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SCHARFF: This is Michael Scharff, the date is Nov. 15, 2010, and I'm sitting with Mr. S. K. (Surinder Kumar) Mendiratta at the Election Commission of India. Sir, thank you very much for agreeing to this meeting.

MENDIRATTA: *You're most welcome.*

SCHARFF: If I could just ask you to perhaps introduce yourself and tell us how you came to be here at the Election Commission.

MENDIRATTA: *At present I am the legal adviser to the Election Commission. I came to the Election Commission in 1964, so for very nearly 46 years I have been here in the Election Commission. I retired about 13 years back, but still I continue.*

SCHARFF: You must have held various roles over the years.

MENDIRATTA: *Yes. At the time of my retirement I was director of law and also the principal secretary. Thereafter they have been retaining me as the legal adviser. I had virtually no retirement.*

SCHARFF: What position did you start in?

MENDIRATTA: *I started only as an assistant in the Election Commission, an assistant.*

SCHARFF: The issue at hand today is the vulnerability exercise which the Election Commission now has in place for the entire country. Can you help our listeners understand when vulnerability mapping first came into play in the Election Commission, roughly what year or what election its introduction coincided with.

MENDIRATTA: *The vulnerability mapping is something we had to resort to because some of the states were infamous for booth capturing. Some musclemen would be hired by the candidates, and they would ensure that people—those who were opposed to that candidate or who belonged to a particular community—would not be allowed to come out of their houses on the day of poll; they would be prevented. That would give them two scopes. One, they would be satisfied that these people had not come. Secondly, in some cases they would even put their own people to vote in their names.*

This was one of the very bad blots on the conduct of elections. People would have a grievance thing: "In independent India we are not even free to vote. Some people are just voting in our name."

So eventually the Election Commission was feeling exercised about this. One solution was to put the police forces in the polling stations and then to ensure that at least inside the polling station or around the polling stations they are not prevented from voted. But that was not the real remedy, because we wanted them to come to the polling station. So that is how this vulnerability mapping started.

We asked the state administration, because they know the local conditions. Every polling station has a definite, defined area. So we would have a look at the polling area for each polling station. We would know, suppose there are two or three hamlets or villages attached to a polling station. We would see which are the areas where the people belonging to the weaker sections live. Where is the polling station? How much distance do they have to cover to reach the polling station? What hurdles are being created by the people belonging to the higher castes, the stronger castes, to prevent them from coming to the polling stations?

We created a map for every polling station. That is the vulnerability mapping. We found that out of these three hamlets, this particular hamlet is the one where the people are perhaps being prevented from voting. So they are the ones who have to be given some assistance to come to the polling station. We identified not merely the areas and the people there, but we also told the local people to identify the people who are potential mischief-makers. These are the people—four, five, ten—who would be taking some courses of action, resorting to some malpractice or illegal methods to prevent the people from voting.

So we prepared a full list of such mischief-makers for every polling station. Not merely the constituency, but even for the polling-station level. Then before the election, police authorities and our law-and-order machinery took preventive steps. Some people were bound down—those who were really threatening to disrupt our polling proceedings. They were even put under preventive retention. So all these steps we have taken now, and we are very happy to know that this has brought about a very fruitful result. I can say that during the last six, seven years, when we started with vulnerability mapping, many people have come and said that they have seen the inside of the polling station for the first time. Many people, very old people. They are very happy.

We just started this. Of course, we knew that some people had problems there. In some cases we just shifted the location itself of the polling station; from one corner of the village, we brought it to the other corner so that people belonging to the weaker section of the other village are not crossing through the entire village of the stronger people and go to the other one. If it is there on the other corner, they can easily come and then go back.

Then, in addition, we also asked our observers, because we have a system of appointing our own domestic observers. So far we have not gone to the extent of appointing any external observers. In India we only depend on the domestic, internal observers. They are very senior officers from the center and also from the states and they belong to the India Service, very senior, even senior to the district people. So we appoint them. Then we have given instructions to them because of the day of poll and even prior to the day of poll they move around in the constituency. They are normally there for about 20-25 days at the stage.

So they go around and then they meet those people. They ask whether there are any problems that they are likely to face and then from whom they are facing problems or threats and all this.

SCHARFF: You use the term “we” a lot—we look at this, we look at that. Meaning?

MENDIRATTA: *“We” means the Election Commission—the Election Commission and the election commissioners.*

SCHARFF: At the district level, it would be the observers working with the district magistrate?

MENDIRATTA: *Yes, because our electoral setup is that we have a district election officer in each district. The district election officer, in fact, is also the district magistrate of that particular district or the collector of that district. So there is a complete harmony between the administration and our election machinery at that time. They all become subject to our discipline and control.*

SCHARFF: So just for the listeners, for clarification. The district election officer is also the district magistrate, and is also the returning officer? These are all the same?

MENDIRATTA: No, the returning officer normally, in the case of an assembly election, is a junior officer to him, maybe a subdivisional officer. But in the case of a parliamentary election, when the election is to the House of the People, he will be the returning officer also.

So we have given instructions to them that when they go around, they should meet the people, try to convince them that there is no problem, that we will give police protection to them in case they need any special protection or any special arrangement. On the day of poll, these officers move around in the constituency and visit polling stations. In the polling station itself, they go and check the electoral roll, because on the electoral roll every voter who turns up is noted.

So they will be just going through the pages of the electoral roll. If they find six, seven, eight pages continuously where nobody has turned up, they know these are the people belonging to an area and there is some problem there; that's why they are not coming here. Our instructions are that you go to those areas; you take them up in case any assistance is needed by them; you ensure that they come. This is all the result of vulnerability mapping, because we know that these are the areas more susceptible to discouragement or intimidation or attacks.

Actually, this started maybe about four or five years back. We started first in a by-election; then there was a general election in Uttar Pradesh. Then we went for the whole of the state. Then subsequently, wherever we are holding a general election, even a by-election, this is being done. And in this Bihar election, I am not very sure about the exact number, but hundreds of villages have been identified and thousands of people have been under our strict watch. So we can now take satisfaction. Bihar and Uttar Pradesh were very infamous for this booth capturing. Now out of six phases for polling, five have already gone through in Bihar, in the current general election, and the sixth phase is the 20th of November. But there is no complaint about booth capturing.

In 1995 there was a general election in Bihar. Now, of course, the communication system is very fast, so with anything taking place anywhere, immediately within minutes you get the report and complaint. But during that period, it was very difficult to get the complaints in daily and then again send them back for reference. At that time, the Election Commission set up a special camp office in Patna. I was made in charge of that office.

Whenever we received complaints, we were making inquiries. Of course, the commission had given me full authority. Sitting there, I ordered a re-poll in more than 1,200 polling stations. And now, except for these 27 or 28 constituencies that are to go to the poll, otherwise—in say 225 constituencies which have already gone to the poll—we have hardly had a re-poll. Only in eight or 10 polling stations, and that was not for any booth capturing or anything like that, but because some voting machine may not have worked properly or there was, say, rain something. No complaint of booth capturing now.

SCHARFF: Can I take you back to the issue of how this vulnerability mapping was actually created? You mentioned the U.P. (Uttar Pradesh) elections.

MENDIRATTA: Yes.

SCHARFF: I believe that was in 2007 and this is the first time this is tried at the state level.

MENDIRATTA: Yes, correct.

SCHARFF: Whose idea is it to try it?

MENDIRATTA: Actually, I won't say that anybody, any individual was the author. Every day the Election Commission meets and they think of the problems. When we met, this booth capturing was naturally on the mind of everybody. We were just in some brainstorming session. We were just thinking how this can be controlled and then people be brought to the polling stations.

SCHARFF: When you say "we"?

MENDIRATTA: "We" means the Election Commission.

SCHARFF: The actual commissioners in Delhi.

MENDIRATTA: Yes.

SCHARFF: Was there consultation with the CEO from—?

MENDIRATTA: They came later into the scene. See, there are now three election commissioners; one is chief and the other two are his—I won't say deputies, because they have all equal powers, just like our courts here. So there is one chief justice, but there are other judges; when they sit on the bench, the judges may not agree with the chief justice.

So here we have a three-member commission, and the chief election commissioner is one of them. Naturally he presides over the other two, but he can be overruled by the other two. That is a very nice thing. So normally in our meetings, these three commissioners sit. Then we have three deputy election commissioners. So they sit; I also sit. And then there are two other officers of equal rank now. One is the director-general of election expenditure—this is the latest aspect on which we are now putting more trust. Because having controlled the muscle power, now we are concentrating on the money power. So that is why this new man has been very recently brought to the commission, maybe about two months back.

SCHARFF: And the second director at the meeting? The general-election expenditure director was one, and then who is the other person?

MENDIRATTA: He is the director-general for information, education and communication, IEC. So this is the core group which normally everyday meets, thinking about what can be done.

When the U.P. election was about to be held, we had to decide something in advance as to how this can be controlled. This was one of the ideas—why not we find out those areas which are really vulnerable? We should identify and do something.

SCHARFF: But booth capturing, for instance, has been an issue in Indian elections for decades and decades. So why is 2007 the year when this idea—?

MENDIRATTA: Previously, we were taking all steps by posting the police personnel and then bringing central police forces from outside the state. But just by putting some police forces at the polling station, this thing was not being controlled. Actually, we could control only the violence at the polling stations, the clashes at the polling stations which we used to call violent booth capturing. That we could

control. But this silent booth capturing, with people being prevented, people not being allowed to come to the polling stations—that was the aspect now which came to our focused attention. Silent booth capturing.

So this vulnerability mapping is a part of that exercise. Having controlled the violent booth capturing, now we went to the next step of putting a check on the silent booth capturing.

SCHARFF: Fascinating. So for 2007, are there guidelines that are drawn up for this in the U.P.?

MENDIRATTA: Yes.

SCHARFF: Who draws the guidelines?

MENDIRATTA: *We. There are certain sections; we have the functional distribution. So we sat together and on the basis of our past experience, we gave them some guidelines through the chief electoral officer. Then we had a meeting with some senior district magistrates there. So something was drafted, and then they added some more points. So this is how. Evolution is there always.*

SCHARFF: Then the Commission was satisfied with the outcome of the exercise?

MENDIRATTA: *Yes. That approach was appreciated by everybody. Later on, in other states, whenever there were elections, we have been doing it now. So it is quite successful.*

SCHARFF: So, because it was successful in U.P. in 2007 is why we see for the 2009 Lok Sabha (House of the People) elections it rolled out on the national scale.

MENDIRATTA: Yes, yes.

SCHARFF: Were things changed? After the 2007 elections, you come back to the drawing board, if you will. You look at the experience that you've just had. What were some of the difficulties that occurred, and what were some of the ways that the system may have been modified for the national rollout?

MENDIRATTA: *This has brought very nice results. That is why I am saying now that even all the political parties, mostly, and the people applaud in those states. They have reasonable satisfaction that at least they are now able to vote. The realization is there, wide appreciation, among the political parties that booth capturing and muscle power are almost a thing of the past now. That is why now everyone is saying you do something for this money power. So now the next focus of the Election Commission is money power.*

For money power, of course, we have undertaken some very effective measures. It started with this Bihar election.

SCHARFF: Can I just ask, and I know you have to run to your meeting, just a final question if you don't mind. When the commission sat down and decided to put this system in place in U.P. in 2007, was it understood that this is the first step and then we're going to go national after this is done?

MENDIRATTA: Yes, yes.

SCHARFF: Was it, "Let's see let's see how it works, and if it doesn't work we're not—"?

MENDIRATTA: No, no, because the elections here are taken in, let's say, phases. One state may be going to an election in one year; another may be going—. So we start some experiments, with the idea that whatever lessons we learn, we are going to implement in the next round of elections.

Now, for instance, whatever measures we have taken for checking money power in Bihar—all those things, rather with more refinement—we'll be using them in the next round of elections in 2011 in the five states. Very important states are going to poll in March, April or May. So we are going to implement all those things, whatever. After the elections, we hold meetings with the observers and CEOs, and they tell us this was the problem which they faced or this was the shortcoming in our instructions where they felt slightly handicapped. So we will be refining all of our instructions now.

We have already started the exercise for this next round in elections in Tamil Nadu, West Bengal, Assam, and then Kerala and then Puducherry. These five states are due for polls in the early part of next year. So we have already started. Immediately after this election is over, maybe in December perhaps, we may be inviting some expenditure observers, those who stayed in Bihar. So we will be asking them to come to Delhi for some debriefing session. They will tell us what actually they observed, where they felt handicapped, where they feel that our instructions need to be strengthened. So on the basis of their inputs we will be doing something now. This is what actually started in Uttar Pradesh.

SCHARFF: Thank you very much for your time, I very much appreciate it. [End of interview/file one]

This is Michael Scharff, the date is Nov. 19, 2010, and we're back for part two of our conversation with Mr. Mendiratta at the Election Commission of India (ECI). Sir, thanks very much for seeing us again. I just wanted to up on a point that you emphasized in our previous conversation. We were talking about how the vulnerability-mapping exercise came about, and particularly why it came about. So there is this question people are asking about why 2007 was the year when it was first tried.

Something you mentioned in our previous meeting was that the Election Commission was feeling exercised—that is, there was some sort of pressure to take action in this regard. I wonder if you could perhaps elaborate on that a bit more and help us understand what that pressure may have looked like.

MENDIRATTA: Actually, this booth capturing is a very old phenomenon in Indian elections. People in some states, particularly, are notorious for this type of malpractice. So for the last several years, we have been posting the central police forces, and the then central police forces, because they create an impression in the minds of the people that they will be neutral and people will have more opportunity of coming out freely.

But then we realized that these central police forces were also not proving very effective. Basically, we were putting them at the polling stations or maybe just making some rounds of patrolling, but they didn't know which areas in the given polling areas are vulnerable. People may not be allowed to come out; they may be threatened. Then, on the day of poll, they may be prevented from reaching the polling stations. There may be some mischief mongers, potential mischief mongers, who may be threatening them, forcing them either in the locality itself or on the way to the polling station.

So that was the next step—to find out which areas need special attention on the day of poll, and which people in those areas also require a special watch. So this is the genesis for this vulnerability mapping. Now, we know in every polling station area which particular portion of the locality that is covered by that polling station is inhabited by the weaker sections which need more protection, which need more assurance from the police authorities that they will be free to come to the polling station on the day of polling.

So this exercise is done in advance now. When we take up this mapping, the local people—local police, local administration—are involved. They know the geography, topography—all those things. Sometimes they tell us if we just change the location of the polling station from particular site A to site B, that itself may lend to more free and fair polling. We do that. Sometimes we feel that a change of location may perhaps not be feasible, because there may not be some good polling building if we have to move it from this present location. In that case, we take precautions to ensure that there is no prevention of voters when they came out of their houses on the day of poll. This we do now in advance. Whenever we feel that some people may create that type of atmosphere which may prevent people from voting, those people are bound down. There are several preventive provisions in the law. They can be bound down for their behavior. Sometimes, in extreme cases, they can even extern them from the polling areas—they can say that you will not enter the polling area. So some externment orders can also be passed.

Because we know that in this polling-station area, this is the locality or a part of the village or a part of the state which needs special attention. That is the whole purpose.

SCHARFF: That's fascinating.

MENDIRATTA: *Our observers are given special instructions that they should keep a watch in these polling areas when they are making rounds. Not merely the observers, but those zonal officers, sector officers who work in that area. They too keep a special watch. We have given instructions to them that at the polling station also, they must keep a check as to whether these people have actually come out or not. If they find from the polling records that those people have actually not been able to reach, they go to those areas and assure them. In some cases, we have even sent the police parties to escort the people who were feeling rather intimidated, to come to the polling stations.*

SCHARFF: In the case where an observer or an election official goes to a polling place and sees, for instance, that 80 percent of the people from the village have not turned out—. Does the Election Commission have a criterion by which there has to be a certain percentage of voters not turning out for there to be an investigation? For instance, if I'm an observer and I go to a polling place and I see that half the people haven't voted, am I compelled to take action? Or am I only compelled to take action per the ECI's guidelines, which may say you have to have a minimum of 60 percent at the polling station?

MENDIRATTA: *No, actually that way we have not laid down any minimum yardstick.*

SCHARFF: So it is up to the individual.

MENDIRATTA: *Yes, it is the individual perception of the observer and the zonal officers. There is another thing which we do. Supposing at the end of the day we find that there*

was actually intimidation, because observers on the day of poll can't move to each and every polling station—areas are quite vast and the zonal officers are there moving around. Supposing they get some information that people in that particular village or some locality were prevented, they could not reach. Then in that case, the delegation is satisfied on the basis of these reports. We declare the poll void, and then we ask for a re-poll.

At the time of the re-poll, naturally we have very unlimited resources. We have all the police; we have all the other senior officers. They can move around and ensure that whatever problems arose on the day of the poll do not recur on the day of re-poll.

SCHARFF: Interesting. When the central Election Commission was formulating a response—that is, when they were coming up with this idea of vulnerability mapping in 2006 and 2007, before it was actually tried in the U.P. elections of 2007—what were some of the potential drawbacks that could have taken place as a result of the vulnerability. You created it and you said it is going to do X, Y and Z—and these are all good things—but what were the concerns perhaps that this exercise could raise?

MENDIRATTA: *The concerns were the complaints—seeing that people are being prevented, people are not being allowed to come to the polling stations. After the elections, if something comes to our notice, unfortunately we can't do anything because the aggrieved person has to go to the court. Under our constitutional scheme once the election is over and things go out of the Election Commission hands. Only the courts then provide the remedy.*

That's not a happy situation—where we say no, no, we are helpless, we are helpless. What counts in a democracy is the satisfaction of the people. People should not say the election was just routine, that it was some paper formality which was completed. Elections should not only be free and fair, but should also seem to be free and fair. That is the hallmark.

SCHARFF: The perception at the end of the day.

MENDIRATTA: *Yes, the perception.*

SCHARFF: So there weren't any other sort of considerations?

MENDIRATTA: *The consideration is our attempt that each and every elector should be able to vote; that is the mandate given to the Election Commission—and how that mandate is to be carried out and how each and every voter is to be enabled to exercise his vote. Every thing must be done by the Election Commission.*

SCHARFF: Was there any one individual, perhaps the chief commissioner, Mr. (N.) Gopaldaswami, who was instrumental in bringing about this mapping? Who was most vocal in support of it and was able to convince their colleagues here at the commission that it was necessary?

MENDIRATTA: *Well, you have read these things started during Mr. Gopaldaswami's time; you are right. Before that we were doing what I may call some "macromanagement." During this period, we started micromanagement. First, we would see a particular constituency is quite a sensitive constituency because important leaders are contesting here, or some notorious people are contesting here, who may try to do some mischief during the election. So those constituencies were being given certain serious consideration, and some special arrangements were being made.*

But then we found that just saying that these constituencies were sensitive—. We must look into the areas also, not merely a constituency. It may be otherwise very good, but even in a good constituency there may be areas where everything may not be all right. So we have to attend to those areas also. So this is how we started micromanaging. Because of this micromanagement we then devoted our attention to each polling station.

SCHARFF: Do you know roughly what year?

MENDIRATTA: That was around 2006—just because in 2007 the election in Uttar Pradesh was due. We know in advance when an election is due—now we know in the next year five states are due. Similarly, in 2006 everyone knew that the election in Uttar Pradesh was due. And Uttar Pradesh was one of the states where this type of malpractice was very much noticed, being rather agitated in the previous years. So we had to do something. Actually, first this started as an experiment in some by-election. That proved very effective. People came out and said yes, this is the first time we are voting after several years. So we said, now that this has brought about a very good change, let us now do it on the state level.

SCHARFF: Interesting. I want to ask you about the question of preemptive arrests from a legal perspective. You mentioned that there are certain laws that would enable the arrests to occur. Can you explain that? We have quite a few individuals who come from a legal background who read this and want to try to understand.

MENDIRATTA: Yes. See, there are some provisions in our Criminal Procedure Code; there are provisions for asking the people to give an undertaking and to give a bond. Section 107, Section 151, Section 113—.

SCHARFF: Of the constitution?

MENDIRATTA: No, these are the provisions in the Criminal Procedure Code. So under these provisions, when the state authorities feel that some people are potential mischief mongers, then they can bind them down. They can ask for the periodic reporting of those people to the police station. They can even tell them that they will have to execute some personal bond. If they indulge in any undesirable activities, they would be arrested and then that bond money would be recovered. So there are certain preventive steps which the state administration has under the law. So all those are invoked during that period.

SCHARFF: And those laws had been in place before the vulnerability mapping?

MENDIRATTA: These are centuries old. But they are now being invoked on a very extensive scale because of the Election Commission's directives.

SCHARFF: Just for people who aren't familiar, when you use the word "bond," can you explain that a little bit?

MENDIRATTA: Yes, bond is a legal agreement. You might say that I will behave properly during this period, and I will not indulge in any undesirable criminal activities. Then some surety is also attached to that—say 10,000 rupees, 50,000 rupees. So they have to give that bond in case they violate that undertaking. It is sort of an undertaking by them that they will behave properly. If that undertaking is violated, then that money may be recovered from them.

SCHARFF: So how do you identify the individuals to pay the bond?

MENDIRATTA: A very large number of people—actually, I don't have the exact figures. But a very large number of people were identified, and they were made to give these bonds and other things.

SCHARFF: So here's how I understand it, starting with the CEO in the state and then the people who are underneath him. As part of the vulnerability-mapping exercise, if we look at that actual sheet that the Election Commission published, they have to list potential troublemakers.

MENDIRATTA: Yes.

SCHARFF: And they do this in the weeks before the election?

MENDIRATTA: In that map we provide two things. This is the polling area; in this polling area this is the area which is vulnerable. Then in this area, he is the man who has to be kept under special watch. So both things are provided on that mapping.

SCHARFF: When this mapping is complete, it is then shared with the security officials, the police?

MENDIRATTA: Yes, security people, police, observers, election officers. Even the presiding officers also know.

SCHARFF: And at that point in time, the police then chose which individuals on that list to approach and require bond from?

MENDIRATTA: Sometimes. Sometimes there is a very—you might say—important political personality in that particular area, but we also know that he is the man who has to be kept under a special watch. So bond itself may not be enough. We may even put a video team to trail him: Where he is going, what type of people he is meeting, where he is addressing public meetings, what he is saying—all those things are being videographed.

SCHARFF: To what extent does the Central Election Commission here have oversight of the creation of the lists of individuals to be monitored? Is it solely up to the discretion of the CEO and his subordinates to create this list and work with the police at the state level—to maybe bound down some people and put them in jail, and maybe some others are followed by video cameras, maybe some others require bond? Does that all just take place at the state level?

MENDIRATTA: No, this is not merely the job of the state police. Actually, this list is created by the police authorities, but with the district magistrate, because the district magistrate is the authority responsible for the maintenance of law and order. And that very district magistrate is our district election officer. So all these lists are prepared in consultation—the police study with the district magistrate, the district officer. Then these lists are provided to our chief electoral officer. They also have all this information, and they share with our observers when the observers visit the constituencies and they are reporting to the observers and others as to what they are doing. Just creation of the list by itself it not enough.

So what steps they are taking to see that these people are kept under check on the day of poll, a few days before the poll? The state police may be doing something, but these things are shared even with the police authorities at high levels also. So the D.G.P. (director general of police) of this state will have complete information, and when the D.G.P. has the complete information, our chief electoral officer also has the complete information.

SCHARFF: So is this a sufficient check in your mind against abuse?

MENDIRATTA: Yes, it is proving to be quite effective. The result is we have very little—we saw that in both elections, and now the results we are seeing very positively coming out in the current elections in Bihar.

SCHARFF: Are there any other checks, other than the fact that these lists are looked at by various individuals? Are there other checks to prevent, say for instance, arrests or video cameras intimidation being used against the political opposition? Because we know, for instance, that in quite a few cases at least the district magistrate at that level and below can be party officials and can be heavily bought off. So critics will suggest that even if the CEO looks at the list there can still be a bit of funny business.

MENDIRATTA: No, see, the good thing in our system is that everyone is under watch. People are watching, political parties are watching, media is watching. Even the Election Commission is under constant watch because whatever decisions we take, whatever instructions we issue, we make them public. So the media is reporting, political parties are coming out with their reactions. Similarly, if the list is prepared by some administration, political parties—those who are opposed—will definitely be telling us what is being done and who is not being fair.

So we also know. And in some cases, if we feel that this man is not acting impartially, we definitely remove him.

SCHARFF: Is there an appeals process? If somebody is bound down, is there a way for them to appeal the decision? Would they do it through the normal judiciary process?

MENDIRATTA: Everyone is free to go to the court. Everyone is free; we can't stop anybody. But in that case, he has to make out the case before the court for their intervention.

SCHARFF: But you mentioned before, there are specific laws that allow for the arrests for instance.

MENDIRATTA: Yes.

SCHARFF: Within those laws, are there provisions that allow for arrests without charging somebody? Without any charges?

MENDIRATTA: See the Criminal Procedure Code is a very elaborate one, which was actually given to us by the British. So for every action being taken, there is a judicial remedy. So if somebody feels that he has been unnecessarily bound down or arrested, then he definitely can go to the court.

And sometimes they make a complaint to us, we also look into the facts and then if we feel some mischief is being done by the district administration we also interfere.

SCHARFF: But when you were coming up with this idea back in 2006 and 2007, was there ever any hesitation on the part of the commission that perhaps the emphasis that the vulnerability mapping placed on identifying individuals could in fact backfire on the commission?

MENDIRATTA: No. We had no such reservation. We knew that the people at large would definitely approve of this and the political parties would also back us. That was our feeling, and they proved right.

SCHARFF: But if I'm correct—and please correct me if I'm wrong—we're talking about hundreds of thousands of individuals who are bound down.

MENDIRATTA: Yes, we have done that.

SCHARFF: That's quite a lot of people.

MENDIRATTA: Yes.

SCHARFF: It's hard for somebody, I guess, from outside to look at the elections here and say that that is justified.

MENDIRATTA: Actually, I think somewhere something gives how many hamlets were identified and how many people were identified. I'm not able to now—but I think I can give you that. If you give me some time, I will give you some ideas as to how many people were bound down under the various preventive provisions. Then how many villages, etc., were identified. I can give you that figure.

SCHARFF: That would be really wonderful. Would most of the people who are bound down then be released immediately after the elections?

MENDIRATTA: Normally, after the election what happens—. Our jurisdiction is very limited. Basically, they may be binding them down for a particular specified period—that during this period you will not do any such thing. So that will be almost a period covering election time.

SCHARFF: So it is not up to the Election Commission at all, how long they're bound down for or how long they remain in jail?

MENDIRATTA: Normally, maintenance of law and order is the state's subject in our constitution. It is for the police administration to see to those who are mischief makers—the areas which are prone to this intimidation, and the people who can create mischief. It is their job, basically. During the election period, we also become their overseers. We ensure that all the steps which they can take under the law—that they should do them. Otherwise, throughout the year they are supposed to do that. But during the election period, we insist on the implementation of those provisions, so they become effective.

I'll just give you a very small example. If you go around Delhi, you will find hundreds of posters being pasted on the walls. Just some college institution or some marriage or somebody saying that you come to me as a doctor and I'll treat all your problems; some astrologer, some people propagating for some matrimonial services. You will find all these. You must have seen them.

SCHARFF: Yes.

MENDIRATTA: That is, under the law, defacement of the property. Nowadays, you find it. But during an election period, you will not find even a single poster on any wall in Delhi—because we give very strict instructions that if we find anything on the wall, the police officers will have some problems. So during that period—absolutely—you will find Delhi very clean. But during the nonelection period, we can't just tell the police, "Now—." So even the courts have remarked in several

cases, "Why are you so active during the election period and then become inactive during the nonelection period. "

SCHARFF: I'll just ask one more question on this topic of the arrests because I think it is fascinating. I think legal scholars are always looking at it. What assurance can you give to that the arrests are justified?

MENDIRATTA: Naturally, if somebody has been unnecessarily harassed, they will make a complaint. They will not just simply pocket it. At least I am not sure whether any serious complaints are coming to the Election Commission.

SCHARFF: Are the complaints documented?

MENDIRATTA: Yes, every complaint is documented.

SCHARFF: Roughly how many complaints do you receive about unlawful detentions?

MENDIRATTA: Not many, I would say. Very, very few. Sometimes they may be making some complaints at the state level, or the district level. At the Commission level, very few complaints have come.

SCHARFF: So most of the people who are bound down are being bound down for an actual reason. Can I just shift to ask you: At the end of the day, when the elections are done, what sort of reviews are there in place to analyze? Let's take the 2009 General Assembly elections. What is the review process here at the Election Commission like? Do you sit down and look at what happened state by state? Do you sort of draw up a list of things that were done well or things that could be improved upon? How do you learn from your experiences?

MENDIRATTA: Actually, after every election we hold a conference of the chief electoral officers, and we ask for the problems which they faced. And if any problem which they faced needed immediate attention, how did they tackle that one? So that can be shared with the others. Other things also—what we call sharing best practices. We undertake reviews as to whether any state had any specific problem, so that in the future that aspect is kept in mind whenever we hold an election in that state or in that area. All these things are reviewed.

Now we have even started holding regional meetings. We have, for that purpose, six regions. In our own internal functioning, we have divided the country into six regions: north, east, west, south, and then northeast and central. So we hold regional meetings and now, just on Nov. 29 and 30, we are going to have the meeting of the north region. Normally, for these regional meetings, the Commission goes to those regions. All those chief electoral officers and the district election officers, etc., who did some good job are invited to the symposium. They come and tell us what they did in a particular area, a particular constituency—what special things they did—so the others can learn from their experience.

Now, on the 29th and 30th we are holding a meeting of the north region. That will mean Haryana, Punjab, Chhattisgarh and Himachal Pradesh. And of course Delhi also will be there. I think Uttar Pradesh. So all these, with the prominent district election officers, S.P.s, etc., will be there.

SCHARFF: The chief election commissioner?

MENDIRATTA: Yes, all three commissioners will go.

SCHARFF: And they'll do the same in all the regions?

MENDIRATTA: Yes, all three commissioners will go, and the deputy commissioners, etc.—we'll all be moving there.

SCHARFF: So every year?

MENDIRATTA: Every year, rather, we hold elections in the regions; now we have started holding regional meetings every year. So there will be six meetings in a year, in the regions, apart from one or two meetings at the central headquarters where everyone will be invited.

SCHARFF: Then you also mentioned in our previous conversation there is a meeting every day here between the—?

MENDIRATTA: Yes, normally, when the commissioners are here. Normally from 11:30. Just now the meeting ended at 2:30 or so.

SCHARFF: And it is attended by the chief election commissioner—?

MENDIRATTA: Yes, all the three election commissioners are there.

SCHARFF: And then yourself?

MENDIRATTA: The deputy election commissioners and the two directors-general.

SCHARFF: That's sort of a brainstorming session; you talk about the issues at hand. What are the things that might be discussed?

MENDIRATTA: For instance, any special problem which we have to tackle for the sixth round of elections in Bihar. And then after that, the counting will take place. So any special thing to be done for counting to ensure that the counting is done properly. All these things—they were discussed.

SCHARFF: So after the 2009 general elections what sorts of discussions were there about the vulnerability-mapping exercise? Were there suggestions for how it could perhaps be improved? Was everyone just happy with how it went and there was no need to modify or adjust? There is a memo—.

MENDIRATTA: Actually, some minor things may have to be done. But practically, the roadmap was laid down in 2009, etc. Same thing was done for Maharashtra, which went to the polls after the general election to the Lok Sabha in 2009. The same thing has been done now in Bihar. And a similar exercise—we have already in a way given instructions—should be carried out in the five states which are to go to the polls the next year.

SCHARFF: You showed us in our last meeting that there is a document which is available on the Website—people listening to this can look it up—that was actually authored by Mr. K.N. Bhar at the time which outlines the specific steps that the CEO should take in vulnerability mapping.

MENDIRATTA: Yes.

SCHARFF: So that was issued in October of 2007, I believe. So after the 2009 election, were any of those A, B, C, D, E guidelines modified or changed?

MENDIRATTA: There may have been some. I'm not really sure which particular sentence we corrected. Usually, when we reiterate those instructions for the next election, some drafting changes—some minor modifications—may have been carried out.

SCHARFF: Is there an updated copy or revised copy available for the public?

MENDIRATTA: I'll have to find out from the Website. That may be available on the Website.

SCHARFF: Just as we bring ourselves to a conclusion, I'm curious, the question often comes up, how do you measure success as an Election Commission official? How do you know that this mapping exercise was successful?

MENDIRATTA: We do not lay down any yardsticks to measure our success. We don't say that out of 10 points, this is how much we should give to our success—because that depends on the people's perception, political parties' satisfaction.

SCHARFF: But if the political parties are happy, if the voters are happy, you're happy.

MENDIRATTA: If the voters are happy, the political parties are happy, the media is happy, the judiciary is happy—they have not had to interfere in our decisions—we are happy.

SCHARFF: How do you know that the political parties and, most importantly, the voters are happy? Are there surveys? Does the Election Commission undertake focus groups or—?

MENDIRATTA: We don't take any special survey, because undertaking any survey will mean money, and why should we pay to any organization to conduct a survey of what we are doing. We are reading the newspapers every day. So if any political party or if any person has any grievance, the newspapers, the media channels will all reflect that.

SCHARFF: It certainly informs what is discussed at the meetings.

MENDIRATTA: The surveys are all state managed, so we can always engage an agency which may give us a 10 out of 10. But that is not the real barometer of our success.

SCHARFF: And as far as the observers?

MENDIRATTA: See, I'll tell you. The test of success is how the critical parties have taken the result. If an outgoing chief minister congratulates the incoming chief minister, saying that here we have lost and here is now the chance for you to take over, that means that people are happy. People have been able to exercise their franchise as they wanted. If some political party, after losing, says thank you very much, you have done your best, then that is a matter of satisfaction for us.

I'll just give you one example. In the last general election in Rajasthan—that was held last year in October or something—one particular leader of a very prominent party was expecting to become the chief minister, because he was expecting his party would come out fairly well. He was expecting to be the chief minister. He lost the election just by one vote in the constituency. And he said that because the voting took place by voting machine, there was no problem and the result only had to be re-checked at most. Then there were a few postal ballot papers, which are cast by people on election duty or those who are working in services. So he only made a request that at least we please recheck the postal ballot

papers. That was done. The result was the same. So he just lost by one vote. He thanked the chief electoral officer, saying, "Thank you for all that which could be done; I gracefully accept." He lost the chance to become the chief minister.

SCHARFF: In some ways the Election Commission has made it harder to cheat.

MENDIRATTA: Yes. What I want to say is that he was quite satisfied the way the election was conducted.

SCHARFF: And that to you is success.

MENDIRATTA: Even after losing, if he says, "Thank you very much for what you have done. I have lost"—that is the measure of our success.

SCHARFF: Observers are posted to the different constituencies. How do you decide who becomes an observer. I know they're pulled from the Indian Administration Services, but what is the process?

MENDIRATTA: I think I told you the other day that we make an assessment as to how many observers we need, and then we write to the Department of Personnel and Training, which is the controlling authority for all services, all India services. We tell them that in Bihar—243 assembly constituencies—we want to post one for at least every constituency. Then, in addition you give us at least 50 others, or maybe 60, for reserve. Somebody may have to be replaced; somebody may have to go on leave for certain reason. So we just ask for some reserve. Then they give us the list. Out of that list, we train everybody. All those people are trained, because before they proceed to that state they are all giving training here.

SCHARFF: In Delhi?

MENDIRATTA: Yes. And in that training, of course, we tell them what the special things are to be seen in that particular state, what arrangements we have made. Then we post. Some people we keep in reserve, some people are actually posted on duty.

SCHARFF: But do these individuals have a choice if they want to be an observer or not?

MENDIRATTA: No, they have no choice.

SCHARFF: The Indian Administrative Service—the Department of Personnel—.

MENDIRATTA: No, they have no choice. Once the name comes to us, if they have any problem, we tell them your state government or your Department of Personnel has given us your name. If you have any problem, you go to them. We will exempt you only if they give us a replacement for you.

SCHARFF: OK, and the decision on how many to put in each state is taken by?

MENDIRATTA: Basically, of course, it is for us to decide how long they will be staying there.

SCHARFF: "Us" is who?

MENDIRATTA: The Election Commission. When I say "us," I mean the Election Commission.

SCHARFF: Meaning the chief election commissioner and the two election commissioners.

MENDIRATTA: Yes. Nowadays, an observer goes to the constituency by the last date for making nominations. He has to be there on the last day for making nominations in a constituency. He goes to that constituency and stays there until the poll is over, including the re-polls. So he has to be there. And suppose we are taking the count after a gap of a day or two or three; then he has to stay until the counting is over.

But suppose there is a gap between the completion of the poll in his constituency and the counting; then he can come back. A day prior to the day of counting, he has to report back. For instance, in Bihar now, we are holding elections in six phases. So the observers who have gone for the sixth phase will be staying until the completion of the counting. But those who went for the first phase, second phase, third phase—after the completion of polling in those areas, they have come back. Again we are counting on the 24th of November. So by the 23rd of November, everybody will be there in his constituency.

SCHARFF: Interesting, I just have one final—.

MENDIRATTA: So it comes to about 20 days, 22 days that they have to be in the constituency.

SCHARFF: Would you reuse observers from one year to the next?

MENDIRATTA: Yes. Actually, some of the observers may have done their job seven, eight, ten times.

SCHARFF: And that's because after they do one they're allowed to continue to do them, or their number just gets called again?

MENDIRATTA: No, every time the state government and the Department of Personnel will give us the names. We have told them that one man should not be picked up for every election, so they make their own selection and see that a person is not repeated every time.

SCHARFF: But if someone does a good job—?

MENDIRATTA: Yes, sometimes we pick up; we may pick up and specifically say we want these people, yes.

SCHARFF: I just have one final question then. I do appreciate all of your time. If the vulnerability mapping had not been put in place when it was, how would elections be different today?

MENDIRATTA: Elections would have been different because the muscle power may not have been properly controlled. The whole purpose of this mapping is to control the muscle power. We have seen in some countries this practice of vote buying. I have been in some workshops where they say vote buying in those countries means a positive vote buying—you pay some money to buy the votes of some people, so that they come and vote for you. Here, as I said in one of the workshops, we have also the practice of negative vote buying. We will pay some money to some people to see that some group of people or group of villagers is not able to come. That is the muscle power. The musclemen are paid—previously were paid. Now they feel that we have deprived them of their professional fee. They used to wait for the elections; now they are out of a job. They have a grievance against us.

SCHARFF: So that wouldn't mean that they would come back for retribution—is that a concern if they have a grievance?

MENDIRATTA: No, at least not those people. But we are not afraid of retribution by them against us. We are worried that the people in the constituency, in the villages, should not suffer.

SCHARFF: Thanks very much for your time.