up from Red Fort and Mandi House (unsuccessfully), and taken to Burari, in a remote corner of Delhi, and left there. How are they supposed to come back? There is no transport from Burari to the heart of Delhi. So they have to either walk or hitchhike. These are all non-violent ways and means that are being utilised.

While I do not know whether this is true or not, but it was said that the police "deliberately," put up barricades in strategic places during the Shaheen Bagh protests, so that traffic gets diverted. As a result, a person coming from Noida would

take 2-3 hours to come to the city. Commuters would feel frustrated and would, in turn, put pressure on the protestors, with comments such as 'What is all this Shaheen Bagh thing going on?' These are the non-violent methods used by the police. These measures may be a part of the law and order but they certainly inconvenience people in the city.

On violent policing

The police also manage protestors by violent means. Certain things are permissible --- water cannons, tear gas, etc. However, the police need to consider when they need to stop a lathi charge. Can they go to the library at Jamia Millia Islamia University and start doing a lathi charge where people are studying? The attackers of the Jawaharlal Nehru University violence were identified one year ago, but there's still no trace of them. Their names and addresses are known, but they have not been picked up. That violence has been condoned.

The farmers' agitation is another case in point. The police can undertake measures to get the farmers out, but they cannot dig up highways. That's not the job of the police. Building a fortress is also not the job of the police. These are the ways in which the rule of law is being sabotaged.

What about the judiciary and police? What is the relationship? I think there's a failure on both sides and it's a little disturbing

as far as I am concerned. I mentioned about the registration of FIRs. *Lalita Kumari's* judgment given by five judges in 2014, is not being followed. A prime example of that is the Hathras incident. The FIR was not registered. They asked the victim to go to a doctor, hospital etc, by which time precious time was lost and she was almost gone.

On investigation and prosecution

We now come to the topic of investigation and prosecution. The police are accused of third-degree torture. In the Thoothukudi incident the father-son duo, Jeyaraj and Bennix, was beaten up. The judiciary failed because the magistrate did not even bother to see the arrested people. Both of them died. This is not the job of the judiciary. They cannot say that I don't need to see the crime accused and it's okay for them to be beaten up for their crime. It's the job of the court to see that human rights are not violated, but the judge failed in his duty.

The SC also passed a judgment saying that CCTV cameras should be installed in police stations. Why? Is there a lack of trust? Or does the SC know that custodial violence happens in police stations. There is a suspicion right at the top that third degree torture is happening. Why else do we need CCTV cameras in police stations? Therefore, confessional statements made by the police are not accepted. But now it has been said that



Narcotic Drugs and Psychotropic Substances (NDPS) officers, who are invested with powers under the NDPS Act are "police officers," and hence, confessional statements made before them should also not be accepted. Again, there's a lack of trust in impartiality.

DK Basu guidelines issued in 1996 had to be repeated in the *Arnesh Kumar* case in 2014, but are still not being followed. Comedian Munawar Faruqui, who was arrested in Bhopal, was also released because *Arnesh Kumar*'s guidelines were not followed. What is the use of these guidelines if they cannot be enforced? Where is the rule of law that we are talking about?

On repeated arrests for single individuals

Repeated arrests for an individual are also happening frequently. I heard of this for the first time in the case of former finance minister Mr. P Chidambaram. He was in judicial custody and asked the police to come and examine him. The police seemed to be in no mood to comply. They seemed more inclined to arrest him and put him behind bars for the second time, on the same day he paid bail. The same phenomenon was visible in the case of peasants' rights leader Akhil Gogoi. He got bail for one case, and was put inside for another. Then he got bail in the second case, and was put inside for a third. I think there are around eight cases pending against him,

including Unlawful Activities (Prevention) Act (UAPA) cases. Actor Deep Sidhu got bail for participating in a riot at the Red Fort, and was re-arrested within a couple of hours for damaging the monument. Why didn't the police press all charges at the same time? These kind of police actions are lawful, but they are an abuse or misuse of the law. Selective leak of information by the police was seen in actress Rhea Chakraborty's case, telecast continuously on television. But crucial information is not disseminated to the people. The police do not share any information about persons arrested for colluding with Kashmiri militants. But there's an information overload on Rhea Chakraborty.

On inflated crimes

Then there are inflated crimes. Somebody says something, and the police respond by using sedition laws or UAPA against them. One girl says something, and is arrested for sedition. And what happens to her? A young lady of 19 years is put in jail

“ There is a suspicion right at the top that third degree torture is happening. Why else do we need CCTV cameras in police stations? ”

for four months in Bangalore. Again, these are perfectly lawful. But should they be done? We also saw the harassment of migrants last year. People were being beaten up. However, it must be said that the police also assisted the migrants with food, and medicines. But we did see people being beaten up. Why? Because according to the police, they were violating curfew orders. Climate activist Disha Ravi was brought from Bangalore to Delhi. I've asked so many people about the way she went back to Bangalore after getting bail. Who paid for her airfare? Did the Delhi police pay for her airfare? Probably not. You bring a student or young girl from Bangalore to Delhi on a trumped-up charge, sedition no less, and then tell her to make her way home when she gets bail. Where did she get the money from? Where does she stay in Delhi? If she gets bail at about 4 pm or 5pm, where is she going to spend the night? Is it okay for the police to ask the accused to come along to places like Delhi, Kolkata and Bangalore as they want to question her? Travelling around is not so simple, particularly in these times. Also, she did not get legal aid. She informed that she had a lawyer and wanted his/her assistance. But the judge declined, saying that he will provide a legal aid lawyer - a bit of a dummy who knew nothing about the case, and did not even open his mouth. And she's put inside jail for a couple of days.



On hate speech

Hate speech is another issue. Many people get arrested just for telling individuals not to do something wrong. For this simple act they are accused of causing disaffection and put in jail. Police have also been searching lawyers' offices, such as Mehmood Pracha. How does a lawyer defend his client if the cops come and search his computer? But if you are a lawyer in the Delhi riots, you are considered to be a conspirator.

On witness protection

Going beyond investigation, the police's role in witness protection needs to be looked at. In the Unnao rape case, Uttar Pradesh lawmaker Kuldeep Singh Sengar has been convicted for raping a girl. The victim tried to self-immolate in front of the Chief Minister's house before he woke up. Her father was beaten up and died in jail. On the way to the court, her aunts were killed in a car crash. Her lawyer also succumbed to his injuries later. The victim somehow managed to survive. Now, is this a part of the rule of law? Was the car crash an accident? We need to ask that question.

The Uttarakhand HC has said no to police officers serving as jail superintendents in state prisons. But why did that idea of needing police officers in prisons strike

somebody? People are being penalised for damaging public property. But what happens when the police themselves damage public property? CCTV cameras have been damaged in JNU, Jamia and other places, but no action has been taken. The police have broken headlights and taillights of motorcycles in Jamia, but again, no action has been taken. Does the rule of law say that if the state does it it's okay, but not if the people do it? These are aberrations in police functioning. Now, again, penalising citizens for destruction of property is legal. But the inequitable application of the law is causing a problem.

On extra-judicial killings

We have spoken about extra-judicial killings in Hyderabad, Kanpur, and Manipur. Eight people convicted of lynching were garlanded by a Union Minister when they got bail. The men were convicted of murder by lynching, and they got bail in appeal. It is a perfectly legal process and there is nothing wrong in garlanding somebody. But should it be done? What is the message being sent to the rule of law --- that it doesn't matter even if you lynch a couple of people?

It is not that the police are all bad. They have also been helping migrants and have done a fantastic job in some places.

Your report talks about people in conflict areas having greater confidence in the police than paramilitary forces. I think the police should be proud of this. Their popularity in conflict areas could be because they are from the same or nearby district. But the fact is that the people have greater trust in them than the paramilitary forces. Less than the army, but more than the paramilitary forces. Your report also talks about a different kind of corruption in conflict areas --- a Robin Hood kind of corruption where insurgents tap illegal sources. But there is less corruption in these conflict areas. Police reforms are needed. But there are other things that also need to be looked into. I think there are serious challenges to the rule of law, not only from the police or the state but also owing to the inactivity of the judiciary which is either unable to or does not want to check some of these police excesses. It is a challenge for this year, and for the next. We have to remember what was said during the American revolution --- eternal vigilance is the price of liberty. Unless we make sure that all of us work together --- whether it's the police or judiciary or any other wing of the state --- to maintain the rule of law and uphold our constitutional rights, we are going to face serious challenges in the 2020s.



N Srinath, Chief Executive Officer, Tata Trusts



About the report

Thank you so much for inviting me to this event. Let me start by thanking Justice Madan B Lokur for making the time to be available to the launch of the Status of Policing in India Report (SPIR) 2020-2021, (Volume 1). Having heard him before, I am sure that his comments on the functioning of the policing system would be of great interest. They will be eagerly look forward to by all the other participants in today's event. I'd like to express my appreciation for the other speakers, the teams at Common Cause and Lokniti-CSDS, the Lal Family Foundation and my colleagues at the Tata Trusts for the work that has been done till now.

The purpose of the police in a free society is to promote public

safety and uphold the rule of law, to ensure that citizens can meet their full and true potential. I think the trust and accountability between law enforcement and the civil societies are very important.

On role of police

In the present pandemic crisis, the role of the police evolves beyond maintaining law and order. In such a context, the police system, policy makers, civil society and so on, navigate the tension between public safety and good policing. This is where I think initiatives such as the Status of Policing in India Report have such an important role to play. It does give us an option or opportunity to look back and see where we are and gives us a benchmark against what we have done on these

parameters. It is true that there's a lot to improve in our system. But it also shows that there are steady efforts, although slow and scattered, at improving our performance. The report is based on an extensive study which combines perception and performance surveys and data about policing in the country. It focuses on the areas which are deeply affected by conflict, extremism, insurgency as well as the general preparedness of the police against disasters in general and health emergencies such as the Covid-19 pandemic.

We at Tata Trusts are very happy to have been a part of this exercise and I thank you all again for being a part of this event today. I look forward to hearing the other speakers of the distinguished panel.



CAN EXTRAJUDICIAL KILLINGS BE THE STATE POLICY?

Excerpts from SPIR 20-21 Vol. I Panel Discussion



Prakash Singh, former DGP and Chairman, Indian Police Foundation

On complaints against the police: A history

The subject of today's discussion is, 'Can Extrajudicial Killings be the State Policy?' Well, the answer is an obvious, no. Historically, the National Police Commission (NPC), in its very first report, published in 1979, said that there are certain complaints against the police, which must mandatorily be subjected to judicial inquiry. They mentioned specifically that in any instance of death of two or more persons resulting from police firing, a judicial inquiry must be held. Subsequently, the National Human Rights Commission (NHRC) issued some guidelines in 1997 and then followed that up in 2010.

They said that for all cases of deaths in police action FIRs must be registered, magisterial enquiry must be held, report sent to the NHRC within 48 hours of their occurrence. This should be followed by a subsequent report along with Post-mortem and Inquest reports as well as findings of the magisterial inquiry/inquiry by senior officers within three months. But what should be followed at the ground level today is the SC guidelines given in 2014 by then Chief Justice RM Lodha and Justice Rohinton Fali Nariman. They laid down 16 points, which must be followed in all cases of police firing resulting in deaths. The guidelines state that FIRs must be registered and cases investigated

by the CID or police team of another police station under the supervision of a senior officer at least a level above the head of the police party engaged in the encounter. This should be followed by a magisterial inquiry. Also, six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGP. In addition, the officer who was involved in firing must surrender his weapon for ballistic examination, and should not be given any promotion or gallantry medal until the case has finally been decided and cleared. These 16-point guidelines, issued by the SC in 2014, are generally being followed by the state governments.



On extra-judicial killings

Now, these principles are unexceptionable and must be followed. Then, why are we discussing this topic today? Because there are so many extra-judicial killings or fake encounters. In the Telangana encounter of December 6, 2019, four alleged rapists were bumped off by the police. What followed was popular support, approval, and endorsement by not only the people, but also the government. That caused a lot of discomfort among thinking people. They contemplated on how the entire society and even the governmental machinery can support such an encounter.

While criticising the Telangana encounter, we also need to think seriously. Going back in history, there were the Bhagalpur blindings. How is it that society comes out in support of such brutal acts of blindings or killings en masse? After all, these people are not mad. Therefore, we need to figure out what is wrong, identify and address it. When people express their endorsement of such extra-judicial killings, they are indirectly conveying that there is zero faith in the criminal justice system of the country. They are sceptical about whether these men would be brought to justice, whether they would ever be punished or whether the case would drag on for 10 years, 20 years or 30 years. At the end of the long legal process, witnesses turn hostile, some of them die and the criminal

ultimately has the last laugh. It is the failure of the criminal justice system to deal with the mafioso and dreaded criminals who have the capacity to influence witnesses, proceedings, and even judges. This was confided to me by a CM of an important state who had a problem handling a mafioso. That is why there is a general approval when such extra-judicial killings take place.

I am not at all condoning these killings, nor am I justifying them. I am merely emphasising that the criminal justice system must become functional. It must deliver within a short span of time and not drag on like the case of postal worker Umakant Mishra, who was cleared by court after 29 years. That is a problem. The criminal justice system is not delivering. It must deliver for such killings to stop getting the approval from society.

On policing in insurgency and terrorism affected areas

There is another area which also needs attention. On one hand rapists and history-sheeters like Vikas Dubey are killed in the domain of normal policing. But it is a different story in areas affected by insurgency and terrorism. After the battle against terrorism was won in Punjab, 2,500 writ petitions were filed in the Punjab and Haryana HC and SC against the Punjab police personnel. Now, imagine the plight of the police personnel who were in the forefront of the battle. I am saying this from my personal experience because I

was there in Punjab when the state was burning.

The only department functioning in the state was the police. Lending support was the paramilitary, aided by the army, who fought the terrorists. All the other departments had become dysfunctional. Even the judiciary was not functioning. There were a number of stories about judges being brow-beaten and bullied inside the court premises by the terrorists. In such a situation, the Punjab police fought the battle but at the end of it, they faced more than 2000 writ petitions. Several police personnel, including one SP committed suicide. Journalist Shekhar Gupta wrote about these writ petitions. He said "It is perfectly valid to question the methods used by the security forces. But is it not more important to ask who is ordering them to do so? It is incredibly and shamefully low of us to ask our own forces to put their lives on the line, do the dirty work, and then when all is back to normal and the debris of war is cremated and

“When people express their endorsement of extra-judicial killings, they are indirectly conveying that there is zero faith in the criminal justice system of the country.”



“The criminal justice system is not delivering. It must deliver for extra-judicial killings to stop getting the approval from society.”

buried to harp back to the law is supreme, in a civil society mode. The Punjab crisis saw 5 Prime Ministers and as many internal security ministers. Each one knew precisely what was going on. Why are they hiding now? Why are they not being charged with genocide?"

I was in Punjab from 1987-1991. Any leader or top-level government functionary touring Punjab at that time had one simple message for all of us: 'Do what you like, but finish terror.' And then former Union minister Arun Shourie also wrote: "Society, of course, will have to consider a fundamental point that goes beyond mere law. To ask a person to fight at the risk of his life on certain terms and conditions and later when the man has saved the day for society, to turn around and say sorry, these conditions we promised you are not constitutional. What is that, but the worst sort of breach of faith?" Why should anyone risk his life to protect such a society?

I concede that in insurgency/terrorist situations, things do go wrong at times. I think the

test should be whether the mistakes or killings happened in the bonafide discharge of duties, or whether they were cold-blooded killings and staged encounters. I think we need to draw a line. Once you find out that it was a cold-blooded killing and people were collected at a place and then shot down, then those cases do not have to be condoned. But there are cases which come in the category of 'collateral damage.' I have seen that when you're facing a group of determined Maoists in Maoist affected areas, and opening fire, the possibility of some villagers getting killed in the process is always there. Now, what do you do? Just allow yourself and your men to be killed or just take them head on? So, while human rights are very important, when you are fighting a group of terrorists/insurgents, sometimes there would be unintended casualties. If it happens in the bonafide discharge of duties then we'll have to take a different route. But on the other hand, I know of instances where cold-blooded killings happen, and those need not be condoned.

On global views on policing

In this context, let me bring to your notice the UK experience. The Defence Secretary of Britain admitted in a statement made in October 2016 that "Our legal system has been abused to level false charges against our troops on an industrial scale." He added that this has "caused significant distress to people who risked their lives to protect

us." The statement was made in the context of claims over alleged humans rights abuses committed by the British troops in Afghanistan and Iraq.

Let us also look at the European Convention on Human Rights. Article 15 of the European Convention on Human Rights says, "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."

English judge Lord Denning once said: "When the state is endangered, our cherished freedoms may have to take a second place". I have spent more than 12 years in terrorist and insurgency affected areas and these are the dilemmas we face. I can assure you that I never faced any accusations of human rights violations in any of the theatres I operated in. And there were instances where people got killed. But my instructions to the men were very clear: 'So long as you are acting in the bonafide discharge of your duties, I shall defend you.' But there were also instances when they had transgressed the limits of law. Then I told them that before the government hangs you, I will be the first person to punish you.



Patricia Mukhim, Editor, The Shillong Times



On fake encounters

The discussion on the topic “Can fake encounters be a state policy,” flows from your report, where 66% of the people interviewed said that they agreed with fake encounters. This is an issue that we really need to reflect on. I come from Meghalaya, where the police are in active connivance with the government in facilitating illegal mining and transportation of coal. What do we do in these circumstances? The police, supposed to prevent illegalities, are part of an illegal system. I would like to correct the organisers of this programme by pointing out that it is not just the lack of development which has led to insurgency in the

North East. We have the longest running insurgency in Nagaland, arising from an assertion of sovereignty, because the North East is not yet fully integrated into the idea of the Indian nation. After all we are only 74 years old as a country, so it's an ongoing process, and I think we are getting there. The killings have come down substantively.

I would also like to correct another idea. If you ask anyone in the North East about their bone of contention, everyone will say that the Armed Forces (Special Powers) Act (AFSPA) should go. It's not nice to have a law like this in a democratic nation. And then you look at the state government. At the first hint of trouble, the state government

asks for the armed forces to come in. They will also declare an area as disturbed very quickly so that they can enforce the AFSPA. So many extra judicial killings have taken place under this Act, particularly in Manipur. Those 1,528 documented cases of alleged fake encounters from Manipur are still pending as part of prolonged litigation, although December 2017 was supposed to be the deadline given by the

“It’s not nice to have a law like AFSPA in a democratic nation.”



court. So, justice really takes a long time. At the same time when the conviction rate is as low as 4%, then where does the public trust stand? The public begins to lose faith and there is a system of complete politicisation of the police. The police are used as an instrument of the state, and to further a political ideology. Then what you have is what we see today. There's actually no rule of law if I may say so.

While we debate the national security advisory board, the recruitment process of the police force is itself questionable. So many people get in by paying money. If you are recruiting people in a corrupt manner into a force responsible for bringing justice to people, then how do you expect it to deliver justice. Investigation is always such a weak point in all the states of the North East. Looking for justice is like looking for needles in a haystack.

On police and the idea of instant justice

Then there are movies like Singham, reinforcing the public's belief that instant justice is preferable to the long-drawn processes of law. In fake encounters, police assume the role of the judiciary and executioner, without giving the accused a chance to be heard. We still remember the famous Thangjam Manorama case in Manipur and the way her body was riddled with bullets, leading to the naked protests by 12 Imas

“ The police are used as an instrument of the state, and to further a political ideology.”



(mothers) outside the Kangla fort. But even today, the army will say that they will not enter troubled territories if the AFSPA is not in force. We know that AFSPA grants the uniformed personnel extraordinary powers, and the impunity to kill just on mere suspicion. Whenever you file a PIL against these fake encounters, the CBI will investigate the case. So, the police will look into complaints against its own personnel. How does one expect justice then?

We have also gathered from media reports that rarely have encounter killings been carried out against some of the most wanted or powerful criminals. Encounters have been used by the state more often against the vulnerable sections of the society. Since May 2017 for instance, half of those killed in encounter killings in UP were Muslims, and the other half were Dalits and from other backward classes. And then, there are so many instances of political opponents being bumped off.

On rewards for encounters

In 2017, the UP government

also allowed district police chiefs to announce rewards of upto ₹ 1 lakh for a team that carries out an encounter. I think this is a blatant violation of the SC guidelines, which among other things, prohibit out of turn promotions or rewards until the enquiry is complete and the police have been absolved of all allegations. Therefore, to me, all these are half done processes. While about 12 or 15 states have set up police complaints authorities so that public spirited citizens can complain against any trigger-happy policeman, none of these, at least in the North East, are working. So, we are back to square one, and do not know what to do. As media and human rights activists, we are left with very little resource to fight the state, fake encounters or extra judicial killings.

“ While about 12 or 15 states have set up police complaints authorities so that public spirited citizens can complain against any trigger-happy policeman, none of these, at least in the North East, are working.”





Sudhir Krishnaswamy, VC, NLSIU, Bengaluru



About the report

I begin by congratulating the CSDS and the Common Cause teams for putting this report together. As others have said, this is an important report in that it speaks to some very narrow-focused questions. As someone who has read and worked with the other reports in 2018 and 2019, I would like to point out that while all of those interventions are valuable, this report is especially valuable. We have a debate about issues like fake encounters without really having any reasonable baseline about what we are discussing. As long as the report provides us with an empirical baseline, we are making progress. I think today's discussion topic can

be very emotionally charged and having strong empirical baselines help us ground these debates. I think this report is an important contribution in that sense. I wasn't sure though that the report had a question on encounters.

We've been asked to address today as panellists the issue of encounter killings. Let me begin by talking about how we can frame this question: what do we call this kind of killing? I then want to talk about how we might approach this question constitutionally: what's the normal case, what's the exceptional case? I want to close off with making a broader point about distinguishing between

two kinds of utilitarian thinking. There seems to be some profound philosophical mistake in which popular reaction to this kind of killing takes place.

So let me begin by the question of framing. All of us who have access to international cable TV have been witness to this remarkable trial of a police officer in Minneapolis in the US. The point of the trial is that it's a

“What we need to see is ordinary criminal accountability in police killing cases.”



trial for murder. Although it is a police killing, the trial is for the ordinary offence of murder. We know, and criminal lawyers will remind us, that murder can be of three degrees, or four degrees, depending on how you read the IPC. We can understand that charges can be across the range. While we watch this trial, we notice that the Black Lives Matter movement, which gained strength in the last year, has struggled to emphasise the need for this kind of ordinary criminal law liability and accountability of the police forces.

On ordinary criminal trials for encounters

In contrast, many Indian case laws have focused on investigation --- by the CBI or SIT of one state or the neighbouring state. The other focus of Indian Public Interest Litigation in this field is on where the trial should take place and how much compensation should be paid. There's very little effort in securing ordinary criminal trials. I don't want to do injustice to the work of Andhra Pradesh Civil Liberties Committee (APCLC) and other actors in the civil liberties movement. But I think the PIL device only goes so far.

What we need to see is ordinary criminal accountability in police killing cases. What is striking to me with regards to the framing of police killings in the Indian debate is the number of terms used for it --- extra-legal killings, extrajudicial killings, encounter killings. I am assuming that

“ ***The deployment of the army, territorial army and paramilitary forces is key to understanding what's happening with policing in conflict zones.*** ”

there's some kind of category difference between these three kinds of killings. Police killings happen in various ways and some important markers to categorise them might be useful. The Indian framing of the issue obfuscates more than it reveals and we might want to use simpler language that might be both popularly and legally more appealing.

On arming the police

What is also different in the Indian context from the U.S. is that the ordinary police personnel are not lethally armed. The U.S. is dealing with an epidemic of excessive police force emerging from very ordinary daily events and traffic stops. Unfortunately, the police pulling people over there are lethally armed. In India, the police may use excessive force, but it is non-fatal for the most part. The real context and problem in Indian policing emerges in conflict zones. The question here is who is lethally armed in conflict zones?

The deployment of the army, territorial army and paramilitary forces is key to understanding what's happening with policing in conflict zones. When we start paying attention to this, many of the questions and highlights of the report start speaking to us in a different way. Why is it that ordinary citizens prefer local police to paramilitary forces, almost two is to one? A part of the answer lies in how these police forces are armed. Your chances of minor engagement with the paramilitary force might result in fatal consequences whereas that with the local police might not be so.

Then there's the other question about corruption. You're paying money and your goods are being taken off you by the police, but you would much rather have the local police because the paramilitary forces are trouble. We must be able to distinguish between cold-blooded murders and people who make genuine mistakes.

The second key distinction here is between the normal situation and the state of exception. Here, I mean state as the provincial state. The ordinary rules of criminal law apply here, primarily the IPC and criminal procedure code. In addition, some special and local laws that sit with the two main codes make up the criminal law of the land. So, in the ordinary course, we know that the laws of arrest allow the use of force but the use of force



may be fatal. We do have the rule of law and we should keep telling the difference between genuine mistake and egregious cold-blooded murder. These are difficult things to do and require trials and investigations. But we should hold on to these conceptual distinctions because if we abandon them, it's a road to ruin for all of us.

On action in conflict regions

However, the problem that emerges in India and areas of this study is the course of action to be undertaken in conflict regions. We already know that in conflict regions we suspend the rule of law in partial and substantial ways, both through the Armed Forces Special Powers Act (AFSPA), and now increasingly through the Unlawful Activities (Prevention) Act (UAPA). And what we find is that while the AFSPA has regional applications, the UAPA tends to

have an even wider ambit. When we look at conditions of conflict, we tend to give examples of the rules of war: what should you be doing in Iraq, what should you be doing in Afghanistan? The rules of war have very different protocols of engagement. Should we really be using the rules of war in domestic insurgency? I don't think so. Because we are responding to our own citizens and that might not require opening out the rules of war. It might require modified terms of engagement. The AFSPA and UAPA both provide for that and then blur the line. But there is a need to understand the exceptional rule of law situation. It is equally important to distinguish between situations when the states of exception must apply and when ordinary rules must apply. It is critical to the future of the Indian republic, not just with the North East or with Kashmir, but across the board. As long as the civil society, political actors and courts understand that the rules of exception must remain very narrowly drawn, much is at stake.

On vigilante police action

How do we explain the popular affirmation of vigilante police action in Telangana? The real question we are struggling with both nationally and otherwise is between two kinds of utilitarian calculations. Utilitarians would be very happy if we judged every single act by the utilitarian calculus and asked, "Does

this maximise social welfare and social good?". And they might then try to tease out the consequences of that act on a case-by-case basis.

The model of moral analysis and calculation that we use, both in the law as well as in moral thinking, is to be 'rule utilitarians.' We don't ask the question on a case-by-case basis, but in a general manner of speaking. If we adopted a rule that allowed a police officer to eliminate a dangerous criminal without trial, would we be better off? And on this question of the general rule, the empirical as well as moral evidence, is stacked in the opposite direction. Because in all societies across historical time, whenever we have invested state authority with this kind of extraordinary police power, we were unable to tell the difference between state authority and private violence.

If we start thinking in this rule utilitarian manner, it would alert us not to be blind to the consequences. The real test of how the consequences matter depends on the rules we choose and not on the individual moral ethic or personal ethics of particular individuals. With that caution, we can retain our core beliefs about the nature of policing in the rule of law society. Indeed, there should be strict rules of engagement respecting the core constitutional values in policing, as is present in all other aspects of law and order in the country.

“There should be strict rules of engagement respecting the core constitutional values in policing, as is present in all other aspects of law and order in the country.”



Meeran Borwankar, former DG and Police Commissioner



About the report

It is a very well researched and drafted report. Whenever I get such a report, the first thing I do is to see the research or survey methodology adopted. I found them to be very comprehensive in this report. It is commendable how the questionnaire was designed and students involved and trained for data collection. This whole exercise was undertaken during November-December 2020, in the middle of the pandemic. Hats off to the teams conducting the survey and producing this report.

On the topic, 'Can Extrajudicial Killings be the State Policy?,' I can say that I have only had

experience about encounters and so-called extra-judicial fake encounters in the urban scenario of Mumbai and Maharashtra.

So, state, as we all know, is a political association with geographical area. It's a sovereign and one of its main duties is order and security. During the course of maintaining order and security, can fake or extra-judicial encounters become a state policy? We are all aware that IPC itself gives us Sections to defend our property and body in a manner that may lead to action on our part. We can resort to violence to defend ourselves. But fake murders as a state policy are an emphatic

no. And yet we have to face the reality of people celebrating and showering flowers on the alleged encounters of the Hyderabad accused. They were never tried but the society decided to conclude that they were the rapists. And then there was the encounter of gangster Vikas Dubey. Now the point is, was the state silent? Yes. Were the citizens silent? Not only were they silent, but they were celebrating. So, given an atmosphere where the state decides to look the other way and citizens rejoice, we have to conclude that it is a weak, rogue or desperate state. It is a desperate state when it came to Punjab, or maybe sometimes in



“ We have to face the reality of people celebrating and showering flowers on the alleged encounters of the Hyderabad accused. ”

the North East. But in the context of urban terrorism by organised crime in Mumbai, I saw a very weak state. Therefore, though it is not a policy, the state, by its very silence, is acknowledging and accepting encounters, some of which are not genuine encounters but extra-judicial killings by rogue police officers.

On unrepentant criminals

One of these encounters has become a topic of national debate. I would like to give two examples. One was when an officer, whom we lost in the 26/11 attack, Vijay Salaskar, informed me that he was following a notorious criminal. Hence, he and his teams wanted a few concessions from the daily duties which crime branch officers have to perform. Understanding the kind of operation the officer was leading, we permitted him. After about two weeks, he produced a criminal before me. During his interrogation of about two

hours, the criminal described various killings where targets were fixed by the bosses of his gang. Hotels were booked for him and pilgrimages to Shirdi and Tirupati were organised after each operation. He stayed in luxury hotels and taxis would report to him before and after the operation. Cash was being handed over to him. Despite my training as an IPS officer, I just held my head in shame and thought: ‘why didn’t we encounter this guy?’ Because I knew he will be in prison for long. His family will be taken care of by his organised criminal gang. And in the end, he may get acquitted. Even though I believe in human rights, and hold that encounters are a big no, I felt otherwise in this particular case. I was extremely disturbed by the way he explained how the killings were being organised. Additionally, he had no repentance at all. So, I really wondered whether I’m doing my duty by putting him in the prison now, where he will be for years, in one trial after the other.

Another instance comes to mind. When I was heading the Maharashtra prisons in 2012, citizens would often meet me with questions. They would ask: “Oh, you are now in the prison department. So, Ajmal Kasab is living on the taxes we pay? What are you going to do with him? Have him there for years? Feed him? Feed him biryani?” It became such an embarrassment to accept that I was heading the prison department as people

would look down upon me. They felt that a terrorist, who was seen opening fire in Mumbai’s Chhatrapati Shivaji Maharaj Terminus (CST) railway station in 2008, was alive and kicking in the prison, a department I was heading. They probably thought that I was feeding him biryani for which the citizen was paying taxes. This incident also made me do a rethink about the system and empathise with the anguish that citizens felt in such cases.

On special courts and speedy trials

I would also emphasise that this is definitely a sign of a weak state. We need to overhaul the criminal justice system instead of thinking that the citizens are accepting of encounters as a way of controlling organised crime, insurgency or Left-Wing extremism. I would recommend that we strive to improve policing and investigation with the help of acts like the Maharashtra Control of Organised Crimes Act 1999 (MCOCA). MCOCA-like Acts are

“ We need to overhaul the criminal justice system instead of thinking that the citizens are accepting of encounters. ”



“Prisons, instead of reforming and rehabilitating prisoners, have become breeding grounds, not of ordinary crime but of organised crime.”

now being brought in by various states, that provide for special courts and speedy trials. Within one year we should be able to say that Person X has been convicted in a crime, and decide on his/her punishment.

On quality of prosecution

We should also improve the quality of prosecution. This survey shows that respondents

feel that Adivasis, Dalits and poor, rural people are the targets. Therefore, there is a need to improve our free legal aid system. My experience in prison also shows that we have only 30% convicts and 70% undertrials. Out of all the prison inmates, Dalits, Adivasis, Muslims and the rural poor are dominant. They desperately need free legal aid, more courts and investments in forensic labs. Today, if we want extra-judicial killings to stop, we have to give a very prompt, timebound justice. To that end, our dependence on witnesses won't be enough as it cannot lead us to conviction. We have to be dependent on technology and therefore investment in forensic labs is a must. Prisons, instead of reforming and rehabilitating prisoners, have become breeding grounds, not of ordinary crime but of organised

crime. This includes chain snatching, organised theft of motor vehicles, house breaking and even violent, organised crime. Prisons are becoming places where organised criminals interact, exchange notes and are emboldened to carry out more criminal activities.

So, if we want to be prompt and professional then the only way out is strengthening the police, prosecution, forensic labs, judiciary, prisons and combined training for all of us. This will help us not to resort to extra-judicial killings but to conclude a criminal case in time and satisfy the feelings of citizens who are looking for justice. If we do not give them justice promptly, they will celebrate extra-judicial killings and the state will have to remain silent. The only way out is to overhaul the criminal justice system in a concrete manner.

“The rule of law doesn't mean the police are in charge, but that we all answer to the same laws.

Edward Snowden



COMMON CAUSE UPDATES

Supreme Court Cases

Petition Challenging the Appointment of Interim Director, CBI:

Common Cause filed a PIL challenging the appointment of an Interim/Acting Director of the Central Bureau of Investigation (CBI) again. It has also sought the appointment of a regular Director, as per procedure established by law.

As per the Delhi Special Police Establishment (DSPE) Act, 1946, the appointment of Director, CBI is to be made by the High-Powered Committee comprising the Prime Minister, Chief Justice of India (or any Judge of Supreme Court nominated by the CJI) and Leader of Opposition in the Lok Sabha.

The petition prays for a direction to the executive to initiate the process of selecting a regular Director forthwith. The petition has also sought a direction to the Centre to initiate and complete the process of selection of the CBI director well in advance. The selection process should be completed well before the date on which the vacancy to the post is about to occur.

In 2019, Common Cause had challenged the appointment of M Nageshwar Rao as Interim Director, CBI on similar grounds. On February 19, 2019, while

declaring the decision of the case, the Court indicated that if due process is not followed in appointments, it is always open to any incumbency and the said appointments could be questioned in accordance with the law.

The current PIL challenging the appointment of CBI Interim/ Acting Director was filed on March 2, 2021 while notice was issued on March 12, 2021. On April 5, 2021 the Court expressed its displeasure on the interim appointment and granted adjournment. It directed the matter to be listed for April 16, 2021. Subsequently, the matter was taken up on April 19, 2021 and the next hearing date fixed on May 13, 2021.

Meanwhile, the Appointments Committee of the Cabinet, based on the panel recommended by the Committee, approved the appointment of Subodh Kumar Jaiswal as the new director of CBI on May 25, 2021. The selection committee of Prime Minister Narendra Modi, Chief Justice of India N.V. Ramana and the Leader of Opposition Adhir Ranjan Chaudhary shortlisted Jaiswal, along with Sashastra Seema Bal (SSB) chief K.R. Chandra and special secretary in the Ministry of Home Affairs (MHA), V.S.K.

Kaumudi. Since Jaiswal was the senior-most among the three officers, his choice became easier. The principle of seniority is the default norm of selection. The matter has not been listed thereafter.

Petition Challenging Re-appointment of the Director, ED:

Common Cause on November 27, 2020 approached the Supreme Court with a prayer seeking to quash the Centre's decision to "retrospectively" amend the tenure of Sanjay Kumar Mishra as the director of the Enforcement Directorate (ED). It has also sought a direction to the central government to appoint a director for the agency "in a transparent manner and strictly in accordance with the law ". The bench of Justices L Nageswara Rao and S Ravindra Bhat issued notice on February 15, 2021 and the matter was taken up on April 5, 2021, when the Court after hearing the parties directed for listing on April 16, 2021. On April 19, 2021, after hearing the parties, the Court directed the matter be listed for May 12, 2021. There are no further orders of listing.

Availability of Vaccines to Every Citizen: Common Cause filed an Intervention Application in the Suo Moto Writ Petition in



which the Apex Court has taken cognisance on issues related to oxygen supply, drug supply, and vaccine policy in relation to the Covid-19 pandemic. The Application seeks directions to the Centre to revise the guidelines for implementation of the National Covid Vaccination Program dated June 8, 2021, specifically relating to the allocation of up to 25 per cent of the vaccine produced in India to private hospitals. Alternatively, we have prayed for directions to the central government to modify its revised guidelines for implementation of the National Covid Vaccination Program in such a manner that it is able to achieve free vaccination expeditiously. No guideline should curtail its capacity to procure 100 per cent vaccines manufactured in India. The IA also urges all the stakeholders, both public and private, to be transparent in the procurement and allotment of vaccines, as well as ascertain accountability for ensuring transparency.

Illegal Mining in Odisha: This matter was listed thrice in January 2021, where some interlocutory applications filed by interested parties were disposed.

Writ for Police Reforms: The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and NK Singh. Since then,

it has been a struggle to get the Court's directions implemented. On July 3, 2018, responding to an interlocutory application filed by the MHA regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the UPSC three months prior to the retirement of the incumbent DGP. The UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP.

To curb the practice of appointing Acting DGPs by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service left, giving due weightage to merit and seniority. It also held that any legislation/rule framed by the states or the central government running counter to the direction shall remain in abeyance.

On March 13, 2019, a three-judge Bench of the SC, headed by the CJI, passed judgment in the said IA. Clarifying its order of July 3, 2019, the Bench said that the SC directions recommended that DGP appointments should be done by the UPSC by constituting a panel, selected purely on the basis of merit. It should feature officers who have a minimum residual tenure of six months, i.e., officers who have at least six months of

service prior to retirement. The matter was taken up on April 12, 2019 where the SC dismissed a contempt petition filed against appointment of DGP Nagaland.

On June 12, 2021, the Court, while disposing an IA filed by the State of Tripura, said: "we consider it appropriate to direct that the UPSC shall prepare a panel for appointment of a Director General of Police for the State of Tripura on the basis of merit from out of candidates who have a minimum qualifying experience of 25 years instead of 30 years. We order accordingly. The instant interlocutory application for directions is disposed of in the above terms. This order shall not be treated as a precedent."

Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) challenged the introduction of Electoral Bonds, which was introduced by amending the Finance Act 2017. These bonds have not only made electoral funding of political parties more opaque, but have also legitimised high-level corruption at an unprecedented scale by removing funding limits for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL sought direction from the Supreme Court to strike down the amendments brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. On



October 3, 2017, notice was issued to the Union of India and other respondents and on February 2, 2018, our petition was tagged with the one filed by the Communist Party of India (Marxist), also challenging the electoral bond scheme.

On March 14, 2019, the Centre, in its affidavit filed in the SC, claimed that electoral bonds would “promote transparency in funding and donation received by political parties.” The matter was taken up on March 26, 2019 when the Election Commission of India (EC) again red flagged the bonds scheme, conveying that it had expressed concerns about it even in 2017. The EC in its affidavit said that the electoral bond project and removal of caps on the extent of corporate funding would have “serious repercussions/impact on the transparency aspect of political finance/ funding of political parties.” Thereafter on April 12, 2019, the SC declined to stay the EB scheme ahead of the 2019 General Elections. It further observed that the question could not be determined on the basis of a short hearing, and that any interim orders of the court must not have the effect of tilting the balance in favour of any political party.

Ahead of the Assembly elections in four states and a Union Territory (UT), an application was filed again in the Supreme Court on March 6, 2021. This was to stop the sale of electoral bonds

till their validity, already under examination by the Apex Court, was finally decided.

On March 26, 2021, the SC dismissed the application, saying that it did not find any justification to stay fresh sales of electoral bonds ahead of the Assembly elections in West Bengal, Tamil Nadu, Kerala, Assam and the Union Territory of Puducherry. The Bench, headed by Chief Justice S.A. Bobde, declined to stay their sale, noting that the bonds were allowed to be released in 2018 and 2019 without interruption and that “*sufficient safeguards are there.*” The EC, which had red flagged the issue in 2017 and 2019, took a different stand. Senior advocate Rakesh Dwivedi appearing for EC said: “The issue of transparency can be considered at the final argument stage, and there should be no interim stay.” Dwivedi added that the stay on electoral bonds would mean going back to the era of unaccounted cash transfers.

Representations

Representation for prioritisation of vaccination for Persons with Disabilities (PWD)

On June 1, 2021, Common Cause sent representations for prioritising vaccine access for PWD to then Health Minister, Dr Harsh Vardhan, as well as all the states and the Government of NCT of Delhi.

We urged the authorities to immediately take all measures to ensure prioritisation of vaccination for PwD, who continue to face exclusion, discrimination, and neglect. Some of our suggestions included giving priority access to vaccinations to PwD, along with personal assistants, family care-givers, and persons working in disability-related services. We have also urged authorities to conduct specific outreach to ensure that persons with disabilities are aware of the availability of vaccines. It should also be made certain that all information campaigns are inclusive, accessible and age/gender appropriate. In addition, the authorities at all levels must introduce helpline numbers with access to trained physicians and counsellors to allay fears concerning vaccination of the PwD as well as their guardians/caregivers. All information systems related to vaccinations must also collect data disaggregated by age, gender and disability, and web-based services should be fully accessible, while ensuring respect for privacy and confidentiality of health-related information.

Representation in response to Draft Model Rules for Live-Streaming and Recording of Court Proceedings

Common Cause sent suggestions to the e-Committee, Supreme Court of India, on Draft Model



Rules for Live-Streaming and Recording of Court Proceedings on June 30, 2021. Our suggestions included spelling out a time frame for the implementation of the draft model rules, in order to ensure functional interoperability. In this regard Common Cause also suggested the hiring of consultants for effective and timely implementation of targets. We asked the authorities

to consider as precedents the computerisation of the Income Tax department or Indian Railways (RITES) in the context of outsourcing the target implementation to consultants. We also recommended that cases of sensitive nature, such as matters relating to child abuse or sexual abuse be exempt from the live/deferred webcasting of cases. Further, personal and private information of the parties,

including the witnesses, should be protected through proper data protection rules enforced in concomitance with the rules for streaming of Court proceedings. The consent of all the parties in cases of sensitive nature should be taken before the broadcasting of the proceedings. In case a party wishes to exclude itself from the broadcasting, such opportunity may be provided to it in advance.

“An individual has not started living until he can rise above the narrow confines of his individualistic concerns to the broader concerns of all humanity.

Martin Luther King Jr.



Common Cause is in the vanguard of India's anti-corruption movement and the fight for stronger public institutions since the 1980s. We make democratic interventions through PILs and bold initiatives. Our landmark PILs include those for the cancellation of 2G licenses and captive coal block allocations, against the criminalisation of politics, for Internet freedom and patients' right to die with dignity. Please visit commoncause.in for more information on our mission and objectives. We also run special programmes on police reforms and cleaner elections.

Common Cause runs mainly on donations and contributions from well-wishers.

Your support enables us to research and pursue more ideas for a better India.

Now you can donate using our new payment gateway.

You may also deposit directly into our bank account (details are given below) and send us an email at commoncauseindia@gmail.com, providing information such as donor's name, address and PAN number for issuance of the donation receipt.

Name: Common Cause

Bank: IndusInd Bank

Branch: Vasant Kunj, New Delhi

S.B. Account No.: 100054373678

IFSC Code: INDB0000161

Address: Common Cause,

Common Cause House, 5, Institutional Area,

Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070

(Phone numbers: 011 26131313 and 45152796)

Printed & Published by Vipul Mudgal on behalf of Common Cause, 5 Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi 110070, Printed at PRINTWORKS, C-94, Okhla Industrial Area, Phase - 1, New Delhi - 110020
Editor-Vipul Mudgal Tel No. 26131313, 45152796, email: commoncauseindia@gmail.com, website: www.commoncause.in
