

# 37th Annual Dr. Ramanadham Memorial Meeting

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## **DIGITIZATION, SCIENCE AND CRIMINAL INVESTIGATION:** *Concerns for Democratic Rights*

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**Peoples Union for Democratic Rights**

January 2023



## **ABOUT DR. RAMANADHAM**

A. Ramanadham, a medical doctor by profession, founded one of the district units of APCLC in Warangal town. He started his career as a government doctor. He was dissatisfied with the unethical medical practices and left his job to set up his own Children's Clinic in 1968 in Warangal. Dr. Ramanadham's involvement with civil liberties was inseparable from his professional role as a doctor. In fact, his professional role helped the civil rights movement which, in turn, made him a better doctor. Dr. Ramanadham tried to create a space for democratic values wherever he went and in whatever he did. With APCLC, Dr. Ramanadham was actively involved in investigating fake encounters, custodial torture and deaths. This earned them the wrath of the police.

On 2nd September 1985, at Kazipet railway station, SI Yadagiri Reddy was shot dead by unidentified assailants, believed to be naxalites. Next morning his body was carried in a funeral procession in which a number of armed policemen participated. The procession was led by the district Superintendent and the Deputy General of Police. When it neared the Children's Clinic, a group of policemen broke into the clinic. They ransacked the clinic and assaulted the compounder and waiting patients. Then they went into the neighbouring shop, Kalpana Optical, where they found Dr. Ramanadham and shot him at point blank range.

## **BACKGROUND, INTRODUCTION AND ABOUT THIS YEAR'S TOPIC**

Every year PUDR organizes a Dr Ramanadham memorial lecture on a topic of contemporary interest. Last year it was Urban Planning and Democratic Rights. The year before that it was on Judiciary and Democratic Rights.

In 2008 the topic of the 22<sup>nd</sup> Ramanadham memorial lecture was Narco Analysis, Torture and Democratic Rights. In order to revisit the issue of police investigation, the focus of this year's topic is on **Digitization, Science and Criminal Investigation: Concerns for Democratic Rights. Why?**

As part of investigation, incorporation of science and technology (S&T) in police procedure seems to be an inevitable process and is highly visible. We feel that the process of making police procedure more S&T based brings new, and aggravates some existing problems. While scientific methods/techniques provide us with a standard or reliable way to address some problems, these methods, increasingly used in criminal investigation in India (DNA profiling, polygraph, narco-analysis, and other biometric methods etc.) are all probabilistic in nature. The reports from these tests are interpreted by humans which again is prone to biases and prejudices. Yet these modes are repeatedly resorted to in police investigation. The other shift that has come after growing digitization in recent years is the unfettered access of the state to data generated from crores of internet users in India despite the restraint of court judgments on such encroachment upon privacy of individuals. This access has particularly grave implications in criminal investigation by the police and other state authorities, which are often heavily reliant on these.

PUDR's work has shown the endemic nature of violence and torture inflicted in police custody in the course of criminal investigation. Given this context, and that the investigating agencies, and their attitude remain the same, what are the consequences of this kind of reliance on data, and 'scientification' of criminal investigation for democratic rights? This year's Dr. Ramanadham Memorial Lecture and meeting seeks to address these issues. The memorial lecture was organised in Delhi on 14<sup>th</sup> January 2023. The main speakers included Jinee Lokaneeta, Professor in Political Science and International Relations at Drew University, New Jersey, USA and Apar Gupta, Delhi based lawyer, activist and Executive Director of the Internet Freedom Foundation.

# CUSTODY, SCIENTIFIC INVESTIGATIONS AND CONDITIONS OF JUSTICE

- Jinee Lokaneeta

Let me begin by thanking friends from PUDR- for this tremendous honor of being a speaker for the Dr Ramanadham Memorial Lecture- personally PUDR (along with APCLC, PUCL, HRF) have been formative and inspirational for my thinking and writing and Dr. Ramanadham's life & the memorial lectures have been a part of my consciousness to consider the integral relationship between one's being- professional and personal- and civil liberties. Indeed when I am asked how I started working on torture and policing, two moments define my thinking: when we were in graduate school in the US on September 11, 2001, there was an [exceptionalism suggested](#) vis-a-vis the return of torture in the US in Guantanamo and Abu Ghraib; and having been witness to the routineness of state violence in another liberal democracy as often captured by the PUDR fact finding reports on every single [custodial death](#) in Delhi since its inception, I was skeptical of the claim that torture was absent in the US and that really gave birth to the kind of comparative project that I ended up doing in my PhD and in my first book- [Transnational Torture](#).

Years later, as I found myself turning to the scientific techniques that took the criminal investigation system in India by storm- as most prominent cases turned to narcoanalysis, brain scans and lie detectors, it was actually the [2008 Dr Ramanadham memorial lecture](#) by Dr Amar Jesani and the concept note from PUDR that ended up being a crucial piece of the beginning of my 2020 book [The Truth Machines](#), so it feels a real honor to give this lecture alongside Apar Gupta from [Internet Freedom Foundation](#) who, with colleagues, have systematically helped us understand privacy, digitization, and rights.

I come to today's talk as a feminist political scientist with a focus on critical political and legal theory that shares a normative commitment to justice, equality, liberty and rights- the critical meant to also indicate that understanding of state and law is always situated in history, politics, & culture and especially in experiences of hierarchy- such as class, gender, caste, religious identity and location. In my remarks, I will focus on three points about policing and scientific investigations in India as the PUDR concept note asked us to, and I will speak more broadly about investigations per se and conditions of justice within which those have to be judged and the implications for law and state. Conditions of Justice here refer to whether the techniques used are in consonance with the ability to exercise rights in custody especially by those who are marginalized.

1. I focus on three techniques-narcoanalysis, brain scans and lie detectors- in Truth Machines to point not only to the unreliability of these techniques or even to the violation of rights which need to be reiterated in today's context yet again given the recent use of narcoanalysis in the [Aaftab case](#), but also how they reveal the challenges of the inherently coercive nature of custody.
2. The choice of psychology-based techniques reaffirms how policing in the Indian context still relies on confessions, rather than other ways of investigation.
3. Role of actors other than police such as magistrate and medical professionals to understand their role in creating a scaffold of the rule of law but also the cracks within what appears to be monolithic.

Narcoanalysis involves the use of a drug such as sodium pentothal often in a hospital situation being medically monitored and a forensic psychologist asking questions to a person when they are in a twilight zone where ostensibly a person is unable to lie. My [interviews](#) with forensic psychologists, police officials, in 2013-14 (and later in 2016) in five cities- Bangalore, Delhi, Gandhinagar, Hyderabad, and Mumbai suggest that versions of such a technique was used with the help of a doctor in a police station (as unofficial narco analysis) or even in an anti-terrorism squad headquarters or in an undisclosed location and often without consent pre-2010 since it was considered as a natural part of the investigation- something high courts also often agreed to. Lie detectors or polygraph involves the use of an instrument to detect physiological changes such as heart rate, blood pressure, breathing, and sweat patterns when relevant questions related to the crime are asked. In brain scanning, responses to stimuli are recorded by the EEG (Electroencephalogram) to determine experiential knowledge of the crime. I call them truth machines because of the claim, not scientifically proven, but popularly considered as helping with extraction of truth with help of machines/drugs/experts.

In 2010, when the Indian Supreme Court intervened in the [Selvi case](#) to indicate that consent had to be ensured for these techniques, and evidence as a result of these techniques were considered inadmissible, while important, it didn't go far enough to address all aspects of what the scientific techniques represented in policing and investigations- or what I am calling the conditions of justice. Given the invasive nature especially of narcoanalysis (that Dr. Jesani called pharmacological torture in his [Dr Ramanadham lecture](#)), one would have imagined the Supreme Court actually to have disallowed such a technique entirely especially when they [write](#):

“It is also quite evident that all the three impugned techniques can be described as methods of interrogation which impair the test subject’s ‘capacity of decision or judgment.’” Yet the justices [claim](#): “going by the language of these principles, we hold that the *compulsory* administration of the impugned techniques constitutes ‘cruel, inhuman or degrading treatment’ in the context of article 21.”

In particular, the Supreme Court failed to address not just the lack of scientific validity and reliability of these techniques which are suspect but more importantly- that’s the point I want to emphasize- the contradiction that is often present about how consent within custody is understood. To take from the landmark US decision [Miranda v. Arizona](#) (1966) under attack more directly now- “We have concluded that, without proper safeguards, the process of in- custody interrogation of persons suspected or accused of crime contains *inherently compelling pressures* which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” So if custody is inherently coercive, then how is consent in custody ensured? In US, it is through the warnings but the question is: in India, are there special steps taken to ensure that consent in custody is free of pressure and threat as required by the self-incrimination clause of the Indian constitution- Article 20 (3)-that [Satpath v. Dani](#) (1978) also reiterates? As the [PUDR concept note in 2008](#) had pointed out “Narcoanalysis negates such protections by making redundant the right to silence of the subject. If interrogated when in his/her full senses, the subject may choose to remain silent. However, by breaking down rational defenses, narco-analysis undermines both an individual’s right to remain silent and the principle behind this right.” And it is this pretrial stage where the individual is often without a lawyer, at the mercy of the police in lockups or even jail officials in judicial custody - are conditions of justice possible or efforts made to ensure them?

One of the reasons narco, brain scan, and polygraph get so much valence and this is my second point -what this tells us about policing and scientific techniques. These techniques were often considered as humane alternatives to physical third degree- something that even High Courts occasionally accepted in the 2000s and explain why accused themselves would sometimes want to undergo narcoanalysis. A [high court](#) stated: “Such tests are conducted under strict supervision of the expert. It cannot be said that there is any violation of the fundamental rights guaranteed to a citizen of India.” A resurgence of these truth machines is seen in the shocking murder case of Shraddha Walkar which was given a communal and [anti-woman’s choice framing](#) due to the inter faith and the live-in relationship they had, but the media emphasis was on narcoanalysis and polygraph (latter done 5 times) of Aaftab as well. Forensic Psycho-

logists gave statements reaffirming how they worked with the Forensic Science Lab team and the Ambedkar hospital team. [A FSL official reiterated](#) “all parameters are complete before narco is done” meant to indicate the safest of circumstances. This is in contrast to other prisoners and undertrials who may languish in jails and lockups without medical and other basic facilities—as we have seen from a refusal of a sipper for [Stan Swamy](#) to a mosquito net for [Gautam Navlakha](#), each of these discretionary acts meant to use deprivation of basic rights as punishment, to [Altaf Shah](#) who was denied care for cancer. There are numerous others who we don’t even know about but who either suffer or occasionally appear as the “natural deaths” in jails that continue to be one of the biggest categories of cases of deaths in custody. The [2021 National Crimes Research Bureau report](#) on prison statistics notes that the number of deaths in jails in 2020 were 1,887, out of which 1,642 were classified as “natural deaths” and 189 due to “unnatural causes”. With natural deaths, 1,542 were reportedly due to illness, reflecting the highest category of deaths in judicial custody. The least number of “unnatural deaths” were explained by a category called “deaths due to negligence/excesses by jail personnel”. Negligence then is also a clear denial of basic conditions of justice.

Unlike the lack of medical and basic care in police or judicial custody, in these scientific investigations, the state shows utmost care in representing their methods to be very humane. In fact even with respect to [polygraph](#), a “senior FSL officer said, “The test was done over the course of three sessions but he {Aaftab} had a fever and cold and this has impacted the results... He’s cooperative but his health wasn’t good and this affects the test because he was also taking medicines.”

The presence of medical experts and scientific drugs and machines (even in a few cases) then fit the Indian state narrative of modernizing that addresses the ills of policing with a technical solution at a time when custodial torture became a big issue for democracies since the 1990s. That’s why in [December 2017](#) a DGP can send an internal circular, in response to a report of custodial deaths in Maharashtra, requesting police to use forensic science—suggesting “that the police opt for lie detector, polygraph, brain mapping and narco analysis tests.” or In [January 2019](#), the Delhi High Court expressed surprise that the forensic science laboratory in Delhi, the capital of India, lacked a narcoanalysis machine, thus requiring suspects to be taken to the Gujarat FSL, and asked that a test machine be operational in Delhi within three months and a further expansion during the pandemic creating the [facility](#) that Aaftab was ultimately taken to.

Thus, even as the Supreme Court in 2010 rejected the admissibility as evidence of consent-based test results from the truth machines, it did allow for the admitting of “information or material that is subsequently discovered with the help of voluntarily administered test results.” This argument is based on [section 27 of the Indian Evidence Act](#) that has long been a source of abuse since it even allows evidence gained as a result of physical torture and allows for these truth techniques to be used. If then we go back to why Selvi was inadequate for ensuring conditions of justice, it was also because it didn’t address the emphasis on confessions that these techniques sought to re-emphasize- the forensic science labs and hospitals became yet another site for confessions where you are forced to betray yourself in a coercive context represented by an invasive medical procedure, or fear of an unknown machine attached to your body, notwithstanding questions of reliability. In the process, the fact that cases can be solved through labors independent of the body’s own betrayals is ignored. The severe lack of forensic labs and facilities is obfuscated and as a forensic psychologist told me—sometimes announcing of narco just creates a calming effect on the crowds that something scientific is being done. Meanwhile, the [Status of Policing in India report](#) that Common Cause and CSDS have published notes that in 2019 around 42 percent of police said that they never had access to forensic technology, and 20 percent said sometimes. The focus on these truth machines also draws attention away from the lack of standardization that currently exists as far as forensic techniques, experts and facilities are concerned that [NLUD’s Project 39 A’s](#) work has also powerfully shown.

And this brings me to the final point I want to make – that of ensuring that state violence should not just be focused on the police as an institution but the reason why a liberal democracy framing (because practices vary by political regime) is possible is because a rule of law is upheld by a range of actors- police- meant to follow procedures, medical professionals – meant to ensure safety of the accused, the magistrates meant to ensure liberty, life, and dignity of those in custody. However, testimonies from Malaya Ghosh that Sharmila Purkayastha has written about from the 1970s in [Women Incarcerated](#), or Abdul Wahid Shaikh’s [Begunah Qaidi](#) have shown numerous instances where magistrates and medical professionals have failed to create a check on the violence. There is in fact a [scaffold of a rule of law](#) where the very procedures that are meant to reveal the violence sometimes end up masking the violence even as the procedures themselves represent the rule of law symbolically.

However, these testimonies also reveal that the focus so far has often been either the trial

or post violence procedures of accountability both by scholarship as well as sometimes the civil liberties community. Did a focus on custodial deaths mean that it was the magistrate's role after the deaths in enquiry commissions or the postmortems that became the arena of focus rather than what happens immediately after a person comes into custody? And here of course recalling the recent inquiry committee into the illegal detention and severe physical and psychological torture (including on the basis of caste) of labor organizer [Shiv Kumar](#) becomes important. He was subject to five medical exams when he was arrested that showed that he was perfectly fine in contrast to the medical report that emerged as a result of a high court mandated inquiry. The report that emerged after the custodial violence took place is a reminder of what the role of a medico legal certificate (MLC) is in ensuring safety, life and death of a person. It raises a question on why there isn't as much scrutiny of the MLC or why isn't the medical report shared with the accused or the remand lawyer or any lawyer for instance. That would be at least one way of immediately noting the contradiction in what the accused shares about their injuries and also reiterate the role of the lawyer even more in the pretrial phase.

In recent years, aspects of investigation including pretrial processes does appear to be the object of jurisprudence- even if inadequately & sometimes due to the demands of civil liberty and human rights groups. Just as the arrest memo as early as [DK Basu](#) (1996) was meant to create a check on illegal detention, the [Arnesh Kumar guidelines](#) (2014) are about the magistrate's role in determining whether there are adequate reasons for arrest, the Supreme Court decisions on CCTVs in prisons and police stations [\(2015\)](#) [\(2018\)](#) [\(2020\)](#) while limited since they don't specify who can get this information, allows ways of accessing aspects of investigation and custody that were hitherto only visible if there was a dead body in custody, a serious case of custodial violence, a high profile case or when there is outcry, not the routine reality of custody.

The introduction of a remand lawyer during first production similarly is an example of enabling the presence of a lawyer much before a trial actually takes place. Just as consent in custody is difficult, the accused is completely under the custody of the police during especially first productions and may end up confessing or feeling unsure about sharing the custodial violence in front of the police. But even more importantly, a focus on the pretrial procedures is to remind one of the constitutional protections inherent in the time when the person has yet not been proved guilty and may be thought of as guilty or a criminal because of their perceived identity, community, gender, caste, religion, class, political ideology or even a past history. Their lives and deaths are

literally determined by whether the lawyer, the magistrate and the medical doctor is able to fulfill their role.

Here then let me briefly mention the [Jeyaraj and Bennix](#) case that everyone may recall- in June 2020, Jeyaraj and Bennix- a father-son duo- were brutally tortured and killed in police custody in Sathankulam, Tamil Nadu. The father and son had been taken for a medical exam before being taken in front of the magistrate. Records indicate that the doctor found them “fit for remand” despite the fact that they were still bleeding from the wounds such that their clothes had to be changed several times first before bringing them to the hospital, next during the medical examination and before they were brought to the court. Jeyaraj’s sister notes the role of the magistrate in her statement: “They were made to stand inside the Court campus but outside the Court building, far away from the office of the concerned Magistrate/Judge. They were surrounded by Police personnel and the Magistrate was standing on the 2<sup>nd</sup> Floor of the Corridor of the Court Building,” who then remands them to a jail.

The most telling testimony that points to the inadequacy and yet significance of the pretrial procedures is from the jail superintendent of Kovilpatti subjail. He noted that when Jeyaraj and Bennix were first admitted to the jail, according to the rules, they were medically examined and fresh injuries were found on the bodies of both which were noted in the register. A doctor was called when Bennix was feeling severe pain who gave them medicines and asked for follow up tests the next day. Then the prison officials sent both Bennix and Jeyaraj to the hospital when their condition worsened and they died. The most remarkable part of this particular narrative is the bureaucratic answers from the prison superintendent during inquiries- “On being asked whether prisoner can be admitted with injuries, I state that since prisoners were brought by Police fit for remand certificate, we can admit the prisoners with injuries mentioning the same in the admission register/Book.” In a further statement, the same jail superintendent had the following exchange. ‘Question: Why did you not get P. Jeyaraj and J. Bennix admitted in Hospital when you came to know about the injuries on their bodies, while they were being lodged in Sub-Jail Kovilpatti? Answer: Most of the accused persons/prisoners, almost about 50%, used to be brought to Sub-Jail, Kovilpatti with similar nature of injuries as inflicted on the persons/bodies of both P. Jeyaraj and J. Bennix. They are usually not required to be admitted immediately, rather than as and when required, doctor from the Govt. Hospital visits Sub-Jail and treat such patients.’” Thus, the very presence of severe injuries is inadequate for an accused

to be sent to a hospital. Rather, it is adequate to just note the injuries in a register and follow the “fit for remand” certification given by the combination of medico legal certificate and the magistrate. There is a statement from the Chief Civil Surgeon who conducted an Enquiry into the deaths of Bennix and Jeyaraj, that no SOP (standard operating procedures) existed for such examinations other than from Indian medical code, 1947. Thus, this is yet another instance of how this lack of focus on medical examination in the pretrial stage becomes important. Civil society groups such as [Commonwealth Human Rights Initiative and CEHAT](#) have recently created uniform guidelines for doctors conducting post-mortem and medical examinations in custody to recognize their important role in documenting injuries that may indicate some correspondence to torture or ill treatment in custody. And indeed, if we look at the inquiry committee report for [Shiv Kumar](#), the significance of a doctor’s exam that did x rays and found the injuries that correspond to the torture and custodial violence is crucial.

Hence even as it appears that the scaffold of rule of law is created sometimes to mask violence unless an inquiry takes place (in Jeyaraj and Bennix & Shiv Kumar’s cases high court interventions made the difference), the openness to the early aspects of the process- whether in terms of arrest memos or arrest procedures, or the requirement for a MLC, a remand lawyer, a demand for magistrate to not have a mechanical remand process and the use of CCTVs – become ways through which a more closed/opaque space of custody opens up to public scrutiny. This becomes a way to recognize the police and state not as monolithic but contingent and where some possibilities of interventions for life, safety, and dignity are possible. Scientific investigations are a part of such a process though definitely cannot be assumed to be panacea of all ills of policing in India today but the criteria for any such process have to be whether they ultimately conform to conditions of justice- meaning the realization of rights of those in custody especially the marginalized.

[PUDR’s 1995 note on Dr Ramanadham](#) ended with this statement: Perhaps the only meaningful way of remembering Dr Ramanadham is by committing oneself to the movement for democratic rights and affirming our faith in people’s struggles to implement and extend these rights” and I want to end with a salute to PUDR friends for their courage and commitment in these difficult times. Thanks!

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# DIGITAL DELHI: A PUBLIC LECTURE ON 'DIGITALIZATION, SCIENCE & CRIMINAL INVESTIGATION: CONCERNS FOR DEMOCRATIC RIGHTS

- Apar Gupta

The 37th Dr. Ramanadham Memorial Meeting, organized by the PUDR, has brought us all together this evening. It is a pleasure to be in the company of Jinee Lokaneeta, whose book "*Truth Machines*" delves into the intersection of science, criminal investigation, and state violence.<sup>1</sup> It poses troubling questions on how lie detectors and narco-analysis offer a pseudo-science that appeals to the biases of investigating officers, prosecutors and even our judges. My own work, first with a private practice and then for broader policy change through the Internet Freedom Foundation, centers on the effects of technologies on human freedom and social justice.

Based on my working experience, I intend to explore the ways in which Digital India has transformed the landscape of policing and criminal justice in Delhi. I believe I can speak with some confidence, if not authority on it, given it is the city of my birth. Delhi has been my home for the past 38 years, a place that has given me tough love, always challenged me to grow and adapt. As I've grown older, I've witnessed firsthand the transformation of the city's landscape, from the construction of new buildings and roads, to the changing state of parks, even how the ashok, gulmohar and jamun trees that dot the streets have grown, shaped and wilted. One development that has caught my attention in recent years is the proliferation of CCTV cameras on our streets, often mounted on trees. Quite often I have noticed someone standing under its gaze held in the hypnosis of a smartphone.

Understandably, many find such forms of surveillance reassuring. It brings comfort from a constant sense of anxiety in an unsafe and aggressive city. So, when I encounter everyday surveillance, try as I do to reconcile myself, I can't help but feel uneasy. Our Chief Minister has stoked this populist sentiment with billboards announcing CCTV deployment. In December 2021, he announced the installation of 140,000 cameras boasting that "*[w]ith 4-megapixel resolution and night vision capabilities, these cameras are meant to increase the sense of security in the city. We are far ahead of London, New York, Singapore, and Paris, to the point that there is no comparison.*"<sup>2</sup> It leads me to question whether this massive deployment of digital technology truly

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<sup>1</sup> Lokaneeta, Jinee, *The Truth Machines: Policing Violence and Scientific Interrogations in India* (Ann Arbor: University of Michigan Press, 2020).

<sup>2</sup> HT Correspondent, "Delhi govt to install 140,000 more CCTV cameras across the city: Kejriwal," *Hindustan Times* (4 December 2021) available at <https://www.hindustantimes.com/cities/delhi-news/delhi-govt-to-install-140-000->

makes us safer, or if it simply gives us the illusion of safety. From a project development perspective, for a poor country like India, is this expense justified? Or, an inquiry more concerned with today's meeting, does it offer us a chance at justice?

### **"What do judges know that we cannot tell a computer?"**

I believe some answers may be found from trends emerging two decades ago. At a time when, *“penetration of Broadband, Internet and Personal Computer (PC) in the country was 0.02%, 0.4% and 0.8% respectively at the end of December, 2003.”*<sup>3</sup> At this juncture the Justice Malimath Committee on Criminal Justice Reforms<sup>4</sup> identified two major issues facing the criminal justice system: a high volume of pending criminal cases and long delays in their disposal, as well as a low rate of conviction for serious crimes.<sup>5</sup> It advocated for the use of technology, noting, *“If the existing challenges of crime are to be met effectively, not only the mindset of investigators needs a change but they have to be trained in advanced technology”*.<sup>6</sup> Its other recommendations also included, for the police to, *“develop and share intelligence tools and databases, which would help investigation and prosecution of cases.”*<sup>7</sup> Its concluding recommendation on the last page ends with stating, *“Society changes, so do its values. Crimes are increasing especially with changes in technology.”*<sup>8</sup>

A few years later Madhava Menon Committee's report on a Draft National Policy on Criminal Justice provides a clearer view on the anticipated impact of digital technologies in policing.<sup>9</sup> Thereport contains a separate chapter on *“electronic surveillance and use of scientific evidence”* and notes *“Developments in Science and Technology (S&T) have both positive and negative implications for the crime and justice scenarios. S&T can help solve more efficiently the problems and challenges of crime particularly those perpetrated with technological tools and*

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[more-cctv-cameras-across-the-city-kejriwal-101638554814497.html](https://www.dot.gov.in/broadband-policy-2004) (accessed 12 January 2023)

<sup>3</sup> Department of Telecom, National Broadband Policy 2004, available at <https://dot.gov.in/broadband-policy-2004> (accessed 12 January 2023).

<sup>4</sup> Dr. Justice V.S. Malimath Committee on Criminal Justice Reforms (Government of India, Ministry of Home Affairs, March 2003) available at <https://criminallawreforms.in/reports/other-reports/2003%20-%20Committee%20on%20Reforms%20of%20Criminal%20Justice%20System.pdf> (accessed 12 January 2023).

<sup>5</sup> Dr. Justice V.S. Malimath Committee on Criminal Justice Reforms, 15.

<sup>6</sup> Dr. Justice V.S. Malimath Committee on Criminal Justice

<sup>7</sup> Dr. Justice V.S. Malimath Committee on Criminal Justice Reforms, 296.

<sup>8</sup> Dr. Justice V.S. Malimath Committee on Criminal Justice Reforms, 287.

<sup>9</sup> Prof (Dr.) N. R. Madhava Menon, Report of the Committee on Draft National Policy on Criminal Justice (Ministry of Home Affairs, Government of India, July 2007) available at <https://criminallawreforms.in/reports/other-reports/2007%20-%20Report%20of%20the%20Committee%20on%20Draft%20National%20Policy%20on%20Criminal%20Justice.pdf> (accessed 12 January 2023)

[Aside : Dr. Madhava Menon was also a member of the Malimath Committee].

*devices.*”<sup>10</sup> This framing of technology as both an opportunity and a risk highlights the role of the state, including the police and judicial authorities, as the primary institutions but also the stakeholders in this issue. This framing also implies a bias in favor of technology, which is a form of determinism in the sense that the adoption of technology imparts objectivity, efficiency and effectiveness in the processes of criminal investigation and trial. I believe such a framing lacks foresight how technology by itself may be used to deepen police abuses and erosion of democratic freedoms. I wonder if these committees headed by legal luminaries may have benefited from reading the debate between one of the founders in the field Artificial Intelligence that is the logical conclusion of a technology fetish. As John MaCarthy provocatively inquired, “*What do judges know that we cannot tell a computer?*”<sup>11</sup>

Policy documents do not turn by themselves into practiced realities. Hence, it is obvious that digital technologies for policing could not be provisioned without their development and availability. Answering, even at times prompting a need, private industry stepped up during this period. This is reported in rich detail by Manisha Sethi where she details the offering of surveillance technologies by national and international vendors at the Homeland Security Fair organized in Greater Noida.<sup>12</sup> She further notes that the principal response by the FICCI Task Force to the tragic Mumbai Terror Attacks in 2008 was, “*invasive technology*”.<sup>13</sup> As per FICCI and Ernst & Young, the foundation for smart and safe cities is, “*totalizing surveillance technology including centralized data system, GIS-based analysis and reporting, and the ubiquitous CCTV camera.*”<sup>14</sup> Today, this technology determinism has only accelerated with phrases such as, “*predictive policing*” entering the policy lexicorn.<sup>15</sup> But, before we step into these magical wares, I believe it is important to consider the use of digital technologies more widely from the site of violence for it closely intersects with policing responses.

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<sup>10</sup> Report of the Committee on Draft National Policy on Criminal Justice, 71

<sup>11</sup> Weizenbaum, Joseph, *Computer Power and Human Reason* (W. H. Freeman. Co., San Francisco, 1975) at 207.

<sup>12</sup> Sethi, Manisha, *Kafkaland: Prejudice, Law and Counterterrorism in India* (Three Essays Collective, 2014) at 149.

<sup>13</sup> Sethi, *Kafkaland* at 173.

<sup>14</sup> Sethi, *Kafkaland* at 181.

<sup>15</sup> Press Information Bureau, Address by Rajnath Singh, Union Minister for Home Affairs (Press Information Bureau, 26 July 2018) available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1540271> (accessed 12 January 2023). Also, National Crime Records Bureau, *Compendium of CCTNS/ICJS-Good Practices & Success Stories: Crime Mapping Analytics & Predictive System* (National Crime Records Bureau, December 2020) available at [https://ncrb.gov.in/sites/default/files/ncrb\\_news/Final\\_Compndium\\_for\\_Net.pdf](https://ncrb.gov.in/sites/default/files/ncrb_news/Final_Compndium_for_Net.pdf) (accessed 12 January 2023).

## More toxic than the Ghazipur landfill

Here, the lawlessness that occurred in North East Delhi between February 23 and 26, 2020, serves as a case study in the role of digital policing and criminal justice. As per a RTI answered by the Delhi Police it resulted in 53 deaths and 581 injuries, with 754 FIRs and 1369 arrests.<sup>16</sup> The high teledensity in Delhi, with an estimated 2.8 connections per person,<sup>17</sup> meant that many residents were likely using social media platforms such as Facebook and WhatsApp at the time of the incident.<sup>18</sup> It is important to understand their role in the cycle of hate speech and provocation that led to the events of February. A fact-finding report by the Constitutional Conduct Group concluded that "*the use of social media platforms are often part and parcel of episodes of violence, whether through spreading false rumors, circulating offensive inciting tropes, or facilitating the conduct of violent acts.*"<sup>19</sup>

I posit that social media serves as the central hub, a backbone, for a ubiquitous digital media ecology<sup>20</sup> that shapes the experiences of many individuals in Delhi. To fully comprehend the cycle of hate speech and provocation that culminated in the events of February, it is crucial to grasp the broader digital media ecosystem that is rapid, ever-present, and influencing our thoughts. This ecosystem is driven by constant connectivity, algorithms that hack away at our cognitive biases. It creates factions and tribalistic tendencies serve a reality that is closer to our imagination. Here powerful tools of both speech and censorship that are legal and technical, constantly curate the information that we consume. It cocoons our understanding.<sup>21</sup> Such is its hypnotism and a forced need for social participation that even those who clearly see it's harms cannot help themselves. They may refer to it as a "*hell site*" but each day they will choose to be its resident. Somewhat similar to an urban waste landfill like Ghazipur. Constantly ablaze and releasing a toxic fume. Yet,

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<sup>16</sup> Delhi Police, RTI Response to Shemin Roy (Delhi Police, 03/02/2021) on file with the author.

<sup>17</sup> Telecom Regulatory Authority of India, Performance Indicators Report for January - March 2020 (Telecom Regulatory Authority of India, 2020) available at <https://traai.gov.in/release-publication/reports/performance-indicators-reports> (accessed 12 January 2023).

<sup>18</sup> Statista, Number of Facebook users in India (Statista, 2021) available at <https://www.statista.com/statistics/304827/number-of-facebook-users-in-india/> (accessed 12 January 2023).

<sup>19</sup> Justice Madan B. Lokur et al, Uncertain Justice – Citizens' Committee Report on North East Delhi Violence 2020 at 104 (Constitutional Conduct Group, October 2022) available at <https://constitutionalconduct.files.wordpress.com/2022/10/uncertain-justice-citizens-committee-report-on-north-east-delhi-violence-2020.pdf> (accessed 12 January 2023).

<sup>20</sup> Carlos A. Scolari, Media Ecology: Exploring the Metaphor to Expand the Theory, Communication Theory, Volume 22, Issue2, May 2012, Pages 204–225 available at <https://academic.oup.com/ct/article-abstract/22/2/204/4085708?login=> (accessed 12 January 2023).

<sup>21</sup> Crystallization: how social media facilitates social construction of reality: Donghee Yvette Wohn , Brian J. Bowe available at <https://dl.acm.org/doi/abs/10.1145/2556420.2556509> (accessed 12 January 2023).

we cannot help but refresh our feeds and touch the smartphone every few minutes. Almost like a nervous tick.

The flood of digital media we encounter is paradoxically also rationed as per qualitative assessments. Here, specially in post-colonial societies such as India, censorship continues to control the medium. This can result from absolute measures that can result in complete information blackouts. These are commonly referred to as internet shutdowns and are the most severe form of internet censorship. It is practiced frequently in India not only in border states but even the national capital. So for instance while the state did not shut down the internet during the North-East Delhi riots, the Delhi Police did shut down the internet during the farmer protests on Republic Day.<sup>22</sup> Here, evidence is often disregarded, and contrary to their intent the impact of internet shutdowns may be counter-productive during periods of mass violence as research suggests that, “*violent mobilization seems to grow in intensity during blackouts.*”<sup>23</sup> Hence, it maybe important to ask, who do such blackouts protect? Even besides their questionable utility, legality is absent. Transparency measures, as directed by the Supreme Court in the case of *Anuradha Bhasin v. Union of India*,<sup>24</sup> where internet suspension orders are published and indexed remains unfulfilled. The Parliamentary Standing Committee of IT recorded that reportedly the government has imposed 518 internet shutdowns in India between January 2012 and March 2021, the highest number of internet blockings in the world. However, there is no mechanism to verify this claim, as both the Department of Telecommunications and the Ministry of Home Affairs do not maintain records of internet shutdown orders by the states.<sup>25</sup> It leads me to wonder, is the statistic too embarrassing for it to be officially counted?

Another form of online censorship is blocking web content that becomes inaccessible to internet users in India. However, these directions are often made in secret, and entire accounts are blocked, rather than individual pieces of content, which prevent any natural justice. Just take the instance of Twitter, where the Government directed the blocking of only 8 urls in 2014, to when

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<sup>22</sup> Internet Freedom Foundation, Joint statement Against Internet Shutdowns to Suppress Farmers' Protests #KeepItOn (Internetfreedom.in, 1 February 2021) available at <https://internetfreedom.in/joint-statement-internet-shutdown-farmers-protests/> (accessed 12 January 2023).

<sup>23</sup> Jan Rydzak, Of Blackouts and Bandhs: The Strategy and Structure of Disconnected Protest in India (Global Digital Policy Incubator, Stanford University, 2021) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3330413](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3330413) (accessed 12 January 2023) at page 44.

<sup>24</sup> AIR 2020 SC 1308.

<sup>25</sup> Internet Freedom Foundation, Concerned with frequent internet suspensions, Parliamentary Committee recommends an overhaul (Internetfreedom.in, 04 December 2021) available at <https://internetfreedom.in/concerned-with-frequent-internet-suspensions-parliamentary-committee-recommends-an-overhaul/> (accessed 12 January 2023).

in 2020 and 2021 it directed the blocking of 2731 and 2851 accounts respectively.<sup>26</sup> These blocking regulations were first challenged before the High Court of Delhi<sup>27</sup> and now are pending before the High Court of Karnataka.<sup>28</sup> Website blocking is routinely exercised routinely as a policing power for reasons extraneous to the reasonable restrictions under the Constitution of India. For instance the Delhi Police has sent notices under laws such as Unlawful Activities Prevention Act (UAPA) that caused domain registrars to block the websites of young environmental campaigners.<sup>29</sup> The crime of many of these teenagers was to facilitate emails to the Ministry of Environment & Forests against the dilution of the environmental impact assessment norms. After lawyers at IFF provided them representation these notices were recognised as erroneous and the references to the UAPA attributed to a typographical error.<sup>30</sup>

*Is it possible to stop and think before we like, share and subscribe?*

The third is probably the most voluminous and significant form of online censorship. It is directly implemented by social media and messaging platforms such as Facebook, Instagram, Twitter and Youtube.<sup>31</sup> When they permit, prefer and prohibit content based on a labyrinth of backend choices in their business and platform policies they determine what we get to perceive, think and react. This is implemented through platform features that provide the architecture of our digital environments. Once within these worlds, our interactions are processed through artificial intelligence that utilizes technologies such as NLP (Natural Language Processing) models that may conduct content moderation. However, I believe what is more important are human reviews and the ability for discretionary decision making.<sup>32</sup>

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<sup>26</sup> 17th Lok Sabha, Unstarred Question No. 1772, Answered on July 27 2022 available at <https://loksabha.nic.in/Questions/QRresult15.aspx?qref=40623&lsno=17> (accessed 12 January 2023).

<sup>27</sup> Tanul Thakur vs Union Of India & Ors on 28 November, 2022 W.P.(C) 13037/2019 available at <https://indiankanoon.org/doc/152022743/> (accessed 12 January 2023).

<sup>28</sup> Mustafa Plumber, Twitter Says Its Business Will Close If Accounts Are Blocked Without Reasons; Karnataka High Court Issues Notice To Centre (LiveLaw.in, 26 July 2022) available at <https://www.livelaw.in/top-stories/twitter-says-its-business-will-close-if-accounts-are-blocked-without-reasons-karnatak-a-high-court-issues-notice-to-centre-204816> (accessed 12 January 2023).

<sup>29</sup> Internet Freedom Foundation, Fridays For Future India resists illegal website blocking #WhatTheBlock (Internetfreedom.in, 23 July 2020) available at <https://internetfreedom.in/fridays-for-future-representation-to-delhi-police/> (accessed 12 January 2023).

<sup>30</sup> Mariyam Alavi, Delhi Police Withdraws Anti-Terror Notice Sent To Environmental Movement(NDTV.in 24 July 2020) available at <https://www.ndtv.com/india-news/delhi-police-withdraws-anti-terror-notice-sent-to-environmental-movement-fridays-for-future-india-2268065> accessed 12 January 2023).

<sup>31</sup> Article 19, Watching the watchmen (Article 19, 8 December 2021) available at [https://www.article19.org/wp-content/uploads/2021/12/Watching-the-watchmen\\_FINAL\\_8-Dec.pdf](https://www.article19.org/wp-content/uploads/2021/12/Watching-the-watchmen_FINAL_8-Dec.pdf) (accessed 12 January 2023).

<sup>32</sup> Tarleton Gillespie, Content moderation, AI, and the question of scale (Sage journals, 21 August 2020) available at <https://journals.sagepub.com/doi/full/10.1177/2053951720943234> (accessed 12 January 2023).

Much of content moderation by online platforms may be argued to be desirable for it improves our media engagements by showing us content relevant to our interests or prevents prohibited speech such as child sexual abuse, racial and religious threats but this is an imperfect system with wide discretion for content moderation and policy teams.<sup>33</sup> In weak rule of law societies that are rife with communal tensions it can make decision making susceptible to extraneous influences. For instance as per the Wall Street Journal's exposures of internal correspondence by Facebook, its India policy team prevented the application of its content moderation policies citing staff safety and business impacts even in instances of hate speech.<sup>34</sup> It is not without reason that the Delhi Government through the Committee for Peace and Harmony inquired into Facebook's role in the North East Delhi Violence.<sup>35</sup> Its summons were disputed by the Chief Executive of Facebook before the Supreme Court that upheld the committee's power to direct attendance.<sup>36</sup> However, after much legislative theater, with its proceedings being streamed live on YouTube, even on Facebook.com little has been achieved.<sup>37</sup> When they finally appeared Facebook's representatives were evasive and the Committee has been inactive since 2021. Today, its chairperson is a Member of Parliament and hence it will need to be reconstituted. Nothing tangible has been achieved in terms of actual transparency or accountability where the more probable outcomes have been a clearer limitation on the powers of the Delhi assembly due to a Supreme Court Judgement. We have largely witnessed political showboating and some level of public awareness due to press reports and live streams.

While the role of social media in fomenting civil division is globally recognised,<sup>38</sup> it bears repetition that it presents a valuable opportunity for volunteer groups to provide aid to those affected by the violence. I remember a late night, answering a call from a young organizer from

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<sup>33</sup> York, McSherry, Content Moderation is Broken. Let Us Count the Ways. (Electronic Frontier Foundation, 29 April 2019) available at <https://www.eff.org/deeplinks/2019/04/content-moderation-broken-let-us-count-ways> (accessed 12 January 2023).

<sup>34</sup> Wall Street Journal, Facebook's Hate-Speech Rules Collide With Indian Politics, (Wsj.com, 14 August 2020) available at <https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346> (accessed 12 January 2023).

<sup>35</sup> Composition Of House Committees 2020-2021, Delhi Legislative Assembly available at [http://delhiassembly.nic.in/Committee/Committee\\_2020\\_2021.htm](http://delhiassembly.nic.in/Committee/Committee_2020_2021.htm) (accessed 12 January 2023).

<sup>36</sup> Writ Petition (C) No..1088 of 2020 <https://indiankanoon.org/doc/23436105/> (accessed 12 January 2023).

<sup>37</sup> Raghav Chadha, Live Proceedings of Delhi Assembly Peace and Harmony Committee (Facebook.com, 18 November 2021) available at <https://www.facebook.com/raghavchadhaca/videos/live-proceedings-of-delhi-assembly-peace-and-harmony-committee/588439099097731/> (accessed 12 January 2023).

<sup>38</sup> Zachary Laub, Hate Speech on Social Media: Global Comparisons (Council on Foreign Relations, 7 June 2019) available at <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons> (accessed on 12 January 2023).

Twitter. I joined a group of lawyers in visiting a makeshift relief center near ITO late at night. There, we coordinated the distribution of food and medical supplies to families living in areas under curfew. It was our hope that, as lawyers bearing parking stickers on our cars, we would be granted safe passage to deliver these supplies to the localities or, at the very least, to the local police stations. I mention this since it's easy to fall into the trap of demonizing social media, but as Facebook whistleblower Francis Haugen has reminded us, "*a safer, more enjoyable social media is possible*".<sup>39</sup> The advance of human societies is based on fraternity and kindness. However, the current incentives for social media companies are centered around power and profit.<sup>40</sup> Despite this, I saw firsthand in 2020 how a rag-tag group of volunteers were able to harness the power of social media for the betterment of their fellow citizens, raising funds for victims of the violence. Unfortunately, even these efforts were not immune to the divisive forces of communalism, with fundraising efforts divided along religious lines.<sup>41</sup>

Public awareness brings me to the fourth important pillar that can manufacture distraction and division through information floods. As Zeynep Tufeqi notes, "*In the twenty-first century and in the networked public sphere, it is more useful to think of attention as a resource allocated and acquired on local, national, and transnational scales, and censorship as a broad term for denial of attention through multiple means, including, but not limited to, the traditional definition of censorship as an effort to actively block information from getting out.*"<sup>42</sup> Here certain platform features, like an automated news feed, or specifically, how Twitter Trends show hashtags based on the number of users that post can lead to public discourse being manipulated.<sup>43</sup> During a riot situation, trending topics that call for violence and increase a media hysteria that may often be manufactured by a mix of well funded automated and human interventions driven by political parties and their associates to cause social polarization.<sup>44</sup> Some of the tweets from these topics are

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<sup>39</sup> Frances Haugen, Statement to the United States Senate Committee on Commerce, Science and Transportation (United States Senate, October 4, 2021) available at <https://www.commerce.senate.gov/services/files/FC8A558E-824E-4914-BEDB-3A7B1190BD49> (accessed 12 January 2023)

<sup>40</sup> Maria Ressa and Dmitry Muratov, Peoplevsbig.tech, 10-Point Plan September 2, 2022 available at <https://peoplevsbig.tech/10-point-plan> (accessed 12 January 2023).

<sup>41</sup> Aneesha Bedi, BJP leader Kapil Mishra runs crowdfunding campaign for Hindu victims of Delhi riots (The Print, 17 March 2020) available at <https://theprint.in/india/bjp-leader-kapil-mishra-runs-crowdfunding-campaign-for-hindu-victims-of-delhi-riots/382709/> (accessed 12 January 2023).

<sup>42</sup> Twitter and Tear Gas Pg. 270.

<sup>43</sup> S. Saquib, R. Ali, "Understanding dynamics of trending topics in Twitter," (ICCCA, May 2017 ) available at <https://ieeexplore.ieee.org/document/8229780> (accessed 12 January 2023)

<sup>44</sup> Borah, A., Singh, S.R. Investigating political polarization in India through the lens of Twitter (Springer Link, 31 July 2022) available at <https://link.springer.com/article/10.1007/s13278-022-00939-z#Sec14> (accessed 12 January 2023).

pasted on online collaboration tools such as Google docs, then sent as templates to groups made on messaging platforms such as Whatsapp and Telegram.<sup>45</sup> This cross-platform flood invariably enters our smartphones and through a persistent ping draws us into a communalecho chamber. Here even for passive participants like most people, the citizenry that calls itself apolitical there is little time to pause and consider. As Hannah Ardent put it, “*any relentless activity allows responsibility to evaporate. There’s an English idiom, “Stop and think.” Nobody can think unless they stop..... It [responsibility] can only develop in the moment when a person reflects—not on himself, but on what he’s doing.*”<sup>46</sup> This relentless flood, where the nature and scale of manufacturing content is supported by structural forms of power pulpits, legal disorders, private profit and technical measures. They quite often end up promoting a baser, tribal form of civic engagement that advocates social aggression as was noted by the fact finding report of the Delhi Minorities Commission, “*Many of the perpetrators live-streamed the attacks on social media, and uploaded videos of themselves committing violence. They were all doing it all in the open and proudly.*”<sup>47</sup>

For me the fifth primary path how the online information ecology is curated is through legal threats under civil and criminal laws.<sup>48</sup> This is specifically addressed to those who believe that the harms of social media will be solved by a legislative tonic of harsher laws and penalties on people and even platforms. Just look at our existing experience. Today complaints and cases are filed through private individuals, semi-public personalities that act as nodes and even police departments. It may lead to cases and prevent the suppression of reports that are critical. Here, a weak rule of law framework and substantive provisions such as sedition, or even obscenity and hate speech provide enough grounds for police departments to demand censorship and affect arrest. Today, a large chilling effect hangs like the Delhi smog over human rights defenders and local journalists. They are often tagged on the social media handles of police departments by online trolls and even everyday private individuals who may or may not enjoy different forms of political

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<sup>45</sup> Alt News Desk, After Alt News exposé, Google doc with trending instructions for #DemonetisationSuccess hashtag is deleted, (Alt News, 3 September 2017) available at <https://www.altnews.in/alt-news-expose-google-doc-trending-instructions-demonetisationsuccess-hashtag-deleted/> (accessed 12 January 2023).

<sup>46</sup> Arendt Hannah, *The Last Interview And Other Conversations*, 2013, pp. 40.

<sup>47</sup> Report of the DMC Fact-finding Committee on North-East Delhi Riots of February 2020 available at <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf> (accessed on 12 January 2023).

<sup>48</sup> Jayshree Bajoria, Linda Lakhdhir, “Stifling Dissent: The Criminalization of Peaceful Expression in India” (Human Rights Watch, 24 May 2016) available at <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india> (accessed 12 January 2023).

patronage. Censorship is distributed in Digital India and everyone has the right to feel offended.<sup>49</sup> Hence, the internet speech and censorship apparatus, not only violates natural justice, or the public's right to know -- but more importantly in civil unrest prevents accountability on state responses, documentation of violence and coordination of relief.

The internet also is a borg like medium for integrating other forms of media. For instance, in the wider media ecology slivers of propaganda often masquerade as news to amplify and deepen social divisions.<sup>50</sup> Clippings of news anchors who are more akin to stage actors mixed with gotcha memes and a musical score serve as memes to flood social media. The shows may by themselves misrepresent innocuous private conversations exchanged on encrypted platforms such as Whatsapp and may even be a part of case evidence.<sup>51</sup> When confronted with the journalistic ethics involved they preemptively cite defenses of shooting the messenger. Only, now the messenger is no longer the carrier pigeon but a vulture.<sup>52</sup> This completes one of many cycles in our media ecology. Many different forms of such cycles exist and they buffer continuously within our smartphones.

### ***Data maximisation and constitutional contraction***

In this circular exchange of data as packets are being continuously exchanged --- just like a letter -- there is a need for identification -- who sends it and who receives it. However, today, the more important feature in information exchange is -- who surveils, intercepts, stores and analyzes it. The massive expansion of digital surveillance is based on the foundation, or to be cheeky, the “Aadhaar”, of databasing. State databases can exist in several forms that store our personal details. Without our consent, maybe even without our knowledge.

Experience has shown that in incidents of communal violence the use of personal data even for a socially beneficial purpose does lead to targeting of specific groups and communities. Take the morbid example of the 1984 anti-sikh pogrom in Delhi in which lists were made of residents

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<sup>49</sup> Freedom House Report, Freedom on the Net 2022 available on (<https://freedomhouse.org/country/india/freedom-net/2022>) (accessed 12 January 2023).

<sup>50</sup> Dr. Ashok Kumar, Naveen Kumar, A comparative analysis of the Prime time shows of Public and Private news channels of India“ (Journal of Content, Community & Communication, June 2021 available at [https://www.amity.edu/gwalior/jccc/pdf/jun\\_33.pdf](https://www.amity.edu/gwalior/jccc/pdf/jun_33.pdf)) (accessed 12 January 2023)

<sup>51</sup> Look what bounced over Times Now's head, NL Team, 27 August, 2020, News Laundry available at <https://www.newslaundry.com/2020/08/27/look-what-bounced-over-times-nows-head> (accessed 12 January 2023).

<sup>52</sup> Watch: ‘Yes I’m a vulture’, says anchor Navika Kumar during debate on Rhea Chakraborty arrest, September 9, 2020, Scroll.in available at <https://scroll.in/video/972611/watch-yes-im-a-vulture-says-anchor-navika-kumar-during-debate-on-rhea-chakrabortys-arrest> (accessed 12 January 2023).

in localities using voting rolls for the Delhi Gurdwara Elections.<sup>53</sup> Today, technology and regulatory frameworks have failed to learn from the past, instead --- to use the grammar of start-ups have scaled up and reduced friction for personal identification. For there exist well developed policy frameworks to create databases at the state and central level in the absence of an enforceable data protection law. These databases are created for a wide range of functions -- to provide welfare and state services, improve administrative efficiency, advance a security apparatus and extract economic value. Such imperatives may form distinct attempts to gather and build independent databases but eventually converge with the bundling and collation of personal data. Here many of these databases talk to each other, which is that they share data through common identifiers such as names or the Aadhaar number, which is often framed as by policy imperatives to break “*data silos*”.<sup>54</sup> Often this is in the absence of any laws that authorize the collection of personal data. Instead non-statutory policy frameworks hold ambitions to achieve 360 degree surveillance on Indian citizens.<sup>55</sup> Today, with the embrace of “*data maximization*”<sup>56</sup> there is a greater belief in computer programming languages than constitutional precedent and institutions of governance. After all, we have been told that the Government should behave more like a start-up to solve India’s “grand challenges”.<sup>57</sup>

Sticking to our case study, let me explain this in the context of the violence in Delhi. One of the most prominent instances of the government selling citizens data to the private sector has been through the Bulk Data Sharing Policy of the Ministry of Road Transport and Highways.<sup>58</sup> The data sharing policy gave licenses for vehicular data that was held in the Vahan and Saarthi databases. These databases include information on 25 crore vehicle registrations and about 15

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<sup>53</sup> Dharendra K Jha, 1984 anti-Sikh riots were an organised massacre, says 'Caravan' article (Scroll.in, 3 October 2014) available at <https://scroll.in/article/682059/1984-anti-sikh-riots-were-an-organised-massacre-says-caravan-article> (accessed 12 January 2023) See also: Shekhar Gupta, Congress was involved in 1984 anti-Sikh riots – I saw & reported it (The Print, 26 August 2018) available at <https://theprint.in/opinion/congress-was-involved-in-1984-anti-sikh-riots-i-saw-reported-it/105745/> (accessed on 12 January 2023)

<sup>54</sup> Data Empowerment And Protection Architecture Draft for Discussion, 2020, NITI Aayog available at <https://www.niti.gov.in/sites/default/files/2020-09/DEPA-Book.pdf> (accessed 12 January 2023).

<sup>55</sup> Prabhjote Gill, India's three main surveillance projects NATGRID, CMS and NETRA have been directed to stop collecting data citing breach of privacy, 2020, Business Insider available on <https://www.businessinsider.in/news/indias-three-main-surveillance-projects-natgrid-cms-and-netra-have-been-directed-to-stop-collecting-data-citing-breach-of-privacy/articleshow/79529256.cms> (accessed 12 January 2023).

<sup>56</sup> Apar Gupta, The issues with maximum data and minimum privacy (Hindustan Times, 26 August 2022) available at <https://www.hindustantimes.com/opinion/the-issues-with-maximum-data-and-minimum-privacy-101661488894224.html> (accessed 12 January 2023).

<sup>57</sup> Viral Shah and Nandan Nilekani, *Rebooting India: Realizing a Billion Aspirations* (Penguin, 2015).

<sup>58</sup> Ministry of Road Transport and Highways, Bulk Data Sharing Policy & Procedure No. RT-11036/46/2014-MVL available at <https://parivahan.gov.in/parivahan/sites/default/files/NOTIFICATION%26ADVISORY/8March%202019.pdf> (accessed on 12 January 2023)

crore drivers' licenses. In July 2019, answering a question posed in the Upper House of Parliament, the Union Minister for Road Transport and Highways revealed that the government had earned 65 crore rupees by selling access to the Vahan and Sarathi databases to about 87 private and 32 government entities. Little heed was paid to caution or legality. It was not considered by the Government whether such an action required a legislative basis to fulfill the requirement of legality,<sup>59</sup> or even the sale may constitute a commercial use of public data that may be prohibited by the Puttaswamy II judgment.<sup>60</sup> Should we be shocked then that on February 26, 2020, online reports first emerged that the VAHAN database was being used to identify the religious identities of persons and their properties?<sup>61</sup> This report was later confirmed by the Delhi Police.<sup>62</sup> After activists and even my own colleagues<sup>63</sup> wrote to the ministry the Apex Committee met on 4 June 2020 via a videoconference and decided to scrap it.<sup>64</sup> The minutes of the meeting noted, “[t]here have been certain issues received in regard to the sharing of data in public, and whether bulk data shared with the stakeholders can be misused.”<sup>65</sup>

Again, did we learn from this? I believe not. Last year, the Ministry for Electronics and IT released the, India Data Accessibility and Use Policy<sup>66</sup> that when originally put to public consultation mentioned the sale of both personal and non-personal data. It was accompanied by a background note that uses a \$1 trillion target to justify the free sharing of data within government and its enrichment, valuation and licensing to the private sector. What will be the form of this data? While the policy does not specify it, there is some indication in the National Economic Survey, 2019. It devoted an entire chapter to the economic potential of data and stated in its summary stating: “Governments already hold a rich repository of administrative, survey, institutional and

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<sup>59</sup> Shashidhar K J, 2019 An assessment of the bulk data sharing policy of the Ministry of Road Transport and Highways available at <https://www.orfonline.org/research/an-assessment-of-the-bulk-data-sharing-policy-of-the-ministry-of-road-transport-and-highways-59267/>

<sup>60</sup> Justice K.S. Puttaswamy and Anr. vs. Union of India (UOI) and Ors. (2019) 1 SCC 1

<sup>61</sup> @Chaai\_Wala on twitter, available on [https://twitter.com/Chaai\\_Wala/status/1232508350740467712](https://twitter.com/Chaai_Wala/status/1232508350740467712) (accessed on 12 January 2023)

<sup>62</sup> Raj Shekhar, How Cops took cue from west, used new tech in riots conspiracy probe (Times of India, 21 September 2020) available at <https://timesofindia.indiatimes.com/city/delhi/how-cops-took-cue-from-west-used-new-tech-in-riots-conspiracy-probe/articleshow/78223601.cms> (accessed on 12 January 2023)

<sup>63</sup> Internet Freedom Foundation, We have written to Government asking them to stop public access to the Vahan database #SaveOurPrivacy (Internetfreedom.in, 26 February 2020) available at <https://internetfreedom.in/we-have-written-to-government-asking-them-to-stop-risks-of-misuse-of-government-datasets/> (accessed 12 January 2023)

<sup>64</sup> Internet Freedom Foundation, Bulk data sharing policy scrapped is an incremental victory that requires follow up action #SaveOurPrivacy (Internetfreedom.in, 30 June 2020) available at <https://internetfreedom.in/morth-bulk-data-sharing-policy-scrapped/> (accessed 12 January 2023)

<sup>65</sup> <https://drive.google.com/file/d/15ggBY4PV9PePK2aRgyrMChnpfYjBcHrg/view>

<sup>66</sup> Draft India Data Accessibility & Use Policy 2022 available at <https://www.meity.gov.in/content/draft-india-data-accessibility-use-policy-2022>

*transactions data about citizens, but these data are scattered across numerous government bodies. Merging these distinct datasets would generate multiple benefits with the applications being limitless ... The private sector may be granted access to select databases for commercial use ... Given that the private sector has the potential to reap massivedividends from this data, it is only fair to charge them for its use.”*<sup>67</sup> In this instance, doing the same thing and expecting different results is not a form of insanity, but a form of technology determinism. Today data sharing policies have been made for both state and the private sector by at least 6 state governments.<sup>68</sup> I would like to remphasise that this is without any legislative authority and in the absence of a data protection law.

Data sharing frameworks and welfare databases such as Vaahan and Saarthi play a visible but small part in the larger surveillance glacier. Let us begin with the National Intelligence Grid, better known as NATGRID, that will allow user agencies to access data gathered from various databases such as credit and debit cards, tax, telecom, immigration, airlines and railway tickets, passports, driving licenses among others. It is being developed as a measure to help security agencies such as the Central Bureau of Investigation, Research & Analysis Wing in tackling crime and terror threats in the country.<sup>69</sup> Then for communications surveillance there is the Centralised Monitoring System (CMS) which is an ambitious surveillance system that monitors text messages, social-media engagement and phone calls on landlines and cell phones, among other communications.<sup>70</sup> It has been set up by the Centre for Development of Telematics and is operated by the Telecom Enforcement Resource and Monitoring cells under the Department of Telecommunications.<sup>71</sup> A truly Chinese form of surveillance is also being attempted with the National Automated Facial Recognition System (AFRS) being developed by the National Crime

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<sup>67</sup> Draft India Data Accessibility & Use Policy 2022 available at <https://www.meity.gov.in/content/draft-india-data-accessibility-use-policy-2022>

<sup>68</sup> A Comparison of State-Level Data Policies (Internetfreedom.in, June 2, 2022) available at <https://internetfreedom.in/a-comparison-of-state-level-data-policies/> (accessed 12 January 2023)

<sup>69</sup> Internet Freedom Foundation, Watch the Watchmen Series Part 1 : The National Intelligence Grid (Internetfreedom.in, 2 September 2020) available at <https://internetfreedom.in/watch-the-watchmen-part-1-the-national-intelligence-grid/> (accessed 12 January 2023)

<sup>70</sup> Anjali Trivedi, In India, Prism-like Surveillance Slips Under the Radar, 2013, TIMES USA available at <https://world.time.com/2013/06/30/in-india-prism-like-surveillance-slips-under-the-radar/#ixzz2YpWhRsrB> (accessed 12 January 2023).

<sup>71</sup> Internet Freedom Foundation, Watch the Watchmen Series Part 2 : The Centralised Monitoring System (Internetfreedom.in, 2 September 2020) available at <https://internetfreedom.in/watch-the-watchmen-series-part-2-the-centralised-monitoring-system/> (accessed on 12 January, 2023)

Records Bureau under the Ministry of Home Affairs. The project aims to develop and use a national database of photographs which is to be used in conjunction with a facial recognition technology system by Central and State security agencies.<sup>72</sup> This is layered with information exchange frameworks such as the Crime and Criminal Tracking Network System (CCTNS)<sup>73</sup> aims to connect police stations across the country to increase ease of access to data related to FIR registration, investigation and chargesheets in all police stations.<sup>74</sup>

What these projects have in common is not only a growing state expenditure for their creation and operation, but the absence of any underlying legal framework. These surveillance projects cannot even be evaluated for their prongs of the Puttaswamy judgment, such as a proportionality analysis for they lack a legislative framework. It's a sardonic but sorrowful state of affairs that reminds me of the "roll safe" internet meme in which a person holds a finger to their head while flashing a fool's grin.<sup>75</sup> It is disappointing that their unconstitutionality is restricted to legal analysis in such speeches, or reports by researchers rather than through the judgements of our courts. Here, it may increase our despondence and the political realities of today that even when the legal framework, if any, when passed it may permit an uncannalised legal powers such as under the Criminal Procedure Identification Act, 2022 -- laws that may convert the *de facto* into the *de jure* and make things worse.<sup>76</sup> Presently, proposed enactments as the DNA Bill provides for mass databasing; the Digital Personal Data Protection Bill contains a compromised regulatory body and wide exemptions for public authorities;<sup>77</sup> the Telecom Bill increases executive powers and evades any parliamentary or judicial oversight on surveillance powers.<sup>78</sup> But, what does this mean in the context of the violence in North East Delhi?

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<sup>72</sup> Internet Freedom Foundation, Watch the Watchmen Series Part 4: The National Automated Facial Recognition System (Internetfreedom.in, 7 October, 2020) available at <https://internetfreedom.in/watch-the-watchmen-series-part-4-the-national-automated-facial-recognition-system/> accessed on 12 January 2023.

<sup>73</sup> Crime and Criminal Tracking Network & Systems (CCTNS) available at <https://ncrb.gov.in/en/crime-and-criminal-tracking-network-systems-cctns> (accessed on 12 January 2023).

<sup>74</sup> Internet Freedom Foundation, Watch the Watchmen Series Part 3: The Crime and Criminal Tracking Network System (Internetfreedom.in, 21 September 2020) available at <https://internetfreedom.in/watch-the-watchmen-part-3/> (accessed on 12 January 2023)

<sup>75</sup> New York Magazine, Roll Safe: The Guy Tapping His Head Meme Explained (New York Magazine, February 2017) available at <https://nymag.com/intelligencer/2017/02/roll-safe-the-guy-tapping-head-meme-explained.html> (accessed 12 January 2023).

<sup>76</sup> Project39A, Analysis of the Criminal Procedure Identification Act available at <https://www.project39a.com/identification-act> (accessed 12 January 2023).

<sup>77</sup> Internetfreedom.in, Consultation Response on the Personal Digital Data Protection Bill, 2022 (Internetfreedom.in, no date) available at <https://internetfreedom.in/read-our-consultation-response/> (accessed 12 January 2023).

<sup>78</sup> Internetfreedom.in, Our Response to the Draft Telecom Bill 2022 available at <https://internetfreedom.in/our-response-to-the-draft-telecom-bill-2022/> (accessed 12 January 2023).

### ***Software does not view religion***

The Union Home Minister entered a short duration standing in the Lok Sabha on March 11, 2020 stated, “[t]hrough face identification software, it starts the process of recognizing all the faces. This is software and it does not recognise religion and attire. We have put voter ID card, driving licenses and government data inside this software. Through it more than 1100 people have been arrested out of which 300 are from Uttar Pradesh.”<sup>79</sup> The statement is substantiated by the Delhi Police’s Annual Report in 2020 takes the case of one “Amrudeen” and shows how a CCTV image was put through a facial recognition system and then matched against a driving license and criminal record that contained his photograph. There are further screenshots within the report which state a rioter has been identified on the basis of worn clothes -- a yellow-blue jacket. In their own words, “945 CCTV footage and video recordings were obtained from multiple sources, including CCTV Cameras installed on the roads, video recordings from smart phones, video footage obtained from media houses and other sources were analyzed with the help of video analytic tools and facial recognition systems. The photographs were matched for multiple databases, which included Delhi Police criminal dossier photographs and other databases maintained with the government. This helped identify persons involved in riots, which proved helpful in taking legal action after corroboration with other supporting evidence. Delhi Police also extensively used Artificial Intelligence (AI) based technology for the enhancement of CCTV images for better identification of rioters. The e-Vahan database and the driving license databases were used for further identification.”<sup>80</sup>

Given that the basis of identification is a facial recognition software that is an automated process it becomes important to inquire as to its reliability. Here there exists no public source code repository, independent audit reports or explanations for the AI tools. As per a RTI response the Delhi Police answered that it considers a 80% match as being positive for the purpose of identification.<sup>81</sup> It is also important to consider that such transparency was resisted until litigated till the CIC and resulted in a reprimand and then disclosure. It is another thing that in 2018 it has

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<sup>79</sup> Home Minister Amit Shah’s tweet as tweeted by ANI available on <https://twitter.com/ANI/status/1237744202106032128> (accessed 12 January 2023).

<sup>80</sup> Pramod Singh Kushwah, Joy Tirkey, Investigation into North-East Delhi Riots, 2020, Delhi Police, pp. 79-87 available at [https://drive.google.com/drive/u/0/folders/1z17\\_ujhr8XhFdkWqHq2aP512ZgEdwyA6](https://drive.google.com/drive/u/0/folders/1z17_ujhr8XhFdkWqHq2aP512ZgEdwyA6)

<sup>81</sup> Internet Freedom Foundation, Delhi Police's claims that FRT is accurate with a 80% match are 100% scary (Internetfreedom.in, 17 August 2022) available at <https://internetfreedom.in/delhi-polices-frt-use-is-80-accurate-and-100-scary/> (accessed on 12 January 2023)

stated before the High Court of Delhi that the accuracy of the system is as low as 2% for identifying missing children where it could not distinguish boys from girls.<sup>82</sup> It's important to note that these flawed, probabilistic digital systems are often used as the foundation for criminal investigations and can perpetuate social biases. These legal hazards become even more pronounced when digital tools have a high saturation in areas with higher populations of minorities, as historical data based on policing practices shows that these areas often have a higher incidence of crime.<sup>83</sup> As researchers from the Criminal Justice and Police Accountability Project remind us that what we are witnessing today are settled habits and new tricks.<sup>84</sup>

But as the Delhi Police has stated facial recognition is only one in many other pieces of, “other supporting evidence”. Would it include videos from the drones that were used? Memberships in Whatsapp Groups and chats there which can be taken contextually? Google Maps data and even the conventional call data records. What was achieved through the combining of such granular digital evidence?

Let us refer to two pre-existing analyses. First, *“according to Millennium Post's review of 100 bail orders of the total over 3,500 bails granted so far, the police had cited CCTV and video footage in at least 44 cases to back their allegations against the accused, of which in 32, the video footage did not stand up to basic judicial scrutiny and the accused were granted bail.”*<sup>85</sup> Second, as per an Article 14 report, *“In a series of recent cases, various Delhi courts have granted bail, while holding the police responsible for “vague evidence and general allegations,”*<sup>86</sup> a “shoddy

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<sup>82</sup> Internet Freedom Foundation, Is the illegal use of facial recognition technology by the Delhi Police akin to mass surveillance? You decide. #Project Panoptic(Internetfreedom.in, 3 July 2022) available at <https://internetfreedom.in/is-the-illegal-use-of-facial-recognition-technology-by-the-delhi-police-akin-to-mass-surveillance-you-decide-project-panoptic/> (accessed 12 January 2023)

<sup>83</sup> Amnesty International, "Ban the Scan: How Facial Recognition Technology is being misused in Hyderabad, India" (banthescan.amnesty.org, 12 December 2022), available at <https://banthescan.amnesty.org/hyderabad/> (accessed 12 January 2023).

<sup>84</sup> Ameya Bokli and others, , Settled Habits, New Tricks: Casteist Policing Meets Big Tech in India (tni Longreads, May 2021) available at <https://longreads.tni.org/stateofpower/settled-habits-new-tricks-casteist-policing-meets-big-tech-in-india> (accessed on 12 January 2023).

<sup>85</sup> Abhay Singh And Arnabjit Sur, In 100 bail orders: 'Videos' used for arrest in 44; 32 of these failed court scrutiny (Millenium Post, 23 February 2021) available at <https://www.millenniumpost.in/delhi/in-100-bail-orders-videos-used-for-arrest-in-44-32-of-these-failed-court-scrutiny-432553?infinite-scroll=1> (accessed on 12 January 2023).

<sup>86</sup> Mohd Arif vs State, BAIL APPLN.774/2021 & CRL.M.A.9357/2021

probe”<sup>87</sup>, “absolutely evasive”<sup>88</sup> and “lackadaisical”<sup>89</sup> attitude; the police have been accused by various courts of investigations that are “callous”<sup>90</sup>, “casual” and “farcical”<sup>91</sup>, “poor”<sup>92</sup> or “painful to see”<sup>93</sup>.<sup>94</sup> Hence, all such advanced video recording and facial recognition technologies have not provided a sense of truth nor justice but have led to undertrials serving long periods in imprisonment.

Even during the conduct of these bail proceedings, technology has played a vital role in appealing to our biases. There have been allegations of selective, advanced leaks of chargesheets and confessional statements that have fed a digital media cycle and thereby prejudiced court proceedings. The prosecution has often given detailed powerpoint presentations rather than credible evidence to demonstrate the thoroughness of police investigations. After all, and I repeat, “What do judges know that we cannot tell a computer?”

### **Delhi is not the endgame**

Deservedly, for all its privileges, much of India, including for many even who live in it, are rarely fond of Delhi. For most it has a “*bad reputation*” but to borrow from Taylor Swift maybe it only has a “*big reputation*”. It is not the only city in India impacted by a digitisation and policing project that is systemic and institutional. It cuts across the political spectrum as the technology determinism is deeply ingrained in our cultural and social values.

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<sup>87</sup> Sparsh Upadhyay, Wastage Of Tax-Payers' Money & Judicial Time : Court Raps Delhi Police Over 'Shoddy' Riots Case Probe -10 Quotes, LiveLaw available, 2021 at <https://www.livelaw.in/top-stories/court-raps-delhi-police-over-shoddy-investigation-in-riots-cases-180831>

<sup>88</sup> Nupur Thapliyal, "Police Failing In Supervisory Duties, Trying To Avoid Responsibility By Not Concluding Investigation": Court Again Raps Delhi Police In Riots Case, 2021 available at <https://www.livelaw.in/news-updates/police-failing-supervisory-duties-avoid-responsibility-investigation-court-raps-delhi-police-181122>

<sup>89</sup> Nupur Thapliyal, "Unable To Proceed With Riots Cases Due To Lackadaisical Attitude": Court Pulls Up Delhi Police, Calls For Expedient Investigation 2021 available at <https://www.livelaw.in/news-updates/delhi-court-slams-delhi-police-over-lackadaisical-attitude-in-investigating-delhi-riots-cases-181083>

<sup>90</sup> Delhi riots: court pulls up police for ‘callous’ probe, 2021, The Hindu available at <https://www.thehindu.com/news/cities/Delhi/delhi-riots-court-pulls-up-police-for-callous-probe/article36264396.ece>

<sup>91</sup> Raghav Ohri, Court slams Delhi Police for not filing FIR of riot victim, 2021, Economic Times available at <https://economictimes.indiatimes.com/news/india/court-slams-delhi-police-for-not-filing-fir-of-riot-victim/articleshow/84420764.cms?from=mdr>

<sup>92</sup> Delhi riots: Investigation standard 'very poor' in large number of cases, says court, 2021, The Hind available at <https://www.thehindu.com/news/cities/Delhi/delhi-riots-investigation-standard-very-poor-in-large-number-of-cases-says-court/article36162590.ece>

<sup>93</sup> Painful To See "Very Poor" Investigation In Many Delhi Riots Cases: Court, 2021, India News available at <https://www.ndtv.com/india-news/delhi-riots-investigation-standard-very-poor-in-large-number-of-cases-says-court-2522662>

<sup>94</sup> Mani Chander, 11 Ways The Delhi Police Have Muddied The Delhi-Riots Investigation (Article 14, 13 September 2021) available at <https://www.article-14.com/post/11-ways-the-delhi-police-have-muddied-the-delhi-riots-investigation-613ebb8c99769> (accessed on 12 January 2023)

On a national level Rs. 2919.55 crores from the Nirbhaya Fund created in the aftermath of the horrific Delhi Gangrape was recommended by the Women and Child Development Ministry to be used for the Safe City Project proposed by the Ministry of Home Affairs for CCTVs. Further, the Standing Committee on Home Affairs in its report on ‘Police - Training, Modernisation and Reforms’ on February 10, 2022 advised that, “MHA may incentivise states to leverage technologies like artificial intelligence and big data for policing”. The proceedings of the committee make for an interesting reading with each city and state police boasting about its use of personal data lakes and artificial intelligence. The effects of such policy nudges are evident across the political spectrum. The Hyderabad Police has constructed a 20-story command and control center that houses a Chinese form of digital surveillance fed with data gathered from cordon searches. Even the Kolkata and Chennai Police departments are implementing facial recognition systems and populating it with images of persons they deem suspicious. This is in effect nothing more than a form of a general warrant prohibited by a substantive reading of the Code of Criminal Procedure and Supreme Court precedent.

The outcomes, if any, are frightening and clear for me. First, as Renee’s work shows there is a bias in our criminal justice systems for pseudo-science like lie detectors and narco analysis to confirm the biases of society and the criminal justice system. I fear with digital databasing and identification technologies the entire chain of evidence may be artificially generated. Here, each stack of a probabilistic technology may serve an inductive form of reasoning that will be accepted by our courts. I hope to develop this idea more in future. Second, is the larger political consequence of digitisation. It inverts the already fraught relationship between the ordinary citizen and the police. For instance the digitisation of our police services is occurring without its proper benefits being properly implemented. For instance under directions of the Supreme Court in the case of *Shahfhi Mohammad v. State of Himachal Pradesh*<sup>95</sup> and its progeny directed the installation of cameras in specific locations inside the police stations including the entrance/exit, visiting areas, and the lockups. However, as per the Delhi Police the CCTVs in Delhi do not have any audio recording facilities,<sup>96</sup> and as per the India Justice Report, One in three police stations yet to get a single CCTV camera.<sup>97</sup> In many ways technology follows a path of power resembling a panopticon

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<sup>95</sup> (2018) 2 SCC 801.

<sup>96</sup> Express News Service, Delhi Police says CCTVs already installed at stations don’t have audio recording facility, HC seeks MHA stand (Indian Express, 10 August 2022) available at <https://indianexpress.com/article/cities/delhi/cctvs-already-installed-at-stations-dont-have-audio-recording-facility-8080869/> accessed on 12 January 2023

<sup>97</sup> PTI, One in three police stations yet to get single CCTV camera, says report.(Times of India, 7 July 2022) available

where accountability and visibility is towards the subjects rather than those who guard the watchtower. At the same time, evidence continues to be illegally gathered without little or no consequence.<sup>98</sup> Hence, it should not come as a surprise that we have today allegations of the use of malware such as Pegasus as Netwire.

Finally, where does this leave us? Alarm? Lament? Resignation? As Andre Gide has been quoted by Kannibiram in *Wages of Servitude* and in the preface of Justice Malimath Committee's Report, "*Everything has been said already; but as no one listens we must always begin again*". I believe many of the outcomes we have searched for in technology rest in the hard structural reforms that have not been carried out legislatively post-independence. India is still in its journey and still transitioning from a colonial state to one that is not in many ways a constitutional democracy. We must study our expert reports that provide learnings from decades of policing in democratic India. There must be a focus on implementation of Supreme Court judgements such as Prakash Singh for the constitution of accountability committees. There must also be a consideration as to how department budgets are being allocated towards digital vapourware rather than towards more hiring and better training police personnel who work under terrible conditions.

This path is long and the outcomes will come only through sustained advocacy. Even then they will only come as a trickle. But I do maintain a sense of pragmatic optimism. Annual gatherings such as today give us a chance to reflect. It adds to greater public awareness and in some small measure provides a convening to question a fetish for digitisation in policing. I believe we have the power to cause positive change once we know better. This is also a form of blind faith -- a type of determinism in the human capacity to uplift itself. After all, it may be better I believe in the transformative power of human empathy over any form of artificial intelligence. Maybe this is also why, despite being a dystopian hellscape, I continue to love the city of Delhi.

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at [https://economictimes.indiatimes.com/news/india/one-in-three-police-stations-yet-to-get-single-cctv-camera-says-report/articleshow/92718686.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/india/one-in-three-police-stations-yet-to-get-single-cctv-camera-says-report/articleshow/92718686.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)  
accessed on 12 January 2023

<sup>98</sup> 2019 SCC OnLine Bom 3155.