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VOLUME 56 NO 2

- 3** **TERRORISM AND RULE OF LAW**
Prakash Singh IPS (Retd.)
Formerly Director General BSF
- 8** **LEADERS BUILD BRIDGES**
TGL Iyer IPS (Retd.)
Ex-Director General CRPF
- 11** **BAHUDHA AND THE POST - 9/11 WORLD**
BP Singh IAS
Former Union Home Secretary IGNCANew Delhi
- 23** **INTERNAL SYSTEMS OF POLICE PERFORMANCE ASSESSMENT:
EXISTING PRACTICES IN INDIAN POLICE**
Prof (Dr) NR Madhava Menon
Director National Judicial Academy Bhopal
- 29** **ARMED FORCES SPECIAL POWERS ACT AND HUMAN RIGHTS**
A Romenkumar IPS (1982 : M/T)
IGP (Training & Human Rights) Manipur
- 39** **GROWING ORGANISATIONS : THE ART OF IMAGE BUILDING**
AP Maheshwari IPS (1984 : UP)
DIGP (Admn) CRPF New Delhi
- 43** **VoIP : THE EMERGING PROBLEM OF ILLEGAL COMMUNICATIONS**
Arun Kumar Ramnish IPS
DIG CBI New Delhi
- 48** **CHILD PROSTITUTION IN SOUTH MUMBAI : EXPERIMENTING WITH
UNORTHODOX METHODS OF CONTROL**
Nawal Bajaj IPS (1995 : Mah)
Deputy Commissioner of Police Mumbai
- 53** **CRYPTOGRAPHY - THE SCIENCE OF HIDING INFORMATION**
Muktesh Chander IPS (1989 : AGMUT)
Deputy Inspector General of Police CID Panji Goa
- 58** **NDPS ACT - LEGISLATIVE LOOPHOLES**
BD Agarwal
District Judge Sivasagar Assam
- 63** **INNOVATIVE POLICING SCHEMES IMPLEMENTED
BY KOLKATA POLICE**
Tumpa Mukherjee
Guest Lecturer, Department of Sociology Scottish Church College Kolkata

Jan - June 2003

Jan - June 2003

Academy Journal

VOLUME 56 NO 1

- 3** **CORRUPTION IN INDIAN POLICE**
KV Thomas
DCIO SIB Trivandrum
- 10** **DOES THE INDIAN POLICE NEED AN ETHICAL FRAME WORK**
Jayanto N Choudhury IPS (1978:A&M)
Joint Director/NE SIB Shillong
- 14** **MALIMATH COMMITTEE**
PR Parthasarthy IPS (Retd)
- 19** **COMBATING THE DRUG MENACE BY COMMUNITY PARTICIPATION**
N Venu Gopal IPS (1995:HP)
Assistant Director SVP National Police Academy Hyderabad
- 23** **FROM THE HILLS OF MT. ABU TO THE ROCKS OF HYDERABAD**
AK Abrol IPS (1972:WB)
Inspector-General of Police Intelligence Branch West Bengal
- 26** **ECONOMIC OFFENCES CODE - NEED FOR EARLY LEGISLATION**
Amiya K Samanta IPS (Retd)
- 34** **NEW DIMENSIONS TO POLICE LEADERSHIP**
1974 Reunion Seminar Report
- 38** **COMMUNITY POLICING**
Ashish Gupta IPS (1989:UP) & P M Mohan IPS (1987:MP)
Deputy Director SVP National Police Academy Hyderabad
Deputy Inspector General of Police Madhya Pradesh & Research Fellow SVP NPA
- 42** **TRAINING AND NON-TRAINING METHODS**
FOR CREATIVITY AND LEADERSHIP DEVELOPMENT IN POLICE
Dr AK Saxena & Avantika
Reader (Training Methodology) SVP National Police Academy Hyderabad
Management Trainee Reliance Industries Mumbai
- 46** **CENTRAL POWER OF MAN : HIS OWN NATURE**
TGL Iyer IPS (Retd)
Former Director-General CRPF
Director Bharatiya Vidhya Bhavan Nagpur
- 49** **WALKING**
RR Varma IPS (Retd)
Former DGP Himachal Pradesh
Former Chairman Himachal Pradesh Public Service Commission
- 52** **CRIMINAL JUSTICE AND SCIENTIFIC CRIMINOLOGY**
Prof R Deb IPS (Retd) PPM
Advocate High Court Kolkata Ex-Principal Surendranath College Kolkata
- 54** **FORENSIC GEOLOGY**

TERRORISM AND RULE OF LAW

Prakash Singh

Terrorism has today become the greatest threat to world peace and particularly to India's national security. Its internal dynamics and external linkages are assuming menacing proportions with every passing year.

The terrorists have been hitting soft targets all over the world after the havoc caused on September 11, 2001. Indonesia was rattled by the destruction of the night club in Bali Islands on October 12, 2002, killing nearly 200 people and wounding another 300. In the African continent, there were simultaneous attacks on Israeli tourists in Kenya : a car bomb exploded at an Israeli-owned hotel on November 28, 2002, killing 14 people and wounding 80; minutes earlier, missiles narrowly missed an Israeli Arkia airliner carrying 261 passengers as it took off from the nearby

Mombasa Airport. The terrorists struck in Casablanca (Morocco) on May 16, 2003, when the suicide bombers attacked five sites including a Jewish community center, a Spanish club, a large hotel and the Belgian Consulate, killing more than 40 people. Turkey was targeted on November 15, 2003, when car bombs exploded outside two synagogues in Istanbul during prayer time, killing 12 and injuring 257. The Jews were the target. On March 11, 2004, the terrorists struck in Spain, taking jihad to Europe. There were powerful explosions in four commuter trains in Madrid as a result of which 199 persons were killed and over 1,400 injured. It was Europe's deadliest act of terror after the Lockerbie bombings. An affiliate of Al Qaida, Abu Hafs al-Masri, which took responsibility for the bombings, described Spain as part of the 'Crusader

Alliance' led by the US. Saudi Arabia has been attacked by the terrorists repeatedly to give vent to their anger over the royal family living under the protective umbrella of the US. On May 29, 2004, gunmen attacked a complex housing oil workers in the eastern city of Khobar, killing 22 people. A disconcerting feature of the incident, for which Al Qaida claimed responsibility, was that the gunmen separated the Muslims and Arabs and killed the non-Muslims only. Those killed included 10 Indians, who were described as "among the murderers of our Muslim brothers in Kashmir".

Recently, on September 1, 2004, terrorists held 1,200 hostages, most of them children, in a school in the Beslan town of the North Ossetia province of Russia. Their demand was that Russia should withdraw from Chechnya. The Russian commandos stormed the school on September 3. In the exchange of fire and the explosions, 338 persons including 155 children were killed. All the 26 terrorists were also eliminated. This was the first major incident where children were targeted.

The threat potential of the Al Qaida actually remains in tact. The International Institute of Strategic Studies, in its latest survey for the year 2003-04, estimated that despite losses around the world, the Al Qaida has 18,000 potential terrorists spread over more than 60 nations around the world.

In India, the terrorists have attacked major targets including the icons of the Indian State: the Red Fort on December 12, 2000; the J&K Assembly on October 1, 2001; the Indian Parliament on December 13, 2001; the Akshardham Temple, Gujarat on September 24, 2002, and the Mumbadevi Temple and the Gateway of India in Mumbai on August 25, 2003. Jammu & Kashmir continues to be their main target.

COUNTERING THE THREAT

A multi-pronged approach is needed to tackle the terrorist threat. The systemic causes must be addressed. A proper policy to combat terror should be formulated. Appropriate laws should be enacted. There should be regional as well as international cooperation among the countries. India's National Human Rights Commission has maintained that-

"..the war against terrorism must be fought boldly and won. But this duty, for all of the difficulties it entails, must be accomplished in a manner that accords with an uncompromising adherence to the provisions of the Constitution of our Republic, the laws of our land, and the relevant international instruments, including those on human rights, to which India is a State party."

Kofi Annan, the UN Secretary General, has also said that -

"Respect for human rights, fundamental freedoms and the rule of law are the essential tools in the effort to combat terrorism".

RULE OF LAW

What do we precisely mean by the Rule of Law? It represents a culture of order' and, as stated by Guy S Goodwin-Gill, stresses the 'virtue of rules' - the legality, certainty, consistency, uniformity, congruence to purpose, accountability, and the principle that law itself should be exercised in accordance with certain substantive and procedural standards of justice. Two important features of the rule of law are: (i) equality before law and that (ii) there should be no punishment except for breach of law.

Sir Ivor Jennings, the British constitutional expert, summarized the

essential ingredients of the rule of law in the following words:

"No man (or woman) may be arrested by a policeman unless he has broken the law, nor be kept in prison unless a magistrate or a judge and jury have found him guilty of an offence; nor may he be deprived of his property except by a legal proceeding and then only on payment of compensation; nor may any government official push him around unless the law says he may, and then only if the official strictly obeys all the legal formalities and makes certain that the man has a square deal."

ANTI-TERRORISM LAWS

The US and the UK have both effective anti-terrorism laws. In the United States, following the terrorist attacks on 9/11, President Bush approved, on October 26, 2001, the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism* (USA PATRIOT ACT) Act of 2001 to deter and punish terrorist acts in the United States and around the world. The Act gave sweeping powers to domestic law enforcement and international intelligence agencies. Its salient features include -

- ◆ modifying the procedures which protected the confidentiality of private telephone, face-to-face and computer communications;
- ◆ easing some of the restrictions on foreign intelligence gathering and affording the intelligence community greater access to information unearthed during criminal investigation;
- ◆ reinforcing federal efforts to curb money laundering through regulations, criminal sanctions and forfeiture;

- ◆ preventing alien terrorists from entering the United States and enabling the authorities to detain and deport them and those who support them;
- ◆ creating new federal crimes for terrorist attacks on mass transportation facilities, for biological weapons offences, for harboring terrorists, for giving material support to terrorists, and for fraudulent charitable solicitation; and
- ◆ enhancing penalties for acts of terrorism and for crimes which terrorists might commit.

The US President also signed a Military Order on November 13, 2001, authorizing the detention, treatment, and trial of certain non-citizens as part of the war against terrorism. It stated that the terrorist attacks on September 11, 2001 had created a situation where it was “not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts”.

UK already had *Terrorism Act, 2000* with a comprehensive definition of terrorism. In the wake of 9/11, another *Anti-Terrorism Crime and Security Act, 2001 (ATCSA)* was passed which is even wider in scope and includes provisions for additional powers to the police, measures relating to information sharing and security of airports and laboratories. The ATCSA further empowers the Secretary of State to ‘certify’ an individual as an international terrorist if the Secretary of State “reasonably” (a) believes that the concerned individual’s presence in the UK is a “risk to national security”, and (b) “suspects that the person is a terrorist”. Upon certification, a non-UK national can be detained without charge or trial for an unspecified and unlimited period of time if the

concerned individual’s removal or deportation from the UK cannot be effected.

In France, the National Assembly approved a series of amendments on October 31, 2001 to a larger Security Bill giving police expanded powers to search private cars, monitor communications and heighten security in public places.

The European Union has an arrangement for issuance of a common search and arrest warrant for wanted terrorists which would be valid in all the EU nations and provide a minimum penalty of 20 years for the worst terrorist crimes. The Union has also set up a powerful anti-terrorist unit within Europol, Europe’s police investigation organization.

Japan passed an *Anti-Terrorism Special Measures Bill* on October 29, 2001 to support the efforts of the international community for the prevention and eradication of international terrorist acts.

ANTI-TERRORISM LAW IN INDIA

The Law Commission of India, an advisory body headed by a former judge of the Supreme Court, recommended in April 2000 the adoption of a law designed to deal firmly and effectively with terrorists and their activities. When the very existence of a liberal society is at stake, they opined, drastic measures meant to strengthen law enforcement and the maintenance of public order are a necessary evil.

Accordingly, the *Terrorist and Disruptive Activities (Prevention) Act of 1987*, or TADA was enacted in 1985. The Act gave stringent powers of search and seizure to the police, which could indict any person, who would then be tried by a special court according to special procedures. In these trials, the normal safeguards ordinarily available

to an accused in a liberal society would be given a go by. There were instances of TADA being misused for political purposes. The Supreme Court nevertheless upheld its constitutional validity in *Kartar Singh vs. State of Punjab (1994)*, considering that the country was in the -

“firm grip of spiraling terrorist violence and is caught between deadly pangs of disruptive activities... Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children and reducing those areas into a graveyard. Deplorably, determined youths lured by hard-core criminals and underground extremists and attracted by the ideology of terrorism are indulging in committing serious crimes against the humanity.”

TADA was eventually allowed to lapse in 1995. Subsequently, the country was witness to major terrorist incidents. These included hijacking of the Indian Airlines flight IC-814 to Kandahar in 1999 and the assault on the Parliament on December 13, 2001. The government was thereafter obliged to enact the *Prevention of Terrorist Act 2002 (POTA)*.

POTA was also criticized on the ground that it gave extraordinary powers to the law enforcement agencies which were misused. It was also argued that the existing laws of the land were adequate to deal with the problem of terrorism. If a law is to be scrapped because it is misused, then perhaps most of our laws will have to be dumped in the Indian Ocean. The proper approach in such cases is to punish those who misuse the law. MN Venkatachaliah,

former Chief Justice of India, when asked whether POTA should be scrapped, said that what was necessary was regulation and not the scrapping of POTA.

The amended Unlawful Activities (Prevention) Act will have a “milder” definition of terrorism and it will exclude provisions of POTA which placed the onus of proving innocence on the accused and the admissibility of confession made before a police officer as evidence.

It is necessary to place on record that POTA had diluted many provisions of TADA : the period in police custody was reduced from sixty to thirty days; the period of judicial custody was brought down from one year to 180 days; and the minimum punishment was scaled down from five to three years. And now, we are going to have an even milder Act. Has the terrorist threat abated?

There is presently a controversy in the country over the Armed Forces (Special Powers) Act, 1958 also, and there is a fierce agitation in Manipur for its repeal. The Act gives enormous powers to “any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces” to fire upon or otherwise use force even to the causing of death, destroy any arms dump or fortified position, arrest without warrant any person, and enter and search without warrant any premises. The personnel are protected against any prosecution, suit or other legal proceedings, which may be instituted only with the previous sanction of the Central Government. The Centre has, while repealing POTA, turned down the demand for the repeal of a far more stringent Act.

INTERNATIONAL CRIMINAL COURT

The International Criminal Court was created by the Rome Statute

in July 2002 to try individuals for genocide, war crimes, crimes against humanity, and the crime of aggression. The statute did not recognize any immunities and, therefore, even heads of state, traditionally insulated from prosecution, could be brought to justice for committing atrocities when their countries were unable or unwilling to address the crimes at the national level. Eighty nine countries have so far ratified the Rome Statute. The notable countries who have not endorsed the Statute include the United States, Russia, China and even India.

The United States had initially signed the Rome Statute but the Bush Administration refused to ratify that. The US took the stand that the Statute was unacceptable, unless it exempted the American service personnel and American civilian officials from prosecution. Other countries also have reservations about the role of the ICC. With these teething problems, the ICC has not been able to make any contribution so far in trying the international terrorists.

It would have been ideal if the international terrorists were treated as violators of the international law. As observed by Frank K Kelly and Robert B Laney -

“To try the terrorists as violators of international law would help to establish a global policy for overcoming terrorism. It would demonstrate to the people of the Earth - including all countries that may harbor terrorists that crimes against humanity shall be punished on the high principle of protecting people from violence originating anywhere on the Earth. It would not contain any element of ‘revenge’ or pit the West against the East, or the powerful against the poor”.

But that, unfortunately, is not happening. Osama bin Laden and 15

others stand indicted for their roles in the September 11, 2001 outrage and the US Embassy bombings in East Africa in 1998. The charges against them should, strictly speaking, be filed in the International Criminal Court, but with the US staying out of the exercise that possibility is ruled out. One alternative would be to establish an ad hoc tribunal on the lines of the international tribunal operating for countries of former Yugoslavia.

Slobodan Milosevic, the former Yugoslav president, is currently being tried by an International Criminal Tribunal at Hague. He faces 66 charges of war crimes, crimes against humanity and genocide. These charges relate to killings and torture on a huge scale spread over ten years during the conflicts in Croatia in 1991-95, in Bosnia-Herzegovina in 1992-95 and Kosovo in 1999.

NEED TO STRIKE A BALANCE

The Amnesty International, in May 2003, charged that, “the war on terror, far from making the world a safer place, has made it more dangerous by curtailing human rights, undermining the rule of international law and shielding governments from scrutiny”. Again in its Report 2004, it said that:-

“The global security agenda promoted by the US Administration is bankrupt of vision and bereft of principle. Violating rights at home, turning a blind eye to abuses abroad and using pre-emptive military force where and when it chooses has damaged justice and freedom, and made the world a more dangerous place.”

The International Federation for Human Rights (FIDH) has also criticized the US for the PATRIOT Act and UK for the Anti-terrorism Act, and said that these laws constitute “serious violations

of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) as they prevent non-nationals from the full enjoyment of basic human rights". The Acts also violate Article 26 of International Covenant on Civil and Political Rights as they create discrimination on grounds of national origin.

In India, the government has already repealed POTA and is in the process of enacting a milder legislation.

The Supreme Court of India in *Indira Gandhi vs. Raj Narain* rightly observed that "the major problem of

human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty become license". It would appear that we need to strike a balance between the security concerns and the human rights considerations. The regulatory and monitoring mechanism which help deter, identify, and track terrorists have to be there, but these should not seriously jeopardize the liberty and freedom of the citizens. The balance should be such which, on the one hand, does not fetter the initiative of the security forces, maintains their morale and generally gives adequate latitude to the government to undertake anti-terrorist operations and, at the same

time, ensures that the laws of the land are observed and the human rights are by and large upheld. Amartya Sen, the Noble laureate, while speaking at a function organized by the UNDP (Aug. 2000) in New Delhi, said that the prevention of a larger violation of human rights might justify the curtailment of some rights. Lord Denning was also of the view that when the state is endangered "our cherished freedoms may have to take second place." The balance may appear difficult but is certainly achievable once we realize that terrorism *per se* is a crime against humanity and that the larger interests of the country and its people as a whole are more important.

*The power of little things
to give instruction and happiness
should be the first lesson in life,
and it should be inculcated deeply*

RH Conwell

LEADERS BUILD BRIDGES

TGL Iyer

You can't teach leadership to others unless you have it yourself. A CEO (Chief Executive Officer) was asked once: "Are you afraid of losing control over the organisation and the people, who work with you?" His reply was typical: "I never had control and I never wanted it. If you create an environment where people truly participate, you don't need any control. They will know what needs to be done and they will do it. When people devote themselves to your cause voluntarily, willingly, you don't need hierarchies and control mechanisms".

The story of the three stonecutters is popular in management circles. When a visitor asked the first stonecutter what he was doing, his reply was: "We have been doing it for generations. My father and grandfather were stone-

cutters". The visitor asked the same question to the second one and the reply was : "I am earning my livelihood as I have a family to maintain". When the visitor asked the third one, he replied: "I am building a Temple". That is commitment to a cause and every leader has it or must have it.

The second quality we find in a leader is VISION and MISSION. Well, 'Vision' is a picture or image of the future we seek to create. 'Mission' provides an orientation, not a checklist of accomplishments. It defines a direction, not a destination. It tells a group that they are working together. Without Mission, it is difficult to define or describe, why some intended results are more important than others? Some individuals make a 'Mission Statement', which can be called self-briefing, to

regulate their actions and behaviours to achieve something. An organisation can also have a 'Mission Statement' which will raise the standards of the employees behaviour, to achieve a common goal. Result-oriented leaders have both Vision and Mission. A Vision instills passion and Mission takes you to the destination to create a future.

The third virtue of the leader is 'Curiosity'. Questions are asked when you don't have the answer. There is a story of a Chief Executive, who wound-up the meeting saying: "If everybody thinks alike, there is nothing to discuss. When you ask questions, you can search for an answer". Somehow many pseudo-leaders pretend that they have the answers to all the problems. That is a myth. A real leader would admit mistakes and convert them into Virtues and Assets. Once, the Vice President of the IBM, made a costly mistake, which caused a loss of ten million dollars. He was summoned by the President. The Vice-President said: "You have called me to demand my resignation, perhaps". The President said: "What a silly notion? We have just now invested 10 million dollars to get better returns". The Vice-President, worked on a new project and in a year's time generated a profit of twenty million dollars.

We live in changing times. 'Flow with the change' is the slogan of a modern leader. For example, instead of a one party-rule in the Center and the States, coalitions have come to stay. Elected representatives share power; differences occur which lead to adjustments and compromises. But the main principle should be not to compromise values and principles, not to deny benefits from flowing to create the welfare of the people; but substituting personal-welfare with people's welfare; and galvanizing change to create progress. Experts say that producing change is 80 percent leadership and 20 percent management.

When this is reversed, progress slows down and comes to a halt. The fourth virtue of a leader is bringing about productive changes.

Imagine the Finnish '130 year old company' called NOKIA, which was a loss-making conglomerate. When JORMA OLLILA, the CEO, look over in 1992, it was in a bad shape. The company was restructured and activities rationalized. The CEO focused on building-up competencies in mobile telephony and in three years time (1992-95) captured 20 percent of the world market and sky-rocketed the company into an 8 billion profit-making conglomerate. All this happened because of 'change'.

The fifth virtue is INNOVATION, injecting new passions and putting the minds of employees on the 'Path of Evolution'. More an individual experiments and commits mistakes, more he will learn to do things better. There are the popular lines of EUGENE BRICE, a preacher of KANSAS, USA, who said: "I was never defeated in a Tennis Tournament : I never lost while running for an office; I was never choked while singing a SOLO; all this happened because I never tried any of them. Only those, who try face the risk of failure". So try, and try and in the end you will succeed!

The sixth virtue is 'Managing Talent'. To do that, the leader has to be a keen observer and judge. Everyone cannot notice talent. In fact, experts say that when you connect with a talent in another, then you have it already. It is a question of discovering a partner to jointly use the talent to ensure progress. The leader develops the capacity 'to fix the proper talent at the proper point'. You can't ask a doctor to do an engineering job or an economist to fight a war. The skill of the leader is to diagnose and utilize the talent of his colleagues or subordinate to get the maximum return.

The seventh virtue is 'empowerment'. For instance, I am working in an organisation at a certain level of decision-making. If you ask me whether or not I am empowered, the answer is yes. Do I make decisions on my own: Yes I do, Am I equal to the Chairman? Certainly not! Does that bother me ? No! Why? Because I accept the Japanese method of empowerment, which says: "You outrank me; yet you have chosen to listen to my views. I am honoured". The Indian version is : "Do what I say and don't argue".

The leader aligns action with values. In other words, he synchronises them. Creating alignment is a two-part process. First part is identifying and correcting misalignments. The second part is creating new alignments, which may be again called "Providing mechanisms with teeth". For example, when an employee enters a company, he should get orientation during the first 24 hours about the history, philosophy, tradition and the future plans of the company. That may be called "Providing Teeth" or alignment mechanism. In another instance, if a teacher joins a school, he or she should know about the past, present and future of the school to align all actions to the values the school has built-up over the years. Therefore, alignment of action with value is the eighth virtue of a leader; it may be the CEO or the Principal of the school!

The ninth quality is 'self-learning'. Ultimately, no one can teach anyone everything. Some they learn in the school; some from life; and some they learn from others. For example, books provide lot of insight and information but realize that books are only catalysts igniting the talent and skill you already have. Books don't teach anything; they create awareness. The response of the reader should not be, "Why I did not know it before?, but I know it now since that was a wake-up call".

Lastly, there is the question of developing leadership qualities in other which, of course, requires three things 1) a teachable point of view 2) a story or history of the organisation and 3) a well-defined methodology for teaching and coaching. Also something more is needed and, i.e., E³; emotional energy, enthusiasm and edge. In sum, no one can teach you anything; teachers can only help you in discovering yourself. In America, Martin Luther King, talked about "I have a dream" which mobilized energy around powerful images of social equality; black and white children

holding hands and marching forward. In India, we had a Mahatma Gandhi, who said: "My life is my message". Those five words ignited the minds of thousands to enter the freedom struggle, ready to be imprisoned, ready to sacrifice and ready to be martyred for Mother India. The Mahatma ran a school of leaders and left behind stalwarts to run the country with commitment and dedication.

Look at Nelson Mandela, who for the cause of APARTHEID was in jail for 27 years, came out without

bitterness, became the President of the Republic of South Africa, handed over power to his successor, announced final retirement from public life and walked into the sunset with pride, sense of achievement and without regrets. How many in the world can do it? The greatest tribute to past leaders and leaders in making is to follow their legacy and create new chapters of history for the many generations yet to be born! History never began; it will never end; it will continue!

*The Policeman is denounced by the public,
criticized by the preacher,
ridiculed by the movies and
unsupported by the prosecuting officers and Judges.*

*He is exposed to
countless temptations and dangers,
condemned while he enforces law
and dismissed when he does not.*

*He is supposed to possess the qualifications of
a Soldier, Doctor, Lawyer, Diplomat and Educator
with remuneration less than that of a daily labourer.*

August Vollmore

BAHUDHA AND THE POST -9/11 WORLD

BP Singh

SETTING AND ARGUMENT

The world has witnessed **three** significant events during the past fifteen years¹. Each event has made deep impact on lives of millions of people in the world and on the course of future history .

First, at 06.53 pm on November 9, 1989, a member of the new East German Government announced at a press conference in East Berlin that the new travel plans would be put into force “straightaway, immediately.” Thousands of East Berliners went to the border crossings. At Bornholmer Strasse, the people demanded to open the border and at 10.30 pm, the border was opened there. That moment meant the end of the Berlin Wall. Soon ,other border crossing points opened the gates to West Berlin.

The significance of the Wall extended far beyond the city of Berlin, far beyond Germany. It became an epitome of the partitioning of Europe, the overarching symbol of the Cold War and one of the places where the Western alliance and the Warsaw Pact came gunsight to gunsight. The Berlin Wall had made an indelible impact on global politics, economics and culture during 1945- 89 period and its pulling down since then. The tearing down of the Wall was a dramatic, but a definitive historic triumph that closed the book of an era. It redefined, for the better, the way millions of people would live their lives. It heralded the potential for a profound change in the way people and communities would resolve their conflicts; the way they would communicate among themselves and decide where to invest and where to

¹ 1998 - 2003

travel to pursue their goals. It helped usher in the present era of globalisation and economic integration².

Second, on June 30, 1997, the British returned Hong Kong to the Chinese Government, while we in India were preparing ourselves for the golden jubilee celebrations of India's independence³. The abdication of the British control over Hong Kong indicated the formal end of colonialism -a process which began with India's independence on August 15, 1947, under the leadership of Mahatma Gandhi.

Third, in the morning of September 11, 2001, a group of terrorists hijacked four jets in the US. Two hijacked jets crashed into the 110 storey building of the twin towers of the World Trade Centre in New York and the whole structure collapsed under the enormous heat generated by fire caused by a spreading jet fuel. One hijacked flight crashed into the Pentagon and caused damage to the defence establishment in Washington DC. Another hijacked flight crashed in Western Pennsylvania. This led to the killing of 3100 people including hundreds of people from 70 different countries of several faiths working in America. This sent the entire country into a state of shock.⁴

In the aftermath of the 9/11 tragedy, it became fashionable for every

think tank to frequently meet in order to unravel "What went wrong?" and "Why people hated us (Americans)?" I too strayed into one such meeting barely ten days after the catastrophe. The gathering was impressive, but there was no overcrowding and I got a place almost opposite the Chairperson. The guest speaker had concluded on a sombre note on the need of building of a coalition of nations against terrorism. He also talked of radicalisation of Islam, values of religious pluralism and the need for tolerance. Presentation made, the Chairperson asked for comments and looking at me (there were not many Indians at the meeting), she said that India may have the answer in view of its heritage of pluralism and originality of mind and gave the floor to me. I was really caught as I had gone to listen rather than to participate. **I recall having said then that while India may have the answer, I do not.** I went on to mention the fact of India relentlessly being subjected to terrorist attacks from across the border and with great restraint we were avoiding an armed conflict with Pakistan. It is our belief that the real answer lies in the Pakistani State eschewing support to terrorist groups, and if their behaviour does not change, to firmly deal with them.

The fundamental question facing the world is "How to live?" The need to work for harmony among peoples and for the spread of democratic governance

are widely felt tasks. How could love and compassion be made to prevail over oppression and exploitation? How could people in different countries be made masters of their own destiny?

ORIGINS AND MEANING OF BAHUDHA PHILOSOPHY

India, Egypt, Iraq, Greece and China have been recognised as the five cradles of human civilisation⁵. Among them India and China have maintained their civilisational continuum. Major religions that still survive in the historical order of their appearance in the world are Hinduism⁶, Judaism, Zoroastrianism, Buddhism, Christianity and Islam. Historical enquiries and archaeological findings have clearly established that the 'Vedas' which are the collective designation for the ancient sacred literature of India reflect the ideals of Hinduism and have shaped the nature and content of the early Indian civilisation. Its beginnings are still shrouded in mystery but its composition is now placed at about 1500 BC and may even go back much earlier.

The Vedas are known as Samhitas and are four in number: Rig Veda, Yajur Veda, Sama Veda and Atharva Veda. The Rig-Veda is on the whole the most important as well as the oldest of the four Vedas. Vedic literature was followed

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2. *The author was queen Elizabeth Fellow at Oxford university, UK during 1989 - 90 and was witness to these tumultuous events in Europe.*
 3. *The author was in charge of golden jubilee celebrations of Independence as Culture Secretary, Government of India.*
 4. *The author was executive Director and Ambassador at the World Bank at Washington DC during 1999 - 2002 and was there on 9/11*
 5. *The term civilisation and culture have been used in this paper referring to the overall way of life of people. Civilisation has been viewed as culture writ large. They both involve values, norms, institutions and modes of thinking to which successive generations of people have attached primary importance.*
 6. *The term Hinduism has been used both as religion and as a civilisation. As a civilisation, it is universally recognised, that Hinduism has existed on the subcontinent since at least 1500 BC. Hinduism is more than a religion or a social system. It is the core of Indian civilisation and way of life of the people. Its role is very vital for India, although India has a substantial Muslim community and other cultural minorities. As a civilisation, Hinduism accommodates other world views and it is separate from the Indian State.*

by the composition of two great epics: the Ramayana and the Mahabharata. The Vedas, the Upanishads, the Ramayana and Mahabharata, have been principal instruments in shaping the Indian way of life all these years. This literature, in both prose and poetry, was passed on orally from one generation to the other. Notwithstanding the fact that Sanskrit was the language of the elite, several of the slokas and key expressions became the preserve of the common people and are transmitted from generation to generation through dialogue in local dialects.

The pluralist approach towards all life and every human life is at the heart of India's civilisational endeavours. The Vedas and Upanishads as well as the oral traditions are full of ideals propagating harmonious ways of thinking. All these have invariably emphasised inclusiveness among all people, all societies, all natural objects including water, the earth and the sky. It also talks about unity of mind. This approach has been both an idea and a reality. The existence of plurality as an idea helps us understand our cultural diversity and incredible ethnic, religious and linguistic varieties. As a reality, it enables us to participate in this diversity. In my view, it is not simple tolerance for others' points of view but seeking of understanding. For example, you may not be a good neighbour with tolerance alone. It does not remove our ignorance of one another, it only creates a pre-condition for that.

Purely, from the people's point of view, I find that one attitude that has greatly contributed to the enrichment of Indian life is respect for another person's view of truth with hope and belief that he or she may be right. This has been best expressed in the Rig Vedic hymn which enjoins -

'Ekam Sad Vipra Bahudha Vadamti'*

I imagine this approach of "one truth, many interpretations" was formulated by our *rishis* both in order to understand the complexities of natural objects and their inter-relationships and for harmonious living in society among peoples of many-sided beliefs and practices and each claiming superiority over the other.

* *The full text (and its English version) reads as follows:*

इन्द्रं मित्रं वरुणमग्निमाहरयौ दिव्यः
स सुपर्णो गुरुत्मोन् ।
एक सद्भिर्ग्रा बहुधा वदन्स्यग्निं यमं
मातरिश्चानमाहुः ॥

They have styled (him, the Sun), Indra, Mitra, Varuna, Agni, and he is the celestial, well-winged Garuda, for learned priests call one by many names as they speak of Agni, Yama, Matarsvan.

Him, the Sun — The Sun is Sayana's interpretation: Yaska says Agni: but they are the same, and are the same as all the other forms, according to the texts, Ekaiva va mahan atma devata suoryh, the divine sun is the one great spirit; and Agni sarva devatah, Agni is all the divinities.

The Bahudha approach is central to the generation of an attitude which creates an environment for harmony among communities and religions, harmony between nature and humans, and enables a person to understand another's point of view about life and religion, science and spirituality. Whether one reads India's great national epics or travels through the length and breadth of its sacred geography, one is struck by the fact that neither our literature nor our places of worship emphasise a singularity of approach to truth. The idea of the one in the many is central to this thought process. In historical perspective, this thought has found expression in Emperor Ashok's (273-

232 BC) Rock Edict 12 in a region of Gujarat. It reads:

"The faiths of all deserve to be honoured for one reason or another. By honouring them, one exalts one's own faith and at the same time performs a service to the faith of others. By acting otherwise, one injures one's language, faith and does disservice to that of others".

There can, however, be no conclusion from this that there has been an absence of conflict between different world views in India. On the contrary, major civilisational encounters have occurred in South Asia both supporting and on some other occasions jeopardising the Bahudha philosophy or pluralist approach.

III

INDIA'S FAMOUS CIVILISATIONAL ENCOUNTERS

In its 5000-year-long history, the Indian civilisation has undergone both external and multidimensional internal upheavals. In this epic story, five encounters (among millions) have been particularly significant. The Vedic period (1500 BC and before) witnessed the intermingling of the Aryans with autochthons which made a decisive influence not only on religion and spirituality but also on patterns of agriculture, industry, trade and overall productivity. It was during this period that the core values of Indian civilisation were strongly defined including the approach which called for respect for the other's point of view that is enjoined in Bahudha philosophy. The Vedas and the Upanishads and the great epics: the Ramayana and the Mahabharata (including Bhagavad Gita) came to guide and determine the way of living and thinking of the elite as well as the common people. Besides, there were notable advances in music and medicine, mathematics and astronomy.

The *second* most significant encounter was through the discourses of Lord Mahavira (599-521 BC), the founder of Jainism, and Lord Buddha (566-486 BC), the founder of Buddhism. It came as a breath of fresh air. Both Lord Mahavira and Lord Buddha questioned the established religious orders and presented a rational way of looking at things, emphasising the role of non-violence in human behaviour and ecology.

I have found the encounter between the Vedic philosophy and the Buddhist precepts a highly interesting dialogue of great value in understanding the Indian mind. The fact that Buddha was a Hindu and that he died as a Hindu were significant. It is equally important to know that Buddhism attained its highest expression both in terms of literature and institutions like monasteries and universities in India. The Buddhist world-view generated introspection among the Hindu elite. As a response, a revitalised Hindu society, on the one hand, decried the increasing role of rituals and rigidity of caste structures and on the other, it incorporated Buddha into its pantheon by treating him as an incarnation of Vishnu. Buddhism is anti-caste but allows divisions according to occupation. Hinduism, by adding several occupational categories to already existing castes, assimilated the economic structure of Buddhism without destroying its own.

The greatest loss in my view on account of the 'banishment' of Buddhism from India was to the approach of rationality and scientific enquiry that Buddhism had encouraged. In the long run, the absence of the Buddhist approach encouraged the forces of regression in the Indian society and constricted our capacity to look at different interpretations of a given idea in arriving at a conclusion concerning religion or nature.

The period of decline that began in the economy and polity after the eighth century AD established an empty space that was filled by the Muslim invasions and eventual Muslim rule in India. Thus commenced the *third* encounter - that between Islam and Hindu belief systems.

Islam in a predominantly Hindu society became the religion of the ruling elite for nearly 600 years till it was replaced by the British colonial rule. It imparted among believers of this faith a single God (hence Muhammad, the founder of Islam is called "The Seal of the Boquets" and that no prophets will follow him), a rigid code of worship and a way of living. To its believers, Islam provided a distinct facial expression, dietary system, dress, language, music, system of marriage and divorce, architecture and spirituality. Unlike Buddha, Muhammad would not and could not be accommodated in the Hindu pantheon.

The economic and social principles of Islam in so far as it dealt with property and inheritance, marriage and divorce also came in the way of harmonisation with Hindu marriage and property codes.

There were, however, significant attempts to find a modus vivendi between Islam and Hinduism. It meant that India had to devise a means by which Hindus and Muslims could live together in a society based on different spiritual and social conceptions. In fact, Islam gradually lost its Arabian and Persian identity and absorbed many Hindu folk traditions. The influences from Persia and Central Asia gradually began to coexist with indigenous traditions in languages, styles of dress, music and cuisines of South Asia. The creative genius of the Indian people - both Hindus and Muslims - found unique expression in Sufism and Bhakti literature, in music

and painting, in birth of Urdu language and enrichment of other Indian languages and in architecture and urban centres.

Christianity came to India well before it went to several European countries. But the civilisational encounter began with the entry of Europeans in India and establishment of the East India Company by the British in India. With the spread of the English language and the concept of democracy and rule of law began the *fourth* civilisational encounter and that led to introspection in the Indian society. The religious and social reforms of Hinduism in the nineteenth century were attempts to assimilate these new influences. The divine rights of kings and maharajahs was slowly yielding place to democratic (severely limited to begin with) institutions of governance. The first sign of this political awakening was the inauguration of the Indian National Congress in 1885 that led to a new conception of nationhood and struggle for independence.

Since the end of the last century, another *fifth* great civilisational encounter encompassing all aspects of our living is taking place. This is, popularly known as the information and communications revolution. This revolution is rapidly transforming our ways of communication - which has become enormously rapid, sharing of cultural values as well as products, and disseminating information as well as imparting training. New approaches are on the anvil to raise productivity and to tackle poverty. The Information and Communication Revolution has the momentum and dynamism to catalyse and sustain our development efforts.

To take full advantage of these revolutionary changes, it is required to build a participatory and inclusive ethos by involving all segments of our society. This is surely not too difficult for a society which in the past has

successfully accommodated and assimilated different points of view and in the religious domain itself created images and institutions for 330-million gods and goddesses. In today's India, democracy supports inclusiveness (notwithstanding polarisation on caste and religious lines) and this would be furthered through education and availability of Internet facilities in the major languages of India. This will also mean better governance, a more informed society and market, and prosperity for our people. The fact that this ancient land of Bahudha philosophy is playing an important role in this new civilisational encounter should be for the good of the Indian masses and aspiring citizens in different parts of the world.

IV

TWO FINEST EXPRESSIONS OF BAHUDHA PHILOSOPHY

Our literature, music, visual arts, folklore as well as oral traditions contain innumerable expressions of Bahudha philosophy.

Two finest expressions of Bahudha philosophy among many have particularly enthralled me. The first relates to Buddhism and the second to Tagore, Vivekananda and Gandhi.

One of the finest expressions of Bahudha philosophy could be traced to the doctrine of Gautama Buddha's (566-486 BC) "middle way". According to this doctrine of the golden mean, the correct or right course of action is always some middle point between the two extremes of excess (too much) and deficiency (too little). There is, however, no evidence to suggest that the Upanishads had any direct influence over the 'madhyam nikai' (middle way) doctrine of Buddhism.

It is, however, interesting to note that similar approaches were

propounded in China and Greece in the pre-Christian era. Confucius (550-479 BC) believed in living by what he called the "doctrine of the mean" (Chung Yang or "constant middle"). For every action there are two extremes which must be avoided. What lies the proper distance between these extremes is virtue, and the right way to act. In a similar way in Greece, Aristotle (384-322 BC) developed how this doctrine of the mean is to be applied in determining what course of action is right in a number of different situations.

There is nothing to indicate that Buddha and his 'middle way' doctrine were known to the Chinese savant Confucius or the Greek philosopher Aristotle.

This astonishing agreement in approach among the leaders of three civilisations (Indian, Chinese and Greek) establishes that commonality in findings about truth is independent of race, climate or age.

This Indian doctrine of the middle way has emphasised moderation in all things, accommodation of antithetical points of view, and primacy of a common sense approach over the rest. The doctrine is not without its possible misuses. When misused as one has seen in India, it could lead to decisions that compromise with principles, negate public good, and become so cumbersome that its implementation is not possible (and thus would justify inactivity on the ground).

It is well-established that to arrive at the middle path is not to effect a compromise but to attain a harmonious view among conflicting interpretations. This is a difficult task. At a deeper level it denotes unity of mind and thought.

The unity of thought among Swami Vivekananda, Gurudev Tagore and Mahatma Gandhi constitutes

another fascinating manifestation of Bahudha philosophy.

The emergence of great rational minds and enormous urge for freedom characterised the Indian scene in the nineteenth and twentieth centuries. In terms of historicity, this era commenced with Raja Rammohan Roy (1772-1883) of Bengal. It heralded a major attitudinal change among the Indian people. For purposes of analysis of Bahudha philosophy and also the impact that it made on India and the world scene, the contribution of three leaders are indeed of great historical value. They are: Rabindranath Tagore (1861-1941); Swami Vivekananda (1863-1902) and Mahatma Gandhi (1869-1948). It is a sheer coincidence of history that all them were born during the decade of the 1860s. Each one grew to become a formidable figure in their sphere of human activity: Swami Vivekananda in religion, Gurudev Tagore in literature, and Mahatma Gandhi in politics and they together constituted the trinity of greatest human figures on earth.

The first to make the great imprint on the Indian consciousness in his time and thereafter was Swami Vivekananda. Narendranath Dutt (Swami Vivekananda) was born in an upper middle-class Kayastha (high caste Hindu) family on January 12, 1863, in his paternal home at 3, Gour Mohan Mukherjee Lane, Calcutta. During the short span of life of 39 years (Swami Vivekananda left his mortal body on July 4, 1902 at Belurmath in Calcutta), he gave new meaning to the Hindu philosophy of tolerance and built the Ramakrishna order to propagate the values of Vedanta philosophy and to work for the spread of quality education and health care throughout the length and breadth of India.

Almost in an exposition of Bahudha philosophy, Swami Vivekananda explained that what our ancestors had left in the Vedanta philosophy will not be Brahminic or

Buddhistic, Christian or Muslim, but the sum total of all these. Such a philosophy will have infinite space for development; which in its catholicity will embrace in its infinite arms, and find a place for every human being, from the lowest to the highest man. In his historic address to the Parliament of Religions in USA on September 11, 1893 Swami Vivekananda clarified:

“The Christian is not to become a Hindu or a Buddhist, nor a Hindu or a Buddhist to become a Christian. But each must assimilate the spirit of the others and yet preserve his individuality and grow according to his own law of growth. If the Parliament of Religions has shown anything to the world it is this: It has proved to the world that holiness, purity and charity are not the exclusive possessions of any church in the world, and that every system has produced men and women of the most exalted character. In the face of this evidence, if anybody dreams of the exclusive survival of his own religion and the destruction of others, I pity him from the bottom of my heart, and point out to him that upon the banner of every religion will soon be written, in spite of resistance: ‘Help and not Fight’, ‘Assimilation and not Destruction’, ‘Harmony and Peace and not Dissension’.”

In one of his addresses in Chicago during the Parliament of Religions meeting, he emphasised the Bahudha philosophy in the following words: *“Do I wish that the Christian would become Hindu? God forbid. Do I wish that the Hindu or Buddhist would become Christian? God forbid.”* The Indian idea was to make a man find the best that he can in his environment, and live up to it in all sincerity. The Hindu conception has been what was described by Paramahansa Ramakrishna in the form of an aphorism: *“Jato mat, tato path”*, that is, *“As many, opinions, so many ways”*.

Rabindranath Tagore was born slightly more than a year earlier than Swami Vivekananda on May 7, 1861 in the Jara Sanko House in Calcutta. He emerged as a world poet when the Swedish Academy selected his work of poems, *Gitanjali* for the Nobel Prize for Literature in the year 1913. His poetry, his novels, short stories and essays greatly influenced the Indian mind (these are still widely read in Assam, Tripura, West Bengal and throughout Bangladesh) and are invaluable in understanding the Bahudha philosophy. It was Tagore who described himself as the product of *“a confluence of three cultures; Hindu, Muslim and British.”*

Gurudev wanted Indians to learn about how other people lived, what they believed in and so on while remaining interested and involved in their own culture and heritage. It was in this context, that he emphasised the freedom of the mind. A poem in *Gitanjali* catches the Upanishadic philosophy in its totality when it reads:

“Where the mind is without fear and the head is held high; where knowledge is free; where the world has not been broken up into fragments by narrow domestic walls; ...where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;... Into that heaven of freedom, my Father, let my country awake”.

The Bahudha philosophy found powerful expression in the writings of Rabindranath Tagore. He had forcefully argued that the idea of India and cultural separatism were antithetical to each other. The idea of India lies in inclusiveness of all points of view, and in fact human creativity. He writes :

“Whatever we understand and enjoy in human products instantly becomes ours, wherever they might have their origin. I am proud of my humanity when I can acknowledge the poets and artists of other countries as my own. Let

me feel with unalloyed gladness that all the great glories of man are mine. Therefore it hurts me deeply when the cry of rejection rings loud against the West in my country with the clamour that Western education can only injure us.”

Mohandas Karamchand Gandhi was born at Porbandar in Gujarat on October 2, 1869. The Gandhis were Vaisya by Varna and Bania by Jati or caste.

The family belonged to the Vaishnava sect; the senior Gandhi encouraged Jains, Muslims and Parsis to frequent his house and to hold religious discussions. It would, however, suffice for our purposes to say that the tolerance of and respect for all religions by a devout Hindu was an article of faith for Mahatma Gandhi. This conviction on his part was based not merely because of family inheritance but in his own language on account of *‘his experiments with truth’*,

Robert Frost said *“Two roads diverged in a wood, and I took the one less travelled by. And that has made all the difference”*. Mahatma Gandhi chose the less travelled road but he did not march alone. He inspired millions of men and women of India of different stations in life: rich and poor, learned and illiterate, zamindars and peasants, industrialists and labour, Hindus and Muslims, Buddhists and Jains, Sikhs and Parsis, Christians and animists to march with him on the road to freedom, human dignity and understanding. And they did so as never before in the history of India.

Bapu not only involved the Indian masses in India’s freedom struggle but was largely instrumental in the end of the colonial order in India which contributed significantly to the movement for freedom in other parts of the world. He was the greatest exponent of *ahimsa* or non-violence in our times.

This was in conformity with our past wherein *ahimsa* was the cornerstone of the Hindu, Jain and Buddhist philosophies. It was Gandhi's genius that transformed, *ahimsa*, into a tool of social and political action in which the large masses of Indians participated. He politicised individual courage.

It was, however, not a story of Success all the way. From 1944 to 1947, Gandhiji's efforts to halt Mohammad Ali Jinnah's drive to divide India into two independent nations did not work.

Mahatma Gandhi saw and stressed the underlying unity in teachings of all religions. "Gods' grace and revelation", he said, "are not the monopoly of any race or nation, they descend equally upon all who wait upon God". He regarded all the principal faiths of the world as divinely inspired but felt they were imperfect because they have come down to us through imperfect human instrumentality. Hence the necessity for tolerance, which did not mean indifference towards one's own faith but a more intelligent and purer love for it. 'The need of the moment', he wrote, 'is not one religion, but mutual respect and tolerance of the devotees of different religions. No religion was absolutely perfect; but every religion was to be judged not by its worst specimens, but by the best it produced. And if you read the Koran, Gandhi said, you must read with the eye of the Muslim, if you read the Bible, you must read with the eye of the Christian, if you read the Gita, you must read it with the eye of the Hindu. What is the use of scanning details and then holding a religion to ridicule?'

The Gandhian approach to non-violent struggle including the three C's: constructive activities, conciliatory activities and courageous non-violence gave new meaning and relevance to Bahudha philosophy.

The teachings and the Ramakrishna order of Swami

Vivekananda, the poetry and institution of learning (Viswa Bharati) of Rabindranath Tagore, and the politics and the constructive programmes of Mahatma Gandhi helped create an atmosphere which helped the new Indian Republic to choose its path: the road of democracy and secularism, of human rights and social empowerment, and of a plural society. The fact that the works of these great minds were largely in the domain of the people like students, teachers, freedom fighters, social, political and religious workers are of enduring value in guiding the future society as well as the state apparatus.

INDIA, THE WORLD AND BAHUDHA PHILOSOPHY

We are living in a period of great turbulence in India, in our neighbourhood and in the world. Terrorism and insurgencies, sectarian violence and narrowness, politicisation of ethnic, caste and religious ties, and lack of opportunities are causing enormous distress in our society. Pakistan's sponsorship of terrorism as an instrument of State policy against India with the avowed aim to weaken India and to forcibly take Kashmir have caused enormous loss of lives, displacement of innocent persons and loss of property. This has also generated hatred and hardening of attitudes.

Since the last decade of the twentieth century, we witnessed an acceleration in the pace of senseless killings on account of terrorist activities in Jammu and Kashmir and elsewhere. The Babri-Masjid demolition in December 1992 was followed by Mumbai riots that killed 1800 people in sectarian violence. The Godhra carnage in 2002 led to another major sectarian violence in Gujarat killing about 2000 persons. What emerged from the Gujarat holocaust was an expression of shameless violence and breakdown of the system of rule of law.

The founding fathers of the new Indian State had foreseen linguistic, religious, ethnic, and caste conflicts in the country and they had recommended tolerance and called for celebration of diversity. On December 11, 1948 Sri Aurobindo wrote : "The ancient diversities of the country carried in them great advantages as well as drawbacks. By these differences the country was made the home of many living and pulsating centres of life, art, culture a richly and brilliantly coloured diversity in unity, that was not drawn up into a few provincial capitalist or an imperial metropolis, other towns and regions remaining subordinated and indistinctive or even culturally asleep; the whole nation lived with a full life in its many parts and this has increased enormously the creative knowledge of the whole. There is no possibility any longer that this diversity will endanger or diminish the unity of India".

In a similar vein, Maulana Abdul Kalam Azad went on to assert that more than a millennia of common history of Hindus and Muslims have enriched India and said:

"Our languages, our poetry, our literature, our culture, our art, our principles, our manners and customs, innumerable happenings of our daily life, everything bears the stamp of our joint endeavour".

In the present circumstances of India, we have to recognise that the countries and groups which promote religious extremism and seek to advance their cause by way of terrorist training camps and suicide squads are causing immense damage to their own societies and polity as well as in the long run it will impart among children fundamentalist lessons and brutalise every sphere of human activity. It is true that democracies are more vulnerable to terrorism because democratic values inhibit effective anti-terrorist action.

Intensive surveillance, curtailment of liberties, restrictions on movements, and other such tedious security procedures are highly unpopular in a democracy because they affect the quality life of citizens. And yet in the long run democracies through their unity and determination prevail over terrorist forces.

In our context, the concept of Bahudha helps us establish that a nation of more than a billion people with a distinguished past must base itself firmly on the concept of plurality, of multiplicity and of tolerance, if it is to make a powerful impact on the world in terms of its economic, political or civilisational strength. There can be no one way - religions, culture, or linguistic of being an Indian. Pluralism is the founding principle for building a pan-Indian identity.

Every country should command respect in the comity of nations for its uniqueness of character and achievement of its people. India is venerated as a cradle of human civilisation and in the contemporary world also for her skilled scientific manpower, market potential, armed strength and, more importantly, as a plural society. We must celebrate the Bahudha philosophy that helps create an environment where pluralism blooms.

After the dismantling of colonialism, the fall of the Berlin Wall (11/9 in American terminology) and the end of the Cold War, it was widely believed that this could signify the end of conflict in global politics and emergence of a relatively harmonious world. The 9/11 tragedy has clearly established that the world is not safe again.

Very soon after 9/11 it became clear that the hijack was masterminded by the Taliban led by Saudi Arabia fugitive Osama bin Laden living in Afghanistan. A military campaign was

launched by the US with its European allies to topple the Taliban regime in Afghanistan and succeeded in doing so. The next threat was perceived to emanate from Saddam Hussein's regime in Iraq (the British and US intelligence reports signalling that the regime in Iraq has amassed weapons of mass destruction to be used against the USA and its allies). After months of planning and military build up, the US acting with its ally Britain, attacked Iraq on March 20, 2003 and toppled the regime of Saddam Hussein. This happened after a war sanction resolution was not approved by a wide margin by the Security Council.

The 9/11 catastrophe made most Americans supportive of a unilateralist approach in foreign policy. The terrorists being in several countries were viewed as persons planning all the time to kill/harm American people and destroy/damage their property in USA as well as at other vulnerable places in the world. The doctrine of preventive strikes on sovereign countries (member states of the UN) have found widespread support in the United States after 9/11 and persists.

The continuing occupation of Iraq by military forces and the possibility of erroneously viewing this conflict in civilisational terms are making deep impact on religion, education and international political architecture.

RELIGION

It is being increasingly feared that a group of alienated individuals drawing inspiration from religion could create violence and terror in any part of the world. Since the participants in 9/11 were from the Islamic world, a large number of books and papers have been published and films and serials made in different parts of the world in order to understand as to what can be done to the believers in Islam in general, and to the radicals among them in particular, for

harmonious living. People are looking at the past when the Muslim world used to produce mathematicians, scientists, physicians and scholars of global stature. It is being argued that halfway through the building of the great Islamic civilisation, the clergy discouraged people to study science and medicine and instead to concentrate on theology.

Looking at major religions in the world and many-fold practices and belief patterns it seems difficult to devise a commonality of views about good and bad, truth and error, paths of salvation and failings. In fact, there is an essential difference between physical sciences (like physics, chemistry or biology) where there are clearly delineated procedures for checking the truth and religion, where there are a number of competing claims to authenticity. There is no way of scientifically arriving at the truth of a single or many of their assessments that a religion makes in relation to their precepts. The problem becomes more complex as one religion contradicts the truth claims of another religion.

A deeply differing perception about ways of living, however, does not eliminate a commonality among different truth claims. There is also a suggestion that we do not yet fully know human nature and ways interacting with the world. There is also no need to give up one's own perception but keep an open mind. It would be irrational to suggest that a single view is final and complete and that everything is wrong as we see that in our neighbourhood people have lived for centuries believing and practising another belief system. A study of different faiths also establishes a plurality of views in each tradition. The view that my faith alone is truth and all others are false stands long rejected. There is need to have a free play of ideas so that there are no religious ghettos. We live in a world in which a mutual interaction among traditions and sharing of knowledge and moral and spiritual

experience is a daily affair and need to be encouraged.

A look at the way people are living in multi-religious, multi-ethnic and multi-racial societies in different parts of the world demand respect for plurality of approach. The conflict between the rational view and blind faith however is not altogether dead. But people have developed today an eye for examining other traditions and in the process perceiving of what they have missed in their own belief structure. The expansion of this analytical approach is called for in the post-9/11 world .

EDUCATION

A reappraisal of the school education system in the Islamic world is receiving worldwide attention. Contemporary history has shown that terrorism has been greatly facilitated in our neighbourhood in Afghanistan and Pakistan through the institution of *madarsas*. During 1990s more than 10,000 *madarsas* sprung up in this region offering the incentive of a free education and the eventual opportunity of a job to the boys - which came to mean a wage earned through activism for a terrorist group. This school network claimed to impart training of Islamic percepts to young boys but went on to emphasize denigration of other faiths as well. The rich religious trusts of Middle Eastern countries in particular freely financed these *madarsas*. Several agencies with the help of drug money supplied arms to the youth and trained them in wanton killing of innocent people. As violence is one of the essential attributes of the human condition, violence in the name of one's god augments human propensity to indulge in terrorist acts including becoming members of suicide squads.

After 9/11 these have started changing in Afghanistan and Pakistan. Common schools for boys and girls are being set up by offering uniforms,

libraries, computer and science laboratories and subsidized tuition fees. Although the facilities in these schools are not at par with schools already functioning in Pakistan which impart training to children of elite families but these new centres of learning have similar vision and curriculum. This is a highly encouraging sign.

The need is to rapidly reform the *madarsas* and to initiate a process of sustainable but indigenous system of education and human development that fosters scientific knowledge and technology-based skills. All children should have access to the power of knowledge so that they may have access to the world of work. Today, that means giving students the technology tools that will help them succeed at the same time. The education system must strive to make people not only intelligent and skilled but also to become proficient in establishing amicable relations between human beings. Such character-building only through a sensitive education-system can accomplish this. The Bahudha philosophy could be of help in promotion of this urgent task.

Schools in multi-ethnic, multi-religious societies having children of different faiths, of different social and economic backgrounds provide a platform where the children slowly start talking to each other, smiling at each other and understanding their respective world-views. In these encounters basic human values of respect and tolerance, love and compassion, transcend caste, tribe, religion, economics and politics.

Several developing countries have achieved commendable success in this direction. The Kerala model deserves special mention. Kerala - a multi-religious federating unit in India - has achieved high levels in literacy and is ahead of all other Indian states. In Kerala, all major religious groups - the

Hindus, the Muslims, and the Christians run educational institutions duly recognized by the state system. The admission to these institutions is not exclusively for the students of the founder religious community although a percentage of seats is reserved for them. Students from other religious communities are also admitted which allows the younger generation to intermingle right at the beginning of their formative years. A student who come out from such a school does not feel isolated or insecure while interacting with members of another faith. For he is well aware of multiplicity of beliefs and customs and their importance in the life of a believer.

It is the education system that diminishes the distance between various religious groups, enabling people to share a common social space. Our endeavour should be to strengthen the existing institutions and to build new one's which would facilitate sharing of a common social space and imparting of values of harmony and compassion among the youth.

UNO

Several questions are being asked about the efficacy and usefulness of the United Nations these days. At an organisational level, it has exposed both its method and efficacy of working of the General Assembly and the Security Council.

From the very beginning, the General Assembly has been a debating forum and besides subjecting moral influence on political adversaries it does not pledge any decision. Today, the General Assembly is composed of 191 diverse nations, big and small, rich and poor, democracies and tyrannies, secular and fundamentalist. But they all debate as equals and have the same voting power. There is a general consensus even today that this equality needs to be continued but ways and means have

to be devised to make the General Assembly more effective within this overall content.

It is the Security Council which has a larger responsibility in maintaining peace and order in the world is largely an instrument in the hands of five countries - USA, Russia, United Kingdom, France and China - the permanent members. This reflected the world power structure at the conclusion of the Second World War in 1945. But not of today. For it excludes countries like Germany, Japan, India, Brazil and South Africa. The question of efficacy of the Security Council to be the final centre to rule on international disputes could be greatly enhanced if it is restructured to reflect the modern world's political, economic and military situation.

The United Nations has not played an effective role in resolving international conflicts after 9/11 as it was hoped by its founders. At the same time, we acknowledge the great role that the UN has played since 1945 as a provider of humanitarian assistance and as a keeper of peace in the aftermath of military conflicts in different parts of the world including in recent years in Bosnia or East Timor. It is the sole global organisation of a rule-based system of international cooperation of maintenance of peace and security. The rise of terrorism in different parts of the world is a new phenomenon as terrorists may or may not be supported by a state and yet it can cause havoc to a nation-state. It is only through the UN system that a new set of norms could be devised for dealing with terrorism. The disappearance of the UN would lead to chaos in international relations. In fact, the need of the hour is for all member countries of the UN and major powers in particular to work for strengthening of consensual arrangements in order that this global political architecture gets revitalized.

I share the views of UN Secretary General Kofi Annan expressed on the UN Day, i.e., October 24, 2003 about the need to involve people of the world about the preservation of the UN and a system based on rule of law in the world. To quote:

“In the end, governments will decide. But they will make the effort to reach agreement only if you, the peoples, tell them clearly what you expect - what kind of world you want to live in. I rely on you to do that. And I believe that if you do make your voices heard, loudly and firmly enough, we can indeed win through this crisis and build a better world, based on the rule of law. Let us all persevere, in the knowledge that we are all contributing to a better future, for ourselves and for our children”.

Each government, and democratic government in particular, is enjoined to enforce the will of the people. Such a system alone would lead to resolution of conflicts not only at the global but also at village, state and national levels. The Bahudha approach shall facilitate in providing firm foundations to our institutions and in guiding human behaviour.

MILITARY INTERVENTIONS, RELIGIOUS VALUES AND BAHUDHA

The way the United States has bypassed the United Nations in launching of an all out war on Iraq and its continuing occupation of that country and the US slogan that “those who are not with us are against us” do reveal the mighty face of military capabilities in international relations.

Many scholars have viewed terrorism and Islamic fundamentalism now replacing Soviet communism as the enemy. The significance of the position lies in the fact that the military

interventions could be endless since there will always be some terrorism .

There are several critiques of military action in Iraq both within the USA and outside. Gunter Grass has captured the sentiments of many when he writes:

“It is hardly surprising that the rhetoric of the aggressor increasingly resembles that of his enemy. Religious fundamentalism leads both sides to abuse what belongs to all religions, taking the notion of God hostage in accordance with their own fanatical understanding. Disturbed and powerless, but also filled with anger, we are witnessing the moral decline of the world's only superpower, burdened by the knowledge that only one consequence of this organised madness is certain: motivation for more terrorism is being provided, for more violence and counter-violence.”

Events in the United States, Afghanistan and Iraq seem to establish cause and effect theories of spread of terrorism and its response in a unipolar world. All these developments are not conducive to welfare of the common people particularly the poor, for the spread of democratic governance and rule of law, and for promotion of religious understanding and harmony among peoples. It has to be realised that a powerful army of a nation can defeat a weak army of another country but it can not build peace in that country. The need is to have a fresh approach in terms of Bahudha philosophy of tolerance and understanding. And this is only possible when prominent world leaders, men and women of different religious faiths, social workers and creative minds join together to re-establish the primacy of a democratic international order.

Are we living in a world which means the end of Bahudha philosophy of tolerance and accommodation? This brings me to what Mahatma Gandhi said

after the Second World War. He reflected:

“Hatred (some people argue) cannot be turned into love. Those who believe in violence will naturally use it by saying, “kill your enemy, injure him and his property wherever you can, whether openly or secretly as necessity requires”. The result will be deeper hatred and counter hatred and vengeance let loose on both sides. The recent war, whose embers have yet hardly died, loudly proclaims the bankruptcy of those, uses hatred. And it remains to be seen whether the so-called victors have won or whether they have not depressed themselves in seeking and trying to depress their enemies”.

Mahatma Gandhi might have said something like this again today.

The principle of tolerance lies at the heart of the functioning of democracy. The use of religion and caste on the part of an individual and political party constitutes the greatest abuse of religion and social system. The need is to consciously move away from this abuse. One can have a political system characterised by reasonably free elections but in the absence of an impartial judiciary and an environment of respect, for the other’s point of view, the spread of democracy will not mean much to ‘life, liberty and pursuit of happiness.’

There is need for an attitudinal change as well. Proxy wars, insurgencies, ethnic and sectarian conflicts have gone on for years in some parts of India. These have caused deaths, loss of property, displacement and poverty inflicted on population. Conflicts have often been accompanied by capital flights and movement of elites from their areas to safer places and these in turn have caused enormous shortage of skilled manpower for revival of the economy and society. (The World Bank,

for example, estimates that 9/11 attacks alone may have increased global poverty by 10 million people).

Ethnic and religious conflicts have generated an attitude of inertia among leaders as well as the elite in India and in other parts of the world. This is often reflected in closed room conversations to the following catch phrases: ‘nothing can be done’; ‘let them fight it out among themselves’; ‘both sides are irresponsible’; and so on. Characteristics like the exploitation of natural resources, job opportunities in the market, availability of skilled manpower in a particular area, and poor governance are not given adequate attention in attempts to resolve conflicts.

Attitudes of tolerance are central to reduction of conflict. This does not mean that the standard elements of development strategy - empowerment of the poor including women, market access, availability of funds, policy reform, and effective governance - do not play significant roles in addressing the development issues. In securing a safer world, no single intervention is likely to be decisive.

In the post-September 11 world, religion almost as in the medieval era has come to occupy the centre stage of global dialogue. Several interpretations about the place of religion and its relevance in global affairs are being offered. To some, religion is a fundamental source of discord. To several others, the emergence of religion to a place of primary in international affairs has come to denote a clash of civilisations between the Muslim world and the West. These questions are far from abstract. One thing is evident that neither the Islamic nations nor the Western countries can any longer regard themselves as the exclusive centre of a distinct civilisation which has nothing to do with others. Today, everybody is a next door neighbour. The shift in

demographics, a mixing of ethnic ties, and exposure to information technology has altered the world of the nineteenth and twentieth centuries. All these would naturally make an impact on how people view their own religion in relation to other faiths notwithstanding the views of fundamentalists about exclusiveness of their world views.

Both the Western as well as Muslim countries are going through a process of introspection in response to the question of reform of the religious world views.

The Western suspicion that Islam is incompatible with democracy is also undergoing change. The Sufi tradition in Islam and accommodation of others in the Islamic tradition of *convivencia* are being revived.

The United Nations was set up on October 24, 1945 with the determination “to save succeeding generations from the scourge of war” and almost in reiteration of Bahudha philosophy “to practice tolerance and live together in peace with one another as good neighbours”. The UN system need to be strengthened in a manner that no country could take unilateral action against another. Terrorism can be banished from our midst by concerted global action. Once the UN resolves that terrorists will not get asylum it will be difficult for that person to hide and escape the judicial process. The obvious course would be to hand over the terrorist to the country where the act of terrorism was perpetrated .

VII

CONCLUDING REMARKS

Democratic values, ideological openness, freedom of conscience, positive regard for others who hold different views as well as the capacity to tolerate even those who remain intolerant need to be accommodated by

every society and by its institutions of governance and social harmony.

The real question is can we make the Bahudha philosophy a global creative venture? Will this attitude help in the process of dialogue among creative minds and in restructuring of the United Nations? The answer is yes. The philosophy of “one truth, many expressions” would help people engage themselves in the light of their heritage which is full of love and compassion. They will be able to see clearly the need to abstain from terrorism and violence, war and destruction, and enter into an era of mutual respect and understanding, peace and development. Such a process can be determined by massive participation of the people and not guided by domination by a few. A revolutionary transformation is possible and Bahudha is an attitude to further that process.

In Bahudha philosophy everyone counts. It is another matter that people hold different views. But once a person or a group believes that his religion or politics has the absolute truth and/or is superior to others, everyone would cease to count. The fundamentalist dictum that his version of truth being perfect gives him or his group an authority to impose it on others is not suited to solving the problems that people are facing today either in the domain of religion or of politics.

Fortunately, claims like - ‘my country is always right’, ‘my people are greatest in history’, and ‘my faith is the superior faith’ are getting increasingly discarded as a result of rational enquiries. Fortunately, these enquiring are taking people to study the essence of his own faith, culture and civilization,

and the faiths, cultures and civilizations of other people in a world that is being seen as becoming increasingly inter-dependent.

In ‘one truth, many interpretations philosophy’ as Gandhiji put it ‘life is an experiment with truth’. We are all imperfect. All our religions try to show us the path of righteousness and give us light and guide us to travel on that path. But one is not superior to another. This attitude alone would lead to equal respect for all religions, all paths (sarva dharma sambhava) and herald a creative relationship between faith and thought - an essential ingredient in ‘pursuit of happiness’.

Bahudha culture offers an environment in which over time, people and nations could learn to respect different points of view and eschew fears and hatreds. It can help institute the dialogue process and consolidate the gains.

The Bahudha philosophy goes beyond the moral realm and in practical terms it is a cornerstone of plural society and liberal democracy. The Bahudha philosophy is amenable to construction of a programme of action.

A question is often posed about the role and relevance of military in construction of an environment for creative dialogue among civilisations. In the post-9/11 world, it is quite obvious that the ugly face of terrorism has given full justification for a strong military posture. In fact, the rise of terrorist activities in different parts of the world demands it. It, however, does not mean that military intervention can be taken in an arbitrary fashion. It has to conform

to international norms and has to have the sanction of the UN system.

Our vision of twenty-first century world should be to work for a genuine global community of nation-states under the United Nations. The strengthening of the UN system is the need of the hour to restore rule of law in global affairs.

The movement for democracy, for religious harmony and for good education need not be viewed as separate ideals or goals; these are inter-related. The creative minds, the civil society institutions and the global political architecture need to have a unity of purpose. The future of harmonious living demands sharing of a perspective that accommodates different points of view and respect for the ideals of Bahudha.

We have to inculcate Bahudha values through education both formal and informal and through the media, both electronic and print.

We should facilitate dialogue among youth, faith groups, NGOs, and the elite of different countries.

The Bahudha philosophy always believes that there are many ways of perceiving truth and in determining the relationship between God, nature and human beings. It recognises the role of religion in human affairs. While we may pursue different faiths and regulate our affairs in various ways, the motives remain the same - human happiness. This unites us all with the bond of goodwill. The Bahudha approach thus could provide an enduring framework for a global public policy for harmony among different peoples and societies in the post 9/11 world.

INTERNAL SYSTEMS OF POLICE PERFORMANCE ASSESSMENT: EXISTING PRACTICES IN INDIAN POLICE

Prof (Dr) NR Madhava Menon

INTRODUCTION

Performance appraisal (PA) is the key to human resource development and for efficient implementation of organizational goals. Some form of PA did exist in police ever since it got organized in India in the 1860s and it has been modified from time to time to respond to perceived inadequacies and fresh needs. Despite such changes, the prevailing PA system, which is neither uniform nor objective, is taken seriously by the police themselves for either career development or organizational development. This is due to a variety of causes including the subjective, non-professional and irregular method employed in performance appraisal itself. This note is an attempt to understand what are the existing methods of performance appraisal in Indian police,

why it remains subjective, non-serious exercise hardly utilized for human resource development and how it relates to organizational management and public perception of it.

It is necessary to appreciate the socio-political context in which the Indian police operate for a fair assessment of their performance. India is a large multi-cultural, multi-religious society committed to a parliamentary system of government under a written Constitution which guarantees a charter of individual rights and establishes an independent judiciary to uphold rule of law and democratic governance. Being a Union of 28 'independent' States, the powers of the Central and State Governments are separately listed in the Constitution itself. "Police" is an item assigned to

the States. Though the Indian Police is organized under a colonial law (Police Act, 1861) each State has adopted the law to suit its needs and evolved Police Regulations and Manuals which are not uniform in content and scope. At the same time, the Constitution prescribes certain All India Services to be centrally recruited and jointly managed by the Union and the States. Therefore, at the higher levels of leadership in Police in the States, the officers are members of the Indian Police Service (IPS) whose recruitment, training, scales of pay, service conditions, including disciplinary rules, performance assessment methods, etc., are governed by rules framed by the Government of India. Less than 10 percent of the total strength of Indian Police belong to the category of IPS officers who hold different supervisory positions in the order of Director General of Police, Additional Director Generals, Inspector Generals and Superintendents of Police (in charge of districts). The other ranks (other than IPS) to which the State Government makes recruitment and regulates service conditions include the Deputy Superintendent of Police (DySP), Inspectors of Police, Sub-Inspectors of Police (SI), Assistant Sub-Inspectors of Police (ASI), Head Constables (HC) and Constables.

The performance appraisal format and methods vary from State to State and also from one category to another except for officers of the IPS for whom a uniform system is prescribed by the Government of India. For the rest, the format and methods are prescribed by the Police Regulations/Manuals of respective State Governments. By and large the tools employed for the purpose are inspections and interactions at the police station unit level and annual performance appraisal (confidential report) in prescribed forms at individual level. The preparation of the Annual Confidential Report is a closed in-house system initiated (written) by the immediate supervisory officer, reviewed by the next superior officer and accepted

by the officer superior to the reviewing officer. The accepting authority usually does not make any remarks on the ACR unless there is a conflict between the assessment of the Reporting Officer and the Reviewing authority. The Reporting Officers are expected to maintain notes on the basis of which observations supporting remarks are made which may be called by the Reviewing/Accepting authorities. Adverse remarks in the ACR are communicated to the person concerned by the Accepting Officer and if any justifiable refutation is received, the remarks may be expunged also.

A quick look at the factors listed in the proforma for appraisal indicates that they are of a very general nature related to knowledge of the job, capacity for hard work, work attitude, integrity, ability to handle difficult situations including man management, relationship with colleagues and supervisors, knowledge of law, state of physical and mental health, fitness for promotion, etc.

Instructions attached with the Confidential Report Form convey the impression that it is intended to be a serious and professional exercise and the columns are not to be completed through use of omnibus expressions like “good”, “very good”, “average”, etc. It says that performance appraisal through Confidential Reports should be used as a tool for human resource development and not a fault finding instrument only. Performance evaluation, it says, is to be done at least after one detailed inspection of the work of the subordinate, unless the subordinate is one with whom his senior is interacting almost daily. Every answer is supposed to be given in a narrative form in unambiguous language. A significant instruction asks the Reporting Officer to set targets/goals at the beginning of each year in consultation with the officer whom he is required to report upon indicating priorities. Further it states that performance appraisal is a joint exercise between the officer reported upon and the Reporting Officer and is to be done

on a continuing basis throughout the year. For assessing the integrity of an officer, a separate procedure is prescribed particularly when the integrity is doubtful. It suggests a separate secret note to the superior officer who will take necessary follow-up action to ascertain the veracity of the doubt before filling up the column on integrity.

Thus, on paper there appears to be an appraisal system which is scientific, objective and development-oriented. However, at the operational level, excepting honorable exceptions, the situation is reportedly far from satisfactory.

PERFORMANCE APPRAISAL : GAZETTED/IPS OFFICERS

Performance of IPS officers who are selected by the Union Government and assigned to the States to hold supervisory posts (Superintendent of Police and above) in the police organization are assessed every year through Confidential Reports prepared in a form prescribed by the Central Government for the purpose. It is a booklet containing six parts and a set of Instructions on the Significance of CR and how to prepare it. Part I relates to Personal Data including details on medals or commendations received by the officer during the period. In Part II the officer reported upon is to write a brief resume of work done (including special achievements) during the period of report in just 300 words. Part III constitutes the assessment by the Reporting Officer on (a) **the nature and Quality of work** including knowledge level of functions, laws and their application; (b) **attributes** including communication skills, capacity for correct judgment, initiative (i.e., willingness to take additional duties) attitude to work (i.e., motivation, reliability, sense of responsibility, willingness to learn, promptness in disposal of work, etc.), supervisory

abilities (i.e., guidance in the performance of tasks, capacity to take decision, maintaining discipline, etc.), team work, attitude towards weaker sections of society, aptitude and potential for training; (c) overall assessment and grading. Part IV contains Remarks of the Reviewing Officer on his agreement or disagreement with the assessment of the Reporting Officer. He is expected to record special abilities, if any, which would justify his selection for special assignment or out of turn promotion. Finally, Part V of the Appraisal Form is to contain the counter-signature of the next higher officer (Accepting Authority) with remarks, if any.

The CR remains with the Accepting Authority for future reference in matters of confirmation in service, empanelment for higher ranks, promotion and placements, etc. Thus, the ACR of the Superintendent of Police who is the head of a district will be initiated by his Range DIG as the Reporting Officer, who will send it to the Range IGP as the Reviewing Officer and finally it will go to the DGP (Chief of the State Police) as the Accepting Authority. In respect of officers of and above the rank of Inspector General of Police, the ACR finally goes to the Home Minister and Chief Minister (as the Accepting Authority) through the Home/Chief Secretary.

PERFORMANCE APPRAISAL OF NON-IPS POLICE PERSONNEL:

Police personnel below the Superintendent of Police are categorized generally as follows :

- Deputy Superintendent of Police (DySP)
- Inspectors of Police
- Sub-Inspectors of Police (SI)
- Assistant Sub-Inspectors of Police (ASI)
- Head Constables (HC)
- Constables

As stated earlier, over 80 per cent of police personnel belong to the above categories. Their performance appraisal norms and procedures are prescribed by the respective State Governments and, as such, may vary in details from State to State. The system existing in a few typical States is examined here.

(a) West Bengal :

For the lowest three categories of Constables, Head Constables and Assistant Sub-Inspectors, the method employed is essentially what is called the Service Book (SB) system under which an SB is opened for each of them at the time of their induction training. The SB contains personal details and service particulars. The SB travels with the policeman to the districts he gets posted. One part of the SB contains all the rewards, good service marks and recommendations which a Constable earns during service period. In another part are noted punishments, adverse remarks, suspensions, etc. In very exceptional cases, the SP of the district may make a special note in the SB that the Constable may be "suitable for work in the CID/Special Branch, etc." The Reward/Punishment Statements in the SB are put up before the Promotion Board as and when necessary.

In the case of Head Constables and ASIs, a slight modification was later introduced under which the SP of the district concerned would record few remarks annually in the Service Book indicating the level of integrity, obedience, efficiency, health and fitness for confirmation/promotion.

For SIs, Inspectors and DySPs, Police Regulations prescribe separate Confidential Report Forms to be prepared annually by the Superintendent of Police. These forms contain such aspects like honesty, efficiency, tact, judgment, power of commanding respect, leadership, knowledge of law and local language, detective ability, initiative, conduct towards superiors/subordinates, etc.

Functionally, the performance of the Constables and Head Constables is assessed almost continuously throughout the year by their superiors in as much as they hold weekly Orderly Rooms (ORs) which is an exercise of personally interviewing those who have defaulted or did some good work. An OR Register is maintained for the purpose by the Officer in Charge of a Unit who is usually the Circle Inspector or the Sub-Divisional Police Officer. In course of such ORs, the "put up" police personnel is informed about his defaults and asked to explain his conduct, asked to reform himself or in extreme cases awarded punishment after obtaining explanations. This OR system together with the SB system explained above form the essence of performance appraisal for Constables, HCs, ASIs and SIs. This is supplemented by a slightly more elaborate Annual Confidential Report system for the Inspectors and Dy SPs as stated above.

Yet another tool relevant in this regard which is in use in West Bengal is the Inspection Register maintained in every police station in which remarks are made by supervisory officers covering one or more items of important activities such as arrest of absconding criminals, progress made in investigation of heinous offences, etc. At least three annual inspections besides "Surprise Visits" are done and assessment of administration of the unit made. Personal interviews are conducted individually during inspections to ascertain problems and to recommend remedial action. The annual inspection remarks are sent to the SP of the district concerned for follow-up actions if required.

Officers do admit that the system of performance appraisal at the subordinate level is seriously flawed; so is their recruitment and training. There are no specified parameters on role functions and expectations. Unlike the case of IPS officers, there is no system

of self-assessment nor any specific instructions given for guidance of the Reporting and Reviewing Officers. As a result, remarks are summary and subjective and are made casually on the right hand margin of the confidential report. There is no streamlined system of allowing the officer reported upon to see his performance appraisal report excepting communication of adverse remarks. Even where the pre-designed proformae are prescribed for performance appraisal, there are no indicators to assess preventive policing and patrol functions. A lot of statistical data is generated at police station and district levels at the time of annual inspections related to crimes reported under different heads, preventive actions taken, number of cases investigated and charge-sheeted, persons arrested, results of trials in terms of discharge, acquittal and conviction, cases pending, property stolen/recovered, etc. The inspecting officers are required to check on the accuracy of these statistical data statements during their inspections of the units concerned. These data are sent to the State and National Crime Records Bureau from where they are collected and published.

At another level, outside the police organization, performance appraisal is done periodically when cases filed are tried by the courts when several facts relating to police functioning come to light often inviting strictures and remarks from the court in their judgments. Similarly, media reports also convey a picture of police functioning at the police station level. These do invite follow-up action within the organization and sometimes at the government or legislative levels.

(b) Karnataka

The Karnataka Police Manual, 1998, contains a Mission Statement for the State Police setting out specific objectives to aim at as part of police functioning at the individual and

organizational levels. Among other things, it asks for equal treatment regardless of caste or religion, special consideration for women, children and senior citizens, human rights friendly conduct and promotion of social transformation for improving quality of life of the people.

Performance assessment is related to these objectives. In the absence of a better alternative, inspections by superiors remain the only mode of performance assessment. Chapter XIII of the Police Manual spells out the scope and importance of inspections and lists certain items to be assessed by the Circle Inspectors, Sub-Divisional Police Officers and Superintendents of Police during inspections of police stations/outposts. However, the crucial question on how each item has to be evaluated is left to the imagination of the inspecting officer concerned. The items include review of cases, review of village beats and village visitations, petition enquiries, review of records, review of properties seized, review of intelligence system, etc. The so-called review is based on data supplied by the concerned police station itself and is a stereo-typed exercise of doubtful value.

According to Karnataka Police Manual, prevention of crime and maintenance of public order are the responsibility of the community as well. Enlisting the participation of the community for these tasks is part of the function of policing. The manner in which this task is carried out by the officers in charge of police stations and the extent to which they have succeeded or failed are expected to be assessed during police station inspections. However, in the absence of scientific criteria and procedure, this is done in a routine, subjective manner. There is no concept of 'management by objective' as yet in police administration.

The Annual Confidential Report prepared by the Reporting Authority (immediate superior officer) reviewed by

the Reviewing Authority (the next superior officer) and accepted by the Accepting Authority, along with remarks of visiting inspection officers and self-assessment made by the officers reported upon are the instruments for performance appraisal. The assessment is largely a subjective process and there are very few quantitative or objective indicators available.

In the existing scheme of things, none outside the police department would have access to performance appraisal reports recorded in ACRs and visiting remarks by senior officers.

(c) Tamil Nadu

The revision of the performance matrix of non-IPS officers is adopted from time to time by State governments at the instance of the State police or otherwise in response to different compulsions, political and otherwise. A system of awarding marks for different indicators to decide on performance of Superintendent of Police at district level was adopted in 2001 in the State of Tamil Nadu under an Action Plan evolved by the State Police. The new matrix format review of performance on monthly basis of the Superintendent of Police required the Inspector Generals (Reporting Authority) to record the data in ten different proformae for ten priority items of work. These are:

Annexure I Performance matrix to evaluate crime control functions - This includes several items under separate columns like law and order, major crimes, economic offences, recovery of lost property, crimes against women, beat service, execution of non-bailable warrants, preventive detention made, security proceedings initiated, functioning of all women police stations etc.

The proforma states in a footnote that a minimum of 60% of detection is expected of every SP (i.e., number of cases detected divided by number of

cases reported, multiplied by 100 should be 60% or more). For an increase of every 1% there will be a bonus of 1/2 mark, the maximum bonus being 10 marks. Districts are classified into heavy, medium and light. A weightage of 10% of the total scored marks in case of heavy districts and 5% in case of medium districts would be added as bonus marks while settling the performance scores for "Law and Order" functions under Annexure I.

Annexure II and III These relate to detection level in the case of six major crimes (murder for gain, dacoity, robbery, serious burglary, grave theft and automobile theft) and four economic offences where minimum percentage of detection is fixed as 60%. These Annexures are intended to work out the SP's performance in relation to each of the serious crimes under the same formula of marking stated above.

Annexure IV This deals with Crimes Against Women only in relation to rape, dowry death, dowry harassment and molestation where again 60% is the minimum expected detection and marks are given on the same formula as above.

Annexure V This is intended to evaluate prevention of crimes through Beat Services under a marks system. Targets are set for each district, based on the number of beat zones and the target achieved is divided by it (and multiplied by 100) to decide "Beat Marks" in percentage points.

Annexure VI is a proforma to evaluate performance in percentage points for success in tracing "out of view criminals" on a monthly basis.

Annexure VII relates to Preventive Detention under which, for every person preventively detained under the National Security Act or the Goondas Act, 1/2 mark is awarded. This is a questionable method of performance appraisal though a maximum of 5 marks only are allowed for this item of work.

Annexure VIII is an attempt to measure performance at security proceedings initiated in a district under section 107, 109 and 110 of the Criminal Procedure Code. Again, with a maximum of 5 marks for this item of work, each security action taken is given 1/2 mark on performance appraisal.

Some senior officers expressed resentment in the system of awarding marks for preventive detention and security proceedings as it has a tendency to egg officers to take liberties with rights of the citizen. Seeking marks through increased preventive arrests leads to dangerous consequences as it is the poor in railway stations and bus stands who often get rounded up to fill up the figures.

Annexure IX Execution of non-bailable warrants issued by courts to arrest persons accused of serious crimes is another proforma prescribed to evaluate police performance. The number of warrants executed in a given month divided by those received during the period (including pending warrants) and multiplied by 100 gives the marks to be awarded for this item of work.

Annexure X This is an interesting factor in performance assessment in the context of the setting up of All Women Police Stations on popular demand. While marks are awarded on their functioning by dividing petitions disposed with the number of petitions received and pending, what is interesting is a mechanism of deducting marks by 1/4 mark for every enquiry not completed within two months.

(d) Maharashtra

Like in most other States, the Annual Inspection (of every police unit), personal interviews with officers during the inspection and writing of the Annual Confidential Reports remain the three main methods of performance appraisal.

The four main indicators to assess performance are professional knowledge as demonstrated through performance, man management ability, personal integrity and attitude towards work.

Patrol functions done by constables and Head Constables are assessed by the Officer in charge of police stations through a "work sheet" kept in respect of each constable/HC. This is examined by the SP at the time of writing his remarks on the Service Book of these Constables/HCs. Remarks are written after interacting with the Constable and are read over to him.

Crime Register maintained by SPs in respect of each Police Station contains the comments on effectiveness of investigation. Comments are written after reading case Diaries of the IOs. These two instruments offer a method of assessment of investigative functions.

Maharashtra Police in 2001 revised the methodology of inspections and gave fresh guidelines to assess police performance and enhance police accountability. One of the guidelines asks for giving up the practice of assessing police efficiency by comparison of crime-statistics of the period under review with those of the previous years. Another guideline speaks about the perils of using the "preventive action" parameters to review police performance. Great harm has been caused to the image of the Police Department due to laying down of faulty determinants for evaluating police performance which has led to a misplaced sense of accountability and questionable methods of crime control, says the communication from DGP forwarding the new Inspection Guidelines of 2001.

The fresh determinants adopted by Maharashtra Police are:

1. Prevention of crime - assessed through sense of security in

the community and people's willing co-operation in prevention.

2. Investigation of Crime - as evidenced through correct registration, prompt visit to the scene of occurrence, speedy, honest and impartial investigation.
3. Law and Order - Extent to which maintained and the manner in which it is done, i.e. whether by people's co-operation or by use of force.
4. Traffic Management - Control of fatal and serious accidents by prosecution of persistent offenders.
5. Service - especially to weaker sections, quality of service in emergencies
6. Reputation for Integrity and Courtesy - assessed through the extent of police collusion with criminals organizing illicit distillation, gambling, economic crimes, prostitution, etc., prompt and satisfactory enquiry into complaints against policemen.

The guidelines direct the Inspecting Officers to get feed back on the above parameters from a cross section of people through meetings including meetings with representatives of people like MPs, MLAs, members of local bodies, etc. The nature and pattern of complaints received should be given special attention. If corrective action does not yield result, the officer should be shifted to give people of the locality satisfactory service. Inspection should be treated as an opportunity of ascertaining what is wrong and giving instructions as to better methods of policing.

Another set of fresh guidelines have also been circulated in respect of

Surprise Visits which senior officers are expected to do at police station. It has incorporated several legal requirements which emerged through judicial interpretations of arrest, interrogation, detention, etc.

CONCLUDING REMARKS

The SVP National Police Academy, the premier institution for training of police officers in India, has sponsored special studies on the working of the performance appraisal system in respect of IPS officers. The Academy proposed a modified system for consideration of an expert committee recently appointed (2002) by the Government of India with a view to revise the Performance Appraisal system of All India Service Officers. It identified several new functions (Terrorism, Organized crime, Cyber Crime, Fundamentalist Violence, Nuclear/Biological Warfare, Disaster Management, etc.) which a professional police official has to manage and the roles he has to play in discharging those functions. It seeks to introduce management techniques in policing (short-term goal setting, Disaster Management, Human Resource Management, Management of police-public relations, Logistics and Materials Management, etc.) and lists the jobs to be done towards it by an IPS officer. Admitting that police performance indicators are not clearly stated at present and wherever done they are too subjective, the NPA's proposal suggests that Performance Indicators be made after police jobs are properly identified and classified. It seeks for more transparency designed as an HRO tool. Each police officer will enter into a Performance Management Understanding with his or her Appraising Officer who will monitor compliance with it on the basis of this shared understanding. It further wants

core competencies, key result areas and key Performance indicators lists to be prepared and notified for each police job. This may be researched and validated by competent outside agencies for scientific assessment of performance.

The NPA's proposal further demands that evaluation of an officer should not be done in isolation, but should be done along with his team. It wants the accountability of Appraiser Officers to be fixed in unequivocal terms.

The Government of India appointed Expert Committee is to make a comprehensive review of the Performance Appraisal System of officers of all Services including the IPS officers. The NPA proposal is now with the Committee and hopefully many of the points raised therein will find suitable recognition while formulating its recommendations.

Meanwhile, several State Governments are making serious attempts to improve the efficiency and accountability of its police based on local experiences and expert committee recommendations. One thing that emerges from the present scenario is that the existing performance appraisal system at all levels is admittedly unsatisfactory and perceived to be so. Some changes are bound to occur in the scope and manner of assessment. Democratic societies are slow on reforming institutions and procedures. India, with its plural composition, multi-party governance structures and severe resource constraints, may take longer time in implementing reforms at the operational level unless it assumes the dimensions of a popular movement supported by major political parties. Police reform is not different in this regard.

ARMED FORCES SPECIAL POWERS ACT AND HUMAN RIGHTS

A Romenkumar

*What light is to the eyes - What air is to the lungs
What love is to the heart, liberty is to the soul of man.*

Ingersoll luminously claimed

1. WHAT IS TERRORISM?

The phenomenon of terrorism can be defined as a strategy whereby violence is used to produce effects in a group of people so as to attain some political ends. One of the effects of such strategy is often fear. The chilling eerie of violence perpetrated by terrorists for a cause has made the world shudder with a creeping sense of insecurity. The controversial disappearances, kidnappings, assassinations, attacking of security forces and besieging of innocent people are “tactic” of the dramatic gesture that prove the ability of the terrorists to strike when, where and whom they like. Terrorism has come to engulf global peace and human safety. It has made its target the person, property, places and communications in a bid to paralyse the individual liberty and dignity of persons on one hand and

peace and security on earth on the other. Terrorism in India is a major problem today, which cannot simply be allowed to persist. It is a complex phenomenon with social, political and economic factors behind it. It transcends national boundaries and has international ramifications.

2. EXTRAORDINARY SITUATIONS

Nothing is more disastrous, disarray and dangerous than sporadic killing of innocent persons, preaching violence followed by extortion and looting and kidnapping for ransom committed by frenzied force of terrorism with their dictatorial attitude which has become a global phenomenon. The post 11th September, 2001 incident of attack at the World Trade Centre shows the magnitude and danger of growing

global terrorism which calls for the demonstration of determined, effective and tenacious environment with competence, professionalism and dedication to combat terrorism effectively. Since the normal peacetime standard of Criminal Law is not only inadequate but also very weak in combating terrorist activities, which are far serious in nature, intolerably grave in impact and highly dangerous in consequences, a Special Law is required designed to meet and check the extraordinary situation. "The Prevention of Terrorism Act, 2002" was enacted extending to the whole of India.

3. VIRES OF POTA WAS CHALLENGED

Vires of Prevention of Terrorism Act was challenged in the Supreme Court in *People's Union for Civil Liberties and another Vs Union of India*, AIR 2004 SC 456. While upholding the validity of the Special Law, the Supreme Court held as below:-

(i) DESCRIPTION OF TERRORISTS' ACTS

Terrorist acts are meant to destabilize the nation by challenging its sovereignty and integrity to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow the democratically elected Government, to promote prejudice and bigotry, to demoralize the security forces, to thwart economic progress and development and so on. This cannot be equated with an usual law and order problem within a State. On the other hand, it is inter-state, inter-national or cross-border in character.

(ii) FIGHT AGAINST THE OVERT AND COVERT ACTS OF TERRORISM IS NOT A REGULAR CRIMINAL JUSTICE ENDEAVOUR

Fight against the overt and covert acts of terrorism is not a regular criminal

justice endeavour, rather it is defence of our nation and its citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together. Therefore, terrorism is a new challenge for law enforcement, by indulging in terrorist activities organised groups or individuals, trained, inspired and supported by fundamentalist and anti-Indian elements were trying to destabilise the country, this new breed of menace was hitherto unheard of. Terrorism is definitely a criminal act, but it is much more than mere criminality.

(iii) TODAY THE GOVERNMENT IS CHARGED WITH THE DUTY OF PROTECTING THE UNITY, INTEGRITY, SECULARISM AND SOVEREIGNTY OF INDIA

Today the Government is charged with the duty of protecting the unity, integrity, secularism and sovereignty of India from terrorists, both from outside and within borders. To face terrorism, we need approaches, techniques, weapons, expertise and, of course, new laws. In the above said circumstances, Parliament felt that a new anti-terrorism law is necessary for a better future. This parliamentary resolve is epitomized in POTA.

(iv) THE TERRORIST THREAT THAT WE ARE FACING IS NOW ON AN UNPRECEDENTED GLOBAL SCALE

The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilized nations. Terrorists' activities in one country may take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a Government across another and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spillover effects.

It is, therefore, difficult in the present context to draw sharp distinctions between domestic and international terrorism.

(v) ANTI-TERRORISM LAWS SHOULD BE CAPABLE OF DISSUADING INDIVIDUALS OR GROUPS FROM ESCORTING TO TERRORISM

Therefore, the anti-terrorism laws should be capable of dissuading individuals or groups from escorting to terrorism, denying the opportunities for the commission of acts of terrorism by creating inhospitable environments for terrorism and also leading the struggle against terrorism. Anti-terrorism law is not only a penal statute but also focuses on preemptive rather than defensive state action. At the same time, in the light of global terrorist threats, collective global action is necessary. Parliament has passed POTA by taking all these aspects into account. Moreover, the entry "Public Order" in the State List only empowers State to enact a legislation relating to public order or security in so far as it affects or relations to a particular State. Howsoever, wide meaning is assigned to entry "Public Order" the present day terrorism cannot be brought under same by any stretch of imagination. The terrorism is not confined to the borders of the country. Cross-border terrorism is also threatening the country. To meet such a situation, a law can be enacted only by Parliament and not by State Legislature.

CASES DISTINGUISHED

- (1) *Rehman Shagoo Vs State of J&K* AIR 1960 Cr LJ 126.
- (2) *Ramesh Thapar Vs State of Madras*, AIR 1950 Cr LJ 1514.
- (3) *Dr Ram Manohar Lohia Vs State of Bihar*, AIR, 1966 Cr LJ 608.
- (4) *Madhu Limaye Vs SDM Monghyr*, AIR 1971 SC 2486; Cr LJ, 1720.

4. TERRORISM IN THE STATE OF MANIPUR

(i) With the uprising of the Naga hostile activities in Manipur, the law and order scenario in the region demanded a special law to give wide powers to the armed forces to deal with any abnormal situation. For this purpose, the Armed Forces (Special Powers) Act, 1958 was extended to the State of Manipur. The background of this Special Law is as below:-

To deal with the situation arising in certain provinces on account of the partition of the country in 1947, the then Governor General issued 4 (four) Ordinances, namely –

- (i) The Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (11 of 1947),
- (ii) The Assam Disturbed Areas (Special Powers of the Armed Forces) Ordinance, 1947 (14 of 1947),
- (iii) The East Punjab and Delhi Disturbed Areas (Special Powers of the Armed Forces) Ordinance, 1947 (17 of 1947) and
- (iv) The United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (22 of 1947). These ordinances were replaced by the Armed Forces (Special Powers) Act, 1948 (Act No.3 of 1948).

This Act was a temporary statute enacted for a period of one year. It was, however, continued till it was repealed by Act 36 of 1957. Thereafter, the Central Act was enacted by Parliament. It was known as the Armed Forces (Assam and Manipur) Special Powers Act, 1958 and it extended to the whole of State of Assam and Manipur and as a result of the amendments made therein it is now described as Armed Forces (Special Powers) Act, 1958 and it extends to the whole of the State of Arunachal Pradesh, Assam, Manipur, Meghalaya,

Mizoram, Nagaland and Tripura. Under Section 3 of the Act, the power to declare an area to be disturbed area was conferred on the Governor of Assam and the Chief Commissioner of Manipur.

(ii) SUBSEQUENT AMENDMENT OF THE ACT

Section 3 was amended by Act 7 of 1972 and power to declare an area to be “disturbed area” has also been conferred on the Central Government. In the statement of Objects and Reasons of the Bill which was enacted as Act 7 of 1972, the following reason is given for conferring on the Central Government the power to make a declaration under section 3.

The Armed Forces (Assam and Manipur) Special Powers Act, empowers only the Governors of the State and the Administrators of the Union Territories to declare areas in the concerned State or Union Territories as “disturbed” keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect against internal disturbance, it is considered desirable that Central Government should also have power to declare areas “disturbed” to enable its Armed Forces to exercise the special power.

The amended provision of Section 3 is reproduced as below:-

3. Power to declare areas to be disturbed areas – If, in relation to any State or Union Territory to which this Act extends, the Governor of that State or the Administrator of the Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, may be is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator

of that Union Territory or the Central Government, as the case may be may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

5. DECLARATION OF THE ENTIRE AREA TO BE DISTURBED AREA

With the deterioration of the law and order scenario in the State of Manipur, the entire State was declared as disturbed area under section 3 of the Armed Forces (Special Powers) Act, 1958 and Army and Assam Rifles who are also governed by the Army Act, 1950 were inducted to deal with the abnormal situation in the State. The said Act was also extended to various parts of Assam, Nagaland, Meghalaya, Arunachal Pradesh and Tripura. Under Section 4 of the Act, wide powers are given to any commissioned officer, warrant officer, non-commissioned officer or any other person equivalent in rank in the Armed Forces to open fire for the maintenance of public order after giving due warning. The relevant sections 4 and 5 of the Act are reproduced as below:-

4. Special powers of the armed forces – Any commissioned officer, warrant officer, non-commissioned officer or any other persons of equivalent rank in the armed forces may, in a disturbed area -

- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as

weapons or of fire-arms, ammunitions or explosive substances;

- (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as training camp for armed volunteers or utilized as a hideout by armed gangs or absconders wanted for any offence;
- (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
- (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

5. Arrested Persons to be made over to the police – Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

6. MISUSE OF THE ACT BY THE ARMED FORCES

There is no doubt that the provisions of the Act give unbridled and unfettered powers to the Armed

Forces. The provisions are without any check and are amenable to misuse by the Armed Forces. Judicial pronouncements made by the Supreme Court and Gauhati High Court may confirm the concept of misuse of the provisions of the Act which are discussed as below:-

The validity of the Act was challenged by the Naga People's Movement for Human Rights before the Supreme Court. The Constitution Bench of the Supreme Court in a case as reported in Naga People's Movement for Human Rights Vs Union of India, AIR 1998 SC 431 held that Parliament was competent to enact such Armed Forces (Special Powers) Act, 1958 to deal with the abnormal law and order situation in a region. However, the Supreme Court laid down the following conclusions:-

- (1) PARLIAMENT IS COMPETENT TO ENACT LAW FOR THE MAINTENANCE OF LAW AND ORDER IN THE STATE

Parliament was competent to enact the Central Act in exercise of the legislative power conferred on it under Entry 2 of List 1 and Article 248 read with Entry 97 of List I. After the insertion of Entry 2A in List I by the Forty-Second Amendment to the Constitution, the legislative power of Parliament to enact the Central Act flows from Entry 2A of List I. It is not a law in respect of maintenance of public order falling under Entry I of List II.

- (2) THE EXPRESSION "IN AID OF CIVIL POWER" IS TO ENABLE CIVIL POWER IN THE STATE TO DEAL WITH THE PUBLIC ORDER

The expression "in aid of the civil power" in Entry 2 A of List I and in Entry I of List II implies

that deployment of the armed forces of the Union shall be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order which has necessitated the deployment of the armed forces in the State.

- (3) WITH THE DEPLOYMENT OF ARMED FORCES, CIVIL POWER WILL CONTINUE TO FUNCTION

The word "aid" postulates the continued existence of the authority to be aided. This would mean that even after deployment of the armed forces the civil power will continue to function.

- (4) THE ARMED FORCES SHALL OPERATE IN THE STATE IN COOPERATION WITH THE CIVIL ADMINISTRATION

The power to make a law providing for deployment of the armed forces of the Union in aid of the civil power of a State does not include within its ambit the power to enact a law which would enable the armed forces of the Union to supplant or act as a substitute for the civil power in the State. The armed forces of the Union would operate in the State concerned in cooperation with the civil administration so that the situation which has necessitated the deployment of armed forces is effectively dealt with and normalcy is restored.

- (5) DEPLOYMENT OF ARMED FORCES IN THE STATE DOES NOT DISPLACE THE CIVIL POWER

The Central Act does not displace the civil power of the State by the armed forces of the

Union and it only provides for deployment of armed forces of the Union in aid of the civil power.

(6) **THE CENTRAL ACT IS NOT A COLOURABLE LEGISLATION**

The Central Act cannot be regarded as a colourable legislation or a fraud on the Constitution. It is not a measure intended to achieve the same result as contemplated by a Proclamation of Emergency under Article 352 or a proclamation under Article 356 of the Constitution.

(7) **SECTION 3 DOES NOT CONFER AN ARBITRARY OR UNGUIDED POWER TO DECLARE AN AREA AS A "DISTURBED AREA"**

Section 3 of the Central Act does not confer an arbitrary or unguided power to declare an area as a "disturbed area". For declaring an area as a "disturbed area" under Section 3, there must exist a grave situation of law and order on the basis of which the Governor/Administrator of the State/Union Territory of the Central Government can form an opinion that the area is in such a disturbed or dangerous condition that the use of the armed forces in aid of the civil power is necessary.

(8) **THERE SHALL BE PERIODIC REVIEW OF EVERY SIX MONTHS FOR DECLARATION OF DISTURBED AREA**

A declaration under Section 3 has to be for a limited duration and there should be periodic review of the declaration before the expiry of six months.

(9) **THE CENTRAL GOVT SHOULD ALSO DISCUSS THE STATE GOVERNMENT BEFORE DECLARATION OF AN AREA AS "DISTURBED AREA"**

Although a declaration under Section 3 can be made by the Central Government suo motu without consulting the concerned State Government, it is desirable that the State Government should be consulted by the Central Government while making the declaration.

(10) **SECTION 3 OF THE ACT CANNOT BE REGARDED AS DELEGATION OF POWER OF THE CENTRAL GOVERNMENT**

The Conferment of the power to make a declaration under Section 3 of the Central Act on the Governor of the State cannot be regarded as delegation of the power of the Central Government.

(11) **SECTION 3 IS NOT VIOLATIVE OF THE FEDERAL SCHEME AS ENVISAGED BY THE CONSTITUTION**

The Conferment of the power to make a declaration under Section 3 of the Central Act on the Central Government is not violative of the federal scheme as envisaged by the Constitution.

(12) **The provisions contained in Sections 130 and 131 CrPC cannot be treated as comparable and adequate to deal with the situation requiring the use of armed forces in aid of civil power as envisaged by the Central Act.**

(13) **SECTION 4 AND 5 OF THE ACT ARE NOT ARBITRARY AND UNREASONABLE**

The powers conferred under clauses (a) to (d) Section 4 and Section 5 of the Central Act on the officers of the armed forces, including a Non-Commissioned Officer are not arbitrary and unreasonable and are not violative of the provisions of Arts. 14, 19 or 21 of the Constitution.

(14) **THE OFFICERS IN THE ARMED FORCE SHALL USE MINIMUM FORCE REQUIRED FOR EFFECTIVE ACTION**

While exercising the powers conferred under Section 4 (a) of the Central Act, the officer in the armed forces shall use minimal force required for effective action against the person/persons acting in contravention of the prohibitory order.

(15) **A PERSON ARRESTED SHOULD BE HANDED OVER TO THE NEAREST POLICE STATION WITH LEAST POSSIBLE DELAY**

A person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the officer in charge of the nearest police station with least possible delay so that he can be produced before nearest magistrate within 24 hours of such arrest, excluding the time taken for journey from the place of arrest to the court of magistrate.

(16) **THE PROPERTY OR ARMS, AMMN., ETC, SEIZED SHOULD ALSO BE HANDED OVER TO THE NEAREST POLICE STATION**

The property or the arms, ammunition, etc., seized during the course of search conducted

under Section 4(d) of the Central Act must be handed over to officer-in-charge of the nearest police station together with a report of the circumstances occasioning such search and seizure.

(17) FOR CARRYING OUT SEARCH, PROVISIONS OF CrPC SHOULD BE FOLLOWED

The provisions of CrPC governing search and seizure have to be followed during the course of search and seizure conducted, in exercise of the powers conferred under Section 4(d) of the Central Act.

(18) WHILE GRANTING OR REFUSING SANCTION FOR PROSECUTION, THE CENTRAL GOVT SHALL PASS AN ORDER GIVING REASONS

Section 6 of the Central Act, in so far as it confers a discretion on the Central Government, to grant or refuse sanction for instituting prosecution or a suit or proceeding against any person in respect of anything done or purported to be done, in exercise of the powers conferred by the Act, does not suffer the vice of arbitrariness. Since the order of the Central Government refusing or granting the sanction under section 6 is subject to judicial review, the Central Government shall pass an order giving reasons.

(19) THE CENTRAL GOVT SHOULD ALSO ISSUE DO'S AND DON'TS TO BE FOLLOWED BY THE MEMBERS OF THE ARMED FORCES

While exercising the powers conferred under clauses (a) to

(d) of Section 4 the officers of the armed forces shall strictly follow the instructions contained in the list of "Do's and Don'ts" issued by the army authorities which are binding and any disregard to the said instructions would entail suitable action under the Army Act, 1950.

(20) The instructions contained in the list of "Dos and Don'ts" shall be suitably amended so as to bring them in conformity with the guidelines contained in the decisions of this Court and to incorporate the safeguards that are contained in clauses (a) to (d) of Section 4 and 5 of the Central Act as constructed and also the direction contained in the order of this Court dated July 4, 1991 in Civil Appeal No.2551 of 1991.

(21) COMPLAINT CONTAINING ALLEGATION SHOULD BE THOROUGHLY ENQUIRED INTO AND SUITABLE COMPENSATION SHOULD BE GIVEN TO THE VICTIM

A complaint containing an allegation about misuse of abuse of the powers conferred under the Central Act shall be thoroughly inquired into and, if on enquiry it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/ or a suit or other proceeding should be granted under Section 6 of the Central Act.

(22) The State Act is, in pith and substance, a law in respect of maintenance of public order enacted in exercise of the legislative power conferred on the State Legislature under Entry I of List II.

(23) The Expression "or any officer of the Assam Rifles not below the rank of Havildar" occurring in Section 4 and the expression "or any officer of the Assam Rifles not below the rank of Jamadar" in Section 5 of the State Act have been rightly held to be unconstitutional by the Delhi High Court, since Assam Rifles are a part of the armed forces of the Union and the State Legislature in exercise of its power under Entry I of List II was not competent to enact a law in relation to armed forces of the Union.

7. ELEVEN COMMANDMENTS OF THE SUPREME COURT OF INDIA

(i) In *DK Basu Vs State of West Bengal*, AIR 1997 SC 610, the Supreme Court, while dealing with the case of custodial death, any form of torture or cruel, inhuman or degrading treatment whether it occurs during investigation, interrogation or otherwise, issued the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measure:-

Custodial death is perhaps one of the worst crimes in a civilized society governed by the Rules of Law. The rights inherent in Article 21 and 22 (1) of the Constitution require to zealously and scrupulously protected. Court cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Art. 21 of the Constitution, whether occurs during investigation, interrogation or otherwise. If the functionaries of the Govt become lawbreakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself there by leading to an archaism. No civilized nation can permit that to happen. Does the right to life of a citizen

be put in abeyance on his arrest ? These questions touch the special court of human rights jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by the Article 21 of the Constitution of India cannot be denied to convicts, sender trials, detenues and other provisions in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

Therefore, the Supreme Court issued the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:-

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness who may be either a member of the family of the arrestee or respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or lockup shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as possible, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the district and police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officers effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.

(11) A police control room should be provided at all districts and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

(ii) FAILURE TO COMPLY THE ABOVE - HIGH COURT MAY INSTITUTE CONTEMPT PROCEEDING

Failure to comply with the said requirements shall, apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

(iii) CPOs AND OTHER CENTRAL AGENCIES TO FOLLOW

The requirements, flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP.

(iv) REQUIREMENTS ARE IN ADDITION TO CONSTITUTIONAL AND STATUTORY SAFEGUARDS

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the Courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

**(v) STEP TO BE TAKEN BY DGP/
HOME SECRETARY**

The said requirements shall be forwarded to the Director General of police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio, besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.

**8. ARMED FORCES (SPECIAL
POWERS ACT), 1958:**

**(i) AWARDING OF RS. 1,00,000/-
FOR DISAPPEARING OF PERSON
ARRESTED BY ARMY WOULD BE
PROPER RELIEF TO BE GRANTED
TO THE WIFE OF VICTIM**

Smt Linthukla vs Rishang
Keishing, (1989) 1 Crimes 428 (Gau).

Constitution of India - Article
226 - Armed Forces Special Power Act,
1958 - Secs. 4 and 5 - Petitioner's
husband has been apprehended by
the Army on 6/11/1983 - Failure of the
Union of India to produce the
aforesaid person - 5 years have since
elapsed - Assumption that he is dead
- Rs 1,00,000/- would be the proper
relief to be granted to his wife - 25%
shall be paid by the State and 75% by
Union of India (Sebastian's case: AIR
1984 SC 571 relied on) - para-7.

**(ii) ARMED FORCES ARE
CALLED IN AID OF CIVIL POWER
NOT AS AN INDEPENDENT BODY**

Armed Forces Special Powers Act,
1958 - Secs. 4 and 5 - Scope of - Role of
armed forces when they are called "in
aid of the civil power" under the
provisions of the Act - The role which
the district administration has to play in
these circumstances - Armed Forces
must act in cooperation with the district
administration and not as an
independent body.

Held: Though the armed forces
have been given wide powers by the Act,
these are sought to be confined within
a narrow limit and in this limit also they
do not really supplant the ordinary
machinery for maintaining law and order
or for that matter public order, but they
supplement the working of ordinary law
enforcing machinery.

**(iii) CIVIL AUTHORITIES AND
ARMED FORCES SHALL WORK
HAND IN GLOVE**

The High Court further held that
the Civil Authorities and armed forces
have to work hand in glove and not in
suppression of any side. It is because
of this that the Act requires by its
section 5 that any person arrested or
taken into custody by the armed forces
has to be made over to the officer-in-
charge of the nearest police station with
the least possible delay.

**iv) THERE IS NO PROVISION FOR
MILITARY RULE IN THE
CONSTITUTIONAL SETUP**

The High Court further observed
that in our Constitutional setup there is
no provision for a military rule in any
part of the territory of India.

**(v) WHILE DEALING WITH THE
INSURGENTS, ARMED FORCES
SHOULD STRIKE A BALANCE
BETWEEN CRUSHING OF
VIOLENCE AND CRUSHING OF
LIBERTY**

Of course, the armed forces must
be allowed free hand in so far as dealing
with insurgents or terrorists are
concerned by then while dealing with
others they have to strike a balance
between the crushing of violence and
crushing of liberty.

**(vi) ARMED FORCES MUST ACT
IN COOPERATION WITH THE
DISTRICT ADMINISTRATION AND
NOT AS INDEPENDENT BODY**

Further, the armed forces must act
in cooperation with the district
administration and not as independent
body. Of course, so far as operational
part of the activity of the armed forces
is concerned, they must be given free
hand but in other matters, they must take
the civil authorities in confidence and
work in harmony.

CASES REFERRED

- 1) Ningshitombi Devi Vs Rishang
Keishing, 1982(1) GLR 756.
- 2) Sebastian M Hongray Vs.
Union of India, AIR 1984 SC
571.
- 3) Sebastian M Hongray Vs
Union of India, AIR 1984 SC
1026.

**(vii) ROLE OF THE DISTRICT
ADMINISTRATION AFTER THE
DEPLOYMENT OF ARMED FORCES**

The High Court observed that
another aspect of the matter, however,
deserves to be gone into by us. This
aspect is related to the role which the
district administration has to play after
the armed forces have been called in aid
of the civil power. A view seems to be
gaining ground that after armed forces
are deployed in the disturbed area, the
civil authorities cease to function. But
as pointed out in Ningshitombi's case
though the armed forces have been
given wide powers by the Act, these are
sought to be confined within the narrow
limit and in this limit also they do not

really supplant the ordinary machinery for maintaining law and order or for that matter public order but they supplement the working of ordinary law enforcing machinery.

(viii) NO ARBITRARY TIME LIMIT CAN BE SET DOWN

But no arbitrary time limit can be set down as it may not be possible in many cases to affirmatively say or precisely qualify the period of time by reference to hours, dates or months. However, it will be possible having regard to circumstances of the case, to say whether thing was done or was not done "with least possible delay". Therefore, whenever the question of "least possible delay" arises for decision in computing the period of time the court has to have regard to the particular circumstances of the case - physical impossibility or otherwise to make over the arrested person to the nearest police station, and how, where and in what circumstances the arrest was effected.

(ix) WRONGFUL DETENTION - MONETARY COMPENSATION CAN BE AWARDED BY HIGH COURT

Constitution of India, Articles 21, 22, 226 - Wrongful detention - Monetary compensation can be awarded by high Court in exercise of jurisdiction (para13).

(x) SUPREME COURT ON COMPENSATION

In Rudul Shah Vs State of Bihar, AIR 1983 SC 1086; 1983 CrLJ 1644, the petitioner was in jail for more than 14 years after he was acquitted by the Court of Sessions Majjafarpur. The Supreme Court after holding that the Supreme Court in the exercise of its jurisdiction under Article 32 can pass an order for payment of money in the nature of compensation consequential upon deprivation of the fundamental right, awarded a sum of Rs 30,000/- in addition to the sum of Rs 5,000/- already paid by

the Govt as an interim measure in the nature of palliative with an observation that the order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State or its erring officials.

(xi) AWARD OF COMPENSATION FOR WRONGFUL DETENTION FOR 4 DAYS IN POLICE LOCKUP

In Bhim Singh Vs State of J&K, AIR 1986 494 : 1986 CrLJ 192, the petitioner Bhim Singh was detained in police lock up for 4 days without order of Magistrate. In that case, the Supreme Court held that it was a gross violation of Bhim Singh's Constitutional rights under Articles 21 and 22(2) and that when a person comes with a complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and invasion may not be washed away or wished away by this being set free. In appropriate cases, the court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. In that case a sum of Rs 50,000/- was awarded.

(xii) NO WOMAN CAN BE TAKEN TO ARMY CAMP FOR INTERROGATION

In Niloy Dutta Vs District Magistrate, Sibsagar District, 1991 CrLJ 2933 (Gauhati), Division Bench of the Gauhati High Court held that no woman can be taken to Army Camp for interrogation - Criminal PC (1974), Sec. 160(1) Proviso. The criminal law of the country is not altered or modified under the provisions of Armed Forces Act, 28 of 1958. What is stated with reference to Police Establishment and powers of the police officials u/s 160(1) proviso applies to Army and Army officers under the Act 28 of 1958. Therefore, whenever Army officials have to deal with women under Act 28 of 1958 as offenders before arrest or as witnesses or "otherwise"

when women are to be interrogated, no women is expected to be taken to the Army camp for interrogation and a woman is not to be requisitioned by the Army officials for attendance at any place other than woman's residence, as provided in Sec. 160(1) of the Code of Criminal Procedure. Further, when a male or female is arrested for interrogation or for investigation and army official after arrest hand over the person arrested to police authorities such arrested person cannot be taken again or into the custody by the Army officials.

(xiii) NO WOMAN CAN BE SUMMONED TO POLICE STATION FOR INTERROGATION

The Ex-Chief Minister (Nandini Satpathy) was summoned to the police station for interrogation. When she was summoned to a police station house with the possible prosecution in the event of default u/s 178 or 179 of IPC, she questioned the proceedings and that case is reported in AIR 1978 SC 1025 (1978 CrLJ 968) Nandini Satpathy Vs PL Dam. The Supreme Court in that case considered the criminal laws of the country relating to women. In more than one sense the entire gamut of the subject matter is covered from all perspectives of issues touching upon the rights of women be it an accused (female), a witness (female) to hold that no woman can be summoned to a police station for interrogation or for the investigation of crime. It is needless to dilate aspects dealt in that case as the case is a locus classicus in many respects.

(xiv) ARRESTED PERSON ONCE HANDED OVER TO POLICE BY THE ARMY CANNOT BE TAKEN BACK BY ARMY FOR INTERROGATION

The High Court further held that once a person, male or female, is handed over to the police authorities by the army authorities, such arrested person cannot be taken again into custody by the army officials.

(xv) COMPENSATION FOR DIS-
APPEARANCE OF BOYS

COMPENSATION OF RS.
1,25,000/- TO EACH VICTIM FOR
DISAPPEARING OF PERSONS
ARRESTED BY ARMY UNDER
SPECIAL POWERS ACT

Smt. Potsangbam Ningol
Thokchom -Vs General Officer
Commanding & Ors, 1997 (4) Crimes 24
(SC).

In this case, the appellant's mother of two boys each aged about 20 years old were picked up by the Army in the year 1980. Since the boys were not released by the Army, writ of Habeas Corpus was filed. The Court further directed to carry out an enquiry. The enquiry report revealed that there was no cogent evidence to show that the boys picked up by the Army had been released from the custody of the Army. The Supreme Court further held that the appellant should be compensated with an award of Rs. 1,25,000/- each. The present case relied on the judgment of the Supreme Court as reported in Nilabati Behera Vs State of Orissa, (1993) 2 SCC 746. The Supreme Court further held that the case before us is squarely covered by the decision of this Court in Nilabati Behera Vs State of Orissa (1993) 2 SCC 746, the facts whereof were similar to those before us. This court held that there was an obligation upon it, conferred by Article 32 of the Constitution, to forge the new tools necessary for doing complete justice and enforcing the fundamental rights guaranteed by the Constitution. This enabled it to award monetary compensation in appropriate cases

where that was the only mode of redress available. The remedy in public law was more readily available when invoked by the have-nots, who was not possessed of the wherewithal for enforcement of their rights in private law, but the exercise was to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

**9. ABSENCE OF PROVISION IN
THE ACT FOR MALICIOUS
ACTION**

Unlike Section 58 of the Prevention of Terrorism Act, 2002, there is no provision in the Armed Forces (Special Powers) Act, 1958 for punishment and compensation for malicious action against the members of the Armed Forces who exercise powers corruptly or maliciously knowing that there are no reasonable grounds for using and operating under the said Act. At the same time, the powers given to them are apparently carte blanche with which they can do anything under the garb of carrying out combing operations against the terrorists, which are manifestly evident from the judicial pronouncements as discussed above.

**10. PUBLIC UPROAR AGAINST
THE CUSTODIAL KILLING OF
ONE MISS TH MANORAMA
DEVI**

In the early morning of 11/7/2004, one Th Manorama Devi was picked up by the 17- Assam Rifles personnel from her house after issuing arrest memo. But on the way, she was killed on the ground of making an attempt to run away from the custody of the Assam Rifles. It had

resulted in creating public uproar. On 15/7/2004, 12(twelve) women who were leaders of various organizations had protested without any clothes in front of the western gate of the Assam Rifles, which had compelled the state authority to impose curfew for maintaining law and order. Thereafter, the public continued to protest on a large scale. Their main demand was to lift the declaration of "Disturbed Area" in the State under the Armed Forces (Special Powers) Act, 1958.

11. CONCLUSION

The implementation of the Armed Forces (Special Powers) Act, 1958 in the North-Eastern region cannot be stalled being the internal security requirement till such time the entire region is free from the chronic terrorist problem. However, it is high time to consider for toning down of the Armed Forces (Special Powers) Act, 1958 by reviewing and amending the entire provisions of the Act by incorporating all the pronouncements made by the Supreme Court and High Courts in the Act itself so that no room is left for any member of the Armed Forces for misusing the provisions of the Act. At the same time, power given under section 4 of the Act should be limited to the Commissioned Officers or Gazetted Officers of the Armed Forces only. A special provision should also be incorporated in the Act as is done under Section 58 of the Prevention of the Terrorism Act, 2002 for punishment and compensation for malicious action against any member of the Armed Forces who exercise powers corruptly or maliciously knowing that there are no reasonable grounds for operating under the said Act.

*The reward of one duty done
is the power to fullfil another*

George Eliot

THE ART OF DYING

AP Maheshwari

I, Not very ago, happened to attend a Rotary club meeting at Gaziabad, Rotarians follow a practice of inviting an eminent person as chief guest and arrange for an address by him on some relevant topic followed by discussions. The chief guest for the evening had to speak on 'The Art of Living' which has been a fashionable topic for quite some time. Somehow, the chief guest, an IRS officer could not make it The host readily declared that we have an IPS Officer with us who is working with Central Para Military Force `CRPF" and we request him to assume the role of the chief guest. I was in a fix, not having foreseen this twist of circumstance, I had come unprepared, Jokingly, I said-sorry I am a propounder of the 'art of dying' I cannot speak on 'the art of living' Many of those present in the audience assumed that I would speaking on my experience in the

police encounter some or some such related issues

But that was not my intention at all, I had various piecemeal thoughts screening through my mind. I had read Kabir, I had read Swamy Chinmayanand's discourse. I had read books of various faiths. I had evolved my own thoughts of 'spirituality' distinctly different from 'religiosity'. Some how I started speaking – "Change is a constant phenomenon". The air we breath in is, at a given point of time, a part of our system. The moment we exhale it, it goes out into the atmosphere where someone else inhales it. It remains no longer ours, it belongs now to someone else. The water in a wave of the ocean remixes in the sea, once the wave encounters the shore or some rock enroute. And soon after some other

wave envelopes it and carries it away. This change is taking place everywhere. The river you see right now is not the same which you see the next moment. The river may flow within the same banks but the waters have changed. So does our body. The cells are dying every movement and the new ones originating. The process of change is constant.

When we want to live, we hold desperately to the present, wanting to retain the inevitable. The emotional attachment the status quo thus becomes the source of our misery. The real art of living is learning 'to let go'. How beautiful we can imbibe the change to the higher echelons and let the remaining die out, as they have to, would decide how blissful can we be. "I went on adding similar examples", when a person is ageing, lower energy inputs through stomach or other sensory organs become ineffective. Those who draw energy from 'Pranik' or spiritual inputs, survive well. In fact, the dependence on lower form of inputs has to be waived off. Same way emotional attachments have to be diluted. When a person is in process of fading away / dying, people surround him. Because of these emotional attachments, he finds it difficult to die. Here also the art of 'letting go' becomes desirable.

I found people trying hard to digest what I had said. May be they were nonplussed, confused and yet not wanting to rebuff me stayed glued to their seats. I continued my delivery as the thoughts forming a pattern raced through my mind.

I took help of behavioural thoughts and went on to delve into the concepts of self. "The physical self, the social self and the spiritual self. Physical self is what we physically and mentally constitute of and think of ourselves as, social self is the image that people have of us, we are often worried about that. The physical self may die as we perish, the social self may have a longer span

of existence but our spiritual self is what lives on and on forever. When a person dies, he, in fact, traverses from the physical self to the spiritual self along with his faith and impressions of 'Karmas' (his deeds). Since this is the ultimate truth and the final destiny, those who learn the art of migrating to the spiritual self while in the living state, find the change over not only easy but also stimulating. Hence learning the 'art of dying' is important from this angle too".

I could see the appreciative smiles surfacing on the faces of the audience, that audience on whom I had almost been imposed upon. The 'art of dying' or 'letting things go' can be understood further on different footings. We may be totally materialistic in our approach, others may be working for social recognition and not just money, still others may choose to work in order to earn the love and respect of their fellow being or may be inspired by the aura of the place or the reflections of the intimacy existing amidst those he has all along identified with. Yet, some people may be further self actualized and want to add deeper meaning to their life. Even beyond all this, the rarest of the rare people may toil on the basis of 'faith' they evolve within themselves and enjoy a state of absolute bliss. These are the various gradations of the human mind and here one has to evolve from lower to the higher echelon. Thus dying out at the lower levels and resurrecting at the higher level is the only secret of maximizing the level of satisfaction till one ascends to a state of 'eternal bliss'. So ascend to the higher levels of the mind and kill the attachments at lower level, in order to reach the levels of sublimity (your eternal self).

It was only after crucifixion that 'Christ' evolved in the purest form, the 'Tandav' of Shiva is nothing but the destruction of your 'Shristi', the lower level world, which you have evolved and which is unfortunately bounded by

bodily limitations. The sacrifice of his 'dearest' as offered by Hazarat Ibrahim was nothing but the suppression of all his lower level bindings. Religiosity might have evolved in different ways, but spiritually remains the same. Death is nothing but an evolution from the physical realm to the spiritual realm and that is the only forward looking positive-step in our life".

There followed pin drop silence in the hall. I had said all that I had set out to say, unable to bear the suspense any further I broke the silence – "I have completed my address".

"I cannot fathom how a Cop is philosophizing on life", said an elderly gentleman with an appreciative glance directed at me. "Our cops are now turning philosophers", I jokingly added. I could see some one trying to pose a serious question. I prompted him to speak louder. He said, "you come in constant conflict with people, then how can you allow things to go past if they tread on your feet, it must be difficult not to react in such a circumstance".

To me it appeared to be a corollary to what I had spoken earlier. The topic was bound to invoke discussions and that is why Mr. Ghoshal posed the first serious question. "Yes", I started replying "you may choose how to counter this move. Many options are available. But to me it appears more relevant that we 'forgive and forget' and come out of the loop fast".

"But what, where is the guarantee that we stand to gain by going into spiritual realm or ascending towards 'God' who is after all only an imaginary entity", asked another gentleman. It was gradually becoming clear that we are entering a zone of deciphering what came first 'the hen or the egg'. But I was confident of my evolving thoughts. I tried to convey them across", there is no separate entity like God. You are yourself a part of the "absolute power"

but that is in its dormant state. Through you inner evolution you activate the higher levels of your mind and try to invoke the power which can descent from there. One has to traverse from the `sub-conscious' to the fully conscious state. This can only happen on the basis of our `faith'. `Faith' can move mountains. So everyone can evolve as `God' if we truly strive for that state. It is, infact, a flight of freedom from negativity to positivity. What you want and strive for yourself shall be achieved when you have deciphered your own level. Your sufferings and happiness would depend on the definitions you draw out within yourself'.

It was nearly ten in the night. Meeting ended with a vote of thanks in a rich and a positive mode. What impact it had left on the audience, I cannot say. But to me, as I know for certain, it helped to reformat my thoughts. It helped me to re-discover myself. My final understanding of the 'art of dying' remains alive.

- The art of 'letting things go' is basic to attain internal bliss.
- It is always preferable to 'forgive and forget' rather than falling in an unending loop of misery.

- It is wise to change the level of mind and enhance your satisfaction level through a range of higher 'level value-additions'.

You may or may not agree, but at least spare it some thought. It would not be far fetched to say "learning the Art of Dying is actually the crux of the real "Art of Living".

CRYPTOGRAPHY- THE SCIENCE OF HIDING INFORMATION

Muktesh Chander

INTRODUCTION

Since the beginning of the civilization, individuals and governments have had secrets to hide from other individuals or governments. Throughout history there has been a need to communicate secretly when certain important messages are involved. This was true when in middle ages kings wanted to send secret messages to their military commanders in the field. This is equally true in today's world when individuals, corporate houses, militaries and governments have much more to hide and communicate secretly. The most important period in the history of secret communication was during the World War II and cold war period when groups of nations were busy in protecting their secrets and at the same time were working hard to break the codes of the other group.

Cryptography is the science of hiding information by encoding plain text into an unreadable format so that only the person who has the necessary 'key', can decrypt and read it. The word Cryptography has its origin from two Greek words; "Kryptos" means hidden and "Graphia" means writing.

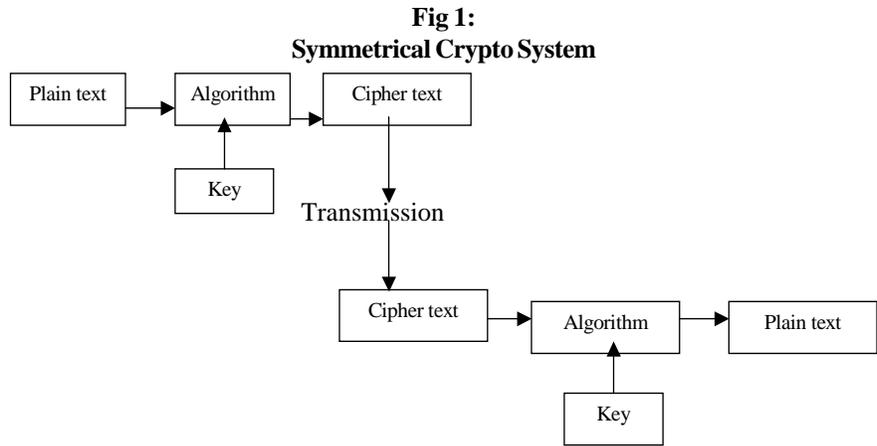
Egyptian hieroglyphics are the first known examples of cryptic writing which date back to around 1900 BC. Around 50 BC, Julius Caesar developed a method of shifting alphabets to encrypt a message. 'Artha-Shastra' of Kautilya written around 300 BC mentions various types of processes to break codes to gain intelligence. Even 'Kama Sutra' of Vatsayana written around 400 AD lists cryptography as the 44th and 45th arts ('yogas') men and women should know. During World War II, a sophisticated rotor based

substitution machine called 'Enigma' was developed in Germany by Arthur Scherbius to secretly communicate with their submarines. Japan also used a telephone relay based machine called "Purple" for secret communication. Breaking of both codes by Allied Forces was a key factor that changed the outcome of the war. Egypt is also known to have used a rotor-based machine called 'Hagelin'.

CRYPTOGRAPHIC SYSTEMS

A system that provides for encryption and decryption of data is called Cryptographic Systems. Encryption is a process through which the original data called plaintext or clear text is transformed into an unreadable text called cipher text. Decryption is the reverse of encryption. The encryption and decryption processes use a predetermined series of complex mathematical transformations or calculations called algorithm, which is governed by a secret value called key. This is similar to a lock and key arrangement. In today's computer world, a number of complex algorithms have been developed which are capable of performing cryptographic process. The crypto system can be implemented both in terms of hardware or software as well as a combination of the two.

Cryptographic systems can be broadly classified into two categories. Symmetric Cryptographic systems use a single key for encryption and decryption processes. The algorithm may not be secret but the secret key is known only to sender and receiver. The sender uses the secret key and the algorithm to convert plain text into cipher text which is then transmitted to the receiver. The receiver, who already has the secret key known to him, applies the key and the algorithm to the cipher text to obtain the plain text. The process is explained in Fig. 1



Symmetric Cryptographic system algorithms are simple and therefore faster and are widely used for bulk encryption. The system provides confidential exchange of message between two or more entities.

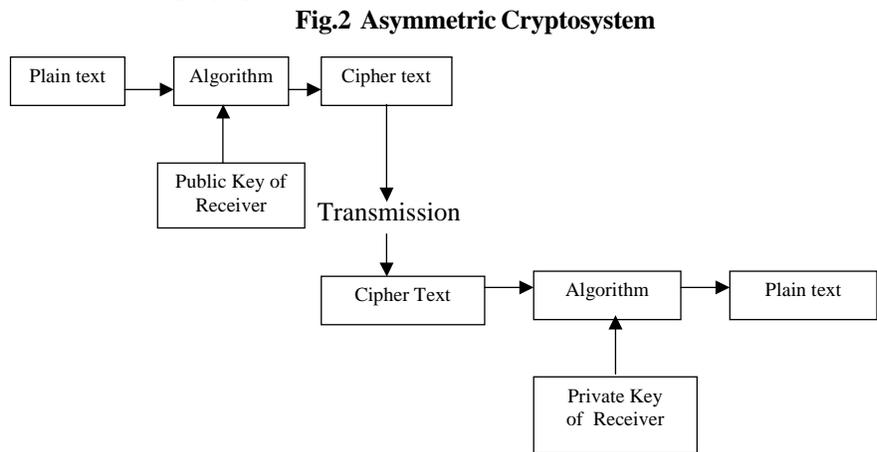
There are a large number of symmetric encryption algorithms like IDEA, CAST-128, RC4, RC5, RC6, BLOW FISH, etc. The most widely used symmetric encryption algorithm is DES (Data Encryption Standard) and Triple DES which have now become defacto world standards.

The most historic and revolutionary departure from the classical cryptography of substitution and permutations was the development of Asymmetric Cryptographic algorithms. Whitefield Diffe and Martin Hellmann of Stanford University were the first to introduce the concept of Asymmetric Cryptography in 1976 which

is now also called Public Key Cryptography.

Asymmetric Cryptographic systems use a pair of mathematically related keys. The encryption is done by the sender using the public key of the receiver which is known to anyone. The decryption is done by receiver by applying his private key which is exclusively known to him only. Even though the two keys are mathematically related, it is not feasible to derive one from the other. The process is explained in figure 2.

When used in different ways, the Asymmetric Cryptography is able to provide confidentiality, integrity, authenticity and non repudiation services to a piece of data. A number of Asymmetric Cryptographic algorithms have been developed since 1978. RSA, named after its inventors (Rivest, Shamir and Adleman) is the most popular



asymmetric algorithm which has now become defacto standard world wide. It was developed in 1978 at Massachusetts Institute of Technology. The RSA algorithm is based on the ease of multiplying large numbers but difficulty of factoring a number to its constituent prime numbers even using computers.

The Algorithm is explained as follows:

1. Find two large prime numbers P and Q. Prime number is a number, which is not divisible by any number except for 1 and itself. In this example, we are taking small numbers for the sake of easy calculation.

Let $P = 7$ (kept secret)
 $Q = 11$ (kept secret)

2. Calculate $N = P \times Q = 77$ (made public)

3. Calculate $M = (P-1) \times (Q-1) = 60$
 M is called ϕ or phi, the Euler Totient function.

4. Find a positive integer number E less than M which is co prime to M. E & M would be co prime when their Greatest Common Divisor (GCD) is one.

$E = 7$

5. Find number D less than M so that condition

$D \times E \text{ Mod } M = 1$ or

$D \times E = 1 + 1 \times M$ where 1 could be any integer which satisfies the condition. $D = 43$. (kept secret)

6. N, E form the public key where as private key is N, D.

7. Encryption is done using one of the keys and decryption is done using the other key of this key pair.

8. Let us say the message which is also expressed as a number is msg. The number to be encrypted must be less than N. For encryption using private key the encrypted message would be

$\text{emsg} = \text{msg}^E \text{ Mod } N$

If message = 6

then $\text{emsg} = 6^7 \text{ Mod } 60$

=41

9. For decryption using public key
 $\text{msg} = \text{emsg}^D \text{ Mod } N$
 $= 41^7 \text{ Mod } 77$
 $= 6$

Large exponentiation is possible in a simple way using Russian Peasant Algorithm.

The strength of RSA algorithm lies in the fact that if Public key (N, E) and Cipher Text are known there is no easy method of finding out private key component D or the prime numbers P and Q or the plain text message.

If P & Q are each 1024 bits long numbers (about 300 digit) even super computers will take hundreds of years to factor their product.

USES OF CRYPTOGRAPHY

Computers have now penetrated almost everywhere and security of information has become most important issue. The networking of computers has brought the world together but has also increased the risk of theft of information. The computer and network security is of paramount importance where national security is involved. Cryptography has emerged as one of the best tools to provide information security in cyber space. Without cryptography, e-commerce, on line banking, electronic fund transfer, e-cash/e-ticketing, e-governance, etc., would not have been possible. It would not have been possible to protect large amount of intellectual property and trade secrets which are stored in the corporate computers all over the world. Internet was originally designed from stability point of view without security in mind. The World Wide Web and the networking of computers got the required level of security only after strong encryption technologies were invented. Every day incidents of hacking into unprotected systems show that the unencrypted data is likely to fall into wrong hands. The sensitive data

on Smart Cards, Credit Cards, ATM Cards, Social Security Cards and Multipurpose National Identity Cards, etc., need to be encrypted, to protect it as well as to make it nearly unforgeable.

The concept of digital signature on electronic document has been possible only with the help of the latest asymmetric encryption technology.

DIGITAL SIGNATURES

In the legal environment and commercial transactions, the signatures on a paper document are of vital importance. The implementation of concept of electronically signing an electronic document was essential to facilitate e-banking and e-commerce involving e-contracts, buying or selling on internet or electronic fund transfer. Public key Cryptography in association with one way Hash Function has provided the much needed digital signatures for signing electronic documents which has all the elements of paper signatures in the most authentic manner. In order to understand digital signature, we must first understand Hash Function.

One way Hash Function is an algorithm which, when applied to a message of arbitrary length, generates a much smaller fixed length extract called message digest. It is computationally infeasible to know the full message from the message digest and no two different messages can have the same message digest. It is like digital fingerprint of a message. MD-5 and SHA-1 (Secure Hash Algorithm) are two currently widely used one-way Hash function. MD-5 produces 128 bit digest where as SHA-1 produces 160 bit output as digest.

The message digest of any electronic document, when encrypted with senders private key, is called digital signature of that electronic document.

Thus, digital signature is a bit pattern that depends on the message being signed. Digital signature when decrypted using sender's public key gives back the message digest. When this message digest matches with the message digest derived from the document, it authenticates that the sender only could have generated this document. Since asymmetric cryptographic algorithms are slow, it is preferable to encrypt the message digest instead of the entire message for digital signatures.

The concept of digital signature is totally unique and different from the paper signatures as it provides 100% confidentiality, integrity, authentication and non repudiation.

Information Technology Act 2000 provided recognition to e-commerce in India. Sec.2 (1) (P) of IT Act 2000, defines digital signature as authentication of any electronic record by a subscriber by means of any electronic method or procedure, in accordance with the provisions of section 3, which specifies the technology adopted to implement Digital Signatures using Asymmetric Crypto System and Hash function. It further defines Hash Function as an algorithm for mapping or translation of one sequence of bits into another, generally smaller set, known as Hash result such that an electronic record yields the same Hash result every time the algorithm is executed with the same electronic record as its input.

The IT (Certifying Authority) Rules, 2000 in Sec. 6 defines the standards to be used to implement digital signatures. RSA is one of the algorithms prescribed to generate digital signatures.

SECURITY OF CRYPTOSYSTEM

Cryptanalysis is the science of studying and breaking the encryption

process to find plain text or the secret key. The security of cryptographic algorithm does not lie in the secrecy of the algorithm, as the most widely used algorithms are known pretty well and any new algorithm which may be secret for the time being has not been tested for security. The security only lies in the length of the key. It is similar to saying that a 7 lever lock is better than 5 lever lock. Ultimately any code can be broken by the use of brute force if one has enough processing power and time. DES had been the defacto standard since 1976 till 1990 and after that the processing power increased to such an extent that it started showing signs of vulnerability. In 1998, DES Challenge II was broken by a network of computers on internet involving tens of thousands of computers in volunteered efforts in about 39 days where about 18 quadrillion keys were checked at the rate of over 250 billion keys per second. It is worthwhile to mention that DES uses 56 bit keys and there are seventy two quadrillion (actually 72, 057, 594, 037, 927, 936) different possible keys.

In 1999 once again DES encryption was broken by Electronic Freedom Foundation using 'Deep Crack' a custom built machine working in conjunction with about 1,00,000 computers around the world using distributed computing in 22 hours and 3 minutes, winning a challenge of RSA, proving that DES has outlived its life. Presently triple-DES (more secure version of DES) is being used and AES (Advance Encryption Standard) using Rijndael Algorithm has been approved by National Institute of Standard & Technology, USA.

Thus, any encryption can be broken given adequate time and resources. How strong encryption should be used depends upon the value of the information being protected. The strength of RSA algorithm lies in the extreme difficulty in factoring large integers. So far no efficient factoring algorithm has been found. It is estimated

that factoring a 1024 bit (approximately 309 digits) integer will take 10^6 years if a million computers all capable of doing 10^9 divisions per seconds are used.

So far RSA challenge to factor a 640 bit integer (193 digits) has not been broken anywhere in the world. Thus Digital Signature using 1024 bit is perfectly safe for decades.

CRYPTOGRAPHY AND CRIME

Interception of written and voice communication is one of the oldest methods of surveillance. In the cyber age, more and more people are using electronic forms of communication particularly e-mail. Criminals and terrorists are now aware that police and intelligence agencies are tapping phones and therefore they are switching to SMS, e-mail, Internet chatting and VOIP (voice over internet). They are also using encryption techniques to avoid intercepted message to be understood. In recent years, there has been enough evidence to suggest that terrorist groups particularly 'Al-Qaeda', 'Hamas' and 'Hizbolla' have been using computer communication using encryption tools like 'Steganography' where a secret message is embedded in a picture message and sent over internet. 'Aum Shinri Kyo' cult of Japan, which released Sarin nerve gas in Tokyo subway, killing 12 people and injuring 6000 persons, had stored their data and plans on computer using RSA encryption. Terrorism investigation in the Philippines in 1995 found use of encryption in an alleged plot to assassinate Pope John Paul II. Organized criminal gangs, drug racketeers, international mafia, international money launderers, child pornographers, arms smugglers, etc., are extensively using computers, internet and encryption technologies. Cryptography has emerged as an ideal tool for conspirators and a serious concern for law enforcers.

A large number of such cryptographic tools like PGP (Pretty Good Privacy), are freely available on internet. There is no control on encryption in most of the countries and criminals and terrorists can easily defeat the law enforcement agencies by resorting to strong encryption which offers unprecedented privacy and anonymity. Terrorists who were planning to bomb United Nations Building, the Lincoln and Holland Tunnels and the main federal building in America could never have been caught, if they had used encryption. FBI was able to nab them after a court ordered e-surveillance revealed the plot.

A major debate has been going on the control of encryption technology in several countries. On one hand advocates of freedom of speech and privacy are against it. On the other hand law enforcement agencies want some kind of control on encryption in the interest of national security and public safety. Widespread and easy availability of strong and unbreakable encryption coupled with cyber anonymity, inadequate laws and lack of global cooperation could provide immunity from lawful interception of information and lead to a situation which can be called crypto-anarchy.

We have seen various phases of terrorism in J & K, Punjab and NE States. The Modus Operandi of terrorists have changed tremendously in the last few years. The terrorists in the Red Fort attack and Parliament House attack in Delhi were known to be using computers for planning the attack. In order to track down cyber criminals and terrorists through e-surveillance, a provision was created in the Information Technology Act 2000, even though its main thrust was e-commerce and Digital Signatures. Sec. 69(1) of the Information Technology Act 2000 gives power to the Controller of Certifying Authority to direct any agency of the government to intercept any information transmitted through any

computer resource. Non-cooperation to assist in this regard is also a severe offence under this section.

Under special circumstances, police and other government agencies can be authorized to intercept e-mail, internet chat, internet browsing pattern and any other information. Since SMS, MMS and other similar messaging systems also use computers, government agency can intercept these messages also. It may be mentioned here that as per IT Act 2000, there is no mechanism available to intelligence agencies to decipher message sent using digital signatures as certifying authority does not keep a copy of private key of the signature. As per Sec 69 (2), although the person incharge of computer is supposed to extend all facilities and technical assistance to decrypt information, it is not clear how any encrypted data can be decrypted by law enforcement agencies without access to encryption key, if the person refuses to give the private key or deliberately destroys it. If an accused has stored in his computer information related to crime using strong encryption, even when he is directed to decrypt the information, he may refuse to cooperate. Moreover, Article 20(3) of Constitution directs that no person accused of any offence shall be compelled to be a witness against himself. Protection against self incrimination comes in direct conflict with the decryption command under section 69(2) of IT Act. This needs to be resolved by suitable amendment.

In the interest of national security, some form of control on use of strong encryption technology is desirable. Alternately, Key Escrow regime should be implemented, where a copy of private key is given to a trusted third party or a key is split among several such agencies. Whenever any investigating or intelligence agency seeks to decrypt any communication, under a proper procedure and court order, the private key can be made available to the law

enforcement agencies to enable them to decrypt the information. The trusted third party could be a government agency, court, or any independent authority established under government order.

CONCLUSION

Computers and Networks are inevitable today. Their advantages are immense and use unavoidable. The most secured way of safety is to use encryption to protect the electronic information and its exchange.

Secure Hyper Text Transport Protocol (S-HTTP), Secure Socket Layer (SSL), Secure MIME (Multipurpose Internet Mail Extension), Secure Electronic Transaction (SET), IP Sec, etc., are some of the internet and web technologies which have been developed to provide security using encryption. Information is asset and needs to be protected before it is stolen and falls into wrong hands. At the same time, there is a strong need to minimize electronic criminal activity and use of cryptography by crypto-criminals and save the cyberspace from crypto-anarchy and cyber terrorism. Law enforcing authorities must, at least, get a level playing field, if not an edge, in the cyber arena in their efforts to secure national security interest and fight against terrorism.

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NDPS ACT - LEGISLATIVE LOOPHOLES

BD Agarwal

Drafting of legislations is not only an art, but it is also a science. The persons, who are responsible for drafting legislations, should not only possess the skills of drafting but they should also have mastery over the subject. In appropriate cases, opinions and views of experts in the field should also be taken. A perfect and well crafted legislation is likely to bring results and achieve the objectives for which it is enacted, whereas a defective legislation not only shatters the hope of legislators but also leads to chaos, miscarriage of justice and injustice to the victims of such law. Narcotic drugs and Psychotropic Substances Act, 1985 is one such defective law.

The NDPS Act was enacted in the year 1985 with a view to contain the

increase in drug abuse and illicit drug trafficking. It is a comprehensive law codifying various State and Central enactments. Within a short period of less than two decades, the Act needed two major dressings by way of Amended Act 2 of 1989 and Act 9 of 2001.

AMENDMENT ACT 2 OF 1989

1989 amendments had really given a shape to the NDPS Act, which was enacted almost in a naked and skeleton condition. A bare reading of the amendments show that the 1989 amendments were primarily intended to make bail provisions and post conviction procedure more stringent. Sec. 32-A was inserted to prohibit suspension, remission or commutation

of sentence. 1989 Act also provided for pre-trial disposal of seized narcotic drugs, death penalty for second conviction under certain circumstances, forfeiture of property, etc. On the procedural side, powers were conferred upon the Govt to constitute Special Court for speedy trial of cases and all the offences under the Act were made cognizable and non-bailable.

AMENDMENT ACT 9 OF 2001

Amendment Act 9 of 2001 came into force wef 2.10.2001, bringing wide ranging changes in the principal law. By these amendments, the Govt has, inter alia, created a National Fund for control of drug abuse and educating public against drug abuse, incorporating Chapter II A newly. The second major change has been made in the field of punishments. The entire Chapter IV has been overhauled relating to 'Offences and Penalties'. Prior to 2001 amendments, only one category of sentence was prescribed for each kind of offence. Now, all the offences have been divided into 3 categories, i.e., 'small quantity', 'in between small quantity and commercial quantity' and contraventions involving 'commercial quantity'. Similarly, the amendments have reduced the quantum of enhanced punishments for second conviction and have also restricted the death penalty only for second offence punishable U/Ss 19, 24 and 27-A, which had earlier covered all the offences punishable U/Ss 15 to 25 of the Act. Besides this, the court's power to release certain offenders on probation and good conduct has been enlarged by amending Sec. 39. These amendments show that the tight jacket put on the original law by way of 1989 amendments has been loosen-up in the year 2001. In the same sequence of liberalizing the law, the arena of trial of offences by Special Courts has also been restricted to offences attracting punishment of more than 3 years.

LACUNAE AND DEFECTS

Despite wide ranging changes made twice in the twenty year old law, it is still as vague and deficient as it was at the time of new enactment. The defects in the law have compounded with each amendment. Emphasis should always be given to draft the law in easy language not only to make it popular amongst common masses but also with a view to eliminate scope of different interpretations of the law by the public, investigating agencies and judiciary. However, the drafting experts of NDPS Act have given a total go-bye to these principles. A few of the noticeable infirmities and deficiencies in the law are discussed below:

REMAND ORDERS

Under Sec. 36 A (1) (b) the Judicial Magistrate have been empowered to detain and remand an arrestee to custody for a period not exceeding 15 days in the whole. Unlike Sec. 167 (2) of the Code of Criminal Procedure (CrPC in short) the NDPS Act has not specified the outer period of detention, except for selected offences of 'commercial quantity'. This vagueness in the law has led to different interpretations through out the country. There is virtual horizontal split in the higher judiciary in this regard. Many High Courts have held that a Judicial Magistrate becomes functus-officio after 15 days and for further remands the accused persons are to be produced before Special Judge. However, the Punjab and Haryana High Court in the case of Janta Singh -Vs - State of Punjab (1996 Cr LJ 1185 FB) has held that till special courts are constituted, the Judicial Magistrates can remand the accused persons beyond the period of 15 days. Similar view was also taken in the case of Alimuddm - vs - State of Rajasthan, 1991 (I) EFR 262 (FB). However, both these High Courts remained short of declaring that even

after constitution of Special Courts, the Special Judges should not be asked to perform the functions of Magistracy, which not only frustrates the objective of speedy trial of cases but also causes confrontation with Magistrates in their day-to-day procedural matters pertaining to narcotic offence. The confusion went to such a pass that the Orissa High Court even went to hold that Magistrates can remand the accused persons beyond 90 days, not to speak of 15 days. This was held in the case of Bimbadhar Behra -Vs - State of Orissa in the year 1993.

In the case of Union of India -Vs - Thamesharasi, reported in (1995) 4 SCC 190 and again in the case of Dr Bipin S Panchal - Vs - State of Gujarat, (1996 Cr LJ 1652) the Hon'ble Supreme Court has held that bail provisions under the Act does not exclude proviso to Sec. 167 (2) CrPC. In this way, the application of Sec. 167 CrPC in the narcotic offences has been approved by the Apex Court. Besides this, a close reading of Sec. 36 A (1) (b) of the Act shows that the remand powers of Magistrate are almost pari-materia and in tune with Sec. 167 (2) CrPC. At the same time, the Act has not put a complete bar upon the Magistrates from extending the remand. Hence, the legislative intent should be drawn that the Judicial Magistrate can extend the remand of accused persons upto 180/90/60 days and even upto one year, as the case may be, after the insertion of sub-sec.(4) to S.36A.

BAIL

Prior to 1989 amendments, no pre-conditions were imposed for grant of bail U/S 37 of the Act and the bail applications were governed as per provisions of CrPC. In 1989 few conditions were imposed for grant of bail to those narcotic offences which invited imprisonment of five years. Now, the pre-conditions have been restricted to offences involving commercial quantity or offences falling u/s 19, 24

and 27 A of the Act only. Despite these laborious exercises, the legislation remained as vague and hazy as earlier regarding the powers of Judicial Magistrate to entertain bail applications.

By virtue of amendment of Sec. 36 A, the Judicial Magistrates have been empowered (impliedly) to try the offences, which are punishable for a term of 3 years and less, and such offences can be tried by adopting summary procedure under sub-sec. (5) to Sec. 36 A. Having given the trial powers, the 2001 amendment did not give the power to accept bail prayers by Judicial Magistrates. Under proviso to Sec. 36 A (1) (b) the Magistrates are required to forward an arrestee to the Special Courts if the detention of such person is found unnecessary. This proviso acts as a taboo/bar upon the powers of Magistrates to grant bail to the accused persons even in petty offences.

ANTICIPATORY BAIL

The Act is conspicuously silent either to extend the protective shield of anticipatory bail to the prospective accused persons or to keep away this privilege from the persons who somehow attract the rigour of law. So far Special Courts are concerned, they can invoke Sec. 36 C, wherein such courts have been permitted to work under the umbrella of CrPC. In absence of any specific embargo in the Act, like certain restrictions and pre-conditions imposed under Sec. 37 for granting regular bail, it can only be inferred that Special Courts, which are deemed to be Court of Sessions, can entertain applications for pre-arrest bail and dispose of the same under Sec. 438 CrPC.

The position of High Courts in the matter of anticipatory bail is more piquant. Somehow Special Courts have been declared to be the Court of Sessions for all practicable purposes and thereby these courts can draw the

powers of Sec. 438 CrPC. However, the High Courts' power have been limited to entertain bail applications which fall in the category of Sec. 439 CrPC., i.e, post arrest bail applications. This is certainly a ridiculous proposition of law. It took nearly two decades for a High Court to clear the legal ambiguity. Recently, the Hon'ble Gauhati High Court, in the case of Baljit Singh -Vs - State of Assam, reported in (2004) 1 GLR 94 (DB), it has been held that it would be wholly incompatible with the idea that it has been denuded of its power under Sec. 438 CrPC. Their Lordships further held that in conformity with the legislative intent expressed in Sec. 36 B (power relating to appeal and revisions to construe that in the scheme of the Act, as envisaged under Chapter IV thereof, the power of High Court to grant pre-arrest bail under Sec. 438 CrPC is preserved. It is high time that this deficiency in the law should be cured legislatively.

PUNISHMENTS

Before 2001 amendments, one set of penalty was prescribed for each category of offence. There was no legislative distinction if the offender was involved in petty offence or big offence. Rather, most of the penal provisions mandated awarding minimum sentence prescribed for each category of offence and that too with a rider for inflicting higher punishment by the courts. Now, with a view to rationalize the penalties, the offences have been divided in 3 categories. The contravention involving 'small quantity', 'quantity lesser than commercial quantity but greater than small quantity' and 'commercial quantity' has been divided in clauses (a) (b) and (c). However, this categorization has been excluded in Sec. 16, 19, 20 (a) and 24. These offences relates to cultivation of coca plant, embezzlement of opium by cultivator, cultivation of cannabis and external dealings in narcotic drugs and psychotropic substances. By way of this

categorization, the prescription of minimum sentence has been confined to the contravention involving commercial quantity.

Sec. 27 deals with illegal possession of narcotic drugs, etc., for personal consumption in small quantity. Prior to 2001 amendment, the punishment for this offence was one year or fine if the drug was cocaine, morphine and diacetyl-morphine and six months or fine for possessing other drugs in small quantity. Under the said pre-amended Act, the Govt. of India determined the 'small quantity' vide Notification dated 14.11.1985. The table of 'small quantity' has been upwardly revised vide Gazette Notification dated 19.10.2001. The following chart would show the said difference:-

Name of the Drug	Pre 2001		Post 2001	
	Small quantity	Small Quantity	Small Quantity	Ratio of Increase
1. Heroin/ Brown Sugar	250 mgs	5 gms	5 gms	20 times
2. Hashish or Charas	5 gms	100 gms	100 gms	20 times
3. Opium	5 gms	25 gms	25 gms	5 times
4. Cocaine	125 mgs	2 gms	2 gms	16 times
5. Ganja	500 gms	1000 gms	1000 gms	2 times

While the entire world is unsuccessfully trying to control the menace of drug-trafficking and drug abuse, the Govt. of India has increased the quantity of drugs which falls in the category of 'small quantity' which is contrary to the objectives of the enactment of NDPS Act. The reason behind giving this legislative reprieve to the drug abusers needs re-evaluation and fresh introspection.

TRIAL PROCEDURE

The traditional method of trial of notified offences by the Sessions Courts is that the Judicial Magistrate

shall commit the cases after completing all the pre-trial requirements and after furnishing copies of prosecution documents to the accused u/s 209 CrPC. In the NDPS Act, the applicability of Code of Criminal Procedure, 1973 has been permitted in general, so far the procedures prescribed in the Act are not inconsistent. For instance, the procedure of search, seizure, disposal of seized drugs during the pendency of investigation and trial, confiscation of conveyance and other property derived from or used in illicit trafficking, etc., are unique in this special law and in these matters the procedure prescribed in the Act will override CrPC provisions. However, u/s 36 C of the Act, the Special Courts have been equated with that of a Sessions Court and the provisions of trial incorporated in CrPC have been allowed to be followed by the special courts constituted under Sec. 36 of the Act. Sec. 36 B reinforces this view wherein the High Courts have been allowed to hear and decide the appeals following the provisions of CrPC as if the Special Court acted as Sessions Court within its local limits.

Despite such clear provision, the ground reality is different and the situation is totally confused throughout the country. In many states, it is believed that after initial remand of an accused, the Judicial Magistrate become *functus-officio*, if the offence is punishable for more than 3 years. Thereafter, the Magistrates just forward the record to the Special Judge, who does the rest. Not only this, the charge-sheet is also submitted directly to the court of Special Judge who proceeds with the case without any formal commitment. This confusing state is the result of restrictions imposed upon Magistrates in the matter of releasing the accused on bail and simultaneously conferring Magistrates' powers upon the Special Court under Sec. 36 A (b), (c) and (d) of the Act.

To analyse as to what should be the correct method of pre-trial stage, we

have to compare Sec. 36 (1) of the NDPS act with that of Sec. 14 of another special law, i.e., Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act enacted in the year 1989.

N.D.P.S. ACT

“36 — Constitution of Special Courts -(I) The Government may, for the purpose of providing *speedy trial* of the offences under this Act, by notification in the Official Gazette, constitute as many courts as may be necessary for such area or areas as may be specified in the notification.

- (2) **** * **
- (3) **** * **

SC & ST (P) ACT

“14. Special Court - For the purposes of providing *speedy trial*, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a court of Sessions to be a Special Court to try the offence under this Act.”

Recently, the Hon'ble Supreme Court of India had the occasion to examine whether Special Courts under the SC/ST Act can hold trial without formal commitment of the case. In the case of *Gangula Ashok & Another -Vs- State of Andhra Pradesh*, reported in 2000 (1) Crimes 196, the Hon'ble Supreme Court has held that the case is to be committed to the Special Court through a Magistrate and the Sessions Court cannot take cognizance of the case directly. This view was restated by the Apex Court in the case of *Moly -Vs- State of Kerala* (2004 Cr LJ 1812) and again in the case of *MA Kuttapan -Vs- E Krishnan Nayanar* (2004 CrLJ). In these cases, the Hon'ble Supreme Court has held that the Act contemplates only trial of the case by the special court and the reason for specifying a court of Sessions as a Special Court is to ensure speedy trial.

A bare perusal of Sec. 36 of the NDPS Act and Sec. 14 of the SC/ST(P) Act exhibits the legislative intention that Special Courts are constituted for providing speedy trial only, of offences covered under those special laws. I am of the view that if a Sessions Court acting as Special Court is to deal with remand orders, taking part in preparing samples, inventory, etc., it would defeat the purpose behind the constitution of special courts.

In the light of the legal principles laid down by the Apex Court in the matter of SC/ST (P) Act it can be said that special courts of NDPS Act also cannot take cognizance of cases directly unless the same are committed to it by Magistrates since Sec. 36 of NDPS Act and Sec. 14 of the other special law are *pari-materia*. Even if Special Courts are constituted separately, the procedure of commitment of cases should be followed, otherwise the very objective of speedy trial of offences will be defeated if the Special Judges engage themselves in magisterial functions. The wide-spread confusion in this regard can be cleared by way of suitable amendment of Sec. 36 A or 36 C or inserting an Explanation therein.

POST CONVICTION

Application of CrPC provisions for drug offences under the Act are subject to contrary provisions in the Act. Sec. 32 A is one such exceptional provision in NDPS Act wherein it has been stipulated that no sentence awarded under the Act shall be suspended, remitted or commuted. Only the offenders under the age of 18 years or convicted for drug abuse in small quantity have been excluded from the rigour of Sec. 32 A.

Section 32 A was introduced in the law by way of Amendment Act 2 of 1989. The said amendment Act was enacted, *inter alia*, to tighten the bail provisions. However, when a humane

touch to the law was given in the year 2001 the aforesaid draconian provision remained untouched. Under Sec. 36 A (3), the special power of High Court, to grant bail to the accused persons exercising powers conferred under Sec. 439 CrPC, has been maintained. In the same breath, Sec. 36 B has preserved the powers of appellate court conferred under Chapter XXIX and XXX of CrPC. These Chapters include Sec. 389, which authorizes the appellate courts to suspend the orders of sentence pending disposal of appeal. Neither Sec. 36 A (3) nor Sec. 36 B has any reference of Sec. 32 A or vice-versa. This anomaly needs to be corrected immediately. The Amendment Act 9 of 2001 also overlooked the judgment of Hon'ble

Supreme Court given in the case of Dadu -Vs -State or Maharastra, AIR 2000 SC 3203: (2000) 8 Sec 437 wherein the Apex Court has declared Sec. 32 A partially unconstitutional.

Prior to 2001 amendment, all the offences were triable by the Special Courts. However, after the said amendments, the offences which are punishable for a term of more than 3 years only have been made triable by special court. Although Sec. 36 A is vague, it can be logically construed that all the offences falling in the category of 'small quantity' and punishable upto 3 years imprisonment are now triable by Judicial Magistrates. If so, the appellate authority against the judgments of Judicial Magistrates should be the

Court of Sessions/Special Courts. In this regard also nothing was said in the amendment. Sec. 36 D of the Act, which deals with appellate powers of High Court, ought to have been amended mutatis-mutandis.

EPILOGUE

Without lengthening the article, I suggest the Govt and the framers of law to re-examine the law afresh. In the last two amendments, almost equal number of new provisions, which the entire Act contains, have already been inserted. Hence, it is a fit case for re-enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985.

*Out greatest glory
is not in never falling,
but in rising every time we fall*

Confucius

INNOVATIVE POLICING SCHEMES IMPLEMENTED BY KOLKATA POLICE

Tumpa Mukherjee

ABSTRACT

In India, after independence, the main functions of the institution of police was not only enforcement of law, but also elimination of social evils and rehabilitation of forces which pose a danger to the peaceful existence of the society. Thus, police are to act as 'Change Agents' performing the role of protector, reformer and promoting social welfare.

For fulfilling such ideals, in recent times, Kolkata Police have adopted and implemented schemes in the field of traffic management, controlling pollution, banning cyber pornography, etc. The present paper describes critically the innovative schemes adopted by the Kolkatta Police to serve the citizens of Kolkata.

In India, the existence of a well-administered police system, as it exists today, is the legacy of the British. After independence, the political leaders of our country had a vision to create a socialist, secular and welfare state. In such a welfare state, the institution of police would cease to exist as a coercive State Apparatus and will act as 'change agents' performing the roles of a protector, reformer and promoting social welfare.

Along with the enforcement of law, the important functions of police include eliminating social evils and rehabilitating forces, which pose a danger to the peaceful existence of the society.

In Kolkata, police and civil society are often at loggerheads with

each other. The gory memories of West Bengal State Police crushing the Radical Left Extreme Naxalbari movement in the late 60's and early 70's haunt the veterans' mind. However, in recent years, Kolkata Police has adopted a number of innovative measures like Community Policing to promote Citizen's Police Service.

Some of the innovative measures adopted by the Kolkata Police in recent times are as follows:-

KOLKATA POLICE & STREET CHILDREN

It has been increasingly felt by the police that certain areas of the city are becoming breeding grounds for criminals where street children are acting as eyes and ears of the criminals and then in due course of time being dragged into the dark underworld of crime. An attempt has been made by Kolkata Police to build up a bond of friendship with the street children. Thus, 50 police officers attended a three-day training programme at Lalbazar, Kolkata Police Headquarters, where they (policemen) were advised to be kind to street children and juvenile delinquents. The training programme initiated jointly by the National Institute of Social Defense and the Detective Department was focused on training officers to counsel juvenile delinquents and help them get back to the mainstream. The trained officers were described as 'Juvenile Welfare Officers'. The officers were told during the training session that if necessary, they would have to buy toys and sweets to become friendly with young people.

KOLKATA POLICE & POLLUTION CONTROL

State Pollution Control Board had marked ten tourist spots across the state as plastic free zones. Eight of the spots are in Kolkata and Howrah. Kolkata Police had launched a nine-day awareness campaign in front of these

spots. At the initial step, Kolkata police personnel tutored the visitors at the awareness camp with the help of school children, NCC cadets and Scouts. School children, with the guidance from the local police station, carried placards urging people to boycott plastic bags.

TRAINING OF KOLKATA POLICE PERSONNEL

In recent months, Kolkata Police personnel have received training on different dimensions of policing. For the first time in the annals of Kolkata Police, a batch of 6 officers were trained in using DNA test findings to track a culprit. The 6 were part of a group of 24 from across the country, who attended for the past three months a scientific investigation session (which included both theoretical as well as practical aspects of investigation) at the Central Detective Training School at Park Circus. To cite some examples, a man who commits a perfect murder hardly leaves behind any clue. But a half-burnt cigarette may be found at the crime spot. This is enough for the investigating officers to gather the DNA identification of the killer, because the cigarette will yield the murderer's saliva sample or during investigation a touch of the suspect's arm will yield his sweat, which can be matched with the DNA identification of the murderer. The DNA report itself can be treated as prime evidence to prove the suspect guilty.

During the training session, the officers were shown films on sensational investigation carried out by the Federal Bureau of Investigation (FBI) in recent times. The films showed how science is being used by the FBI to crack crime and nail the guilty in a courtroom. The officers under training were taken to the Forensic Science Laboratories and explained how to conduct scientific tests. The officers further received training on how to tackle advocates in a courtroom. Mock trials were fought in mock courtrooms.

Secondly, a proposal has been drafted to train Sub-Inspectors, Sergeants Head Constables of Kolkata police on media management at the Kolkata Police Training School at Alipore.

The draft contains some specific guidelines for the investigating officers of a criminal case. One of the most important point mentioned in the draft is that no news of any arrests should be made public, unless the main culprit behind the crime is nabbed.

KOLKATA POLICE & COMMUNITY 'TRAFFIC' POLICING

The traffic wings of Kolkata police have adopted a number of innovative schemes. Every year, in the month of January, Kolkata Police organizes 'Traffic Safety Week'. Traffic Safety Week acts like a precaution ensuring that citizens are made aware of road rules and responsibilities. School children and NCC cadets are involved in this project and they man twenty road safety booths including those at the vital intersections like Park Street, MG Road and Central Avenue.

The city police have recommended that the state school education department incorporates a paper on traffic rule in the curriculum. Earlier, road rules formed compulsory chapters in the Work and Physical Education syllabus in secondary level education but later it was made optional.

Thirdly, the traffic wing of Kolkata Police had invited teachers, doctors, engineers and artists to offer suggestions for improving city's traffic management system. The city's police area comprising of 11 traffic guards was divided into five broad zones and about 5 citizens from each zone were invited to offer their suggestions. Some workable solutions suggested are like replacement of dull navy blue sweaters with some bright fluorescent colors.

In the year 2003, 4000 pedestrians were hauled up for jaywalking. Moreover 9 lakh cases had been registered for violation of traffic rules last year. In an attempt to curb the fatality rate on roads, city police introduced spot fines to teach jaywalkers a lesson.

Initially, the police held a 15-day awareness campaign with the help of school children and other organizations. Pedestrians were taught how to cross an intersection, functions of traffic light, etc. Pedestrians were given time to come to terms with the new regulations. In the next phase of the road rule implementation programmes, traffic Sergeants and Constables kept a close watch at the designated intersections. Then, if anyone was found crossing the street violating traffic lights and rules, the offender was detained for five or ten minutes and he or she had to go through road rules. In spite of all this, if the offender still violates traffic lights and rules, he/she had to pay spot fines. There is a provision in the Calcutta Police Act of 1866 that a fine of upto Rs 50 may be levied.

To sensitise errant drivers and make them aware of traffic rules, Kolkata police have organized a training course. In 2003, there were cases against 27,000 drivers for rash and negligent driving. From January 2004 till date, licenses of 33 drivers have been suspended and licenses of three others have been cancelled. The drivers whose licenses have been suspended for rash driving have to take the three-day course at the Police Traffic Training School. The training programmes will be conducted once every month. The traffic police have collected data about the academic and socio economic background of each of the drivers. The training course includes lessons on defensive driving techniques, awareness of traffic rules as well as proper maintenance of vehicles. The training session has been divided into following phases – first and foremost is knowing one's vehicle. Drivers are trained to ascertain whether

the vehicle itself is the source of possible danger. Secondly, the drivers were taught to concentrate more while driving and attended counseling session regarding how to remove family/psychological problems which haunt drivers while driving. They were also made to learn how to behave well and inculcate the proper attitude for driving. They were made to learn traffic rules and signal in a crash course at Traffic Training School.

Drivers were also shown economics of rash driving. By indulging in rash driving one can at best earn Rs. 10 extra as commission. But by applying defensive driving techniques they can save lives and families. On the last day of the training, the drivers were taken by traffic police officers on a tour to important intersections to show them what havoc rash driving creates and they had to control and direct traffic with policemen.

Later, a test was conducted and those who pass out are given their licenses.

KOLKATA POLICE & BICYCLE PATROLLING

Though bicycle patrolling existed in this city, it has been re-introduced with a new motive. Apart from being eco-friendly, 'bicycle cops' armed with revolvers and wireless sets, can dash through smaller lanes, carry it over crowds and footpath, can be used to reach the spot fast which bigger vehicles like police van, jeeps and motorcycle cannot.

KOLKATA POLICE BAN CYBER PORN AT CAFES

Kolkata police have instructed cyber café owners to strictly enforce the ban on surfing pornographic sites. The police officers have made a list of cyber cafes in the city and the owners were

asked either to stop people from surfing porn sites or face police action. Though no laws exist at present to prevent people from surfing porn sites, but the police have decided to prosecute the offenders on the ground of possessing, distributing and selling pornographic material, a criminal offence under the IPC. As a result of police action, most cyber cafes have now come up with a 'Please don't surf any pornographic sites' board inside the cafes.

KOLKATA POLICE AND DIVING RESCUE OPERATION

Kolkata Police and Sea Explorer's Institute (SEI) have taken an initiative for underwater diving training. Expert divers are required during the Durga Puja immersion ceremony, when both sides of the Hooghly gets flooded with puja organizers engaged in immersing the idols. The training programmes includes a mock rescue operation in which a heavy object is immersed in the lake and the divers are told to retrieve it within a stipulated period of time. On completion of the training module, the select police personnel will be deployed in rescue operations in case of a boat capsize or attempts by individuals to commit suicide by jumping into the Hooghly.

FUTURE PLAN OF KOLKATA POLICE

The city police has sent a proposal to the home government that they can provide security at various high profile events including marriages and private parties, provided the police force is payed its required fees. This may be regarded as the first step towards commercialization of the city police force. Such a move can bring in some revenue which may be utilized for infrastructural development of police force. The state government is planning to pass an order to this effect along with necessary approval from the finance department post Lok Sabha polls.

However, successful implementation of such innovative schemes suffer due to a number of reasons. The officers are so engrossed in their hectic daily duty schedule that they often do not have time to spend with street children and rehabilitate them. Often red-tapism prevents implementation of the programmes proposed/drafted.

Some of the programmes implemented by the traffic wing of Kolkata police are sporadic in nature lacking sustainable efforts.

However, it is hoped, if the loopholes are solved, such innovative schemes will benefit the society at large.

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*There is no road to success
but through a clear strong purpose.
Nothing can take its place.*

*A purpose underlines
character, culture, position,
attainment of every sort.*

T T Munger