

# Crime & Justice

PERSPECTIVE

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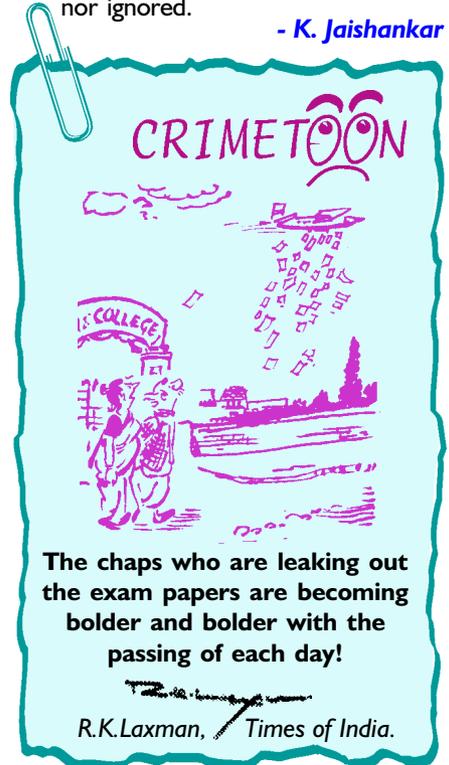
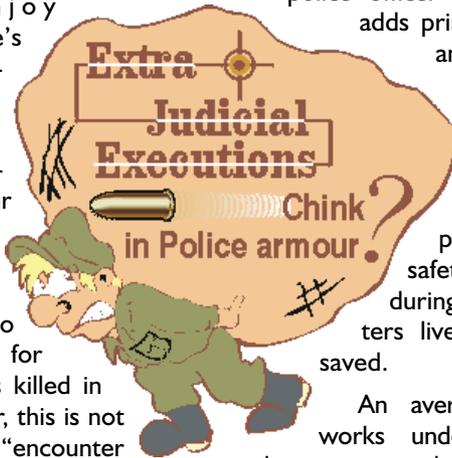
Welcome to yet another issue of the "Crime and Justice Perspective" in a new academic year. Three criminal justice issues dominated the media in the past two months. Torture in the Abu Gharib prison in Baghdad, Dhana n j o y Chatterjee's death penalty controversy in Kolkata, and the Police encounter killing of four Lashkar-e-Toiba terrorists in Gujarat. Of the three issues, prime importance was given to the Gujarat incident, for the fact that a girl was killed in the shoot out. However, this is not the first instance of "encounter killings" or extra judicial executions that is debated much.

Extra judicial executions have long been a part of the Indian socio-political landscape. In the 1960s the euphemism 'encounter killings' began to be used to describe extra judicial executions because of the frequency with which officials would claim that the deceased had been killed in an 'encounter' with police. Now, the word 'Police encounter' has become synonymous to killing. In fact, police encounter means police action taken

by individual officers at the operational level. Human rights organisations and civil right activists opine that most of the police encounter killings in India are fake. According to the law of the land, an officer can go even to the extent of killing to protect him and others. The discretion of a police officer in the field adds prime value to an extra judicial killing. No doubt, if the police officer takes appropriate safety measures during encounters lives might be saved. An average officer, works under tremendous pressure during a situation like this. Some times his judgment may go wrong, even though he has been adequately trained to deal with such emergencies. It is easy for any armchair analyst to criticize the officer in the field. While extra judicial executions are not correct, legally and morally, If there is an outcry for every such incidents, police officers will lose their morale. The National Human Rights Commission (NHRC) has circulated the guidelines in respect of the proce-

dures to be followed by the State Governments in dealing with deaths occurring in encounters. However, moral persuasiveness at the internal and state level apart from the NHRC guidelines will go a long way in effectively addressing these issues. So, a strong policy is needed for controlling police behaviour on the use of deadly force. In the mid-1970s, police departments in the United States began developing restrictive internal policies on the use of such force. If only such policies are formulated in India, extra judicial executions will neither be justified nor ignored.

- K. Jaishankar



Thirukkural's  
Criminal Justice  
Outlook  
Spies & Intelligence

International Journal  
of  
Criminal Justice Sciences  
Online

Opinion  
Why the President Should  
Grant Clemency?

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

கடாஅ உருவொடு கண்ணஞ்சாது யாண்டும்  
உகாஅமை வல்லதே ஒற்று.

*Kataa uruvotu kannancathu yandum  
Ukaamai vallade ottru*

ஒற்றாடல் - *Otrradal*  
(Espionage) Chapter 59,  
Kural 585

### Translated Verse

A spy is one who is able to assume an appearance, which may create no alarm (in the minds of others), who fears no man's face, and who never reveals (his purpose).

### Explanation:

Employing spies seems to have been common and part of royal administration in the ancient times. It is the duty of a king to keep in touch with various issues of the kingdom. The spy was an important means of keeping a finger on the pulse of public opinion. This *Kural* prescribes the qualities of an efficient spy. He should not be easily identifiable by appearance and should be an expert at dis-

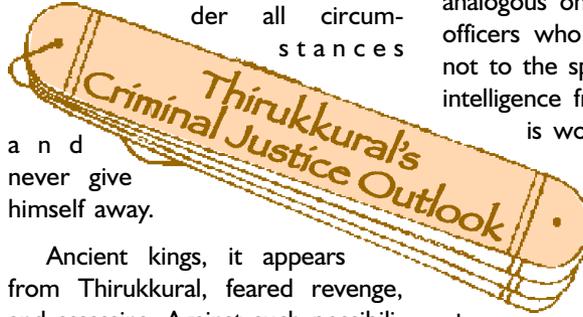
# Spies & Intelligence



guise. When under disguise and otherwise, it should be possible for him to merge easily with the surroundings and ward off suspicion and he should be unnerved by any scrutinizing stares. He should be able to protect secrets under all circumstances

and never give himself away.

Ancient kings, it appears from *Thirukkural*, feared revenge, and assassins. Against such possibilities, they had a network of spies. While comparing the spying system with the present, we are in a need to understand the structure of the ancient kingdom envisaged in *Thirukkural*. The ancient kingdom is like a city or a district as there were



many such small kingdoms. Therefore, the spies of Thiruvallur's period are analogous only to the present police officers who collect intelligence, and not to the spies who collect external intelligence from foreign countries. It is worth noting, that, when a police officer in Tamil Nadu took charge of the intelligence wing he ordered his subordinates to read thoroughly the ten couplets of *Thirukkural* describing espionage. The qualities of the efficient spy developed by Thiruvalluvar still holds good to the present Intelligence officers.

- E. Enanalapperiyar & K. Jaishankar



மீறலிலிருந்து எழும் குற்றங்களுக்கு துரிதமான வழக்கு விசாரணை அளிக்கும் நோக்கத்திற்காக, மாநில அரசுகளானது, உயர் நீதிமன்ற தலைமை நீதியரசரின் ஒப்புதலோடு, அறிவிப்பினை முன்னிறுத்தி, அனைத்து மாவட்ட அமர்வு நீதி மன்றங்களை மனித உரிமை மீறல் குற்றங்களை விசாரிப்பதற்கான ஒரு மனித உரிமைகள் நீதிமன்றமாக குறிப்பிட்டது.

ஆயினும், அமலில் உள்ள எந்த பிற சட்டத்தின் கீழும், மனித உரிமை மீறல் குற்றங்களுக்காக அல்லது அமர்வு நீதிமன்றம் ஒன்று ஏற்கனவே சிறப்பு நீதி மன்றமாக குறிப்பிடப்பட்டிருக்குமாயின் பிரிவு 30-ன் படி அமையப்பெற்ற நீதிமன்றம் செல்லுபடியாகாது.

மேலும் மாநில அரசானது, இந்த நீதிமன்றத்தில் வழக்குகளை நடத்தும் பொருட்டு, ஒரு சிறப்பு அரசு குற்றவியல் வழக்குரைஞரை அல்லது ஏழாண்டுகளுக்கும் குறையாமல் தொழில் மேற்கொண்டு வரும் வழக்குரைஞர் ஒருவரை முறையான அறிவிப்பினை தொடர்ந்து பணியமர்த்த வேண்டும்.

- செ. அனந்த ராமகிருஷ்ணன்

International Journal of  
Criminal Justice Sciences  
Online

CALL FOR ARTICLES

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

“உலக நாடுகள் அனைத்தும் தமது நாட்டில் நிகழும் மனித உரிமை மீறல்கள், மற்றும் அதற்கான நிவாரணங்களை உடனுக்குடன் வழங்கும் பொருட்டு சிறந்ததொரு அமைப்பினை ஏற்படுத்த வேண்டும்”.

மேற்கண்ட கூற்றை, 1993ஆம் ஆண்டு சூன் 25ஆம் நாள் நடைபெற்ற மனித உரிமைகளின் மீதான வியன்னா மாநாட்டில் உலகநாடுகள் அனைத்தும் முன் வைத்தன. இதனை தொடர்ந்து இந்தியாவிலும் மனித உரிமைகள் சட்டம் 1993 (மத்தியச் சட்டம் எண் 10/1994) இயற்றப்பட்டது. இதில் மனித மீறல் நடவடிக்கைக்கான நீதிமன்றங்களும் இடம்பெற்றன. மேற்கூறப்பட்ட சட்டம் பிரிவு 30-ன் படி, மனித உரிமைகள்

# Why the President should grant Clemency?



Part-1

While the President of India, Dr.A.P.J. Abdul Kalam is currently in the process of deciding whether to grant clemency to Mr. Dhananjay Chatterjee, who is facing the death sentence in the Hetal Parekh rape and murder case, it is necessary for him to evaluate the implications of death penalty and its relevance for creating deterrence for potential offenders. Obviously, the Indian civil society is divided on this issue and there are a number of people who genuinely feel that victim justice demands that Mr. Chatterjee be hanged and on the other side of the spectrum people argue that capital punishment is revengeful and does not serve any meaningful purpose. It is quite understandable that the family and friends of the Ms. Hetal Parekh and many others who advocate for victim justice feel strongly that Mr. Chatterjee should not be granted Presidential Clemency. However, the President while making a decision to this effect may consider the following aspects:

## I. Death Penalty and Deterrence

C. Raj Kumar\*

One of the important reasons for the death penalty to remain in the statute books in India and other countries is its relevance for creating deterrence among potential offenders. It is believed that if Mr. Chatterjee is hanged, then people like him who are intending to commit such grave offences like rape and murder in the future would be deterred against commission of such offences, as they will fear that they will be met with punishment in the form of death penalty. However, this notion of criminal deterrence has been significantly contested and undermined by contemporary notions of criminology and criminal justice. There is no empirical evidence or other forms of evidence to indicate that all those countries that have abolished death penalty are any less just or lenient in handling with serious crimes than countries that kill criminals. Moreover, various researches have not produced any evidence that the death penalty is more effective than life imprisonment. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted by Professor Roger Hood of the University of Oxford for the United Nations in 1988 and updated in 2002, concluded that "it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment" (Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, third edition, 2002, p. 230).

lished practice of not carrying out executions making a total of 118 countries which have abolished the death penalty in law or practice. This is a very important factor for the President of India to consider as India is part of the international community of nations and what happens in other countries may not be directly relevant and applicable for India, but, needless to say, that it should be borne in mind that there is a worldwide movement towards abolition of death penalty. While legal abolition of death penalty may involve complex legislative process and needs more consultations among various groups and we should work to reach that goal, granting of presidential clemency is far easier. This would ensure that the Indian state sends the right signals that it does not accept retribution and vengeance as an objective of punishment even though death penalty is available in its law books. Over 35 countries and territories have abolished the death penalty for all crimes since 1990. They include countries in Africa (examples include Angola, Côte d'Ivoire, Mauritius, Mozambique, South Africa), the Americas (Canada, Paraguay), Asia and the Pacific (Bhutan, Hong Kong, Nepal, Samoa, Turkmenistan) and Europe and the South Caucasus (Azerbaijan, Cyprus, Georgia, Poland, Serbia and Montenegro, Ukraine).

[To be continued]

\*The author is a Lecturer at the School of Law, City University of Hong Kong, Hong Kong, and was a Rhodes Scholar at the University of Oxford and a Gammon Fellow at the Harvard Law School.



1. The abbreviation of the Russian spy agency KGB is
2. The International criminal police organization is commonly known as
3. Who said 'If poverty is the mother of crimes, want of sense is the father of them?'
4. Rahul, a police officer, fires on a mob by the order of his superior officer, in conformity with the commands of law, and thus kills five persons, including two women and a child. What crime has Rahul committed?
5. Which famous novel had the epigraph: 'Behind every great fortune there lies a crime?'

(Source: 1000 Crime quiz by Anil Aggrawal)

1. Komitet Gosudarstvennoy Bezopasnosti
2. Interpol
3. Jean de la Bryere
4. None (Indian law gives impunity)
5. Godfather

## II. Worldwide Movement Towards Abolition of Death Penalty

Amnesty International has noted that over half the countries in the world have now abolished the death penalty in law or practice. It needs to be understood that 80 countries have abolished the death penalty for all crimes; 15 countries have abolished the death penalty for all but exceptional crimes such as wartime crimes; 23 countries can be considered abolitionist in practice: they retain the death penalty in law but have not carried out any executions for the past 10 years or more and are believed to have a policy or estab-

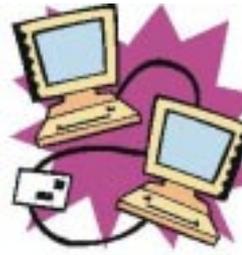
**1st International and Fifth Biennial Conference of the Indian Society of Victimology**

**CALL FOR PAPERS**

The Department of Criminology and Criminal Justice (DOCCJ), Manonmaniam Sundaranar University, Tirunelveli, India, is organizing the First International and Fifth Biennial Conference of the Indian Society of Victimology (ISV), during 18-20, November 2004. The main theme of the conference is RESTORATIVE JUSTICE: A stride towards Victim Justice System. Papers are invited for presentation on the main theme or some aspect of the sub themes. The Last date for submission of abstracts is September 30, 2004. For further details, please visit the conference website at <http://www.isvconf.co.nr>

**INBOX**

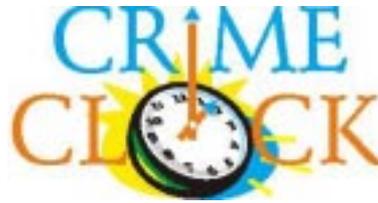
Your Newsletter is wonderful. This innovative initiative makes yours a real & unique Department.



*Dr.R.Sreevalsa Kumar, Assistant Professor, Department of Educational Psychology, Addis Ababa University, Ethiopia.*

Your newsletter was quite interesting and informative. Thanks a lot for it.

*Dr. Nina Priya J MD, Siddha Doctor, Palayamkottai, Tirunelveli.*



One accident occurs every minute in India, says the National Road Safety Council. This results in one death every six minutes and one serious injury every minute.

Source: The Week, May 2, 2004. Vol.22. No22.

We welcome your feedback and contributions in the form of success and failure stories, new initiatives, articles on contemporary issues, announcements, interviews of persons working in Criminal Justice and related areas.

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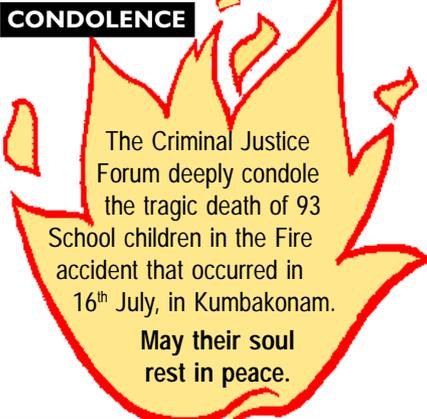
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Views expressed in the opinion column is of the author and not of the editors of this Newsletter.

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**CONDOLENCE**



The Criminal Justice Forum deeply condole the tragic death of 93 School children in the Fire accident that occurred in 16<sup>th</sup> July, in Kumbakonam.

May their soul rest in peace.

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