

January - June 2002

ACADEMY  
JOURNAL



Sardar Vallabhbhai Patel  
National Police Academy

**SVP National Police Academy**  
**JOURNAL**  
**Vol 54 No1 Jan - June 2002**

**Editor**  
**Ashish Gupta IPS**  
**Assistant Director**

Copyright by SVP National Police Academy, Hyderabad. All rights reserved. No part of this book may be used or reproduced by any means without written permission from the publisher. Neither the Editor, nor the Publisher assumes responsibility for statements of facts or opinions in the papers printed. Authors are responsible for obtaining copyright permissions.

**About the Academy**

The Sardar Vallabhbhai Patel National Police Academy is the premier police training Institution in the country for the training of senior police officers. It was established at Mount Abu on 15th September, 1948 as Central Police Training College. Subsequently, it was named after the 'Iron Man' of India, Sardar Vallabhbhai Patel, whose vision and determination resulted in the establishment of the institution. The Academy was shifted to Hyderabad in November, 1975.

The Mission of the Academy is primarily to prepare leaders for the Indian Police. The Academy also endeavours to be a focal point of Training of Trainers for police training institutions all over the country as well as a centre for research studies on police subjects.

Apart from conducting the basic course for the IPS Officers, the Academy also conducts three regular in-service courses for serving officers of various seniorities, three Training of Trainers courses and several short duration thematic courses.

The Academy rendered yeoman service to the nation during the last 54 years in imparting basic training to IPS Officers and other officers many of whom occupy leadership positions in the country not only in police organizations but in other fields also. The alumni of the Academy include past as well as present Governors of States and several other distinguished personalities. In recognition of its services to the nation the Academy was awarded the President's Colours in 1988.

The regular publications of the Academy include a half-yearly professional journal and a quarterly newsletter. The Academy also publishes, from time to time, books written by the faculty and research scholars of the Academy, besides reading material on varied subjects relating to policing, for basic as well as in-service courses.

**For more details visit NPA web-site <http://www.svpnpa.gov.in>**

To order or subscribe, contact: The Editor, SVP NPA Journal, SVP National Police Academy, Shivrampally, Hyderabad - 500 052. Fax No. 4015179, Tel 4015151-58

e-mail : [administrator@svpnpa.gov.in](mailto:administrator@svpnpa.gov.in)

Published by SVP National Police Academy & Printed at N.P.A. Printing Press, Hyderabad

# Academy Journal

VOLUME 54 NO 1

- 3** **PRIVATISATION AND DEMILITARISATION IN POLICING**  
**SN Pradhan IPS**  
Assistant Director SVP National Police Academy Hyderabad
- 11** **DISASTER INVOLVING EXPLOSIVES**  
**B Sandhya IPS**  
AIG Police Headquarters Kerala Trivandrum
- 15** **CAREER PLANNING OF IPS OFFICERS**  
**PC Sabarwal IPS**  
IGP Law & Order UP Lucknow
- 21** **USE OF HANDCUFFS**  
**Sankar Sen IPS (Retd)**  
Senior Fellow Institute of Social Sciences New Delhi  
Former Director SVP National Police Academy Hyderabad  
Former Director-General National Human Rights Commission
- 24** **A MODEL FOR INTELLIGENT POLICING**  
**Jayanto N Choudhury IPS**  
Counsellor Embassy of India Washington USA
- 30** **CIVIL AVIATION TERRORISM**  
**PVK Reddy IPS DIG**  
**Dr Shikhar Sahai** Deputy Commandant  
National Industrial Security Academy Hyderabad
- 37** **PLEA-BARGAINING AS A CONCEPT**  
**A Romenkumar Singh IPS**  
IGP Crime Manipur
- 41** **ENVIRONMENTAL POLICING**  
**Nikhil Jaiprakash Gupta IPS**  
SP Sindhudurg Maharashtra
- 47** **POLICE-COMMUNITY COLLABORATION**  
**KN Sharma IPS**  
Special IGP Ahmedabad
- 53** **THE “POLICE BRIDGE”**  
**Y John Nicholson**  
Deputy SP In-Service Training Madurai
- 57** **BANK FRAUDS & SCAMS IN INDIA**  
**Pullela Murali Mohan IPS**  
Research Fellow SVP National Police Academy Hyderabad



# PRIVATISATION & DEMILITARISATION IN POLICING

SN Pradhan

**P**olicing has been perceived as a fundamental or core activity of the government. The police as an organization are a service provider for the prevention and control of crime and maintenance of public order to promote a sense of safety and security in the community. It is significant that one readily equates the absence of a sense of security in the citizenry to the lack of effective governance or even anarchy. The "... relationship between personal security and government is tautological: if people are not provided with protection at some minimal level, government is not considered to exist. Anarchy is the absence of enforced public safety. Public safety in democracies is considered a public good-an obligation of government to all<sup>1</sup>". From the above viewpoint, it will be tempting to conclude that privatization in such a core function of government and

demilitarization in a service, which derives its work culture from military traditions, may be a contradiction in terms. However, such an inference would be misplaced. It would be pertinent to underline here that the subject at hand is privatization and demilitarization **in** and not **of** policing. The obvious import is that the twin processes are to impact policing but not replace it. The issue is **not** the supplanting of public or government sector policing by private policing. Secondly, the implication is **not** demilitarization of all police processes, strategies and operations. The thrust is towards a citizen-oriented, democratic organization that delivers.

The move towards privatization and demilitarization of policing is already a reality across the world. Consider the following:

---

*1st Prize: Prime Minister's Silver Cup Essay Competition 2001*

In India the Regulation of Private Detectives and Security Agencies of India Bill, has been hanging fire since 1975. But the private security industry continues to grow very fast. A recent study estimates that the number of private security personnel in India today equals the number of policemen. "In 1991, Indian police strength stood at over 1,150,000. (It is estimated that)... the number of security personnel may be equal to or greater than the number of police officers. Most of the vendors interviewed in India felt that the private security guard business is a growth industry <sup>(2)</sup>."

The Archaeological Survey of India, an organization under the Government of India has contracted Security International Services (SIS) to provide security at thirteen heritage archaeological sights.

The US government has found privatization of police functions as a significant enough trend to institute a task force (the US Department of Justice's Task Force on Private Security) and to fund an exclusive research (Hallcrest Systems Report on Private Security and Police in America).

In the US in 1970 for each private security guard there were 1.4 police officers. Today the ratio is 3:1 in favour of private security in the US and 2:1 in the UK, Australia and Canada. In Russia and South Africa, the private security and public police ratio is as high as 10:1. *These statistics are a pointer to the future of policing worldwide.*

A recent report in India Today highlighted the increasing reliance on private security agencies for protecting life and property. Another report in The Week (April 15, 2001) put the industry turnover in India at Rs 1500 crores <sup>(3)</sup>.

Worldwide there is a growing conviction that police has to now define good policing in terms of the

**community's satisfaction** and not just better statistical performance. The movements towards COP (Community Oriented Policing) and POP (Problem Oriented Policing) are testimony to a realization that the traditional militaristic approach to policing must change.

The growing use of civilians in miscellaneous and a few specialized police jobs – terms as **Civilianisation** of police work – is a reality the world over.

The successful use of the 'Koban' system in Japan and Singapore, with a direct involvement of police in community life is a shining example of the need to demilitarise police towards a more people oriented culture.

Privatisation and demilitarisation in the context of police work can be best appreciated in the light of the trends highlighted above.

**Privatisation** can be defined as the process of changeover of ownership and authority for use of resources as well as actual provision of services, from the State to the hands of the private sector. Accordingly, privatisation in policing would refer to:

- (a) the authorisation of private security by private sector entities like companies or groups (e.g. a departmental stores chain having its own security, and also
- (b) the actual provision of private security (e.g. running a private security agency and supplying security to clients).

**Demilitarisation** refers to the process of reorientation of an erstwhile regimented and centralized organizational structure, which has been built upon an impersonal, process-based bureaucratic culture towards a decentralized, flat structure promoting a value based culture of democratic and participatory decision-

making. From the police perspective it means de-emphasizing the rank structure, democracy in decision-making transparent organizational policies, importance to feedback and clear orientation towards community satisfaction as against mere departmental or statistical compliance.

## **POLICE PRIVATISATION AND DE-MILITARISATION IN THE NEW MILLENNIUM: FRAMING THE RIGHT PERSPECTIVE**

**T**he twin strikes on the World Trade Centre on the 11<sup>th</sup> of September, 2001 brought the law enforcement agencies in the United States and the world face to face with the monster of terrorist hyper-violence. Security experts and strategic thinkers talked of new vulnerabilities, new frontiers of law enforcement and even about a new war. The print and the visual media repeated *ad nauseam* that policing has to rise up to this new challenge now or become irrelevant. Police leaders around the world pondered over the future and in their own ways concluded that policing, perhaps, will never be the same again. The subject of privatisation and demilitarisation in policing may also need to take into account the policing issues thrown up by the dramatically violent events of the *Black Tuesday*. Often the best way to approach and analyze a subject at hand is to see it *in the context of reality that is live and festering*. Can we consider, even for a moment, the proposal of entrusting the investigation into the WTC disaster to a private security agency sans government monitoring? How about the proposition of an untrained and civilian (demilitarized?) security structure at the airports to look after aviation security concerns of the society? What would be the reaction of the American citizenry to the above propositions?

Indeed, what would the families of the victims have to say to the above posers? In the same breath, one may also ask that since WTC attacks warrant stringent measures to counter terrorism, does it follow that an essentially civil organization like the police be turned into a military machine? Should the police suddenly put democratic rights in the dustbin and invade the privacy of any citizen? Should every suspect in the 'hajat' (lockup) in a police station be approached as if he were an enemy alien? Should police start functioning like an occupational army within the society, which it is to serve? Should the airports become military fortresses and the flights hostage to the slightest dissatisfaction of the police? Will all this be acceptable to the society at large? Unfortunately, there are no easy answers. *Increasingly, individual freedom and his safety in the societal context is becoming a very difficult trade-off.* If this were the case, where does *privatization* and *demilitarization* in policing figure?

On a balanced analysis of above-mentioned issues a sobering perspective emerges:

When we talk of *privatization* and *demilitarization* in policing we are not referring to changes in appearances or wholesale replacement of government police.

We are talking of changes in work-ethos and a paradigm shift in police orientation, culture and mindset. The society is not asking police to get rid of its uniform or paramilitary tactics and processes where required.

Society is not assuming that all police functions are going to be privatized or that such a situation is desirable. *What is felt generally is the need for police to embrace some of best practices of private enterprise including the viable leadership and management concepts. This can help the police come out of the mindset of a regimented organization with a phlegmatic, militaristic and non-*

*innovative approach to crime and law and order problems.* We are also talking of the possible sharing of policing and citizen security concerns between the public and private police. The currency of terms like *Grey Policing, hybrid policing and selective outsourcing of police functions may soon be more the rule than the exception.*

#### THE PRIVATISATION IMPETUS: *Raison d'être*

**P**rivatisation of policing functions is not the panacea for all the ills that beset a moribund police organization and its culture, *but it is here to stay. In a society that is becoming increasingly pluralistic and fragmented the system for maintaining order are bound to become equally pluralistic.* It would have been unheard of, may be a decade ago, that housing societies would so on contract with private security firms to look after their security needs. Today, in big metropolises in India the presence of private security guards in gated housing colonies and multi-storied complexes are becoming increasingly commonplace and mandatorily necessary.

Contracting out security of private premises is symptomatic of the changing economic scenario. The concept of *mass private property* is a reality. It signifies the provision of privately owned facilities for mass public use such as large shopping malls, privately owned sports complexes, large retail/departmental stores, cinemas and multiplexes, etc. These properties have multiplied in geometric progression in the last few decades. They have also enjoined upon the owners to provide basic security and risk management.

The other significant reason for growth of private policing is socio-political. The increasing perception in the public that the government may be

ill equipped to handle crime and day to day law and order may have contributed to a felt need of private security.

Finally, one of the primary reasons of the privatization of routine police functions is that the police simply cannot take care of such endless list of tasks that denote day to day policing. In UK, *the Home Office Review of Police and Ancillary Tasks actually suggested load shedding of 26 policing tasks that can easily be looked after by non-police agencies.*

#### UNDERSTANDING POLICE PRIVATISATION ON GROUND: A REALITY CHECK

**D**espite Karl Marx and his prognostications the State is not about to wither away anywhere. What is happening, in fact, is the *redefinition of the role of the State, the extent of its authority and its regulatory power.* The dynamics of the global market have now proved beyond doubt that the state is not an efficient owner or manager of commercial and industrial enterprises. So, worldwide we are witnessing a wave of state disinvestments and privatization in areas, which were for long state monopolies.

This shift has been especially conspicuous in the area of the manufacturing and service sector. However, *there are still areas wherein the need for state intervention and presence has been difficult to rule out in the larger interests of economic and social justice as also equity.* Against this backdrop, along with education and transport and communication, privatization in law enforcement and policing has been an issue of debate and deliberation.

The function of policing has to be understood from two angles:

- (a) the auspices which authorizes policing

(b) the actual physical provision of security

Until recently, governments assumed primary responsibility for providing security. “Providing” has a double meaning: Governments determined what sort of security was needed and provided the means to achieve it. Governments were the organizational **auspices** for formulating demand for policing, and they were the **providers** who supplied it. In the current restructuring of policing, these two functions have become separate. Furthermore, it has become acceptable for groups other than governments both to take control of their own policing and to select the providers of it. In short, the responsibility for *authorizing policing* and *for providing* it instrumentally has been multilateralised and denationalized<sup>(4)</sup>.

The spread of private enterprise in the realm of day to day policing has the potential to usher in *an era of co-existence of domains* as well as *a complementary division of labour between private and public sector policing*. This process already is and will increasingly in the future bring in the governing values of successful private enterprise into relevance for the police organization. *Customer satisfaction, quality service, time bound response, service reorientation based on client feedback, competitiveness in service delivery, cost effectiveness* are all values that would be greatly welcome in the police department from the point of view of the real target customer – the common man.

On the threshold of the new millennium, one is witness to a large-scale proliferation of private security agencies in both the developed and the developing world. Indeed statistics bear out that in the United States the private sector ‘policemen’ outnumber the government employed policemen by almost a 3:1 ratio. In a developing country like India also private sector security

Sl. No.	Domain of Police Work	Police functions found amenable to privatization
1.	Crime prevention/routine policing	<ul style="list-style-type: none"> <li>• Traffic Management</li> <li>• Patrolling the streets</li> <li>• Collection of intelligence/cultivating agents/appointing Special Police Officers (SPOs)</li> <li>• Surveillance</li> <li>• Antecedent checks/character verifications</li> <li>• Counselling</li> <li>• Domestic violence response</li> <li>• Serving notices and bonds for good behaviour</li> <li>• Cash escort services</li> <li>• Risk management</li> <li>• Investigation of disability claims, family disputes</li> <li>• Deliver of legal papers</li> </ul>
2.	Crime investigation and control	<ul style="list-style-type: none"> <li>• Collection of physical evidence</li> <li>• Disposal of dead bodies</li> <li>• Maintenance of case exhibits and records</li> <li>• Forensic Services</li> <li>• Medical services</li> <li>• Cyber crimes investigation</li> </ul>
3.	Prosecution	<ul style="list-style-type: none"> <li>• Execution of summons and processes</li> <li>• Escorting and production of prisoners</li> </ul>
4.	Law and Order	<ul style="list-style-type: none"> <li>• Supply of crowd control weapons</li> <li>• Maintenance of equipment and arsenal</li> <li>• Disaster rescue management, security of vital installations including highways and railways</li> <li>• Non-lethal weapons</li> <li>• Vehicle backup</li> <li>• Law and order related intelligence</li> </ul>
5.	In-house support outsourcing	<ul style="list-style-type: none"> <li>• Housing</li> <li>• Inventory control maintenance and supply</li> <li>• Accounts</li> <li>• File management</li> <li>• Dispatch</li> <li>• Data processing</li> </ul>

agencies are growing at an unprecedented rate. The manifestations of this trend are the smartly and sometimes not so smartly dressed security personnel manning shopping malls, hotels and restaurants, private sector offices, private industrial premises, mega public events, apartment complexes, etc. In the developed countries, private security is almost omnipresent – “in gated communities, shopping malls, hotel lobbies, airports, sports stadia, industrial plants, banks, and elsewhere. The taxpayer finds them appealing because they are usually less

expensive and/or supply extra safety and control<sup>(5)</sup>.”

## TOWARDS A NEW PARADIGM: PRIVATISATION AS MULTILATERALISATION

It is apparent that privatisation in policing has increasingly found recognition as a potent crime prevention machinery. Public law enforcement as well as government departments in many countries around the world are developing a closer working relationship with private security agencies to prevent crime in their jurisdictions. The



outsourcing of the protected monuments of India to a private security agency by the Archaeological Survey of India is symptomatic of a future trend. Recently, after the lynching of a tiger inside the Nehru Zoological Park in Hyderabad the zoo authorities (part of the State Government Forest Department) have hired the services of private security guards to monitor access. In both examples the local police of the area will still be required ever to concern themselves with the security of those monuments. Indeed, if there is a theft of an idol from an ancient temple being protected by the private security agency, the local police will have to register an FIR and investigate the case. However, normally the agency will ensure security in such premises to prevent any such occurrences. Thus, it is now partnership involving co-existence and sharing of the security function. ***This seems to be the present and increasingly the future of policing.***

The following list of police functions is a pointer to the degree of amenability of certain police functions to a privatization initiative<sup>(6)</sup>:

The policing functions delineated above are those that are *already being carried out by private security agencies in various parts of the world*, including many in the developing nations. However, it would be an oversimplification to call this process privatization. It is more like a sharing of functions depending on the local circumstances on ground. *The truth is that there is almost a concurrent availability of primary policing services to the citizens from both public and private sectors.* It also implies that both government and private sector, on the basis of an agreed operational framework, may mutually share many police functions. Identifying policing functions as exclusively public or private is bound to be an infructuous exercise in the new millennium. The issue is what combinations are the best suited to the instant policing needs. The process of

privatization in policing will ultimately be a sub-process of the paradigm shift towards what can appropriately be called as ***multilateralisation of policing.***

## RETHINKING THE MILITARISED POLICE STRUCTURE

The German sociologist Max Weber gave the concept of the State as the possessor of ***“the monopoly of coercion”***. Consequently, the police as part of the bureaucracy was seen as objective, predictable and impersonal with a premium on rules and procedures. The modern police organization has built itself upon these lines right from the time when Sir Robert Peel unleashed his ‘Blue Locusts’ in 1829. In structure, culture and function it shows all the characteristics of a militarized organization:

“Highly specialized routine operating tasks; very formalized procedures in the operation core; a proliferation of rules, regulations and formalized communication throughout the organization; large-size units at the operating level; reliance on the functional basis for grouping tasks; relatively centralized power for decision making; and an elaborate administrative structure with a sharp distinction between line and staff <sup>(7)</sup>.”

The organization of the police department has traditionally been a multi-layered and pyramidal structure with an effort to promote standardization and uniformity. In such an organization ***“the focal point for control rests on the creation of a hierarchy. Rules and procedures are created, but the emphasis for control is placed on the hierarchy”***<sup>(8)</sup>.

Perrow has described the negative effect of such a militaristic structure:

“The hierarchy promotes delays and sluggishness; ***everything must be kicked upstairs for a decision either because the boss insists or because the subordinate does not want to risk making a poor decision*** <sup>(9)</sup>.”

Police agencies the world over are facing challenges that demand a radical change in the perspectives and attitudes with which police interfaces with the society. At an organizational level the ***‘issues of change management’*** facing the police are similar to those that occur in private organizations. The time has come to realize that *a typical militarized hierarchy is not the ideal structure* for running an effective police organization that caters best to the interest of its clients, i.e., the citizens. *Modern policing is increasingly gravitating towards the felt-need of the community oriented policing.* The multi-layered system of ranks designed to promote efficiency and accountability is increasingly acting as a deadweight, which inhibits discretion and creativity down the ranks. “There is a greater demand for problem-solving and innovation at the lowest level in the organizational pyramid and an increased need for horizontal and lateral communication to ensure efficiency <sup>(10)</sup>.”

*The depth of the hierarchy has violated the top police leadership from the patrolman on the street.* To the average constable the Superintendent of Police of the district is still an entity that is not easily accessible. *Policies and procedures seem to assume greater importance than appropriate action to resolve instant issues.* Decision makers down the rank seem to be more particular about the *proper procedure than the about the proper decisions* under the circumstances. “For all the considerable merits and tried and codified operating procedures, high standards, and strict accountability, getting them via a centralized, paramilitary style has important liabilities for police departments. The emphasis on procedure and discipline blunts the initiative and adaptability of officers in the field. *The system encourages officers to think in terms of avoiding blame rather than taking any unusual action, and it places heavy emphasis on treating all cases as though they were similar even when there are circumstances that make them seem*

different to the officers on the scene. As a result, the department does less work, and less particularly adapted work, than it would if the officers were given freer reign <sup>(11)</sup>.”

## QUALITY POLICING AND DEMILITARIZATION: THE LEADERSHIP IMPERATIVE

In 1987, the Madison Police Department in the US outlined three conditions that are necessary for development of quality policing from the clients’ perspective:

- a) Employee participation in organizational decisions
- b) Healthy work environment for employees
- c) Promoting citizen-oriented decentralization <sup>(12)</sup>

In the process, the Madison Department arrived at the Twelve Principles of Quality Police Leadership, which seem to offer universal applicability. It is interesting to juxtapose these twelve principles with the general principles that guide leadership in a militaristic organization stuck on top down decision-making <sup>(13)</sup>.

Consensus is emerging among informed police leadership that the process of demilitarization is not going to be so much a surgical removal of all ills of regimentation as a greater openness and adaptability towards the basic democratic values and ethos of transparent and accountable policing wherein both *the employees (policemen of all ranks) and the ‘customers of police services’ (citizens) are treated as stakeholders for quality policing*. This can be achieved only by strident efforts to root out the militaristic tendencies of top down decision-making backed by a culture of blind compliance.

It should be underlined, however that the so-called bureaucratic-militaristic structure and sub-culture of policing is

Principles of Quality Leadership in a democratic and demilitarized structure	Principles of Leadership in a Typical Police (Militarized) Structure
Believe-in, foster and support teamwork	Boss driven team, centralized decisions.
Committed to the problem-solving process through objective data analysis.	Subjective emotional decisions uninformed by available data.
Seek employees input before making decisions.	Decide unilaterally from top.
Improvements always attempted on the basis of feedback of employees who are beneficiaries.	To just impose all improvements from the top.
Develop mutual trust and respect among employees.	Induce distrust and lack of respecting the employees.
Have a customer/client orientation towards employees and citizens.	Employees treated as subordinates who obey and execute and citizens as clients by default.
Management based on the behaviour of 95% of employees, not on 5% bad eggs.	A culture of faultfinding and punishing bad eggs to ‘ <b>set examples</b> ’ ignoring the majority who do good work.
Improve systems and examine processes before blaming people.	Blame people for organizational ills instead of examining the systemic ills and faulty procedures.
Avoid “top down” power-oriented decision making.	Top down, power-oriented decision making more the rule than the exception.
Encourage creativity through risk-taking and be tolerant of honest mistakes.	Low tolerance to honest mistakes and no encouragement to creativity.
Be a facilitator and coach, encourage feedback.	Feedback discouraged.

not without certain intrinsic values. The present day policing landscape warrants a very high degree of preparation and training on the part of the policemen. The militaristic structure has its viability. The management guru Peter Drucker acknowledges that the traditional hierarchical structure has its values, despite some obvious limitations. However, ultimately it is important to realize that the militaristic structure is inanimate and its failures to a great extent can be ascribed to *the leadership* and the men.

## CONCLUSION

**T**he twin issues of privatization and demilitarization are ideas whose time has not only arrived but ones that can be ignored or bypassed only at our own peril. It is no longer difficult to see that the society at large is possessed with a suppressed desire for good quality policing. *Good policing, however, is seen as a rare commodity*. Where it is in

evidence it has come to imply policing that has a **visible degree of community participation and decision back up**, coupled with early decision delivery and response time. In pragmatic terms, it means quick and reasonably effective response from the nearest available policeman, irrespective of rank. In proactive terms, it translates into the consistent involvement of police in core community decisions that pertain to safety and security of the community and its citizens with a view to prevent possible crimes and other infractions of law. This is client-oriented policing wherein the client is the community at large. *For too long now the police the world over and more so in a country like India has been defining good and effective policing on its own terms. There has been thus a marginalisation of the stakeholder himself in defining what is good policing*. The increasing reliance on private security for some routine crime prevention duties is society’s way of striking back at traditional policing in

the capacity of a stakeholder. The police continue to labour under the burden of a bad image and there seems to be a growing usurpation of police functions by private agencies.

The need to be cautious in promoting the cause of privatization cannot be overemphasized. The process of privatizing police functions has its inherent dangers. They are indeed quite apparent:

- (a) The private sector policing may be unregulated.
- (b) It is not being subjected to social audit of its performance.
- (c) Private policing is not concerned about equality of protection and may be motivated more by profit than the sense of equity and justice.
- (d) Quality of service cannot be ensured.
- (e) The use of ill trained security personnel can increase rather than decrease one's vulnerability.
- (f) Whether the poor man in a scenario where he who can afford can be secure? Some will contend, with reason, that the present situation is no different. Will it then be a case of from bad to worse?

Obviously it devolves that the government still has to play its part in the policing function. Even in the scenario of a high degree of privatization, public interest in policing can be protected if the government retains three functions - **regulating, auditing and facilitating**<sup>(14)</sup>. It has to closely *regulate* private security providers through appropriate laws and quality control. It has to develop *the capacity to evaluate* performance and act as a guide. Finally, the Government has to *facilitate* a

judicious mix or even division of labour between public and private policing. ***"The design and guidance of hybrid law enforcement systems is an essential task of Government in the...(21<sup>st</sup>) Century."***<sup>(15)</sup>.

From the analysis above, some clear inferences emerge:

Privatization is a process that refers to –

- 1. The continual growth in the number of non-state or non-governmental entities that authorize and provide some 'policing' services,
- 2. The process of making government sector police 'customer-oriented' with a willingness to adopt some governing values of private sector enterprise, and
- 3. The sharing of routine policing with some private sector players in the business of providing security.

*This trend is now non-reversible and is good for policing.* The only word of caution here is that ***the role of government in policing is by no means over*** and the future hybrid or grey policing, with a large helping of private policing services, is a reality that the government has to live and contend with and most importantly guide and regulate.

Demilitarization of policing is a felt need both within and outside the organization but the *results are not as visible as the privatization process*. The reason seems to be straightforward. *The government cannot stop privatization in some police functions even if it wanted to.* The market forces and forces of ***industrialization and globalisation with its attendant problems of urbanization and high crime rate have catalysed the private security industry.***

Democratic demilitarization, on the other hand, is ***an intra-organizational issue*** for the police. Consequently, it is *predicated on the leadership initiative from within the organization*. However, there is a growing consensus that the modern police department should be an efficient organization, transparent, flat-structured that promotes individual initiative and discretion. These ideas have created a desire within the police organization for a decentralized structure and a demilitarized value-based culture. As outlined in the World Development Report 2000/2001, an accessible system of governance and rule of law is ***"tremendously important for all citizens – but especially for poor people, who have few private means of protecting their rights"***<sup>(16)</sup>.

In sum ***multilateralisation and democratization in policing is the felt need of the hour***, and the subject could rightly be reframed as such.

## REFERENCES

- 1. Bayley, David H & Shearing, Clifford D, ***The New Structure of Policing***, Research Report to US Dept. of Justice, OJP, 2000.
- 2. Nalla, Mahesh, ***Security Guard Industry in India***, @ [www.cj.msu.edu](http://www.cj.msu.edu) (Michigan State University), Michigan, USA
- 3. Derived from ***"Guards of Honour"***, *The Week*, April 15, 2001.
- 4. Bayley, David H and Shearing, Clifford D, *Ibid*.
- 5. Whisenand, Paul M. & Ferguson, Fred R., ***The Managing of Police Organizations***, Prentice Hall, NK, 1998 (p.19).
- 6. *Not meant to be a complete list.*
- 7. Mitzberg, H. (1983). ***Structuring in Fives***, Engelwood Cliffs, NJ: Prentice Hall (p.164).

8. Carol E. Rasor, ***Is it Time to Change Law Enforcement's Paramilitary Structure?*** In *Controversial Issues in Policing* by James D. Sewell, Allyn and Bacon (p.141).

9. Perrow C. (1986). ***Complex Organizations: A Critical Essay***. New York: Random House (p.29).

10. Carol E. Rasor, *Ibid*.

11. Sparrow, M., Moore, M., & Kennedy, D. (1990). ***Beyond***

***911: A New Era of Policing*** New York: Harper Collins Publishers, Inc.

12. David H. Bayley (Ed.), ***What Works in Policing***: Oxford University Press 1998.

13. Adapted from ***Twelve Principles of Quality Leadership of Madison Police Department*** as quoted in David H. Bayley (Ed), *Ibid* (11).

14. Bayley, David H and Shearing, Clifford D, *Ibid* (1)

15. Bayley, David H. & Shearing, Clifford D, *Ibid*

16. Grabosky, Peter N. ***Using Non-Governmental Resources to foster Regulatory Compliance***, *Governance (Journal)*, October, 1995

17. World Bank, ***World Development Report on ATTACKING POVERTY, 2000/2001***.

◆ ◆ ◆

***It's a shallow life that doesn't give a person a few scars***

***Haste is good only in catching fleas***

***A lot of people approach risk as if it's the enemy  
when it's really fortune's accomplice***

# DISASTER INVOLVING EXPLOSIVES

B Sandhya

**T**he case study presents a disaster involving explosives, which occurred in the heart of the city of Thrissur. The probe into the incident shows how storage of explosives in congested places without the knowledge of the police, but still under the cover of a valid license, can cause serious disasters. The article also throws light on the loopholes in the present system of licensing for storage and transportation of explosives. Certain suggestions are made to bring in effective control of the storage and transportation of explosives.

## THE CASE

**A** big explosion took place in a building where explosives were stored in Thrissur town on 16.11.1997 morning around 3 a.m. In this explosion, 3 deaths occurred and around 15 persons were injured. The destruction was so enormous that a major portion of the RC

building where the explosives shop was situated was blown off and another RC building under construction opposite to that building was also destroyed partially. The FCI godown building, a convent, two hotels and many other buildings nearby also sustained damage. One old person died probably due to the shock of explosion. The casualty could have been much more had the incident occurred on a working day during day time.

## THE EXPLOSION

**T**he SP Trissur got the information about the explosion at around 3.00 hrs. on 16.11.1997. By very swift and efficient action, with the help of Fire Services and other departments, the police coordinated the rescue operations. In the meanwhile, local information was also collected. Some police officers were asked to procure mud excavators and crane service. By sunrise

crane service could be used for removing debris of buildings. Under the debris, one dead body was recovered at around 6.30 am. The brother of the driver of the lorry parked at the sight of explosion came and told that the driver used to sleep in the corridor of the exploded building. After an intensified operation at that area, the second dead body was found in the morning itself. A third body was found by afternoon. Many dignitaries including the Chief Minister of the State visited the scene of explosion in the morning.

The sense of duty and selfless service rendered by the Fire Services and police at the site of explosion was extremely commendable. Electricity Wing of Municipality and the local public also rose to the occasion and rendered invaluable help in the rescue operations. Without the expert operations conducted by the crane service and mud excavator van, the debris removal work would never have been so successful.

### **FACTS REVEALED ON ENQUIRY**

The origin of explosion was a concrete building of Thrissur Municipality which belongs to a well known dealer in explosives. A huge quantity of potassium chlorate, sulphur, pyrotechnic aluminum powder, etc. and also high explosives like gelatin and detonators were stored in the building. These explosives were stored in rooms partitioned using plywood and the rooms had ceiling made of plywood where shells made of paper were stored. These shells were kept for sale along with the explosives. In another room and also in the backyard, coconut shells, charcoal, etc. were kept for the purpose of sale. The sale of all these materials used to be done without giving any proper bill to any buyers. There was no habit of checking the licenses of the buyer in the shop, where explosives are sold. Fast moving items were stored along with salts, i.e., potassium chlorate, strontium nitrate,

etc., and aluminum powder and sulphur. Gelatin sticks and detonators were items moving less, but these items were also made available to the buyers by keeping a stock. The items for sale used to be brought and unloaded into the shop, in the explosive vans and lorries.

### **THE SITE AND BUILDING OF EXPLOSION**

From the investigation it was revealed that the building where the explosion took place was an 'L' shaped one having around 24 rooms opening towards the main road and around 8 rooms opening towards east.

The exploded building was located in an extremely congested place. This area is situated within the heart of the town and in between the private bus stand, KSRTC bus stand and railway station.

The building where explosives were stored was having four rooms. Both the licenses were for one door. The hall behind the licensed room was used as the godown. This hall was having false ceiling made of iron rail and plywood. The room on the south-eastern side was partitioned using plywood. In the false ceiling, paper shells were stored. High explosive gelatin and detonators were said to be stored in the hall. Potassium chlorate was stored in huge quantities in the western room which was recovered after the explosion. Different types of explosives and chemicals like ammonium nitrate, potassium nitrate, pyro technique aluminum powder, strontium nitrate, sulphur, gun powder, charcoal and bundles of safety fuse, etc., were stored in the other room. When the shutter is closed all the rooms become air tight except a small air hold. Coconut shells and charcoal were stored in the backyard of the building.

The site of explosion was seen scattered with debris of paper shells,

coconut shells, huge quantities of safety fuse apart from parts of concrete building. Remnant of pyrotechnique aluminum powder, charcoal powder, potassium chlorate, potassium nitrate, sulphur, ammonium nitrate, empty coconut shells, paper shells, plenty of safety fuse wire, etc., were found on the scene of crime. Potassium chlorate and sulphur should not be kept together. Likewise potassium chlorate and aluminum powder should not be kept together. If kept together these chemicals interact and cause explosion. Potassium chlorate and aluminum powder are dangerous substances. Potassium chlorate is legitimately used only for manufacturing matches and amorces. It is used in leather curing also. Potassium chlorate and sulphur comes under the Arms Rules and license for these substances are given by the District Magistrate. From the quantum of damage and destruction at the scene of crime, the storage of high explosives like gelatin and detonators in huge quantities was suspected. Mixture of fire works combination containing potassium chlorate, aluminum powder and sulphur was also suspected to have been kept in the premises. These fire works combinations are usually used for manufacturing palm-leaf crackers, shells, gundu, etc. It is possible that the above explosive composition could be ignited due to spark or any naked flame. The spark produced from the loose electric wires, switches, etc., can ignite the explosive combination. Spark or any naked flame can ignite gelatin also if kept in a confined place like a closed room leading into severe explosion. Explosion at this site can be either accidental or deliberate.

Investigation revealed that the accused is the major explosive dealer in Kerala presently operating through many licenses in the names of his employees. The licenses of the present shop was also in the name of one of his employee. The licenses are for storage of large quantities of explosives, detonators, etc. The accused was having many explosive van licenses in

his own name or in other names. A perusal of these licenses will show that some of these licenses are as good as free hand to transport and store unlimited quantities of explosive substances. For instance, one van license was to transport anywhere in India with license to store 12000 kg of gelatin and 4 lakh meters of detonators.

A perusal of trip sheets of a single lorry itself shows that 9 tonnes of Telgex 90 (gelatin) were seen transported in a lorry twice a week from Vellore to Thrissur. These explosives brought to Thrissur are seen sold to various shops.

In some of the trip sheets chemicals like calcium chloride, etc., are seen mentioned. The accused himself admitted that actually calcium chloride was not brought but when other chemicals were brought the factory had given the bill in the name of calcium chloride. The records showed that the accused was having business with many firms in Tamil Nadu, Karnataka, Maharashtra, Bengal, Bihar, etc.

#### **THE LICENSE**

As far as the storage of ammunitions (salts like potassium chlorate) which comes under the purview of Arms Act and Explosives like gun powder, etc. are concerned, the District Magistrate is the licensing authority.

License to possess and sell small arms nitro compound not exceeding 25 kgs or gunpowder not exceeding 25 kg and 1000 meters of salting fuse is given in form No 24 of the Explosives Rules. The licensee in the exploded building had obtained a license for storing 15 kgs. of gunpowder and 5000 meters of safety fuse. As per the Collectorate records, the license was seen issued without conducting any police verification or Fire Force NOC. The granting of license was not communicated to the police. There was no communication at all to the

District Police Office, regarding the grant of such license.

As far as the second license by the accused is concerned, the following facts were revealed. A license was seen granted to store 100 metric ton of sulphur and 10 metric ton of potassium at a time for the storage of sulphur and of potassium chlorate. The license is seen given in the same building and same door number. NOC from the Fire Force Department is not seen obtained in this case also.

Thus giving license in the same door number to store huge quantities of explosive materials without obtaining any verification report or NOC from the Police Department and Fire Force Department is very clearly brought out.

#### **SYSTEM OF VERIFICATION FOR ISSUE OF ARMS AND EXPLOSIVES LICENCES**

The District Police Office gets a copy of the application received in the District Magistrate Office to issue Arms and Explosives but it is noticed that all such applications are not received in District Police Office. The District Police Office registers all such applications and the applications are sent to SHOs of the Police Station concerned for enquiry and report. The SHOs will visit the place, enquire and report through the CI & SDPO whether the license can be granted on security point of view. Then the file is put up to the SP who examines such files and even if the SDPO has recommended the license, some of such applications are sent to Deputy Superintendent of Police, Special Branch for further enquiry. The rest of the applications are either recommended or not. The applications are generally recommended, if both DySPs recommend the same.

As far as applications for renewal of licenses are concerned no communications are received in District Police Office.

#### **SUGGESTIONS**

- The licensing of explosives is currently dealt with by the Industries Department of the Central Government, without any involvement of the Home Ministry. Effective control by the Home Department maybe brought in, taking into consideration, the present security scenario.
- The granting of license by the various agencies should be done only after obtaining NOC from the Fire Force and Police Department through the Divisional/District authorities only. The District Magistrate personally shall grant/reject the licenses after perusing the recommendations of the District Police Superintendent and Divisional Fire Officer. The top most district authorities of police as well as district authority of Fire Force should invariably personally recommend/not recommend the application for license.
- Granting of license to store/transport explosives in extremely huge quantity like tons, thousands of tons need not be allowed.
- Blanket licenses like transportation all over India should not be granted at any rate. For transport of each consignment, separate license should be obtained.
- Where as substances like potassium chlorate are used legitimately only in a very limited quantity, granting of licenses to store huge quantities may be stopped forthwith.

- Under no circumstances storage of explosives need be allowed in town area.
- Sale of explosive substances need be undertaken only in the remote areas where other buildings are not situated.
- The present system of granting of license by the Controller of Explosives without any NOC from the concerned District Police and Fire Force has to be stopped forthwith.

If all the above suggestions are carried out, routine check by Circle Inspector, Tahsildar and Fire Force will become meaningful and all these three agencies will be able to get an exhaustive list of all the licenses under the Arms

Act and Explosive Act. At present, the Police generally get information of granting of license only in a few cases and mostly the licenses with very meager quantity only are brought to the notices of police. This sieving is extremely dangerous.

The explosive van license as well as the storage license for high explosives (gelatin stick, potassium chlorate, detonators, etc.) may be obtained exclusively by some State Government organization, so that this business can be done by the Government or Government Agency (as in the case of liquor by the Beverages Corporation). Once the Government is able to supply necessary explosive materials for activities connected with quarrying, the Government will be able to exercise an excellent control over

transport and storage of these materials and clandestine business can be curbed to a great extent.

All the dealers in explosives who have been involved in criminal cases may be listed out and under no circumstances license will be granted to them. An NOC may be obtained from the Special Branch to the effect that the applicant is not involved in criminal case. All the persons arrayed as accused in Explosive/Arms Act cases should be debarred from obtaining any license under Explosive/Arms Act. Such persons may be rowdy history sheeted in every police station. Once the licensee is involved in a criminal case, canceling of his license should become mandatory.

◆ ◆ ◆

*If you are not criticized, you may not be doing much*

*Anonymity is the truest expression of altruism*

*Underpromise; overdeliver*



# CAREER PLANNING OF IPS OFFICERS

PC Sabarwal

**I**ndian Police Service is structured to provide apex level leadership to the Indian police. As a service, however, its contribution in providing a visionary leadership to various police organizations of the country has become jaded. In the absence of a well thought out career planning of IPS Officers, the officers have been forced to fend for themselves and watch their interests through extra-constitutional/extra-departmental channels.

Organizations that seek to gain competitive advantage through their human resources must manage the behaviour and performance of all employees, especially of its senior managers through a conscious career planning of its key functionaries. There is little evidence of a conscious career planning being done either by the IPS officers individually or by their cadre managing authority. For this, it is imperative to re-examine issues like choosing between multiskilling and

specialization, hierarchical or functional organizational structure, job design, job enrichment, etc.

It is recommended that police organization may be restructured on functional basis. In addition we need to strengthen our training institutions and design training courses to enhance professional competence. To give training an additional edge, we should make pre-defined cadre courses mandatory for promotion. Due to increasing complexities of socio-politico-economic fibre of the country, we need to clarify task ambiguity; remove role conflict through an effective system of feedback.

## CAREER PLANNING OF IPS OFFICERS

**W**e often lament the fact that Indian Police continues to be governed by an archaic and outdated Indian Police

Act of 1861, which was enacted to ensure the perpetuation of a foreign rule in utter disdain of the aspirations of a progressive society. However, the point that is often overlooked by us is the continuation of an equally archaic and monolith service that provides leadership to the whole of Indian Police, i.e. The Indian Police Service (IPS). The need for having a re-look at IPS is no less pressing than that of Indian Police Act. And closely linked with this is the issue of career planning of IPS officers.

A successor to Indian Police, for many years, Indian Police Service continued to be influenced by its peers who were originally IP officers, small in number, trained and socialized in the best of English traditions designed to be “Burra Sahibs” with an anglicized social and behavioural mindset. To be fair, such a force suited the objectives that the British desired to achieve but the changed political and social conditions demanded that the service change its perceptions accordingly. But this did not happen. Deliberately, perhaps through design and equally through inertia, we continued to believe in the virtues of this great force.

And the service did have and continues to have many features that not only require to be retained but also require to be strengthened. In a service structured to provide apex level leadership to the Indian police, a tough competitive exam ensures that only the best of brains are allowed to be a part of this elite force. Basic training is designed to equip IPS officers with elementary skills of policing, physical robustness, social etiquettes, and in developing qualities of leadership and resourcefulness. A prolonged stay at the National Police Academy (NPA) helps IPS officers to develop esprit de corps and group identity that lasts throughout the service and beyond. It is for such reasons of service bonhomie that IPS officers look up to their service colleagues with a sense of belonging and as a matter of right. Most often these

sentiments are reciprocated and over the years this family has attained a formidable emotional bond.

As a service, however, its contribution in providing a visionary leadership to police organizations of the country has become jaded. Admittedly, IPS offices cannot be held responsible for many of the reasons for such a state of affairs, but the senior IPS leadership must own the ills that has made this unique force less responsive than what it was and what it can still be. In the absence of a well thought out career planning of IPS officers, the officers have been forced to fend for themselves and guard their interests through extra-constitutional/extra-departmental channels.

## HOW TO DEFINE A CAREER

**O**rganizations that seek to gain competitive advantage through their human resources must manage the behaviour and performance of all employees, especially of its senior managers. This makes it necessary for the organizations to carefully plan and execute careers of its key functionaries. A career can be defined as a sequence of positions occupied by a person during the course of a lifetime. The issue of success or failure, advancement or stagnation in a career is implicit in the career path of the individual, which is impacted by many factors, of which, some are attributable to the individual and some to the organization or to the socio-political environment.

## CAREER PLANNING

**H**uman Resource Development (HRD) experts lay a lot of emphasis on career planning, through which both organizations and individuals evaluate their abilities and interests, consider alternate career opportunities and establish career goals. It is not that only

individual employees do career planning, organizations too can be actively involved in this exercise. Since organizations can rise only to the limits of their people’s capacities, skills and motivations, they have a vested interest in the careers of their members. Career planning helps them enhance employee’s job performance and thus the overall effectiveness of the organization.

Career planning helps both the individual and the organization in more than one way. For organization, it helps in identifying qualified and most suited personnel for specific assignments. For individuals it helps them improve their job satisfaction that can be an instrument for developing high self-esteem and positive attitudes. Needless to say that career planning is a complex process as it involves matching future prospects of individual employees, organizational goals/objectives and various social issues, that can be at variance with each other. These dichotomies get further heightened in case of a public utility service like police because of its relevance in almost all walks of social, political and economic life. However, the best career planning is that in which the goals, ambitions and aspirations of the individual employee match with that of the organization for the mutual benefit of both. Notwithstanding that, the primary responsibility of career planning remains that of the individual employee and organization can at best facilitate this. In fact, there are instances when the organizational requirements and the individual employee’s ambitions become incongruent. In such a situation, the will of the former will prevail and to that extent, career planning becomes dysfunctional.

## CAREER PLANNING OF IPS OFFICERS

**T**here is little evidence of a conscious career planning being done either by the IPS officers individually

or by their cadre managing authority. In fact one single factor that greatly influences the course of our careers in All India Services is the allocation of a cadre. An inconvenient cadre may force us to make many adjustments in our career planning. A significant number of IPS officers are allotted cadres that are no less than a foreign country to them. In such inconvenient cadres, the language barrier is the biggest discomforting factor; differences in social customs, education system, climatic conditions, geographical distances, etc., pose other serious challenges. It is for these reasons that many of us start searching for opportunities that afford life-long assignments away from the cadres like the Intelligence Bureau (IB) and Research and Analysis Wing (R&AW). In such cases, no doubt a conscious career planning is made but the motive is making the best out of a bad situation rather than advancement in career. However, there is a small minority of officers who do plan their careers. With this backdrop, career planning of IPS officers is more like an individual effort rather than a deliberate organizational issue of conscious planning, deliberate enforcement to develop individuals as effective leaders for providing a visionary leadership to all the police forces of the country.

## VARIOUS ISSUES IN CAREER PLANNING

**C**areer planning involves many important considerations and long-term policy objectives before it can be implemented. Expediency, the bane of present day Indian bureaucracy has no place; otherwise the distortions in the system will negate all efforts.

**Specialisation or multiskilling :** The first issue to be decided is, whether IPS officers should develop a wide range of general skills (multiskilled) or should they be specialists confined to their own field through out their careers. This age

old debate is becoming more and more relevant in the context of Indian police. There is a lot of sense if we opt for specialization. The core functions of police, viz. crime control and investigation, maintenance of public order and traffic management, are becoming so specialized so as to render automatic interchange between these functions and inefficient use of police officers. It is easier to decide if we are sure of the qualifications and skills needed to do justice to the task assigned to us. If these tasks are truly diverse, then the skills needed for each will be different, with little or no overlap and we choose specialization. If, on the other hand, they are fundamentally not diverse, then either the same generic skills are required for all these aspects of policing, or the skills developed for one function will be readily transferable to another function. Till recently, in India, these skills were easily transferable but in the present times such shifting from one core function to another is not prudent owing to their complexities. It is precisely for these reasons that the IPS officers may be of better service to the community if they spend the whole of their careers in one or other of core functional areas, rather than interchanging between them.

### Organizational Structure of Police:

Closely linked to this decision is the issue as to how should the police be organized, in a hierarchical structure or in a functional structure. The present police structure throughout India is highly regimented and hierarchical. To achieve specialization, police will be required to be organized on a functional structure, which encourages and provides clearly marked career paths for specialists and makes it easier for the organization to coordinate efforts of functional area specialists. At present only Central Police Organizations (CPOs) are structured functionally. IPS officers in these organizations plan their career better and become more skilled in the organization of their adoption. However,

in the state cadres, IPS Officers continue to be posted in and out of jobs requiring different skills and orientation.

**Quality of police service:** Police provides services to the society and in that sense society is our customer. Every organization has to continuously monitor whether or not its customers are satisfied with the services that they are getting. Being a monopolist, till recently very little attention was paid to the quality of service we provided. Since there were no competitors, we could get away with whatever we offered and whatever was the standard of our performance. The world, however, is changing and changing fast. In the western countries already many of the peripheral police services have been privatized but the public representatives and the press are clamouring for value for their money. In India also there is a silent but sure shift to privatization. The most evident public face of the privatization of policing has been the proliferation of security guards, private detective and surveillance agencies. This is a clear indication that our customers are not happy with us. There is a pressing need for evaluating our performance. There are three major determinants of quality performance. These are:

- **Willingness to perform:** A vast majority of IPS officers are willing to perform only if they feel that the job has glamour, public dealings, power and authority. That is why executive jobs are preferred rather than jobs in the support sector like special branch, armed battalions, vigilance or anti-corruption wings.
- **Capacity to perform :** It is closely linked to strengthening of our skills and professional competency through training. First, our officers are not exposed to latest trends in policing that have been successfully tried in some countries. Secondly, even

if such training is imparted to a few of the officers, these are mostly from certain central police organizations. State police officers often fail to get slots in important training courses.

- **Opportunity to perform:** Here again, many times, postings are made on considerations other than merit. Most of the strategic assignments go to a few favoured by politicians on caste or allegiance basis. Promotions are given to push up the whole batch with little consideration to the merit of individual officers. We must pause to think why IPS officers get away with mediocre to poor performance. Today, there is little reward for a good performer and little adverse impact for a bad performer. Till a few years ago, integrity of the officer was one of the important considerations for a sensitive assignment but with the advent of militancy now we have become result conscious. Nothing wrong with this except that this kind of trade-off between ethics and results has eroded police credibility.

**Job design of IPS Officers :** Police jobs are overwhelmingly oriented towards crime and law and order. Because of this, jobs associated with law enforcement and crime investigation have become hub of police departments often at the cost of other important functions like training, intelligence collection and personnel management.

Due to hierarchical structure of state police and over concentration of police powers in district police, most of non-district police posts are considered inconsequential. An assignment in such peripheral jobs is not liked by a majority of IPS officers who do not want to be dubbed as failures and employ all means, fair and foul, to be on the buttered side of the bread.

Such a situation provides a potent weapon in the armoury of politicians and other extra-departmental forces to ensure that recalcitrant IPS officers fall in line. The British had ensured that all IPS cadre posts wielded influence and power that further ensured that society respected IPS officers for the clout that they had. Gradually but surely, in a mad rush to promote officers, often to keep pace with our bete noire The Indian Administrative (IAS), we have distorted our job design. Police organizations have become top heavy. In some cases, an IG is posted where earlier only a DySP was posted. The result is that police posts are now poorly designed and lack both range and depth. An effective job design should have:

- ☐ **Range:** Number of jobs employee performs
- ☐ **Depth:** Discretion of employee to decide job activities and outcome.
- ☐ **Relationships:** Decisions regarding departmentalization and span of control.

On all the above counts, in State policing, the only post that encompasses these is that of a district police official and its higher hierarchy. If we have to have a meaningful career planning of IPS officers, we must provide jobs that brings them dignity and a sense of purpose. This is possible only if the jobs of IPS officers are redesigned and restructured. There is a need to look beyond district SP as the only executive functionary by redesigning post of say an armed battalion Commandant, whose troops are also put under the command of District SP. We may, for example, provide him with a specific area of jurisdiction in need of deployment of his troops and let him operate with the help of civil police.

**Job enrichment:** Next issue is that of job enrichment. It involves, inter alia, increasing opportunities for an IPS officer to exercise discretion within his job via:

- ◆ Control over resources
- ◆ Opportunities for new learning
- ◆ Uniqueness of job
- ◆ Direct feedback
- ◆ Personal accountability
- ◆ Freedom to schedule job priorities.

Since we lack most of these, except probably direct feedback opportunities, we must strive to provide these features in police jobs. And we really do not have any reason why police jobs of middle and senior management cannot be redesigned. All we have to do is to come out of this mind-set. Our heavy dependence on use of human resources and documentation has impaired our vision regarding use of modern technology. Be it inventory control, criminal documentation, use of management information system to manage our personnel affairs, use of scientific aids to investigation, traffic management or for scores of other police functions we continue to depend on old technology. Computer culture is lacking and wherever we use computer, it is due to personal initiative of a few forward looking officers rather than as a conscious policy decision. Governments are willing to spend crores of rupees on modernization but we do not look beyond housing, vehicles and communication equipment. We are unable to decide on force multipliers like electronic scanners, intruder alarm systems, lie detectors, bomb disposal squads and sniffer dogs. Our futuristic appreciation of police requirements continues to be neglected or is in nascent stage.

**Motivation for IPS Officers to plan their career :** Due to limited opportunities, IPS officers fail to integrate their personal goals with the organizational goals. Initial euphoria of joining a premier service does not last very long. One is sure to lose most of the enthusiasm if an inconvenient cadre is allotted. If we are lucky to go to a good cadre, the drive is

sustained for the next 6 to 7 years. By that time we start realizing that merit alone is not enough to do well. Personal liaison and extra departmental contacts become sine qua non for remaining on the 'right' career path. There is no reward for developing new skills or for showing good performance. Motto is, avoid being caught, do not volunteer for any assignment, do not argue, comply or at least pretend to comply and manage things through a good image building. All that is required is average performance because promotions and rewards are denied only if there are indictments.

IPS Officers should not feel smug because they have passed one (and only one) exam held by the Union Public Service Commission (UPSC). Unfortunately such is the case. Over the years IPS Officers have been very conscious of their rights but have not paid much attention to performance or ability to perform better than the state cadre police officers. We must not forget that the difference in seniority between IPS and State cadre officers is about 15 years who enter the service in the same year. With such a generous lead, should not IPS officers acquire some superior professional skills and exhibit better conduct.

### THOUGHTS TO PONDER OVER

As has been mentioned, career planning is a complex process with a host of individual, organizational and social issues underpinning its structuring and execution. For an IPS officer, age of entry, familiarity with language and customs of the cadre, and his caste/religion become assets or liabilities depending on the dynamics of state politics. It is also significant that the clout DGP of a state used to wield in 60s and 70s is no more in evidence. In many smaller states the office of the DGP has become irrelevant in cadre management. Within these changing circumstances we cannot be silent spectators to continued erosion of this

great and historical cadre. A close scrutiny and self-monitoring is required. Perhaps, we may try the following for initiating the process of career planning of IPS officers:

- a. Restructure the police department on functional basis under major heads like investigation, law and order, intelligence, counter-militancy, VIP security, logistics and office management, etc., and provide IPS officers specialization in these fields. It will be something like what Army does, distributing their officers in various functional areas like infantry, artillery, signals, service corps, etc. In police, it might appear somewhat difficult, however a closer examination will show that it is not insurmountable. To begin with, district level set-up of police functions may not be disturbed but within that specialist police officers may operate. For example, the issue of separating investigation from law and order has been analysed many times in the past and there is a lot of merit in it. Similarly, for anti-militancy operations we may allow special wings to operate. Punjab police successfully used this model to fight militancy. Central police organizations have already shown us the way. We do have parallel structures in the State police also but here the inter-transferability of personnel from one organization to another, which is not the case in the CPOs, defeats the purpose. To have much-needed specialization and to remove task ambiguity, we should confine our officers to specific and not to generic fields.
- b. Design training courses to enhance professional competence and make these courses mandatory for promotion. At present there is no concept of

skill upgradation. As indicated earlier success in one exam opens up vast career opportunities notwithstanding obsolescence in professional knowledge. Also, it is not mandatory for IPS officers to undergo certain specified training courses. With fast changing technology and unleashing of human resource potential both in favour and against human kind, we do need a periodic upgradation of our skills and broadening of our professional knowledge. Present system of in service training needs to be re-evaluated and made more purposeful.

- c. Strengthen our training institutions: Not that our training institutions lack any sincerity or effort but in the absence of a system, adhocism has taken over. There is no system of either empanelment or evaluation of skills of trainers. In the State Police, posting to training institutions is mostly due to reasons other than training skills of such officers. An assignment in training institution is considered most obscure and therefore most insignificant for the police functioning. No wonder some police officers perceive it as a punishment posting. Also, we have not developed a reservoir of good trainers. After all who are our present trainers? Do we have in-house professional trainers? Should we not entrust training to our best officers and recycle them periodically so that they keep in touch with reality. The trainers should be the role models for the trainees. And there is a dire need for removing this deficiency.
- d. Clarify task ambiguity: Police officers often feel that many aspects of their job lack clarity. Officers experience task ambiguity when they are not provided with

adequate information with regard to their duties, responsibilities, organizational goals and policies, limits of authority and decision-making, etc. It happens very often in police functioning because of socio-political pressures and counter pressures, subjectivity and discretionary powers, decision-making, ambiguity in powers of supervisory officers and above all accountability in case of operational failure. Many of us try to hide behind the axiom of law taking its own course to permit situation to slide one way or the other.

- e. Develop an effective system of feedback: Over the years we have not developed any system of taking or giving feedback. Being a monopolist, we attributed motives to our critics while gravitating towards those who complement us. We have rarely bothered to have an external audit done of our performance. Such feedback ambiguity is more detrimental when we feel that the superiors are neither responding nor reacting fully to our performance. This enhances our perplexity since we do not know whether our performance is upto the satisfaction of our bosses and organization.

- f. Remove role conflict: Role conflict occurs when there is a simultaneous occurrence of two or more sets of pressures or demands such that compliance of one would make compliance of the other more complex and difficult. Compliance through legal and departmental provisions often exposes us to conflicting ethical and social issues that create such role conflict. Investigations are kept pending, prohibitive sections of CrPC like 144 though promulgated are not deliberately enforced; innocent people are arrested to artificially inflate numbers especially during communal riots and VIP security. Such style of functioning has become more prominent in recent years due to contradictory pressures exerted by mushrooming of political parties, coalition governments both at federal and provincial level, emergence of strong regional political parties and polarization of IPS officers on caste lines. Career planning of officers has been greatly influenced by these changes in working environment. These issues need to be addressed and faced squarely by all of us. We must develop strong professionalism and that is possible only if our loyalty and

commitment is only to qualitative performance with total disregard to extraneous considerations.

Career planning of IPS officers cannot be taken in isolation. Policing today has very little in common with the job its peers did in the mid-20<sup>th</sup> century. Police are now required by the public to answer to calls for assistance, and also to respond to continuing crime problems such as domestic violence or child abuse, which were earlier, usually handled within the family. Big cities with anonymous residents, single mothers, live-in relationships leading to breakdown of important social institutions like family, etc., have all combined to place significant demands on police. Due to these pressures and job requirements, a modern policeperson is expected to be a highly skilled professional, usually working in a specialist group dealing with a particular type of job. Due to the aforementioned reasons, the job profile of police has expanded enormously without discernable boundaries. Clearly, continuation of archaic organizational ethos and military type regimented approach to performance execution and evaluation needs to be changed. This is possible only through a progressive looking career planning for IPS officers.

◆ ◆ ◆

*For all the advances  
in medicine  
there is still no cure for  
your child's  
'common birthday'*

## USE OF HANDCUFFS

Sankar Sen

**A**rbitrary arrests and misuse of handcuffs are common complaints of abuse of authority against the Police. Judicial pronouncements of the Supreme Court in the case of Premshankar Shukla v Delhi Administration (SC 1980) and Citizens of Democratic v State of Assam (SC 1996) viewed the existing practice of handcuffing by the police as extremely objectionable and laid down restrictions on the discretion of the police to handcuff the prisoners. The apex court felt that “functional compulsions of security must reach that dismal degree where no alternative will work except manacles”.

In the case of Premshankar Shukla, a better class undertrial prisoner in Tihar Jail was required to be taken from the Jail house to the Magistrate’s court and back periodically in connection with certain cases pending against him. The trial court had directed the concerned officers that while escorting him to the court or back, handcuffing should not be done, unless it was so warranted. But as the handcuffs were forced on him by the

escorts, he sent a telegram to one of the judges of the Supreme Court on the basis of which a habeas corpus petition was admitted by the apex court. The Supreme Court speaking through Justice Krishna Iyer held that to be consistent with articles 14 and 19 of the Constitution ‘handcuffs must be the last resort as there are other ways of ensuring security. No prisoner shall be fettered routinely or for the convenience of the custodian or escort’. The court further laid down where in extreme circumstances handcuffs have to be put on the prisoner, the escorting authority “must record contemporaneously the reasons for doing so”.

The court was of the view that merely because a person is charged with grave or serious offences, inference of escape does not follow and on that premise alone he cannot be handcuffed. Therefore, the Court held as arbitrary the provisions of clauses (a), (b), (c) of paras 26:22 of the Punjab Police Manual of routinely handcuffing an undertrial who

is accused of a non-bailable offence punishable with three years imprisonment. Further, classification of the undertrial prisoners for the purpose of handcuffs into 'better class' or 'ordinary class' as enjoined in the Punjab Police Manual was arbitrary and 'hostile to the constitutional ethos'. In the case of 'Citizens for Democracy' the Supreme Court reiterated its earlier ruling on handcuffing and made its adherence mandatory. The Court also emphasized that 'violation and circumvention of the law laid down by the Supreme Court shall attract the provisions of Contempt of Court Act, apart from other penal consequences under the law'.

The Supreme Court's ruling in Prem Shankar Shukla's case was given in 1980. Only in 1988 (4.10.1988) the Government of India issued the following guidelines regarding handcuffing:

1. No prisoner shall be fettered or handicapped routinely just because of the convenience of the custodian or escort.
2. It is arbitrary to classify the prisoners for the purpose of handcuffs into 'B' class and ordinary class.
3. Handcuffing should be resorted to in exceptional circumstances where there is clear danger of escaping or where the concerned accused is so violent that he cannot otherwise be secured. Handcuffing may be avoided by increasing the strength of the armed escort or by taking prisoners in a well protected van.

It advised the Home Secretaries and DGs of all State Governments to ensure that these instructions are scrupulously observed.

Police Manuals of different states have framed rules incorporating the rulings of the apex court and directions of the Government of India. Andhra

Pradesh Police Manual Order No. 461 lays down that undertrial prisoners and accused persons shall not be handcuffed and chained without specific permission of the courts, and whenever it is considered necessary to handcuff certain prisoners while they have been taken out, the written order of the Magistrate should be obtained. Permission granted by the Magistrate should be maintained in a book to be kept by the guard officer. With regard to handcuffing a refractory, violent or dangerous prisoner, the officer in charge of the sub-jail guard or the senior police officer present may control him only by utilizing more personnel and by such force as may be necessary, while rushing a messenger to the concerned court or Magistrate for permission to handcuff him.

But in practice the policemen are facing a number of practical difficulties which should be taken note of. A study done by the Bureau of Police Research and Development (BPR&D) shows that a large number of prisoners have escaped from police custody during the period from 1996-2000. Number of such escapes from some of the major states are as follows

Rajasthan	428
Maharashtra	439
Gujarat	320
Uttar Pradesh	776
West Bengal	106

However, these statistics do not reveal a complete and clear-cut picture as to in how many cases escapes took place precisely because handcuffs were not used. Again during this period, as figures collected by the BPR&D show, that altogether about 4000 policemen had to face criminal/departmental action for the escape of the prisoners from their custody. An escape from custody can result in the prosecution of policemen under Section 221 to 225 (A) of IPC which make both intentional and negligent conduct on the part of policemen a

cognizable offence. Moreover, police regulations of all states make escape from the custody of the police a serious omission. In such cases policemen are invariably suspended and disciplinary action initiated against them. Though the Supreme Court says that use of handcuffs can be minimized by increasing the number of escorts, in practice it becomes very difficult to augment the strength of the escort party, because the available strength at each police station is limited and there has been an exponential increase in the commitments of the police. Again, non-handcuffing of the prisoner in the present scenario pose threats to the security of the police officers. These days not only the terrorists, but also the ordinary criminals carry fire arms and do not hesitate to open fire on the law-enforcing officials. Sometime ago Vinoy Kumar Yadav, a Sub Inspector of Delhi Police, was shot dead by an accused. Undertrials are not docile and submissive and many of them indulge in violent mischievous activities. Further, infrastructural facilities are also inadequate. As the number of jail vans is not enough for the strength of the prisoners, often they are brought in the courts in less secure police vehicles, requiring deployment of more policemen in the escort party. Due to the resource crunch it has become difficult to either augment the police escort strength in each district or add to the number of jail vans.

In countries like UK, USA, handcuffing is viewed as one of the accepted practices of the police while effecting arrests and escorting prisoners. In UK, there are case laws on use of handcuffs. Handcuffing is justified when found reasonably necessary in order to prevent an escape {Reed v. Wastie (1972) Crim LR 221}.

In another case of 1972, it has been laid down that handcuffing is justifiable where it is reasonably necessary in order to prevent an escape.



Handcuffing is justifiable when found reasonably necessary to terminate a violent breach of the peace by the prisoner {R.V. Lockley [1864], 4F&F.155}. In Australia, Police Service Handbook of the State of New South Wales provides that the officer is justified in handcuffing prisoners when they have tried to escape or to prevent escape or injury to themselves and others.

In USA, the Idaho Court of Appeals in an appellate decision declared that a “policy requiring officers to handcuff arrested person when they take him to the jail so that the suspect may not grab a weapon, fight with officers or cause damage to country property is inherently reasonable. Even the most meek-appearing and fragile suspect may have the ability to place the officer, the public and the suspect at great risk”.

European Court of Human Rights (ECHR) in interpreting article 3 of European Human Rights Convention (which gives freedom from degrading treatment) has laid down that it is in order to restrain a person using handcuff to effect a lawful arrest or prevent the

escape of a person lawfully detained. The court decided in the case of Ranihen v Finland 1997 that it was not degrading to lead an individual in handcuff past friends and supporters but to keep him handcuffed for a total of two hours in a situation where the use of restraint was unnecessary.

In the present scenario, with escalating crime and increasing lawlessness, there is an urgent need to review the law on handcuffing the criminals. Under the existing instruction of the apex court which have the force of law, it is obligatory for the police officer to first make a diary entry at the police station regarding the antecedents of the accused and the reasons as to why it was necessary to handcuff the accused and to produce a copy of the diary entry before the court. It is difficult for the police to comply with these conditions. As a result, the instruction of the Supreme Court are honoured more in breach.

In a recent national seminar in Delhi on the use of handcuffs by the police, the well-known lawyer KT Tulsi stated that the directions of the Supreme Court were somewhat impractical, based on unrealistic

expectations which stem from distrust of the police. This distrust is weakening the foundations of our criminal justice system. It is necessary for the Parliament to pass a comprehensive law on the subject replacing the Prisoners (Attendance in Court) Act and clear up all ambiguities. The law should take into account the operational problems of the police and at the same time contain provisions to prevent misuse of handcuffs by the police. In Premshanker Shukla case, Justice Pathak while giving the concurring judgment observed that whether handcuffs or any other restraint should be imposed on a person is primarily a matter for the decision of the authority responsible for his custody. There is reason for imposing a supervisory regime over the exercise of that decision. The supervisory jurisdiction should perhaps be left with the senior officers of the police. If the enactment of the new law takes long time, a larger Bench of the Supreme Court may be moved to review its decision and observations in the light of the ground realities and practical difficulties faced by the police to implement the directions of the court.

◆ ◆ ◆

*Recovering from failure is often easier than building from success*

*The softest things in the world overcome  
the hardest things in the world*

*A perfect method for adding drama to life is to  
wait until the deadline looms large*

# A MODEL FOR INTELLIGENT POLICING

Jayanto N Choudhury

**I**ntelligence-Led-Policing is an imperative in combating organized crime. The police in India need to better understand the intelligence process and upgrade intelligence capabilities, in order to deal with global criminals of the Information Age. In addition to its obvious tactical utility, intelligence can be an invaluable tool for police strategy. The leverage provided by effective intelligence is open to unscrupulous exploitation and needs safeguards. Organizations like NPA and BPR&D can play a key role in increasing awareness of the potential of criminal intelligence and developing the structure and skills to move toward a better intelligence function in policing.

## **Intelligence-Led Policing (ILP): A Model for Intelligent Policing**

**I**s Intelligent Policing an oxymoron?

‘Intelligence Failure!’ is the outcry after every major incident, whether the

Kargil intrusion or the December 13 attack on Parliament. Well-intentioned though often ill informed demands are then made to ‘revamp’ the intelligence machinery. High-powered commissions are constituted to identify weaknesses and make recommendations, usually resulting in the creation of a new agency.

Interest in the workings of intelligence in India, has been by-and-large restricted to areas related to national security. Less glamorous though as important is the need to introspect on the role and process of criminal intelligence for the police. Unfortunately the potential and process of intelligence is poorly understood and viewed with scepticism by many police leaders themselves, unless the inputs are purely tactical and immediate in scope. At field levels, whether police station or district, all successful officers depend on good intelligence - the legendary SHO is expected to know when even a leaf falls in his elaka! However, this is rarely a systemic process and is usually centred around individual initiative. Even Police

Commissions have paid only lip-service to the need to upgrade intelligence capabilities. Informed public discussion on intelligence is non-existent. Who can then blame critics of the police from asking only half in jest, whether intelligence in policing is in fact an oxymoron?

## **TRADITIONS OF CRIMINAL INTELLIGENCE**

British India had an established tradition of good police records that is the foundation of effective intelligence. The Village Crime Note Book (VCNB) used in many states was an invaluable data bank used to identify and monitor potential trouble spots and troublemakers via crime-maps and 'BC' lists. The Anti-Thuggee Department in the 19th century under the renowned William Sleeman used a pre-information age version of intelligence analysis, to destroy that all-India network of religious killers.

Its contemporary avatar, the Central Intelligence Bureau (CIB) has an equally impressive record as the premier intelligence organization in the country. Its charter is focused not on crime, but on safeguarding national security. This wide role ranges from providing tactical inputs for combating espionage and countering terrorism to formulating assessments for policy-makers on issues of governance. It is the only security agency in Independent India with a permanent presence in all state capitals and most district headquarters.

Most states have Special Branches (SB) modelled on the CIB with the charter of monitoring individuals or organizations that may be threats to public order. Organizations like the Central Bureau of Investigation (CBI) have a well-deserved reputation for investigating sensational offences ranging from corruption to terrorism. The Criminal Investigation Department (CID) at the state-level like the CBI is

investigation-focused and case-centered; taking up Special Report or sensitive cases for investigation, and is not an instrument for police planning or resource-allocation.

## **NEED FOR INTELLIGENCE-LED POLICING (ILP)**

What is needed today is a closer look at the systems and processes needed to provide systemic intelligence support in formulating anti-crime strategies. The main battleground of the police is in the states, and it is at here that we need to develop an effective and professional intelligence machinery. The trend of terrorist groups partnering with organized crime reveals the blurring of boundaries between offences and methods that affect national security and those that target individuals or the public. Kidnapping for ransom and extortion, drug trafficking, circulation of counterfeit currency or corrupting the government machinery, are the modus operandi of criminal organizations that can easily switch to terrorist actions like the Bombay Blasts or murdering policemen in Calcutta. On the other hand, as has been experienced with terrorism in J&K, Punjab and the Northeast, many terrorist groups profess a political objective, but in fact are just organized crime gangs.

The economic revolution in India has created a super class of the wealthy, who have become an attractive target to an underclass of criminals. Sustained socio-economic development and improvement in the QLI (Quality of Life Index) demands that police services be upgraded to ensure security of life and property. Solely increasing manpower or providing state-of-art weaponry cannot achieve modernization of the police. 'Software' multipliers like better intelligence capability are as essential as the 'hardware' of policing, though more difficult to achieve.

In the West, Intelligence-Led Policing (ILP) has become a model for better utilization of resources and a prerequisite for risk-management when dealing with competing priorities. However, ILP is more than merely a force-multiplier of limited police resources. It represents a paradigm shift from a reactive policing response to a more proactive approach. In ILP, intelligence is seen as a precondition to effective policing, and the intelligence product as a guide to decision-making, both at tactical and strategic levels.

This article reviews the basic concepts of Intelligence-Led-Policing (ILP) and calls for fresh thinking on how to make intelligence a more useful tool for police leaders. It defines the intelligence function, then explains the intelligence process and highlights the problems inherent in evaluating intelligence performance. Calling for ethics in intelligence, this article proposes in conclusion, a multi-pronged approach to more professional intelligence support for policing.

## **WHAT IS INTELLIGENCE?**

Policing is highly information dependent since the basic input for police action is information. Intelligence is in essence, information that is analysed. As a process intelligence involves the collection, evaluation, analysis and dissemination of information. When used to combat crime, criminal intelligence applies this process to suspected criminals and criminal organizations. The modern intelligence process attempts to look beyond a single act committed by an individual in a discrete interval of time. Experience has shown that targeting the individual 'foot-soldiers' seldom impact on the criminal organization. The modern intelligence function therefore looks for an inter-temporal pattern of criminal actions over a wider geographical area, with the objective of

targeting the organization rather than individuals. The criminal intelligence mission is to assist in planning actions aimed at neutralizing the leadership and resources of target organizations.

The most desirable form of police intelligence is proactive, anticipating the potential for criminal action. Strategies for preventive policing require this type of intelligence that allows advance planning. Proactive police initiatives, popularly known as 'sting' operations would also need such intelligence. Unfortunately, intelligence production of this kind is resource-intensive and often long-term, neither of which appeals to decision-makers looking for quick fixes.

More commonly the police use retrospective or reactive intelligence. An example of this is using records such as vehicle registration data or fingerprints when investigating a case to link the suspect to the offence. Modern IT applications to police intelligence tasks are most often used for such retrospective applications.

Intelligence can be tactical in scope aimed at immediate targets by providing names, locations and other identifying information for field operations. This is the usual demand and the common understanding of the role of intelligence. Strategic intelligence uses analysis for long-term planning to provide an overview of strengths, weaknesses or trends for policy decisions. This is still a developing effort, and police agencies all over the world are working to use the intelligence function to provide a more holistic picture of crime problems. In the United States variations of the SARA model have been effectively used by several police departments including New York i.e. *Scanning* to identify and define the problem, *Analysis* to systematically collect and analyse information on the problem, *Response* tailored to the problem and *Assessment*

of the impact of the response on the problem. In the UK, the National Intelligence Model takes a fresh look at the defined goals and tasks of any police organization and then finds ways to use intelligence to achieve these goals.

## THE INTELLIGENCE PROCESS

Understanding each stage in the process is essential to improving and making better use of the intelligence product.

**Collection.** The layman's view is that intelligence is collected solely through covert means such as informers or 'sources' called 'humint' in intelligence jargon. It is true that some information can be obtained only through covert means. Individuals who are part of a criminal action or organization have unique information that is invaluable in planning investigative strategy or directing enquiry. Undercover operations when possible also have immense possibilities and physical surveillance is a police tool since policing began.

Contemporary quantum growth of communications networks not only within India but globally, has been exploited by criminals to expand the reach and sophistication of their operations. Today, electronic surveillance can provide additional covert sources of intelligence of the interactions and activities of targeted individuals. Logs kept during surveillance, and data generated by intercepted telephone or e-mails are priceless. This is not limited to just authorized interception of actual voice communication, but even pager numbers or dialled number records that can help indicate links between individuals and the spread of the criminal activity.

On the other hand, open source intelligence has become a primary resource. The reach of the visual and

print media extends to the remotest corners and often signposts individuals, organizations and crime trends. Modern society has spawned a never-ending trail of records, from birth to death. Criminals managing large empires cannot avoid leaving some trail of financial records even as they launder their wealth, unless they hide their wealth under the proverbial mattress! The information-age explosion in databases is catching up in India also, and has expanded the spectrum of records that can be accessed for intelligence purposes. Similarly the e-trail left by today's more computer-literate criminals is an additional source and provides insights into criminals and their activities.

The array of law-enforcement and regulatory agencies whether under central ministries like Finance or Home, or at the state level can be a rich mine of information if suitable coordinating mechanisms can be instituted. The challenge of obtaining an integrated intelligence picture is often elusive because of the conventional 'stove-pipes' of intelligence functioning. Sometimes, the principle of need-to-know itself becomes a stumbling block, as is the effort of each organization to prepare a separate intelligence product.

Even police reports, whether from the beat or case investigations that can form a regular channel of criminal intelligence collection are often neglected. Document Exploitation (Docex) is a technique developed by NDIC (National Drug Intelligence Center) in the US to systematically analyse on-site paper or electronic records seized during police operations with the aim of developing leads in real-time to other individuals and organizations linked to the target entity.

## *Evaluating and Collating Intelligence*

Evaluating the information collected is critical in effectively using intelligence. Determining the reliability and validity

of inputs is the first step toward reaching the intelligence product. The past record of any particular source of inputs usually determines reliability. Categories used in practice range from 'reliable' to 'unknown reliability'. Similarly, the validity of the information is judged by whether it can be corroborated or is consistent with past inputs. The lack of an objective and consistent system for evaluating inputs can result in potentially valuable inputs remaining unused or give undeserved importance to unreliable ones.

The process of collation aims to separate irrelevant information and organize useful information so that connectivity can be established. Earlier methods of collation were index-card based and aimed to compile a master index of names and cross-index identifying data such as addresses, associates, phone numbers or criminal activities. The information age has transformed techniques of intelligence collation since paper-based records can now be stored electronically. Developments in database architecture and the revolution in software have enabled linkages of databases across organizations.

The physical form of intelligence inputs has also changed. Surveillance video coverage, audio monitoring, phone records can all be recorded in digital format. Photos and paper notes can be scanned and converted to image files. The promise of optical-character-recognition and speech recognition techniques will further advance the sophistication of collation. Designing intelligence database applications can be a complex process. Computer applications in the police have lagged behind other areas and software applications for intelligence is a narrow market that is unlikely to reach a volume attractive to the private sector.

**Analysis.** In India investigators themselves usually informally analyse information collected. In the West, intelligence analysis has evolved as a

specialization that interprets the collected information in a manner to support decision-making. Modern analysis attempts to provide linkages over space and time, whether of actions or individuals. Network analysis traces relationships, Activity-flow analysis tries to explain the key actions of an offence and where necessary, connect this to other crimes. Analysis of telephone records and e-mails can provide in-depth profiles of the spread and linkages of criminal organizations. Analysis of video and audiotapes of interaction between criminals can similarly give invaluable insights into criminal actions and relationships between persons. Sophisticated systems of money laundering and trans-national financial flows have generated the need for comparable analysis of bank records and other financial documents that provide leads to individuals or groups.

The tools of modern intelligence analysis are schematic structures that project such connectivity, like event-flow charts, link charts and time lines or telephone record analysis. Analytic products include threat and vulnerability assessments, estimates and forecasts. Software has been designed to help analysis, but is only as good as the man behind the mouse. Analysts need skills like computer literacy, communication and the ability to think logically. Equally important are the ability to think critically and the willingness to make judgments based on the intelligence available.

**Dissemination.** To be useful, the intelligence product must reach the right people in an effective way. The usual criterion to decide on who are the consumers is to determine the 'right to know'. This defines the larger set of individuals and organizations that may need access to classified intelligence products for policy or action decisions. 'Need to know' is a narrower band of identified individuals that have a specific reason to have a particular product. Different levels of classification of sensitive intelligence are also a guide to

its dissemination. It is usually the responsibility of the originator of the product to determine the consumer, the classification and the time for which the classification will continue.

Analytic reports for strategic intelligence purposes are usually produced for higher-level decision-makers and policy-planners. Conclusions of such reports usually highlight trends or offer forecasts and make recommendations. For example, 'threat assessments' are intelligence 'estimates' that identify organizations or individuals that already are, or are emerging as crime threats with as much intelligence as available regarding their aims, area of operations, structure, methods and resources. 'Vulnerability assessments' identify individuals or entities that are considered potential targets for criminal activity.

The intelligence product for tactical requirements can range from the basic name-check and location details of individuals that enable apprehension, to daily incident bulletins, security alerts or weekly reports on emerging patterns. This is usually shared at the operational level and with the growth of automated systems much of this could be directly accessed by field officers.

## EVALUATING THE INTELLIGENCE PROCESS

The conventional performance indicators for the police are 'numbers' – the number of crimes detected, the number of arrests, number of convictions or amount of property recovered in a specified time period. These basic 'product' measures do provide some index of success, but are often inadequate to measure the effectiveness of strategies against more complex crime problems. When applied to intelligence performance, these indicators are even less valid since useful intelligence by anticipating problems is expected to

enable prevention. Similarly, measuring outputs (intelligence products) against inputs (resources) may not give a useful profile of the effectiveness of the intelligence function. The problem of evaluating intelligence performance remains a dilemma worldwide, with expectations often bordering on the unreal. Given limited resources and restricted in spread, the intelligence function is none-the-less expected to be omniscient and omnipresent. The axiom of intelligence performance remains that of “ triumphs that go unheralded, and failures that are trumpeted.”

Observers have suggested a three-tiered approach to practically evaluating intelligence:

- ❑ **Self-evaluation.** This is an in-house exercise that undertakes an inter-temporal comparison of coverage in a given area to ascertain whether coverage of identified crime organizations has increased.
- ❑ **Evaluation of the intelligence process.** This exercise, preferably, by a separate agency or unit within an agency that reviews the separate stages of the intelligence process. The collection process reviews aspects like collection planning, whether all potential sources were developed and intelligence coordination with other agencies. Appraisal of collation would look at database management and retrieval systems. Review of the analytic process would examine use of analytical techniques and technology. Study of the dissemination stage would evaluate timeliness, relevance and utility of the products.
- ❑ **Client feedback.** This is an interactive process with consumers of an intelligence organization. Unless there is a demand for its intelligence product, the resources expended and efforts made are wasted. At the same time, the

consumer may not be aware of the different intelligence product. The words of Akio Morita the visionary founder of Sony aptly summarize the need to educate the consumer on the different intelligence products viz, “ The public does not know what is possible, and so we refine our thinking on a product and then try and create a market by educating and communicating with the public.”

## ETHICS IN INTELLIGENCE

**I**ntelligence is a critical element in combating organized crime. Space and time no longer constrain today’s criminals who have exploited information age technology to revolutionise the range of their activity. Intelligence systems that seek tools to meet this threat (like the need for electronic surveillance) have to maintain the balance between combating crime and preserving personal liberty. In India we have had controversies like the ‘Moily tapes’ in Karnataka, and other cases where the intelligence machine has been misused against political opponents.

There is a need for acceptable guidelines for intelligence targeting. This would avoid targeting individuals or entities just because they are not in official favour and help reduce the suspicion that works against the legitimate use of intelligence tools. Judicial preview of warrants against individuals for intelligence techniques that infringe on personal liberty, and legislative oversight of the overall direction of such operations must evolve to prevent abuse of the intelligence function. All police organizations need not develop independent intelligence capability, nor is anyone and everyone suitable for intelligence work. Temperament and training are important determinants in preventing abuse of the intelligence function.

Modern intelligence systems can be highly effective in exposing links between corrupt public officials and organized crime. However, the fall-out of such exposes could have adverse impact particularly in states where policing is more a function of political favour and less of legal or public accountability. Unless systems for accountability are in place, an efficient intelligence system could degenerate into an instrument of oppression or be exploited by the unscrupulous.

## CONCLUSION

**A** multi-pronged approach toward achieving Intelligence-Led-Policing in India is outlined below:

**1. Training:** The NPA should review current course design to ensure that IPS officers are familiar with current developments in the intelligence process and the potential of the intelligence function. NPA could co-host with BPRD/CBI/CIB, an annual workshop on ‘Intelligence Training, Technology and Safeguards’. Participants from the state police will be able to identify training requirements, members of the judiciary and opinion makers should be invited for inter-action on Safeguards. The private sector can usefully participate in adapting technology like the latest software applications that may have potential for the intelligence process.

**2. Organization:** BPR&D could annually review the intelligence function in one or two selected states to determine changes in organizational structure and skills needed to make criminal intelligence an effective policing tool. This review could also examine coordinating mechanisms with other agencies that have potential to enhance the intelligence process. The experience of the National Criminal Intelligence Service in the UK, and similar reforms in Canada and USA could provide a starting point to evolve a criminal intelligence model for India.

**3. Leadership:** The annual DGs conference should recognize achievements in criminal intelligence by the institution of an award (perhaps called the Sleeman Award) to state intelligence units that have demonstrated an innovative approach in any stage of the intelligence process against organized crime, developed an intelligence product that has helped high-level decision-making, or achieved an integrated product in coordination with other agencies.

Intelligence must emerge from the shadows and be accepted as a legitimate and professional tool of modern

policing. The National Criminal Intelligence Service in the UK has a sign at the entrance to its headquarters 'you can't see it, you can't hear it, you can't taste it. But you need it'. If the police in India are to achieve an edge in the war against organized crime, Intelligence-Led-Policing is not a luxury or an unreachable ideal. It is an immediate and urgent need.

#### REFERENCES:

1. *Modern Policing*. Ed. By Michael Towry and Norval Morris. University of Chicago Press.
2. *Intelligence 2000: Revising the basic elements*. A joint publication of the LEIU (Law Enforcement Intelligence Unit) and IALEIA (International Association of Law Enforcement Intelligence Analysts).
3. *Understanding Strategy*. Ananda Mukherji and Jyotsna Mukherji, Texas A&M International University.
4. *Intersec*. The journal of International Security. Volume 11 issue 11/12, November/December 2001.



### *The Ten Commandants (plus two for a slimmer you)*

1. *Binge on breakfast regularly.*
2. *Put some muscle into your stroll by holding some weight while walking.*
3. *Adopting a dog is always cheaper than hiring a personal trainer.*
4. *Eat round the clock by having smaller and more frequent meals.*
5. *Cut back on the fat and take more carbohydrates.*
6. *Stand and deliver gossip on telephone.*
7. *Leave your desk as frequently as possible.*
8. *Get up and dance.*
9. *Do gardening which involves digging, weeding, etc.*
10. *Don't ever go on starvation diets.*
11. *Sit upright while watching TV rather than recline.*
12. *Do chair push-ups if you have got five minutes to kill.*

# CIVIL AVIATION TERRORISM

PVK Reddy

Dr Shikhar Sahai

**T**errorism in the field of civil aviation has emerged as one of the most visible threats to civilized societies. The development of civil aviation networks, which transcend national boundaries, has created a prime target for terrorist activity – a soft target with disproportionably high publicity value. The sabotage of Kanishka Aircraft, hijacking of IC-814 and attack by Laskar-e-Toiba militants at Srinagar Airport are grim reminders of the nature and magnitude of the threat which our country faces. The September 12<sup>th</sup> terrorist attacks on World Trade Centre and Pentagon in the USA have fundamentally altered our entire approach and thinking on issues pertaining to security and disaster management exposing the myth of invincibility of world's mightiest and richest nation with far-reaching ramifications for countries like India facing proxy war with fundamentalist forces. The whole sequence of events go on to show how a single act of

terrorism could trigger off disaster and disaster-like situations across the globe. A conflict situation has been brought virtually at our doorsteps in South Asia which has already emerged as one of the major theaters of conflict in the world.

The present paper will examine the concept of terrorism in general, the threat perception and vulnerability potential of the civil aviation sector and steps to counter civil aviation terrorism.

What is terrorism? In simplest terms, terrorism can be described as the systematic use of violence by an organized group to create a climate of fear and to undermine the functioning of the established system with the ultimate aim of guiding public action towards a desired objective. According to a proposal submitted before the Adhoc Committee on International Terrorism appointed by the UN General Assembly in 1973, International terrorism was defined as “any threat or act of violence



which endangers or takes innocent human lives, or jeopardizes fundamental human freedoms, committed by an individual or group of individuals on foreign territory, on the high seas or on board an aircraft in flight, in the air space superjacent to the open or free seas, for the purpose of instilling terror and designed to achieve a political goal<sup>1</sup>.” The US government has never issued a formal definition but its agencies have proposed unofficial definitions. The CIA gave this definition of terrorism in 1976: “the threat or use of violence for political purposes when such action is intended to influence the attitude and behaviour of a target group wider than its immediate victims and its ramifications transcend national boundaries<sup>2</sup>.” As per the Indian National Security Guard Act, 1986, a terrorist means “any person who with the intent to overawe the government as by law established or to strike terror in the people or any section of the people does any act or thing by using bomb, dynamite or other explosive substance or inflammable substances or fire arms or other lethal weapons or poisons or noxious gases or other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death or injuries to any person or persons to damage to, or destruction of property, or disruption of any supplies or services essential to the life of community.” A similar definition was provided in Terrorist and Disruptive Activities Act (TADA) and Prevention of Terrorist Ordinance (POTO).

Terrorism idealizes violence, it is guided by the nihilist philosophy that violence is a cleansing force. However, terrorism is something more than mere resort to violence in course of common crimes such as robbery or extortion. It includes violent acts intended to influence a wider audience, to send a message. We must distinguish between the victims of the violent acts from the targets. Terrorists are primarily interested in the audience, not the victims. Indeed, as Michael Stohl puts it, “the first

purpose of terrorism is advertising the course. The violence of the terrorist is not intended simply to destroy but also to be heard... The terror is a message: we exist, we must be heard, and you may choose not to listen only at great risk<sup>3</sup>.” Terrorism, thus, thrives on the oxygen of publicity. The perpetrators of WTC attack could not have asked for a better publicity as the grim sight of the twin towers in flames reverberated for days and weeks on millions of television screens with incalculable psychological impact.

The term ‘State Terrorism’ is employed to refer to inhuman repressive measures carried out by despotic governments in denying peoples their legitimate right of self determination. Terrorism in many cases is state sponsored, i.e., supported and backed by hostile foreign countries. It is a tool employed to wage a proxy war as in case of Kashmir.

We may glean the examples of state sponsors of terrorism despite elaborate attempts to hide their involvement. A French court found that intelligence agents of the Gaddafi regime in Libya carried out the bombing of a French UTA airlines over the Niger desert in 1989, with a loss of 170 lives and the Lockerbie trial which concluded in January, 2001, found that one of two indicated Libyans were guilty of murder. The judges found the evidence in furtherance of the purpose of Libyan Intelligence Services. Another example was the midnight bombing of KAL airliner in 1987 with the loss of 115 lives planned and carried out by North Korean intelligence agents.

The Terrorism Act 2000 of UK prescribes a list of terrorist organizations:

1. Al-Qa’ida (the international network led by Osama Bin Laden)
2. Islamic Jihad (Egypt)
3. Al-Gana’at al Islamiya (Egypt)

4. Armed Islamic Group (Algeria)
5. Sala Fist Group for call and combat (Algeria)
6. International Sikh Youth Federation (India)
7. Babbar Khalsa (India)
8. Harakat-ul-Mujahideen of Kashmir
9. Jaish-a-Mohammed of Kashmir
10. Lashkar-e-Toiba of Kashmir
11. Liberation Tigers of Tamil Eelam (Sri Lanka)
12. Hizbulla (Lebanon)
13. Hamas (Palestine)
14. Islamic Jihad (Pakistan)
15. Abu Nidal Organization (Iraq)
16. Islamic Army of Aden (Yemen)
17. Mujahedin-el-Khalq of Iran
18. Kurdistan Workers Party (Turkey)
19. Revolutionary People’s Liberation Party (Turkey)
20. Basque Fatherland and Liberty (Greece) (Euskadi Ta Askatasuna - ETA)
21. 17 November, Revolutionary Organization (Greece)

The US State Department has in October, 2001 re-designated 25 already named terrorist groups as Foreign Terrorist Organizations (FTOs) dropping two outfits (The Japanese Red Army and Tupac Amaru) from the original list of 27 named last year. The only Kashmir related named in the group is the Harkut-ul Ansar, also known as Harkut-ul Mujahaddin. After attacks on J&K Assembly on 01.10. 2001 and Indian Parliament on 13.12.2001, US and UK governments banned Lashkar-e-Toiba and Jaish-e-Mohammed. Pakistan President General Pervez Musharraf banned Lashkar-e-Toiba and Jaish-a-Mohammad under international pressure after India started diplomatic offensive post 12/13 attacks.

## THREAT PERCEPTION & VULNERABILITY POTENTIAL

**C**ivil Aviation Terrorism includes acts of hijacking, sabotage, terrorist attacks on airports and aviation installations and other acts of unlawful interference. Hijacking remains the most serious and visible threat to civil aviation security. The history of hijacking can be traced back to the year 1930 when some revolutionaries of Peru hijacked one aircraft and used it for dropping leaflets in their favour. Between 1945 and 1952 there were 21 incidents of hijacking out of which 18 incidents were related of the escape of persons from the 'iron curtain' in Eastern Europe. Cuba was the center of focus of hijacking incidents occurring between 1958 and 1961. These hijackings were either committed by asylum seekers fleeing out of Cuba or by persons running away from USA heading for Cuba. The Palestinian revolutionaries took to hijacking in a big way and used it as a means to highlight their political struggle against Israel. The year 1969 can be designated as a year of 'Terrorism in Air' when 81 attempts were made to hijack various aircrafts. In 1969, a Palestinian lady Leila Khaled hijacked a TWA Boeing aircraft operating a flight from Rome to Tel Aviv and took it to Damascus. This was the first time that a lady was involved and Leila Khaled become a famous name all over the world. One year later, she made an unsuccessful attempt to hijack an E1 A1 aircraft.

In India, it all began with the hijacking of an Indian Airlines Fokker Friendship aircraft on Srinagar-Jammu flight to Lahore by members of Kashmir National Liberation Front in 1971. The Khalistan terrorists also took recourse to this weapon. Since then India has faced more than two dozen incidents of hijacking. The hijacking of IC-814 to Kandahar has once again demonstrated the high degree of threat perception.

While the earlier hijacking aircrafts were aimed primarily at extracting concessions from governments, September 11 has introduced a new terror phenomenon not seen before – suicide air attacks targeted at vital installations where Fidayeens used Aeroplanes as missiles to launch attacks on World Trade Centre (WTC) and Pentagon.

Sabotage remains another important threat to civil aviation security. The first reported incident of aviation terrorism through sabotage was in 1949 in Philippines when a woman got a dynamite planted in the plane in which her husband was traveling as a result of which her husband and 30 other passengers were killed. Since then, there has been a large number of incidents of sabotage and attempted sabotage. In 1985, an Air India Plane 'Kanishka' exploded in mid air over the Atlantic due to bomb which led to killing of 329 passengers and crew. Two Sikh terrorists who were involved in this blast were arrested by the Canadian Police 15 years later. In 1988 the village of Lockerbie (Scotland) made international headlines when a Pan Am Aircraft exploded in mid-air due to sabotage and the dead bodies fell over the village leading to 270 deaths (including 11 on ground). In a similar tragic case of suspected sabotage in 1996 in USA, 230 occupants of TWA airliner lost their lives.

Terrorists attacks on airports also constitute a threat to civil aviation. In 1968, an Israeli aircraft parked at Athens airport was attacked by Popular Front for Liberation of Palestine (PELP) terrorists. Similar incidents took place in the coming years involving Palestinians. After a brief lull, Rome and Vienna airports in Europe were simultaneously attacked. Nearer home, 40 people were killed when a suitcase bomb exploded in international arrival hall at Madras Airport in 1984. The Srinagar Airport was attacked by Lasker-e-Toiba militants in 2000. Colombo Airport was attacked last year.

There are many reasons for the vulnerability of civil aviation sector to terrorist actions. It is not a country-specific sector (unlike railways) and its operation involves adherence to certain standards laid down as part of an international security regime. An aircraft of one country may be boarded by hijackers at an airport located in another country and taken to an airport in a third country. Thus, response to a hijack situation would greatly depend on the intricacies of international diplomacy and relations between the nations. This creates serious impediments in bringing the culprits to book. More often than not, the hijacked plane is taken to hostile countries which are sympathetic of the cause of the hijackers and might have played a role in engineering such acts as part of proxy warfare.

When we focus on the terrorist groups who have targeted Civil Aviation and assess the current threat environment we can broadly perceive the threat emanating from:

- a) Islamist Fundamentalists
- b) Nationalists/separatists, and
- c) Extreme Left Revolutionaries

### ISLAMIST FUNDAMENTALISTS

**T**hough all of them claim acting in the name of "true" Islam and fighting holy war, most of them have clear political agenda. For example, Al-Gama-at-el-Islamiya wants an Islamic republic of Egypt, the GIA wants an Islamic Republic of Algeria, Hamas wants an Islamic Republic of Israel and so on. The most Pan Islamist group currently active is al-Qaida led by Osama Bin Laden which operated in safe haven of Taliban regime of Afghanistan.

Its aim is to establish a pan-Islamic caliphate throughout the world, to expel Americans and Westerners from Arabian Peninsula and to overthrow all the regimes in Middle East and elsewhere in Muslim world which are non-Islamic. Bin Laden issued a statement in 1998 saying

it was the duty of all Muslims to kill all American citizens including civilian and their allies whenever and wherever the opportunity arose. It has extensive links to other Sunni terrorist groups such as Al Gama-at el-Islamiya and Islamic Jihad of Egypt. Bin Laden being a son of wealthy Saudi family estimated around 300 million dollars together with donations and profit from frontal organizations finances all terrorist operations. In May last year four of Bin Laden's followers were convicted in New York court for one of worst atrocities, the bombings of the US Embassies in Nairobi and Dar Salaam in August 1998 killing at least 300 people and injuring over 5000.

Al-Qaida was also linked to Bojanga plot wherein during 1995 a dozen trans-Pacific flights were to be bombed simultaneously. Fortunately this plot was unearthed and the worst impending aviation disaster was aborted. The same organization was involved in 9/11 which led to US action in Afghanistan.

Another Islamic Fundamentalist outfit is Hizbullah, a Lebanese Shi'ite group formed in 80's with support of Iran headquartered in Syrian-controlled Lebanon. It has its cells in North and South America, Africa, Asia and Europe. Notorious acts of terrorism were the bombing of the US embassies in 1983, a sixteen day hijacking of a Kuwait airliner in 1988 and prolonged hostage taking in Lebanon during 80's.

During 1996, a Hizbullah terrorist Hussein Mikdad was to blow up an El Al airliner leaving Israel but for accidental blowing up of himself in Jerusalem Hotel room. Hizbullah, though has its own political agenda but also sees itself engaged in wider struggle against Israel and US. Due to its international network of cells and close links to Iranian Intelligence services its capability in both domestic and international terrorism has to be closely monitored.

Abu Sayyat group is involved in local struggle in Philippines to create an Islamic state in southern Philippines. Its notorious leader Ramzi Yousef the author of the Bojanga plot was captured, tried and convicted in US did try out sabotage bombing tactics on a Philippine Airlines plane in December, 1994. This group holds threat to Asia-Pacific area.

## SEPARATIST TERRORIST GROUPS

Civil aviation affords a rich variety of symbolic targets of the groups' enemy states and the international publicity to be gained from such attacks is a great motivating factor for separatists. Due to improved aviation security measures in number of European and Eurasian countries there has been a decline in number of hijackings originating from these parts. Last year Britain disclosed that a plane load of Afghan asylum-seekers arrived at Stansted. A group of Chechen rebels hijacked a Russian airliner in March, 2001, departing from Istanbul, diverted to Medina and got terminated after Saudi Rescue Commandos stormed the aircraft resulting in loss of three lives.

The two most notorious West European terrorist groups, the provisional IRA and ETA generally stayed always from aviation targets except, PIRA mortar attack on Heathrow airport and ETA's bombing of an airport terminal at Tanagona in North East Spain.

When we assess the ethnic and ethno-religious conflicts likely to attack civil aviation targets, India and Pakistan bitterly hostile to each other over Kashmir issue provides a fertile ground. There is nuclear race between them. In view of these, many experts on terrorism agree that the center of gravity of international terrorism has shifted from Middle East to South Asia. Harkat Kujahideen of Kashmir hijacked an Indian

Airlines plane in December, 99 and obtained the release of Maulana Masood Azhar, leader of Harkat imprisoned since 1994 in return for the release of passengers and crew. Harkat is estimated to have 1000 armed supporters and its goal is to unite Kashmir with Pakistan. Another militant Kashmiri organization is Lashker-e-Toiba, the armed wing of Pakistan based Markaj-ud-Dar-wal-Irshad led by Prof Hefiz Saeed. It raises the funds from Pakistanis in UK and Middle East. With India, Pakistan and Indonesia experiencing internal conflicts such countries are likely to be the fertile grounds for aviation terrorism

## REVOLUTIONARY GROUPS

Latin America provides a leading example. Intra-state conflict in Columbia from the Revolutionary Armed Forces of Columbia, National Liberation Army, spills into bombing, hijacking, Narco-terrorism. Liberation Army carried out hijacking of an Arianca aircraft in April, 1999 taking 41 hostages. There seems to be no end to degenerate guerilla activity in these parts.

## INTERNATIONAL LAW

The international community has made modest attempts towards codification of international rules and regulations on the subject. The Chicago Convention (1944) was the first such step in this direction. The convention led to the establishment of International Civil Aviation Organization (ICAO). Annexure 17 of the convention laid down the standard and recommended practices for safeguarding international civil aviation against acts of unlawful interference. The Tokyo Convention (1963) dealt with offenses committed on board an aircraft. A more elaborate effect to deal with hijacking was made in the Hague Convention for Suppression of Unlawful Seizure of Aircraft signed in 1970. Apart from the defining the offense of hijacking, the convention, inter- alia,

formulated provisions for taking custody of a hijacker, the convention, inter-alia, formulated provisions for taking custody of a hijacker in contracting state's territory (Art.6). Prosecution of non-extradited hijackers (Art.7), inclusion of hijacking as an extraditable offense in extradition treaties (Art.8) etc.<sup>4</sup> The Montreal Convention of 1971 was an effort to deal with aircraft related crimes, of armed attacks, sabotage and other forms of violence and intimidation directed against civil aviation. The Montreal Protocol (1988) provides for suppression of unlawful acts of violence at airports.

The above conventions and protocols cover comprehensively various aspects of civil aviation safety and security. However, they cannot be efficacious in the absence of full cooperation among sovereign states. The manner in which the Taliban regime of Afghanistan allowed the hijackers of IC-814 to go away scot-free from Kandahar show the limitations of international civil aviation regulations in particular and international law in general. As the aphorism goes, international law is the vanishing point of jurisprudence. A country like USA could use its clout to get the trial of Lockerbie culprits done (in which one Libyan was convicted) but the same could not happen in Kandahar case. All countries do not have proper extradition treaties with one another and in many cases acts of terrorism are sponsored by States.

The publicity value of the civil aviation sector enhances its vulnerability potential becomes, as stated earlier, terrorism thrives on the oxygen of publicity. An act of hijacking tends to involve the highest functionaries of the country and prolonged negotiations for hours and days under the glance of modern media with far-reaching ramifications for the prestige of the country, political issues raised by the offenders and international diplomatic relations.

## TECHNICAL VULNERABILITY

An aircraft is also highly vulnerable due to technical reasons. It is said that a small quantity of explosive is sufficient to blow up an aircraft at cruising altitude (at about 29000 to 45000 ft.) where the air pressure inside the aircraft is three to five times than outside the aircraft. As such, the aircraft is like an inflated balloon which bursts with the prick of the pin. An explosion enough to blow a small hole would be sufficient to destroy the entire aircraft. A small bomb hidden inside a radio cassette player was responsible for the Pan Am blast over Lockerbie. In Kanishka case, an explosion had taken place inside the forward cargo compartment and the bomb (probably hidden inside some suitcase) had caused a hole in the passenger cabin<sup>5</sup>.

## COUNTERING AVIATION TERRORISM

The challenge of aviation terrorism has to be met with a three fold approach. Prevention, Crisis Management and Legal Action.

### PREVENTION

The preventive measures are based on the internationally laid down security procedures which include, inter alia,

- ◆ Access control
- ◆ Body search of passengers and hand baggage (to prevent bringing of weapons, etc., which could be used for hijacking).
- ◆ Baggage checking and reconciliation (to prevent transit of unaccompanied baggage which contain explosives)
- ◆ Security of cargo and catering
- ◆ Screening of airport/airlines personnel

- ◆ Surveillance and intelligence gathering
- ◆ Passenger profiling.

Failure of the security checking system leads to acts of terrorism. A plane is hijacked when the offender is able to bring arms inside the aircraft as in case of Kandahar incident. In 1993, a Kashmiri terrorist posing as a crippled man with plaster on both his legs hijacked an Indian Airlines plane. He had hidden two pistols and a hand grenade in his clothes and inside the plaster and was allowed by security personnel without proper checking apparently out of sympathy. In case of Kanishka, the explosives could not be detected by airport security because the X-Ray machine at Toronto airport was faulty and hand-held metal detectors were used which could not detect plastic bombs. The persons responsible for bringing in the explosives did not board the flight but managed to send their baggage containing the bomb<sup>6</sup>. Baggage reconciliation is the bedrock of anti-sabotage system and security experts believe that this is one area where loopholes still exist. According to Rodney Wallis, some 8000 bags around the world are mishandled every day. He asserts that until the 1990s, systems to ensure air cargo security were noticeably underdeveloped and such omission was utilized by Columbian drug traffickers to pedal them as illegal cargo<sup>7</sup>.

The events in USA call for a drastic review of security prevention measures. Airlines are already tightening the checking system by advancing the check-in time and disallowing even small items like paper knives, battery cells, etc. It is also proposed to isolate the cockpit from the rest of the aircraft by a bullet proof door-a concept sometimes called fortress cockpit. In its efforts to starve off terror, the 'brave new world' will turn to a familiar friend, one it has long regarded as a panacea: technology<sup>8</sup>. A number of technological devices are suggested such as:

- Checking of carry on baggage by dedicated 3-D scanners.
- Security cameras integrated with face recognition technology and linked with digital database of terrorists and data-mining programmes.
- Use of biometric indicators including retina scans, DNA and fingerprints.
- Release of tear gas into the cabin to temporarily incapacitate the hijackers.
- Autopilots linked to terrain warning systems that show pilots what is below them and where landmark buildings are.
- Software randomly generating fake weapons to keep the security personnel on their toes<sup>9</sup>.

There is also need for greater degree of state control over activities of private flying schools and chartering of aircrafts which could be also the used for a sinister purpose. Even Boeing 747s are available on lease. Investigations have revealed how two suspected hijackers, Mohammed Atta and Marwan received aviation training in Florida. An Algerian pilot, Lotfi Raissi was arrested in UK for allegedly giving flying instructions to four of the suspected hijackers.

The economic dimensions of terrorism are equally important. The investigation of the suicide bombers money trail has put the spotlight on just how easy it is for terrorists to exploit the world's financial systems. The IMF estimates that global money laundering represent as much as 05 per cent of the world GDP – about \$1.5 trillion. The International Banking system allows for a network of tax havens, offshore banking centers and regulatory loopholes in which savvy criminals can easily conceal funds<sup>10</sup>. Narco money also fuels terrorism, funds networks across the world and makes possible missions like the WTC air attack. According to a 1999

World Bank Report, the smuggling trade between Taliban controlled Afghanistan and Pakistan was worth more than \$2.5 billion in 1997<sup>11</sup>. Post 9/11 the US President on September 24 ordered the freezing of assets of 27 individuals and organizations including Osama-bin-Laden. On October 01, Britain seized Taliban regime's assets worth 60 million pounds. On October 11, six Gulf Cooperation Council (GCC) countries decided to freeze the assets of all the individuals and groups named by Washington as suspect terrorists. The UN ordered a global freeze on assets held by every member of former Taliban government on November 28. Regulation of international financial system will be an important agenda in prevention of terrorism.

The need for strict adherence to security procedures cannot be over-emphasized. In some cases, it is observed that passengers resent security check and even make it a prestige issue. This attitude needs to be changed and all concerned should cooperate with the security staff in ensuring a safe air journey.

## CRISIS MANAGEMENT

Once the preventive measures fail, the crisis has to be managed on war footing. In a hijack situation this would involve protracted negotiations with the captors and, if required, an armed action. A quick response time and anticipation of probabilities is of seminal importance. Whenever a plane is hijacked in mid-air the possible places of landing should be worked out and concerned airports alerted. In case of Kandahar hijack the possibility of touch-down at Amritsar should have been anticipated after landing permission was refused by Lahore ATC 12. The major bottleneck in the crisis management of IC-814 was the inability of the Indian authorities to prevent the plane from leaving Amritsar airport after a 48-minute stay.<sup>13</sup> The aircraft could have been prevented from taking off by deploying an oil tanker on

the runway or putting a single bullet in the aircraft's tyres. Moreover, had the pilot taken one wider circle over Amritsar airfield before landing, he would have been low on fuel for any further take-off before refueling. He could have also pressed the anti-skid button by bursting one of the tyres and immobilizing the aircraft at Amritsar.<sup>14</sup> Once the plane was allowed to go, we lost the initiative and vantage point for further action.

Commando Action against the terrorists can be resorted to in times of need. In 1972 a hijacked plane at Tel Aviv was successfully stormed by Israeli commandos (who approached the aircraft in the guise of maintenance staff). In 1977, a Lufthansa aircraft was rescued by West German commandos and hijackers shot dead. Nearer home, in 1993, Indian Black Cat Commandos shot dead the hijackers of an Indian Airlines Aircraft at Amritsar and rescue the passengers. While there has been several rescue operations, the pride of place must go the Entebbe Airport Rescue executed by the Israelis in 1976.

In June, 1976 an Air France plane was hijacked and taken to Entebbe Airport in Uganda where 253 passengers including 106 Jewish passengers were held hostage. The dictator of Uganda, Idi Amin was apparently sympathetic to the hijackers. The Israeli Government launched a rescue operation while keeping up the pretense of negotiations. Aircrafts belonging to Israeli Air Force left for Entebbe with their landing and navigational lights switched off and landed there. Then in a swift calculated move trained commandos raided the place, killed the hijackers and released the passengers and crew as the Ugandan authorities were caught totally unaware. Before launching the raid, the Israelis gathered intelligence from every conceivable source including satellite photographs of the airport. The Entebbe operation (Operation Thunderbolt) conducted at a location under the a hostile regime several thousand

kilometers away remains the ultimate landmark, a gold standard for all raid and rescue missions.<sup>15</sup>

Suicide hijacking imparts an entirely new dimension of threat and requires a different response which includes the extreme possibility of adopting the policy of shooting down aircraft that approaches a sensitive installation. A less drastic approach would be to make the Air Force intercept the hijacked plane and monitor the path so it is not allowed to hit a vital installation or leave the country. Such a policy would include, inter alia, clear demarcation of non-flying zones. According to a news report, the Department of Atomic Energy (DAE) has taken up with the Civil Aviation Ministry a proposal to ban flights over India's nuclear installations for security reasons.<sup>16</sup>

Swift, coordinated and calibrated response with a high degree of professional skill and intelligence back up is a sine qua non for successful crisis management.

### Legal Action

In India, prior of 1982, no separate provisions existed for acts of hijacking, etc., and cases were registered under relevant sections of IPC. In 1982, the Anti-Hijacking Act and Suppression of Unlawful Acts against Safety of Civil Aviation Act were passed. In 1994, these acts were made more stringent of burden of proof on the accused in case of recovery of arms and explosives under certain circumstances. Out of 24 cases of hijacking involving India prior to Kandahar, the present position of cases is as under:

◆	Convicted	05
◆	Cases closed	01
◆	Cases withdrawn	01
◆	Interpol requested for details	08
◆	Pending Trial	09

Civil Aviation Sector involves transnational operations and, in the ultimate analysis, no state acting alone has the ability of solve the conundrum which Civil Aviation terrorism poses. Given the seductiveness of civil aircraft as terrorist targets, the international community must give aviation security the priority it so obviously warrants. Paul Wilkinson has suggested that since many Third World countries lack the military expertise for commando operations an 'international hostage rescue force' may be necessary to counter terrorists round the globe.<sup>17</sup> But such expectations may be unrealistic when sovereign nations sponsor terrorism as a tool for international power struggle. The WTC attack galvanized the USA and its allies into action through it is apparent that the USA is more concerned about its own national interests. It is necessary for India and other affected nations to build international public opinion against sponsors of terrorism but time alone will tell whether it will fructify into a truly multi-lateral agenda with effective plan of action.

### REFERENCES

1. See Amrith Rohan Perera, *International Terrorism*, 1997 for a detailed account of past and current international initiatives on terrorism.

2. *Encyclopaedia of World Terrorism*, 1997 Library Reference Edition published by Sharpe Reference.
3. Michael Stohl, *The Politics of Terrorism*, 1988.
4. See J.G. Starke, *International Law*.
5. Bimal Srivastava, *Aviation Terrorism*: 1998.
6. *Ibid*.
7. R. Wallis, *Combating Air Terrorism*, 1993.
8. Steven Levy, 'A High-Tech Home Front, *Newsweek*', October, 8<sup>th</sup> 2001.
9. Peter Henderson, 'Technology aims to prevent future hijackings' *Reuters* Report.
10. Rana Farooq, 'Storming the Fortress', *Newsweek*, October, 8<sup>th</sup> 2001.
11. Devendra Mishra, 'The Economics of Terrorism', *The Hindu*, Oct, 2<sup>nd</sup> 2001.
12. See report, Bowing to Terrorism, *Frontline* (Jan 21, 2000).
13. For a detailed day to day account of Kandahar hijack see U.B. Bhat and Sanjive Sharma, *Terror on Board* and Neelesh Misra, *173 Hours in Captivity*.
14. Maj. Gen. O.P. Sabharwal, *The Killer Instinct*, 2000.
15. *Ibid*. Also see, Bimal Srivastava, *Aviation Terrorism*
16. *The Times of India*, October, 6<sup>th</sup> 2001.
17. Giriraj Shah 'Hijacking and Anti-Hijacking Measures in *Encyclopaedia of Crime, Police and Judicial System*.

◆ ◆ ◆

*The largest room  
in the world is  
the room for improvement*

## PLEA-BARGAINING AS A CONCEPT

A Romenkumar Singh

**T**he concept of speedy trial is read into Article 21 of the Constitution of India as an integral part of the Fundamental Right to life and liberty guaranteed and preserved under the Constitution. This is well reflected in Sec 309 of the CrPC. Article 21 encompasses delay in all the stages of investigation, inquiry, trial, appeal, revision and retrial. Sec 309 reads that in every inquiry or trial, proceeding shall be held as expeditiously as possible. But in ground reality, this provision is observed more in breach than in observance.

The total scenario of the number of cases pending before the Courts is really shocking as is evident from the recent public address of the Chief Justice of India in which he has to say that nearly two crore cases are pending in various Courts in India for over several years and that the justice delivery system will collapse on its weight of delay in disposal of cases. The usual proverb also runs as justice delayed is justice denied. It is also seen that in several

cases death sentence was reduced to life imprisonment due to long delay in disposal of appeals holding that such delay offends Article 21 of the Constitution, i.e. the right to life.

Everyone is conscious of the effect of such delay. Everyone concerned has to address himself as to its cause and think of ways and means by which it can be remedied. Every criminal case has to go a long journey of investigation, inquiry, trial, appeal, revision and a special leave petition to appeal to Supreme Court under Article 136 of the Constitution.

As a part of means of speedy disposal of cases, the Law Commission, in its 154<sup>th</sup> Report has recommended plea-bargaining to be made applicable as an experimental measure in offences which are liable for punishment with imprisonment of less than 7 years and or fine, including the compoundable offences under Sec 320 CrPC. The concept of plea-bargaining is to induce or lead an accused person to plead guilty

under a promise or assurance that he would be let off lightly. It is basically an inducement for the accused to confess on an allurements being held out to him that if he enters a plea of guilty, he will be let off with mild punishment. Though it may be quite possible that such a concept might induce an innocent person to plead guilty to suffer a light and inconsequential punishment and in the process the guilty accused might be allowed to go scot-free. It is shortcut procedure in the Criminal Justice System. But the judicial decisions of the Apex Court on the concept of plea-bargaining are not in favour of the recommendation of the Law Commission which may be discussed as below:

#### **It is very wrong for a Court to enter a plea-bargain of this character**

In the case of Madanlal Ramchandra Daga V. State of Maharashtra, (AIR 1968 SC 1267), the accused persons were convicted for cheating and sentenced in the aggregate to rigorous imprisonment for two years. Appeal against conviction was preferred before the High Court. The Court, while adjourning the appeal, afforded the accused an opportunity of tendering his share of amount in payment of losses caused to the complainant. The Court also assured the counsel for accused that question of reduction of sentence as a plea-bargaining would be heard after the amount was deposited.

During the appeal before the Supreme Court, it was observed that the High Court adopted an unusual course in the case. In fact, a similar course was suggested to us at the hearing by submitting that we should increase the fine and reduce the sentence to the period undergone. In other words, the accused were adopting the same method which they did in the High Court, namely, that they will pay the amount which they have wrongly realized from the JR Firm and this may be taken in mitigation of the punishment on them.

“In our opinion, it is very wrong for a court to enter into a bargain of this character. Further held that offences should be tried and punished according to the guilt of the accused. If the court thinks that leniency can be shown on the facts of the case, it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered for the complainant through their agency. We do not approve of the action adopted by the High Court.”

#### **Plea-bargain practice intrudes on society's interest**

The concept of plea-bargain was also considered by this Court in Murlidhar Meghraj Loya V. State of Maharashtra, AIR 1976 SC 1929. In this case, the accused person was prosecuted under the Food Adulteration Act, 1954. During the trial, the accused pleaded guilty to the charge whereupon the Trial Magistrate, sentenced him to a piffling fine of Rs 250. The whole process in court is strongly suggestive of a tripartite consensual arrangement of plea-bargaining procedures. The State filed a revision to the High Court against the illegal and ultra-lenient impost and enhanced the sentence to the imprisonment of 6 months. During appeal before the Supreme Court, it was succinctly observed.

“To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of nolo contendere stance. Many economic offenders resort to practices of what the Americans call plea bargaining, plea negotiation, trading out and compromise in criminal cases. The Trial Magistrate drowned by a docket full burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and

ignominy of tenancy of a prison cell, trades out of the situation, the bargain being a plea of guilt, coupled with a promise of no jail. These advances arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less. The accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice system he is free early in the day to pursue his old profession. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society's interest by opposing society's decision expressed through pre-determined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased plea of guilt and partly justify it philosophically as a sentence concession to a defendant who has, by his plea aided in ensuring the prompt and certain application of correctional measures to him.

In civil cases, we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute finds itself in the field of criminal law, Law Enforcement repudiates the idea of compromises immoral, or at best a necessary evil. The State can never compromise. It must enforce the law. Therefore, open methods of compromise are impossible.”



**Conviction on basis of evidence is vitiated as Magistrate's approach is affected by admission of guilt as plea bargaining**

Ganeshmal Jashraj V. State of Gujarat, AIR 1980 SC 264.

In a trial for an offence under section 16(1)(a)(i) Prevention of Food Adulteration Act, the Magistrate after the closure of the prosecution case and examination of the accused under section 313 Cr. P.C. convicted the accused on his plea of guilty recorded on the same day as a result of plea-bargaining and sentenced the accused for imprisonment till the rising of court and also to pay a fine of Rs.300. The High Court in revision suo motu enhanced the sentence which was in breach of mandatory requirement of the section, holding that the conviction on the basis of evidence recorded was not vitiated. In appeal by special leave against the judgment of the High Court, the Supreme Court held that when there is an admission of guilt made by the accused as a result of plea-bargaining or otherwise, the evaluation of the evidence by the court is likely to become a little superficial and the court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission to guilt. The entire approach of the court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. In the instant case, the approach of the Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction and accordingly, the case was remanded to the trial court to proceed afresh from the stage of examination under section 313 CrPC.

**Conviction on plea of guilt by reasons of plea-bargaining is violative of Art.21 of the Constitution**

Though the Judicial decisions of the Supreme Court are always against the concept of plea-bargaining but sentencing of flea-bite punishment by the Magistrate on the basis of plea-bargaining was continuing. In Thippeswamy V. State of Karnataka, AIR 1983 SC 747 where by reason of plea-bargaining the accused pleaded guilty in a case punishable under section 304-A of IPC and was convicted and imposed a fine of Rs.1000 only by Magistrate acting upon his plea of guilty. The High Court in appeal, maintained the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment for a period of one year.

When the matter came up before the Supreme Court during appeal it was held that it is obvious that by reason of plea-bargaining, the appellant pleaded guilty and did not avail of the opportunity to defend himself against the charge, which is a course he would certainly not have followed if he had known that he would not be let off with a mere sentence of fine but would be sentenced to imprisonment. It would be clearly violative of Art. 21 of the Constitution to induce or lead an accusation to plead guilty under a promise or assurance that he would be let-off lightly and then in appeal or revision, to enhance the sentence that the court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonably fair and just to act on the plea of guilty for the purpose of enhancing the sentence. The court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him.

**Magistrate cannot convict on the basis of plea-bargaining and award sentence less than the minimum prescribed as practice of plea-bargaining is unconstitutional**

In Kasambhai Abdul Rahaman Bhai Sheikh V. State of Gujarat and Kachhia Patel Shantilal Koderlal Vs. State of Gujarat, (1980) 3 SCC 121, the Supreme Court held that the practice of plea-bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice. In this case, the appellant was convicted by the Magistrate for an offence punishable under section 16 (1)(a)(i) read with Sec. 7 of the Prevention of Food Adulteration Act, 1954 and sentenced him as a result of plea-bargaining to suffer simple imprisonment till the rising of the court and to pay a fine of Rs. 125 or in default to undergo simple imprisonment for a period of 30 days.

The Gujarat High Court in suo motu revision, enhanced the sentence of imprisonment to 3 years and fine to Rs. 500 by merely relying on the plea of guilty of the appellant.

The Supreme Court while disposing of the appeal petition held that the course followed by the Magistrate showed that there was no application of mind by him to the case laid on behalf of the prosecution and he was a consenting party to the appellant being persuaded to enter the plea of guilty. It is contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurements being held out to him that if he enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 21 of the Constitution. It would have the effect of polluting the pure fount of justice, because it might induce an innocent

accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial, which having regard to our cumbrous and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence thus, subverting the process of law and frustrating the social objective and purpose of the anti-adulteration statute. The court further held that this practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. The conviction of an accused based on a plea of guilty entered by him as a result of plea-bargaining with the prosecution and the Magistrate must be held to be unconstitutional and illegal. Judicial officer must discharge his judicial functions particularly when it concerns the liberty of a person.

### **Concept of plea-bargaining is not recognized in our Criminal Justice System**

The conviction of an accused person on a plea of guilty as a result of plea-bargaining is against public policy and is not recognized in our Criminal Justice System. In *State of Uttar Pradesh Vs. Chandrika*, AIR 2000 SC 164 where the respondent accused was convicted under Sec 304 IPC and sentenced to undergo eight years rigorous imprisonment. The respondent accused

preferred an appeal before the High Court and at the time of hearing he opted not to challenge the findings of conviction recorded by the trial court with a view to bargain on the question of sentence. High Court accepted the bargain and allowed the appeal by observing inter alia that as the incident had taken place long ago and since the appellant had been in jail for some time, both as under trial prisoner and as a convict, it was desirable to substitute his remaining period of jail sentence as awarded by the trial court and altered the sentence to period of imprisonment already undergone. The Supreme Court held that the order passed by High Court reducing sentence is based on concept of plea-bargaining and therefore, liable to be set aside. The court further held that the concept of plea-bargaining is not recognized and is against public policy under our Criminal Justice System. Sec 320 Cr PC provides for compounding of certain offences with the permission of the court and certain others even without permission of the Court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the Public Prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flea-bite sentence by pleading guilty. Hence, it is settled law that on the basis of plea-bargaining, Court cannot dispose of the Criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the court in

appeal or revisions should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscience must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence nor can the accused bargain with the court that as he is pleading guilty sentence be reduced.

### **CONCLUSION**

The catena of judgments of the Supreme Court gives the conclusion that the concept of plea-bargaining is against the public policy under the Criminal Justice System and the practice of plea-bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice. But the Law Commission has recommended plea-bargaining as an experimental measure in its 154<sup>th</sup> report. It is yet to be seen as to how the recommendation of Law Commission is to be reconciled with the law of the country.

◆ ◆ ◆

***Blessed are those  
who can give without remembering and  
take without forgetting***

# ENVIRONMENTAL POLICING

Nikhil Jaiprakash Gupta

**E**nvironment can be defined as the sum total of physical, biological and social environment in which we live. Any crime relating directly or indirectly to any of the components of environment can be termed as an environmental crime.

The concept of environmental crime is not a new one. It is as old as the emergence of Homo Sapiens on the planet and it was realized in the times of Plato 2500 years ago. The Jhoom (shifting) cultivation practiced by tribals since ancient time is a simple but old example of environmental degradation. However the issue has taken a serious and multilateral dimension in the current era. Environmental degradation is reaching such a stage that it is posing a serious threat to the very existence of the human being on this planet. Rapid industrialization, urbanization, population explosion, poverty, over-exploitation of natural resources, unending greed of a few for monetary gains, inadequate knowledge and value

of species and ecosystem, short term gains overtaking long term interest and reckless race for development are some of the reasons for current status of degraded environment. While on the one hand, tremendous progress has been made in the area of science and technology, the concept of preservation of environment could not grow with the same pace.

Knowingly or unknowingly, many of us are committing environmental crimes in one form or the other. The result is that the environment gets polluted and degraded. It is now a matter of great concern as to whether the next generation will be in a position to meet their own life sustaining demands or not.

Criminal justice functionaries, mainly the police, the forest officials and the judiciary, who are connected with the environmental crime prevention and control now face a new challenge. These functionaries need to play an important role as the very

survival of the human being is at stake. The paper discusses various challenges arising due to environmental degradation and especially the new role the police need to perform. Having commented on the inadequate initiative on part of the police, the paper also advocates creation of Special Environmental Policing Cells in police organizations.

## **CURRENT STATUS OF ENVIRONMENT IN INDIA**

**I**n India, as elsewhere in the world, the uncontrolled and haphazard growth and development has resulted in serious environmental problems. Before going into the details of the environmental scenario, it is worthwhile to take a look at some of the important facts regarding our country.

- India is one of the world's twelve megadiversity countries having two hotspots of biodiversity.
- 7% of the world's total biodiversity is present in India alone.
- There are an estimated 81,000 animal species.
- 45,000 plant species are found in India.
- Against these, India has 2.4% of world's landmass, 16% of the world's human population and 18% of world's domesticated animal population.
- The total forest cover in India is roughly around 637293 sq. km. which amounts to around 20% of the geographical area.

According to a World Bank estimate, India loses a whopping \$80 billion annually on account of sickness and death from pollution and economic costs attributable to resource degradation. The loss due to poor environment is estimated in excess of \$

20 billion a year calculated by conventional methods and \$80 billion in Purchasing Power Parity (PPP) concept, according to the World Bank Annual Environment Review of 1998. It also says that deteriorating water quality due to poor sanitation, industrial effluents and pesticide runoff, lack of clean drinking water, poor solid waste management and air pollution are the key environmental problems in South Asia.

## **MAJOR AREAS OF CONCERN**

Following are the major concern areas that are a direct result of environmental crimes committed either individually or by a group:

- Water pollution
- Air pollution
- Noise pollution
- Deforestation
- Illegal wildlife trade
- Loss of biodiversity

### **Water Pollution**

Water is life. The human existence to a large extent depends upon the availability of safe water. Water is used for domestic (household), industrial and irrigational purposes. At present, in India, of the total resources available, 92% is utilized for irrigation, 6% for household and 2% for industrial purposes. The main sources of water are surface sources like rivers, tanks, nalas, etc. and groundwater sources like wells, springs, etc.

Industries, civil bodies, farmers and individuals primarily pollute surface and ground water sources. Paper and pulp, tanneries, dyeing industries, etc. discharge the liquid waste into nearby sources of water thus making it unsuitable for any use. Pollution of Ganga & Yamuna rivers in India are glaring examples of how vast rivers can be converted into carriers of near poisonous liquids.

Civil bodies at many places pollute water sources with untreated or insufficiently treated sewage and sullage. Here the polluter is not an individual but a government body itself.

Use of pesticides like Endrin, Endosulphan and DDT for agriculture also causes certain amount of water pollution. In India, the farmers continue to depend heavily on chemical pesticide rather than bio-pesticides which do not cause any pollution. A WHO study, which analysed food samples across the country found that 50 percent of the samples were contaminated with pesticides residues, with 30 per cent of them exceeding permissible limits.

Pollution of surface and ground water makes it unfit for domestic consumption or for irrigational purposes. It thus affects agriculture production as well as industrial production also. The polluted water is a carrier of disease causing micro organisms which affect human health too.

### **Air Pollution**

One of the greatest disasters of environmental crimes is the Air pollution. Pure air is a basic necessity of every living being. Here the industries and vehicles are major causes of air pollution. Many industries like cement, brick kilns, oil refineries, etc emit large amount of smoke containing gases like Sox, Nox and suspended particulate matters which disturbs the natural composition of the air around.

Added to this, sources like cow-dung, fuel-wood or trash widely burnt for domestic cooking and other purpose also emit smoke which pollutes the air.

Vehicular pollution is another biggest contributor to the worsening situation. In cities like Mumbai, Calcutta, Delhi, etc., the vehicular pollution is so much that in most cities in India the

levels of suspended particulate matter (SPM) far exceeds the safe standards set by WHO. More and more people are falling prey to diseases like asthma, bronchitis, cough, breathlessness, etc., due to worsening air quality.

### **Deforestation**

Forests are probably one of the most desirable thing for any country. Right from providing timber and minor forest produce, they maintain oxygen balance, check global warming, control floods, check soil erosion, help rainfall and control pollution. As per records of forest survey of India, roughly 20% of the geographical area of the country is under forest cover. Various reasons responsible for degradation of forest cover are:

- ☐ Illegal cutting of trees
- ☐ Forest fires
- ☐ Uncontrolled grazing
- ☐ Shifting cultivation
- ☐ Increasing demand of land for commercial purposes
- ☐ Encroachment over forest land
- ☐ Heavy dependency for forest produce

Deforestation affects in more than one way. Environmentally, it results in loss of biodiversity, adverse climatic changes, reduced rainfall, loss of ecological stability, flood and droughts and erosion of soil cover. Economically, it reduces agriculture production, reduced forest products and reduction in forest related industries. And finally, it has social impacts too like loss of employment, threat to health, reduced food production and resultant effects.

### **Noise Pollution**

With increasing activities all around, the noise levels everywhere have crossed tolerable limits. Industries, vehicles, social gatherings, etc., create a

continuous and irritable environment which affects health adversely. Irritation, headache and restlessness are some of the known health hazards of noise pollution.

Similarly, indiscriminate use of loudspeakers in public places in one of the major causes of noise pollution.

It has been estimated that overall loudness of environmental noise is doubling every ten years. Nobel laureate Robert Koch had predicted that a stage would come when the worst enemy of human health would be noise.

### **Illegal Wildlife Trade**

Illegal trade in wildlife is another form of environmental crime which is a global phenomenon now. It is estimated that annual global trade in wildlife is approximately to the tune of \$ 20 billion annually. And 30% of this trade is illegal. The global trade as per WWF, India includes at least 40000 primates, ivory from at least 90000 African elephants, 1 million orchids, 4 million live birds, 10 million reptile skins, 15 million furs and over 350 million tropical fish.

The illegal trade in wildlife has a serious ramification on the biodiversity of the region. India, being a mega-diversity country, is a source and transit route for a large amount of this illegal trade. Various reasons which result into this trade are for food, for pets, for souvenirs, for medicines, for timber, for scientific research, for circuses and for museums, etc.

### **ENVIRONMENT AND LEGAL PROVISIONS**

**B**efore analyzing the critical role to be played by police in protecting the environment, it will be necessary to look at the existing legal provisions for the same.

### **ENVIRONMENT PROTECTION IN ANCIENT INDIA**

**T**he concern for environment protection in India can be traced back to the period between 321 and 300 BC. The ancient Indian law on the subject can be found in Kautilya's "Arthashastra". According to the document, it was a "dharma" of every individual in the society to protect the nature.

### **CONSTITUTION AND THE ENVIRONMENTAL PROTECTION**

**C**onstitution of India is one of the few constitutions, which especially provides for protection of environment in so many ways. It not only provides for directive principles to the State but also casts duty on the citizens to protect and preserve the environment. One can find concern for environment thus:

- Art. 48A (Forty Second Amendment Act, 1976) states that "The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."
- Art. 51A(g) imposes a fundamental duty on every citizen of the country to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."
- Art. 253 empowers parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body.

Apart from the above-mentioned constitutional provisions, environment protection has been sought under various Acts/Laws.

## Indian Penal Code 1860

Chapter XIV of the IPC (S.268 to 294-A) deals with offences affecting the public health, safety, convenience, decency and morals. Under S.426, 430, 431 and 432, general pollution caused due to mischief by any persons has been made punishable.

## Criminal Procedure Code, 1973

Chapter X (Part B) provides for speedy and effective intervention in matters concerning any act which causes air, water or noise pollution resulting into public nuisance.

## Police Act 1861

Provides for prevention of noise pollution.

The above mentioned code provides for control of pollution in rather general way. A number of legislations were passed before and after independence to protect the environment by aiming at a specific component of the environment. They are:

### Water pollution

- North Canal and Drainage Act, 1873
- The River Boards Act, 1956
- Indian Fisheries Act, 1897
- Indian Boilers Act, 1897
- The Water (Prevention & Control) Act, 1974
- The Water (Prevention & Control of Pollution) Cess Act, 1977
- The Environment Protection Act, 1986

### Air Pollution

- ◆ Explosives Substances Act, 1908
- ◆ The Air (Prevention and Control of Pollution) Act, 1981
- ◆ Environment Protection Act, 1986

## Forest and Wildlife Protection

- √ Indian Forests Act, 1927
- √ The Wildlife Protection Act, 1972
- √ The Forest (Conservation) Act, 1980
- √ Elephant Preservation Act, 1879
- √ Wild Bird and Animal Preservation Act, 1912
- √ Environment Protection Act, 1986

## Noise Pollution

- Police Act, 1861]
- Environment Protection Act, 1986
- The Motor Vehicles Act, 1988

## Miscellaneous

- The Factories Act, 1948 (NC)
- The Atomic Energy Act, 1962 (NC)
- The Insecticides Act, 1968
- Customs Act, 1962 (Non Cog.)
- Imports and Exports (Control) Act, 1947, etc.

Despite a large number of legislations for protection of the environment, those entrusted with the responsibility to take action against polluters seem to have not done adequately. It is very much evident from the preceding paragraphs that the situation on most fronts on Environment is not encouraging. Many agencies like Central and State Pollution Control Boards, Forest Department, Police Department, etc., as enforcement agencies appears to have failed to implement the various laws. It is time for all these agencies to take a review of the adequacy or otherwise of the action taken by them in the past and simultaneously to plan for the future.

## Performance evaluation of Police vis-a-vis environmental protection

Having discussed the various powers available to law enforcement agencies under various acts, it will now be worthwhile to see some indicators of police performance in this regard. It may not be possible to evaluate the performance of Police under all the acts where it enjoys powers but one of the commonly used and important act is the Forests Act. A perusal of the number of Statewise cases registered all over India, under the Forests Act will be an eye opener.

Some of the conclusions drawn based on the statistics (1995-1999) are as below:

1. On an average 4000-5000 cases were registered under Forest Act, every year, in all the 25 States and 7 UTs during the period.
2. There are 10 States out of 25, which registered less than 10 cases in the five-year period while six States did not register a single case over a period of five years.
3. The total number of cases registered by UTs during 1995-1999 was 11 in which five UTs did not register a single case under the Forest Act.

4. Areas like Arunachal Pradesh, Manipur, Mizoram, Nagaland, Tripura, A&N islands, though having more than 50% of the area under forest cover, have not reported cases under the Forest Act in proportion to the area.

## The Evaluation

The above figures are self-explanatory. Police in most the States and UT Police (barring a few), are not utilizing the powers available to them in an effective manner under the provisions of Forest Act. Offences under Forest Act are easy to understand and investigate compared to various other

offences under different Acts, which are of highly technical nature. Even then, the figures above show that Police all over, is probably not taking enough interest to curb the illegal cutting and smuggling of forest and forest produce.

Similarly, only a few cases have been made under the IPC and the Police Act of 1861. In a nutshell, the police appear to be not shouldering enough responsibility in the protection of the environment, if the above statistics are in any way an indicator of its dismal performance.

### **Why inaction?**

Some of the reasons behind such dismal performance can be summarized as below:

#### ***Indifference towards environmental protection***

As any other component of the society, police too, appear to have not realized the importance of environmental protection as yet. Probably this is the most important reason for inaction on part of the police so far as environmental issues are concerned. More so, environment protection is generally considered as a subject to be dealt with by the scientists, engineers and NGOs. Police generally do not associate itself directly with the cause.

#### ***Lack of knowledge about laws***

A good number of police officers and men do not have adequate knowledge about the environmental protection laws. At the same time, many of them are not aware about the powers given to them under various acts. Detailed provisions now exist in the Motor Vehicles Act and Rules for control of Air and noise pollution caused by motor vehicles. The Central Government has enacted Noise Pollution (Prevention and Control) Rules, 2000. But not many State Governments have

issued GR's authorizing any officer as mentioned in the said rules to act as a Competent Authority for implementation of the rules. Places where it has been done (like Maharashtra), not many cases seem to have been made so far. More so it is a misplaced, yet common belief that protection of forests and wildlife, etc., is the job of forest officials alone.

### **Priority**

For the police force, which already is overloaded with maintenance of law and order, prevention and detection of crime and handling internal security problems, probably the environmental protection does not find a place at the top of its priority list.

### **Adequacy of Law**

It is worthwhile to discuss about the adequacy or otherwise of the existing laws for the protection of law. Looking at the various laws enacted before and after independence, it can be roughly concluded that many specific Acts are already in place which give sufficient powers to agencies like state and central pollution control boards. Adequate penalties have been provided especially in Acts like Environment Protection Act, 1986. But then it is important to see that police has been given very little or no role in majority of these Acts like Environmental Protection Act, which is so important for majority of issues of concern, does not provide for any direct action by the police. Even in Water Pollution Act and Air Pollution Act, there is no scope for police to take action suo moto. Nevertheless, sufficient powers are given under Forest Act, Wildlife Protection Act, and IPC where police officers need to act in a proactive manner. But specially empowering police under Environment Protection Act, Air Pollution Act and Water Pollution Act would certainly strengthen the police hands in effectively protecting the ecology.

### **Need for Environment Policing**

Criminal Justice System has responded to the need of the time as and when it was felt so. Though slow, reforms have been taking place in the overall functioning of the system. Creation of economic offences cell, cyber crime cells, etc., are all indicators of the change. Sadly, however, environmental protection is yet to find a place it deserves in the changing times. At present a case made under any of the Acts mentioned above, are investigated by the local police stations. For various reasons cited above and also due to non-specialization, adequate attention is generally not paid towards registration and investigation of environmental crimes. Unlike in economic crimes or cyber crimes, where special wings have been created both at Central and State level, there exist hardly any special cells/wings in police organizations. No seminars/workshops are organized for police officers to equip them with the latest on the subject of environmental crimes/laws. So also, the basic training curriculum for all grades of policemen is sadly lacking in the input on environmental laws and its rigorous and effective implementation.

It is recommended here that to ensure effective action against all type of environmental crimes, special environmental cells must be created by the state/central police organizations. Police officers, trained in environmental laws to effectively tackle all sorts of environmental crimes be put on the job. These Cells will deal with all matters connected with air pollution, water pollution, noise pollution and protection of forest and wildlife. These could be 'One stop shops' which would provide for much faster and effective registration and investigation of all environmental crimes. It would help in reducing the burden on the existing system by taking up the cases in the area and saving the traditional institutions like the police station from tackling cases for which they are not

trained. Here the police officers would play a role of a specialist rather than going about these cases in a routine and generalistic manner.

The Cells can also act as legal advisors to the respective governments on any matter connected with the environment crimes. Our judiciary has pronounced enough number of verdicts in numerous cases connected with the environment and these can form the basis for the cell to function effectively.

Moreover, we need to take a fresh look at the existing legal structure. The government may think in terms of giving powers to police officers to investigate cases directly under various important Acts (making offences cognizable) like EP Act, 1986, Air Act, Water Act, etc. Alternatively, suitable amendments may be made in Acts like Environment Protection Act to provide for joint action by the pollution control boards and the environmental police cells.

## CONCLUSION

**E**nvironmental degradation is a matter of concern for one and all. A large number of laws exist in India for protection of environment. However, the effective use of these laws is missing which is evident not only from the statistics but could also be felt even by a common man. It is high time now that the respective governments create special environmental policing cells on the aforesaid lines, with trained police officers equipped with adequate legal powers. Such cells must start functioning immediately against all the violators of environmental laws before it is too late.

## Important guidelines on the role of Criminal Law in the protection of the Environment

The issue of protection of environment has been taken up quite seriously at various foras internationally. Asia Crime Prevention Foundation, Japan is one such forum which has issued detailed guidelines on criminal law in the protection of environment. A few guidelines are as below:

### Areas of environmental protection to be covered

Criminal provisions, together with other provisions of regulatory nature, should cover every area of environmental protection and relevant areas, including the following:

- Prevention of air pollution;
- Prevention of water pollution, including ground water pollution;
- Prevention of marine pollution;
- Prevention of soil pollution;
- Control of noise and oscillation;
- Prevention of offensive odor;
- Prevention of subsidence of ground.

### Criminal complaint and accusation

Investigation into any environmental offence should be instituted without delay upon a criminal complaint or accusation filed by any person.

## Enhancement of environmental awareness

Utmost efforts should be made to enhance the awareness of the importance of the environmental protection and the blameworthiness of environmental offences among the officials not only of law enforcement, prosecution agencies and the judiciary but also of other relevant government agencies.

### Capacity building

There should be adequate and continuing arrangements for the training of law enforcement officials, prosecutors and judges on legal, technical and other matters in order that they may effectively and efficiently respond to environmental offences.

### Specialisation

Specialisation in various aspects of environmental problems among the functionaries of the Criminal Justice System should be pursued as far as practicable.

Thus the various guidelines as above also clearly focus on the need to develop awareness, provide training, build capacity and achieve specialization in enforcing the Environment Protection Laws. The special environmental police cell as proposed could alone attend to all these guidelines effectively.



*The only thing  
we ever keep is  
what we give away*



# POLICE - COMMUNITY COLLABORATION

KN Sharma

**P**olice-Community relation can be defined as being the management function which evaluates public attitudes, identifies the policies and procedures of police organization with the public interest, and executes a programme of action to earn public understandings and acceptance. The need for strengthening police relationship with the community is critical today in both the urban as well as rural set-up. The weaker sections and other minority groups are increasingly turning towards police for protection of their rights and for enjoying a life with dignity and safety. Despite observations to the contrary in certain quarters, Police-Community relationships have a direct bearing on the character of life in our society and on the communities ability to maintain stability and to solve its problems.

Whether anybody likes it or not, police is an agent of social change and sooner the fact is recognized the better it is for a proper perspective of police-

public relationship. It is often said that the liberties which a citizen is rightly proud of, are rooted in the provision of the Constitution and the independence of the Courts from the Executive or Government. Absolutely true. But these roots would not go very deep without a police force willing and determined to ensure that the laws made by parliament and rulings of the Court are observed; a task sometimes requiring courage, both moral and physical. It is well known that before the establishment of professional police forces in 19<sup>th</sup> century, those rulings were treated with scant respect.

The origin of police attitude towards the people lies in the police force created in the country to perpetuate a colonial rule. The objective was not service of the people but of upholding laws which were neither debated in parliament nor had the force of people's mandate behind it. This was, as has been come to be called, a ruler-appointed police as distinct from people's police. This burden of historical genesis is still carried

by police in India. Members of the force, instead of thinking that they are part of service organization, consider themselves as amongst those few privileged to whom the people should come and beseech for help.

## POLICE PERSONALITY

**B**efore we venture to suggest a model for Police-Community collaboration, it is necessary for us to understand what kind of police we are dealing with. This brings us to the question of police personality. Many people assume as a matter of course that there is a distinct police personality, which is characterized by authoritarian and cynical tendencies. According to the view, authoritarianism is an unavoidable by-product of police work that is formal responsibilities, information expectation and every day experiences of working in the field. Traditional belief attributes five traits to a policeman's personality. It is said that they are suspicious. Statistically speaking, police work is the most dangerous job in the country and policemen are aware of this. Danger is a recurrent theme in police work. Because his work requires him to be occupied continuously with potential violence, a policeman develops a perceptual method to identify certain kinds of people as symbolic assailants, i.e., he tries to identify gesture, language and attire that could be recognized as prelude to violence. Consequently a good policeman, who has been trained properly and who routinely looks for out of ordinary occurrences, appears suspicious. The second trait, which is attributed to a policeman is cynicism which is identified as one of the outstanding features of police mentality – a deep-seated-distrust of basic human goodness. A policeman's world is full of savagery and hypocrisy: policemen are assaulted frequently; the educated citizen thinks nothing of going through a red light, and businessmen uphold the law only when it is their interest to do so. One of the most common explanation

for police cynicism is public antipathy towards the police. A policeman's image of the citizen is shaped by people he deals with everyday. A hostile public attitude, for issues over which he has no control is the abuse a policeman observes day after day. Yet another aspect attributed to a policeman is Bigotry. Police cynicism finds its strongest expression in racial prejudice. Fortunately the police in India is relatively free of this disease. Nevertheless some policemen work under a pre-conceived notion about certain criminal tribes and the ability of certain communities in resorting to a certain type of crime. Fourthly, is the attribute of violence. Critics accuse the police of being overly fond of violence as a problem solving technique. Police cynicism supposedly forms a background against which police brutality is explained. Finally, conventionalism is considered as one of the outstanding characteristics of a policeman. He rigidly adheres to middle class values. A police department is like a military organization, where strict discipline is required at all times. Conformity to the rules can become an end in itself, even if it means ineffective law enforcement. A policeman's suspiciousness, a trait we discussed earlier, could also contribute to his conventionality. Consequently, things out of ordinary would be indicative of criminal activity.

However, the fact is that there is no empirical evidence to suggest the typical police personality exists. Studies conducted in the United States, showed that the policemen were considerably less authoritarian than control sample of ordinary citizens. A typical applicant for a police job is very similar to an average male college student. It is entirely possible that a unique police personality could develop after a recruit has spent sometime in the job. However, another study of experienced policemen revealed that they were found to be less prejudiced and authoritarian than the control population sample.

## CITIZEN PERSONALITY

**H**aving put into perspective a personality of a policeman we may now look at the people police routinely have to deal with. India is a country of different communities and religions, where the people speak different languages and dialects. From the very rich to those living in abject poverty in cities, towns and villages, a policeman has to deal with a variety, not existing anywhere in the world. Cultural differences manifest themselves in a plethora of festivals, some of them having violent potential. A typical citizen may have a negative image of the police because of the impression that the latter is insensitive, abusive and dishonest. Such a citizen may also be selfish, lacking in concern for society and having no faith in the institution, constitutional or otherwise, existing in our country. He may be looking at any effort at improving his lot as being eyewash and merely cosmetic but the picture is not so dismal. There are individual who have a desire to contribute positively to their organization or society, motivated by desire of seeking fame or being looked upon as a model citizen. Some genuinely worry and would want to improve the lot of their fellow countrymen. Every individual wants to be well regarded and well thought of by fellow human beings. Caste based politics and lowering of values have created myriad problems, not faced by any police force in the world. Such factors as rising population, dissimilar population makeup, increasing social mobility and the democratic setup sans responsibility, continuously put extra strains on the police's dealings with the community. Citizens do not grasp this fact readily.

Yet, the fact remains that the people cannot survive in a society without the climate of law and order which only the police provide, or the

police cannot survive in a climate in which their very presence and authority are challenged. What the police do, no matter how it may be defined, requires utmost public participation. A common ground, where decency and goodness thrives, exists between the police personality and citizen personality. This has to be found out and a model of Police-Community collaboration built on it.

Three steps are proposed for achieving our objectives:

### Step-I

The model that we should consider, should take into consideration the fact that public attitude is heavily influenced by the actual contact with the police. The rank, which comes most in contact with the people is an ordinary Constable or Head Constable. One of the greatest tragedies of police administration in India has been not to give this rank his due. He is generally treated with disdain by superiors and ignored by the public. All models of community collaboration generally starts with the role of Station House Officer and ends at the level of Superintendent of Police. In today's scenario when a citizen is required to approach police for redressal of his grievance, he either goes to the Superintendent of Police or Commissioner of Police, provided these officers have developed a work attitude which permits accessibility to ordinary citizen. What actually happens is that the citizens seek out an M.L.A., M.P. and any other influential persons, to have a word put to the Station House Officer. This means that, for example, in a city of ten lakhs, (in a commissionerate area) broadly speaking only one Police Commissioner is available to the public. If the population of same city is equally spread over, say ten police stations, one Station House Officer is expected to react properly and decently with one lakh people. Current models envisage, that excepting for these two ranks, there cannot be adequate collaboration between police and the community.

The importance of a Constable or Head Constable pounding the Beat cannot be over emphasized. This is a familiar face who ideally using a bicycle and without a more potent weapon than a baton or lathi, tours his area every day for eight hours between 09.00 hours to 13.00 hours and 16.00 hours to 20.00 hours. What does he do during this time? On joining the Beat, he collects the following information and writes it down in a book to be called the Beat Book:

1. To collect the name, address of the Banks and its timing of function.
2. To collect the names of milk distribution centers, name, surname of center/owner and timing of milk distribution.
3. To collect details of Schools and Colleges with timings.
4. To collect details of markets, timing of its operation and timing of rush during the day.
5. To collect name and address of jewelry shops and its timing of operation.
6. To collect details of Jhuppadpatti, inhabitants, details of those who himself designed as "Don" or the owner and the details of any unauthorized construction.
7. To collect details of hotels, lodges and boardings with telephone numbers.
8. To prepare a list of areas where property offences taking place regularly.
9. To prepare a list of temples, mosques, gurdwaras, churches existing in the area.
10. The details of railway station and bus stand.
11. Details of festivals celebrating in the area.
12. To prepare a list of robbers and dacoits and the anti-social elements.
13. To prepare the list of Mohalla Samiti and Peace Committee members along with address and telephone numbers.

14. Details of offences of following heads reported in the Beat during the last five years:
  - (a) Murder
  - (b) Attempt to Murder
  - (c) Dacoity
  - (d) Robbery
  - (e) House breaking
  - (f) Thefts especially or nament
  - (g) Rioting.
15. To prepare the details of communally sensitive areas.
16. To prepare a list of persons who are posing obstruction in the day-to-day police functioning.
17. To prepare the details of industrial organizations, name and address of in charge or owner of the organization, number of persons working in the organization and the unions to which they are affiliated.
18. List of name, address and telephone numbers of office of the newspapers and the reporters.
19. List of name, address and telephone numbers of government and private hospitals, dispensaries, clinic along with the name of Medical Officer.
20. To prepare the details of the offices of political party existing in their area.
21. To prepare a list showing the name, address and telephone numbers of cinema houses and the name of owners.
22. To prepare the list showing the details with telephone numbers of electricity company, sub-station, fire brigade, All India Radio, Doordarshan and the details of Telephone Exchange, Television Tower, Satellite Tower, if exists in the area.
23. To prepare a list of name, address and telephone numbers of petrol pumps.

24. To prepare a list showing details of the shops and godowns of gas and explosives in their area.
25. To prepare a list of weapons licenses.
26. To prepare details of taxi and autorickshaw stand.
27. To prepare a list of government and semi-government officers.
28. To prepare the details of vegetable market, authorized and unauthorized markets and posing any obstruction to the smooth passage of traffic.
29. To prepare the details of children's play ground with the timings of gathering of children in large numbers.
30. To prepare a list of persons who are showing interest in rendering assistance to police.

After the above work is completed, he is entrusted the following work which along with the background material he has already put in Beat Book, becomes a basic of Police-Community collaboration:

1. To contact citizens of the area and to inquire about the measures taken by them like which type of locks on the doors and grill on windows have been fixed to prevent the property offences. To verify whether locks on the shutters are in the middle of bottom side in case of shops.
2. To alert the citizens about the safety of their vehicles when parked in the residential areas during the night and in market and other areas during the day and to give guidance.
3. To acquaint with the activities of regular visitors of the area like hawkers, employees of telephones, etc.
4. To have details of persons serving as servants, watchmen

or drivers in private bungalows and in the and in the residences of the area.

5. To maintain watch on the activities of anti-social elements, drug addicts and criminals.
6. To identify the locked houses, contact the neighbours and to direct them to maintain a watch of the locked houses.
7. To visit ten shops/offices daily, inquire whether they are facing any problem and also inquire whether they need any assistance from the police?
8. To visit five houses, bungalows and flats, inquire whether they are facing any problem and also inquire whether they need any assistance from the police. If the residents are old people, above the age of sixty-five living alone, the beat constable must inquire if they have any problem with regard to their telephone, electricity and petrol bills.

It will thus be seen that, in this manner policing has been transformed from a reactive one to that of a proactive one, more importantly this proactive policing has taken the role of a service organization. When the policeman visits five houses or apartments every day, he is reaching out to the people who are pleasantly surprised that the policeman has their welfare in mind. Thus trust and respect begins to come in and the stature of this very Police Constable/Head Constable is enhanced. In briefing the policemen selected for Beat duty, it should be stressed that he is for the Beat, what a Superintendent of Police is for a district. He must consider himself not only the natural guardian of that area but also its potential convenor for all the community activities involving major public participation. The advantages of this system should be obvious to everyone. All matters come to the notice of the beat duty policemen, he knows most of people and institutions of his area and he is then a source of genuine

information for his superiors and inspiration for the people of his area. Postings to the Beat must be for a period of one year ideally but certainly not less than six months.

## Step-II

Prateep Philip, a young Superintendent of Police in Tamil Nadu introduced a scheme called "The Friends of Police". The scheme envisaged identifying people who could be invited to assist the police for watch and ward duties. It would create a reservoir of human resources, which could be utilized for putting across the police view to the people and be of genuine assistance in solving problems of friction between public and police, tactfully. It is reported that the scheme was a resounding success in the particular district of Tamil Nadu, where it was implemented.

The nomenclature 'Friend of Police' is very attractive, apt and a useful one. Every citizen is a friend of police. However, the scheme needs to be enlarged in scope and in its application. The widest possible participation can be secured in which the entire gamut of society is represented. Persons to be selected as a Friend of Police can be from not only the educated and well-to-do class but should also be from amongst auto-rickshaw drivers, owners of lorigalla or a worker in a factory. The scheme should not be allowed to become elitist, which it will have a tendency to be, if not checked. Membership would be opened to the people between the age of 18 and 70, a citizen of India normally residing in the concerned police station area and with no criminal antecedents. Age relaxation should be made for exceptional people. There should be no educational qualification, however, the individual if educated and if he is able to think clearly, it would be an asset. The objectives of FOP as envisaged by Prateep Philip are to separate the friends of police from the enemies of police, to bring about awareness amongst the public with regard to prevention of

crime and to draw the attention of the citizen towards his social responsibility. To this could be added, the responsibility of inculcating the students of Schools and Colleges respect for the law of the land. While posted as Commissioner of Police, Surat City, the author had introduced the FOP Scheme in a modified form. Advertisement was placed in newspapers inviting the people, wanting to join in the FOP to apply for the same through local police station. The application form consisted of 17 columns and a candidate for selection as FOP was to be recommended by the Inspector of the Police station and the Assistant Commissioner of Police of division concerned. The Deputy Commissioner of Police of Zone took the final decision with regard to the suitability of individual to become FOP. The candidates were required to obtain a character certificate either from a gazetted officer or, in order to recognize the role in society and given them their due status, the Principal of a Govt. recognized School or College. Other information sought pertained to interest in activities like NCC, Sports or Culture. Each prospective candidate for FOP would volunteer for assisting the police in any of the following:

1. Traffic
2. Night Patrolling
3. Public meeting
4. Religious processions
5. Active assistance in controlling crime.
6. Investigation.
7. Member of think-tank.
8. Any other area as suggested by the applicant.

Once a FOP was selected, he was issued a card, which bore his photograph and was signed by the Assistant Commissioner of Police of the concerned division. The validity of the card was for a period of one year and FOP gave the following undertaking at the time of enrolment under his signature:

“I hereby give an undertaking that I will give honorary service as a “Friend of Police” to the society and will endeavour to be of assistance to all men and women regardless of caste, creed, colour or community. I will respect the rule of law and will never misuse the card.”

The issuance of laminated Identity Cards lends seriousness and respectability to the scheme. It made the participation interesting for the citizens. It was impressed upon every Police Inspector in charge of Police Station that an FOP was not to be treated as a subordinate or an extra hand. He is also not an informant. He is a partner of police, an additionality in strength and were to be consulted and given due respect.

Such initiatives are always likely to meet with resistance from die-hard Police officers, but their mind set can be neutralized by a Superintendent of Police/Deputy Commissioner of Police, holding Station House Office accountable for proper functioning of the scheme. For this purpose it was provided that, apart from meeting the FOPs, while briefing them about their area of interest, there would be monthly meeting on a Sunday where the Assistant Commissioner of Police of concerned division will remain present. The Deputy Commissioner of Police of concerned required to hold a similar meeting every six months.

The citizens of Surat City were encouraged to take their problems to the FOP residing in their area. They would be able to relate with him easily. The FOP in turn were encouraged to open channels of communication with the people in their area without being officious or over bearing. In Surat city, for example, when the application forms were invited from those wanted to join, the response was tremendous and citizens from all walks of life had come forward to join. It, therefore, became

possible to choose carefully the right kind of people to join initially. Those connected with any political party or youth or religious wings of any political party were screened out. This aspect was advertised and was important to attract the right kind of people.

The success of public participation would, however, depend on following two factors:

(a) A clean and transparent police administration, preceding the introduction of scheme, which improves the image of police, in the eyes of people. The reputation of Chief of Police and his straight forwardness will become critical.

(b) A clear understanding that anybody with any political connection is not welcome and that this will not be a forum for an incipient political career. There should not be any doubt in anybody's mind that in today's time, the credibility of politicians is very low.

Since the credibility of bureaucrats or that of a government representative is also not all that high, the public will need visible demonstration of the sincerity attached to the effort. In Surat city, a retired Judge of Supreme Court and a Vice Chancellor of South Gujarat University volunteered to become an FOP. Number of citizens with professional qualifications such as Doctors, Professors, Chartered Accountants were many. Women belonging to minority community also joined. Those, whose monthly income did not exceed five thousand or six thousand rupees, were also selected and joined. The FOPs played a meaningful role during Ganesh Chaturthi and Moharrum processions. Many of them began to assist the accident victim by taking him into a hospital and also simultaneously alerting the police. Some even passed useful information, which led to detection.

In this manner, a structure of genuine public participation with the police in providing a safe environment to citizen can be erected.

### **Step-III**

There exists in England a concept of Police Authority, which is required by statute to publish a local policing plan for the financial year ahead, the draft of which is prepared by the Chief Constable of the County. The Police plan represents a shared understanding between the force and police authority about the priorities and objectives but it does not represent, the totality of policing in the county. Direction and control of force remain fully with Chief of Police.

In India, no state government has had the courage and the vision to introduce this in their respective Police Act.

Step-I above which deals with beat Constable has already created a right atmosphere and placed the Police - Community relationship on a sound

footing. The FOP Scheme in Step-II is the manifestation of good will generated in this manner. The next step should be to form a Police Advisory Committee at the level of the Superintendent of Police in the Mofussil and Commissioner of Police in the cities. There are men-women who are known and well regarded by beat Police Constable/Head Constable, who as current FOPs have contributed their mite for the town/city and who are adjudged by Superintendents of Police/ Commissioner of Police to possess the requisite maturity, a sense of public spirit, experience and rectitude to now become a member of the Police Advisory Committee. This Committee should be selected by the Police Chief from the amongst the FOPs. The Committee, in the same manner as police authority though without statutory support, would gradually evolve into identifying priorities and objectives for the particular district/ city. The Superintendent of Police/ Commissioner of Police would be

Chairman of the Committee with Deputy Superintendent of Police (Headquarter)/ Deputy Commissioner of Police (Headquarter) as the Secretary. The Committee would meet in the month of December to formulate a set of priorities and objectives and during the year would be available to the Police Chief for consultation and advice as and when called for. Needless to say members of the Committee will have to be men and women who command genuine respect in the community.

Since a policeman's own perception of his status in the eyes of people plays an important role in his attitude towards public, as the public confidence and trust in the police grows, such status will also get enhanced. As the self-esteem of the police rises he will be able to play a crucial role in making the laws of land acceptable to the people.

◆ ◆ ◆

### ***The Triangle of Mystery***

***This area of Atlantic Ocean bounded  
by imaginary lines connecting  
Miami, San Juan and Bermuda  
has claimed some fifty ships and twenty aircrafts.  
These mysterious disappearances have been attributed to  
methane gas coming from the ocean floor and alien abductions.***

***The fact  
is that it is the world's most heavily trafficked area  
which is bound to have a high accident rate and  
now experts agree to the unpredictable weather,  
the powerful Gulf Stream and human error.***

## THE “POLICE BRIDGE”

Y John Nicholson

Neither high sounding speeches on well raised platforms nor much deliberated ideas in much attended conferences will bear fruit unless the ideas are translated into action. The work turned out is measured not by the words but by the deeds. In the prevailing scenario, police being a service organization, the success of their function largely depends on human relations. Establishing human relations in the context of policing is a challenging task. It can be better achieved by lack of authoritarianism, absence of corruption, attitude for good relationship with public and all other value oriented qualities desired by the public as to be possessed by police. Entrusted with noble duties and sensitive responsibilities of prevention and detection of crime added with maintenance of law and order, though the police are supposed to be permeated with right understanding and appreciation of law, time has proved that such ideals cannot be achieved by practicing only the mechanics of this

function. Wisdom and enlightenment to act in accordance with principles based on humane concern is the need of the hour. The police are considered as natural allies of human delivery system. To bring in better result, the police should become a hybrid of a force and a service.

There is an increasing demand for the police to attend an enormous range of miscellaneous responsibilities because of their constant availability, appreciable mobility, militaristic agility and unmatched ability. The police do the best to the community with limited resources of men and material. As the cities have become anonymous conglomerations of masses of people, with the increasing demand from the society, to meet an endless range of miscellaneous responsibilities by the erstwhile beat constable – the watchman’s descendant, he has to now become a philosopher, guide and friend. The present relationship with the community is characterized by distrust,

hatred, hostility and apathy. If police fail to do their legitimate duty and indulge in humiliating the people and denigrating their dignity, resort to illegal detention, crude in dealing, arrogant, discourteous and inefficient, then people will neither like it or trust it. It is high time that an attitudinal and behavioural change is brought about.

For the police to carry out all functions in the context of the growing demand from public, community policing is the alternative. Involving community policing activity is difficult all together in view of the widening gap in police community relations. The relationship suffers from lack of confidence of public on police and confidence building plays a crucial role in involving the public after studying the local problems of the public. The police should identify themselves with their needs and venture activities that would help confidence building. Here is a living monument erected through community policing, "THE POLICE BRIDGE" at Virudhunagar, Tamil Nadu.

### **NEED OF A BRIDGE**

**K**nown for narrow roads, Virudhunagar has been experiencing acute traffic congestion and frequent accidents. Concerned by this disturbing trend in the traffic front, the people of Virudhunagar have been demanding an accident free traffic management. However, due to various reasons the demand of the people remained unfulfilled for a long time. The author witnessed the difficulties of the people in that most of the buses plying on the bye pass road between Satur and Madurai never came to the bus stand in Virudhunagar town during day and night. The bus crew hesitated to drive through the circuitous and capillary roads inside the town as it consumed much of their time and fuel. Moved by the state of affairs, several meetings were organized involving service organizations,

philanthropists and other departments. As a result, the task of regulating and improving traffic within the town was initiated. It could not ward off all traffic problems fully, for the buses going towards Madurai had to take a circuitous route causing financial strain on the state transport corporations. This fact along with the demand of the people to introduce a short one way route engaged the attention of police to find out a permanent solution to this pressing problem.

### **BIRTH OF POLICE BRIDGE**

**T**hough the demand of a bridge was felt by everyone, the municipality had its financial crunch to go in for the construction of the bridge. Since the pressure of the public demand for a free fair traffic was mounting so heavily, the police invited the courage to initiate the construction of a bridge in consultation with the officials of the Municipality and Highways Department. The process of consultation and co-operation brought forth the needed support from the formal authorities. But it became quite necessary to rope in philanthropists, well wishers and service minded public to support the proposed bridge construction venture initiated by the police. All efforts made in this regard yielded overwhelming response and support from the public and Govt. officials. As a result, the work of bridge construction was completed on a war footing in a record time.

### **ROLE OF POLICE**

**N**eedless to say that Virudhunagar police took the initiative and provided the leadership in planning, mobilizing resources, monitoring and executing the work. Policemen were pressed into service in cleaning the thorns and bushes in the Kalaigar Nagar rivulet area and filling the thirty feet deep ditch, covered with mud and gutter. They worked along with public and

labourers day and night taking real interest, with a sense of devotion, dedication and pride. On seeing the tremendous work put in by the police, the newspapers started writing articles highlighting the importance of the bridge and recognizing the services of the police. It had its salutary effect in bringing into the bridge building venture spontaneous material support from responsible and respectable public. The police was careful and cautious to mobilize and accept assistance systematically only in kind, that too, only from those public and philanthropists who do not have anything to expect from police. Hundreds of lorry loads of earth and stone arrived free of cost. Likewise, other materials required for bridge construction came to the site in great speed and in good spirit. Added to this, periodic visit to the spot by the District Collector, DIG and Superintendent of Police served as a tonic to the policemen engaged in building the police bridge. As Virudhunagar police considered the bridge construction as building their own houses, they left no stone unturned in approaching the concerned officials in the high ways department and the municipality for securing timely support and technical advice.

### **ROLE OF PUBLIC**

**A**s it has been stated earlier, the Virudhunagar Police bridge is a bye product of a collective effort of police, public and other Govt. departments. The entire materials, be it earth or stone, cement or sand, labour or hardware, all came from public. Not only materials but several knowledgeable public came to the construction site in large numbers and shared their views with the DSP for rendering the construction stronger and speedier. Apart from materials, ideas and suggestions for the hundred metre road, connecting the 60 ft. long and 40 ft. wide bridge, came from the public. The sight of policemen and members of public doing manual work in scorching sun and torrential rain, both day in and day out



was a feast to the eye and talk of the town. People visited the construction site in thousands and extended their material support with out any demand by police. A stage came that the offer for support from public exceeded the need and police had to politely say a 'no' to many such further consignment of materials. With the growth of the bridge, the press literally every day carried news in praise and appreciation of this gesture by police.

### **ROLE OF MUNICIPALITY AND HIGHWAYS DEPARTMENT**

**A**s already referred to, despite the bridge project on its cards for a long, at a cost of Rs. 10 lakhs the municipality could not take up the work for want of finance. It was at this juncture that it became a necessity on the part of Police to take up the bridge construction work. As it could be expected, the police got technical guidance and support from the municipal authorities. The municipality also provided its labourers at its disposal, and made available the services of tractors and other materials. The Highways Department helped the police in securing and using some unused cement pipes. The frequent visit of the officials of the Highways Department, and the supply of labourers now and then enabled the police to complete the project on scientific and systematic lines.

### **BENEFITS OF POLICE BRIDGE**

**T**he Police Bridge built across Kalaingar Nagar rivulet is immensely beneficial to the public and the Government. The various benefits may be classified as professional, economic and social.

#### **PROFESSIONAL BENEFITS**

- The Police Bridge has eased traffic congestion and as a result accidents have been reduced to minimum.

- The odai area surrounded by bush, thorn and mud was used by criminals for anti-social activities, before the construction of Police Bridge. Today the entire Police Bridge area is busy with public activity.
- The Bridge constructed by Police has helped in a big way for boosting the image of Police in the eye of public in the state level.
- The Police Bridge stands as a symbol of police-public co-operation, resulting in remarkable reduction in crimes.
- Police have gained the confidence of public and hence policing has become very easy with the involvement of the community in other areas of policing.

#### **ECONOMIC BENEFITS**

**B**efore the construction of Police Bridge, vehicles were reaching National Highway-7 after travelling a circuitous route of about 4 kms. The Bridge has reduced the distance and today only two furlong travel along the bridge enables the vehicles to reach the National Highway.

- The Police Bridge has enabled the buses, lorries, cars, autorikshaws and other two wheelers to save fuel in several lakhs every months.
- The travelling time of vehicles is reduced by 10 to 15 minutes.
- The bridge was constructed availing spontaneously arrived material assistance from the Public at a time when the Virudhunagar Municipality was not in a position to allot Rs 10 lakhs for the Bridge construction.
- The Police Bridge has accelerated and augmented economic activities in and around Virudhunagar town.

#### **SOCIAL BENEFITS**

- By linking Muslims residing in Ahamed Nagar and non-Muslims dwelling in Kalaingar Nagar, the Police Bridge stands out as a model for communal harmony in the new millennium.
- The Police Bridge across the rivulet is a boon from heaven to the people of 18 villages to straightly reach Virudhunagar town who previously used to travel a long circuit route either on heel or on wheel.
- Most of the long route, south and north bound buses which neglected Virudhunagar town and passed off through bypass road are now coming into Virudhunagar town by using the Police Bridge and this had redressed the long felt grievance of travelling public.
- The Police Bridge is a live testimony to the fact that Government servants and public can jointly solve any problem under "namakku naame attitude and action, which means for us, by us".

#### **APPRECIATION BY CM OF TAMILNADU**

**N**one other than the Chief Minister of Tamil Nadu commended this laudable service as an unprecedented effort in the history of Tamil Nadu Police. The Press has also heaped kudos.

#### **LESSON FROM THE SUCCESS STORY OF POLICE BRIDGE**

**W**e should have interface with public and signal the community that our doors are open and we intend to extend a helping hand in their social problems. We should hold regular community meetings and listen to their problems. During the course of such meetings we

should be prepared to listen to their healthy criticism on police for their commissions and omissions. Even senior officers should get out of their vehicles and go near the people they serve. We should explore opportunities to participate in community activities and participate in civic functions. We should sensitize other members of the force about the need to implement community policing project. We should involve our

subordinates in the action plan and ensure participation of all to achieve this. Even though slight change may have to be effected in some of the 'how to do' areas, the overall objective can be achieved by their active participation. We should be prepared to withstand resistance, criticism and lack of support from our staff. The community at large with an historical distrust and lack of confidence on police is not likely to

change its perceptions and come towards police over night. A phenomenal change should be brought about in the attitude of the public and police for making the community project result-oriented and to make it happen, commitment is essential. Credibility is everything in community policing. However difficult things are, we should not bow out with excuse.



### ***No Laughing Matter, this !***

***The dear doctor had given the ultimatum to his terminal patient.***

***" You have only six months to live".***

***But when the man couldn't pay his bill, the doctor gave him another six months.!***

***Go ahead and laugh.***

***It's strong medicine as every body is realising .***

***There is a professor in laughter research***

***who says that even the physical act associated with laughing is good for you.***

***It increases blood flow and contracts abdominal muscles.***

***A hundred belly laughs is the aerobic equivalent  
of ten minutes on a rowing exercise machine.***

***"Laughter is a powerful antidote to stress,"  
says one laughter expert.***

***Watching a humorous video decreases  
levels of two key stress hormones that can cause  
irregular heart rythms which may lead to heart attacks.***

***Heart disease patients are often given drugs called beta-blockers  
specifically to block these hormones.***

***" Laughter can exactly do the same thing.  
And it can be a lot more fun," says another expert .***

***It is said that when you're laughing, we can't help but feel better.***

# BANK FRAUDS & SCAMS IN INDIA

Pullela Murali Mohan

As a banker many years ago, this author was then interested only in gathering huge deposits for his bank, give loans to get decent interests, do such competitive business that he would outshine all others in the field. The mood was simply to slit anyone's throat just to get ahead.

Granting temporary loan adjustments to 'good customers' was almost a daily routine. When the head office or controlling authorities pointed out the discrepancies and irregularities, which were in the nature of unsanctioned overdrawals, those accounts used to be adjusted immediately by a simple method of falling literally at the feet of those esteemed customers at the eleventh hour. There was high risk in banking. But everyone played it rough, all the same. Because that was the name of game. Because the **mantra** was more deposits, more loans, more business and more profits. But that was all fun.

The adrenalin rush in this cat and mouse game was the actual kick of the job.

But unfortunately, it is seen that many of the high risk-takers have bitten the dust. Frauds have a very dangerous habit of visiting such high fliers, more often than not.

Again, as a supervisory officer in the Central Bureau of Investigation this author had dealt with a number of bank cases. It was always found that the field investigators in CBI have always seen to it that somehow bank officers are invariably drawn into the frauds. *Mens rea* was attributed even to normal business decisions going wrong.

It was most probably because of their perceived notion that a private person can never, all by himself, penetrate the fortress called the bank without somebody from inside allowing it. However, in some cases bank officers were taking risks to get brisk business

---

*Extracts from the study conducted as Research Fellow -2000 at SVP NPA*

and in that process getting beguiled. They were caught for criminal activity because there was a loss to the bank.

The investigations had to invariably rope in the bankers as accused and perpetrators because private persons can be hooked only through them.

The most popular sections of law available were of criminal conspiracy (120A, 120B IPC). The banker invariably was presumed to have had the *mens rea* if only the bank had lost some money.

This was the basic problem of all the big fraud and scam cases that had hit the Indian economy. Because of this inherent deficiency many of the bank fraud cases could not get past the rigorous tests of Indian courts. The perpetrator of frauds enjoyed the fruits of his crime and got away with it at least in his lifetime. The bank frauds, thus have become a worthy business proposition in these hard days.

#### **ROLE OF THE ATTITUDE OF A BANKER IN PERPETRATION OF FRAUDS**

Any banker's mind is prioritized consciously or subconsciously in the following manner:

- Getting very good deposits
- Meeting his targets
- Earning good profits
- Outshine his competitors

Getting good deposits for the bank is the basic aim of all bankers. This is set as a benchmark for good performance and is fed into the basic psyche of every banker. In most cases, the colour of money that a banker is after does not matter for him. He considers a person who has deposited large amounts in his bank to be a good customer. He does not even blink his eyelid once to pry on

his good customer's sources of money. It can be black money, illegal money, and any kind of money for that matter. He even grants unnecessary and indiscriminate loans to such kind of people by mentioning them as his good customers in the credit worthiness reports in their loan assessment forms.

All this is done just because he wants to boost his deposit figures. This attitude of bankers trying to pass off large amount depositors as good customers has been encouraging fraud.

Meeting targets is the next important priority on the mind of a banker. He is so very claustrophobic over this thought that nothing matters much to him as he goes along to 'somehow' meet those targets. Year-ending window dressing of balance sheets is a very common phenomenon in almost every bank. Bankers go to any lengths to attain their targets. This encourages corruption and fraud. Loans are given without proper verification while rules and procedures are just a mangled mess. No scruples are followed.

The third objective of earning good profits puts a banker on the same plane of thinking of that of a conventional small time businessman. He just wants to earn more, come rough weather or rains. Basically, banking is a business proposition. A banker has to earn profits for his survival. But paradoxically, the nationalization of public sector banks had put him in a Catch 22 situation. He has to meet the social obligation of developing the society on the one hand, and yet earn his bread and butter. To earn better he takes higher risks and runs into bad times more often. This is when frauds take place.

All said and done, banking has become a competitive commercial battlefield where only wolves rule the roost. No tame hares in this race. Such tough is the competition these days. Each so-called good customer is virtually

wooed by several players in the banking arena. If a banker is slow on the uptake he has to simply go out of business. He has to be inventive all the time to cope up with competition. In this rat-run who is to bother about fair play. The casualty: the scruples, once again. An area wide open for frauds.

All these factors along with the lack of time to concentrate on each transaction at length make the banks most vulnerable for frauds and unscrupulous activities. There is always a tremendous pressure on time even in this modern computerized atmosphere. The banker has no time.

The man in front of the computer is yet to leave his old mindset, even now. The nationalized banks are making all-out efforts to create an atmosphere of modernity by introducing computers in their workplace but it has been found that most of the computers are just appendages and are not optimally utilized. There are many personnel in nationalized banks who are still not adequately computer-literate. This makes these banks vulnerable to frauds.

#### **BANK FRAUDS IN INDIA**

Banking did spread in India. And in 1990s, the share of banks in the total financial assets of the country as an aggregate amounted to two-thirds of national wealth. With this, the bank frauds have also definitely increased both in terms of number of frauds and also in terms of money lost.

But perversely, there was a definite benefit to banks by default due to the increased number of frauds and scams. The money migrated to banks from a scam/fraud-tainted stock market. Beginning 1992, larger proportion of household savings moved into the banking system. It was a windfall for banks, which recorded an annual growth of 20% in deposits through the 1990s.

However, with the spread of banking and banks, frauds have been on a constant increase. It could be a natural corollary to increase in the number of customers who are using banks these days. In the year 2000 alone we have lost Rs 673 crores in as many as 3,072 number of fraud cases. These are only reported figures. Though, this is 0.075% of Rs 8,96,696 crores of total deposits and 0.15% of Rs 4,44,125 crores of loans & advances, there are any numbers of cases that are not reported. There were nearly 65,800 bank branches of a total of 295 commercial banks in India as on June 30, 2001 reporting a total of nearly 3,072 bank fraud cases. This makes nearly 10.4 frauds per bank and roughly 0.47 fraud per branch.

The sole statutory regulatory body of all commercial banks, Reserve Bank of India, has issued 48 caution advices between July 2000 and June 2001 to those accounts in the banks, which were observed to have committed serious irregularities in their borrowal accounts.

## FRAUD PRONE AREAS

**I**t is a fact that all the connected people to frauds, (a) banker (b) fraudster and (c) the regulatory body, know which areas are prone to frauds. The areas are so elaborately publicized that sometimes it is felt that it is so much necessary to do so.

Even in the name of education! In this age of publicity overkill and training, all and sundry come to know about the fraud prone departments in banks and the modus operandi of frauds to the last detail. It only takes one to pick up a classic case and just replay the whole act afresh in a virgin and unexplored place and situation. And lo and behold, there is a fresh fraud on hand.

Umpteen number of fraud cases are just repetitions of what had already occurred before. Does that mean one should not publicize the cases of fraud? The answer to this is both *Yes* and *No*.

It is yes because if the concerned people do not know how frauds take place, how would they avoid/prevent/tackle them in future. Certainly, fraud prone areas must be known to all concerned as also the modus operandi being used in committing frauds to enable them cope with very effectively.

But loud publicity is a big no. The information should be confidential and restricted to only those who are dealing directly. For example, when a circular about the occurrence of a fraud is received at the bank branch, the head should read it first, then call those personnel/staff who are responsibly placed and directly concerned to make them comprehend the contents for future caution and guidance. The usual practice is that any circular, which arrives, is routinely marked to all the staff members via a class IV/temporary/casual staff. It does not mean that fraudster knows his ways only through those circulars. But why, in the first place, should anyone else unconnected to the job know it?

Fraud prone areas have been traditionally exploited over and over again since the operators have always found gullible takers all the time. The man on the counter is the first person to be alert. He must be intelligent enough to see that no one could take him for a ride.

Some of the frauds occur because the man on the counter falls into the rut of the routine. He does not even look up to the customer who is dealing with him because he thinks that he is too busy. But it only takes a split second to meet the customer in the eye. A glance, a smile or a gesture will do well to familiarize with the person across the counter. Establishing this essential link goes a long way in either avoiding the fraud in the first place or tracing one afterwards.

## LESSONS FROM HARSHAD MEHTA SCAM

**L**arge-scale financial scams have occurred even in the most modern banking systems. International experience shows that, in most of these cases, there has been lack of adequate supervision by the regulatory authorities and collusion between the bank employees and the perpetrators of fraud. The financial scam, which surfaced in India in April 1992, has been investigated and these investigations have brought to light the underlying economic factors and inadequacies in the system, which were exploited by the scamsters. All dark clouds have a silver lining. A scam of this dimension does contain many lessons for the future. The lessons could be drawn from the experience for evolving suitable remedies at the Government level, Regulator level and Institutional level. The developments since 1992 indicate that right action was not taken based on the lessons available from the experience in a number of areas. The fact that a number of scams arising out of the same set of causes did take place since 1992 - Hawala Scam, MS Shoes scam, CRB Capital Scam and scams in the Cooperative banks in Gujarat and Andhra - showed that the remedial measures were either not taken or they were inadequate.

### Government Level

The scam surfaced at a time when the government was contemplating a series of economic reforms relating to capital markets, banking sector, insurance, telecom, power and transport. It is to be noted that the peak period of the financial scam - April 1991 to May 1992 - coincided with the period of introduction of deregulation measures in the financial sector.

It is not advocated that the then existing "Over regulated and under-governed" financial system should have

been allowed to continue as such. However, such a system was responsible to a considerable extent for the origin of the irregularities in the transactions of securities by circumventing and violating the rules. There was a need to change such a system. Where things went wrong was in the way in which the financial sector reforms were ushered in and handled.

The results of investigations clearly indicated that government should take remedial action in five major areas. They are a) regulation of markets through reform measures, b) ensuring adequate legal framework to deal effectively with the offenders, c) policy decision relating to financial sector, d) coordination and interface among the different agencies and e) introducing transparency and accountability in financial transactions.

#### Regulation of Markets

Based on the experience of the Scam of 1992, one can draw three major lessons for regulating the markets. The first one is, before introducing deregulation; the government should ensure that checks and balances are built in the system. Deregulation does not mean no regulation. Unnecessary curbs in the market should have been removed and an orderly trading to protect the interests of the public should have been introduced by a system of efficient re-regulation.

Let us take a look at attempts made at reforms in the Insurance sector, Telecom sector and Power sector. Insurance Regulatory Authority was created without statutory powers and the legislation for the same took quite some time. In the case of TRAI, it was set up, dissolved and re-introduced in a different form thereby causing considerable delay in implementing reforms. Similar was the story with respect to regulatory authorities in power sector, which is yet to take off in the Centre and the States. The second

lesson is that the regulatory set up should not have gaps. The lack of proper regulatory authorities for UTI, NBFCs and NHB was the main reason for irregular transactions in these institutions. SEBI did not have control over all the operations of UTI. The overseas corporate bodies (OCBs) did not come under the purview of either SEBI or RBI. A number of NBFCs exploited these grey areas. For proper governance in the financial sector, the government should ensure that there is no area in the system, which is not governed by any statutory regulations. The third lesson is to develop a monitoring and warning system in the Ministry of Finance, to keep a close watch on the development of the markets, analyze the signals professionally and advise the government in time. Nobody can question the need for it. But this is yet to materialize and take a proper concrete shape.

#### Legal System

The biggest handicap in handling the scam was the absence of a legal system through which the scamsters could be dealt with expeditiously. When the scam surfaced in April 1992, the Government had no other way than to issue an ordinance, since the existing law did not have a definition for offences relating to securities.

It is to be noted that even with the Special Court ordinance, it took nearly 7 years to get the first conviction (which went in appeal to Supreme Court). This situation has to be compared with that of Singapore where the accused in the Baring Bank case was apprehended, prosecuted and convicted within a period of one year. Government did realize the need to have a comprehensive legislation for dealing with economic offences and initiated steps. However, very little progress has been made. The fact remains that we should have an adequate legal frame work in place to tackle worst possible situations.

#### Policy issues

The JPC report gave a number of recommendations on major policy issues. Government accepted the need for defining the borrowing policy and managing fiscal deficit. It was decided to bring SLR to the statutory limit of 25 percent and CRR to 10 percent in a phased manner. Government has decided to give *more* powers to SEBI. With regard to priority sector lending, however, the interest subsidy continued in a modified form, all in the name of social justice. It is not fair to penalize the banks in the name of social justice. The subsidy considered necessary should be provided in the budget and reimbursed to the banks directly. Then only the banking sector can be competitive. Similarly, the public sector banks should get an equal playing field in their right to recruit and manage their manpower. The dual control by RBI and Government as owner is not at all in the interest of efficiency of the banks. The appointment of top management should be only on professional considerations and they should be held accountable. In the post scam period the number of bank frauds, the amount involved and the non-performing assets of public sector banks have actually increased.

A clear-cut banking policy should be evolved in the light of the experience gained through the past mistakes by avoiding over-regulation and ensuring proper governance.

The very fact that the irregularities, which were described in detail in different RBI inspection reports, could continue since 1985, grow and reach a formidable dimension till they were discovered in April 1992 would clearly indicate that there was no interface or effective coordination among the different agencies. They were working in isolation and very often reluctant to share the information available with them. There was no common forum where they could come together and work as a team.

The Ministry of Finance (MOF) should function as a nodal agency ensuring effective coordination and interface among regulators and investigators. The developments after the scam indicated that no concrete step could be taken to ensure coordination and interface among those different agencies. An attempt was made at the instance of the Supreme Court to put the investigating agencies such as CBI and the Enforcement Directorate under the purview of the Chief Vigilance Commissioner. The MOF has also got too many regulatory agencies under whose administrative control these agencies continue to work in isolation as different compartmental entities. Whenever there is a crisis, MOF interferes - more as a fire fighting set up than as a nodal agency accountable for coordination.

#### Transparency and Accountability

In the banks and financial institutions the transactions in securities were handled by a small group of officials in the treasury department and even the chief executive and the Board of Directors were not aware of the system and procedure followed. All the senior managers while giving evidence before the JPC admitted that these transactions lacked transparency. When even those who were holding top managerial positions did not know the operations, the quantum of irregularities naturally increases in volume. This situation got worse in the absence of accountability and the size of the scam transactions further increased.

It is to be noted that the ethos of non-accountability had got into the financial system so strongly that it continued even after the exposure of the scam.

The pertinent point to note is that the Government could see the basic issue of the culture of non-accountability in varying degrees in the handling of all

these scams. It is this culture that led to several public interest litigations and the subsequent interference by the Judiciary giving directions to the executives as also monitoring compliance.

The accounting system, the balance sheet, the system of provisioning for non-performing assets, selection of broker and investment policy is to be evolved based on the concept of transparency. Transparency in the system and transactions will lead to questions and the demand for scrutiny of operations. This has to be followed by a fair concept of accountability.

If such scams are to be avoided in future, the one and only way is to ensure that the concepts of *transparency* and *accountability* are followed in the letter and spirit. The developments after the scam indicate that even though the emerging lessons from the scam and the recommendations of the JPC are accepted, in actual practice the concept of accountability does not appear to be followed and action taken in a convincing way. The occurrence of scams at regular intervals only proves this point.

#### Regulatory Level

The regulators for the Indian Financial System are i) RBI, ii) SEBI and iii) Institute of Chartered Accountants. The investigations revealed that inadequacy of supervision and ineffective enforcement by the regulators was the main reasons for the scams.

Certain departments in the RBI contributed considerably for the high volume of irregular transactions in securities and the areas of failure were clearly brought out in the JPC report. After that, the Board of Financial Supervision was created in the RBI. It was expected that the new set up would put an end to the violations of rules and guidelines. However, it could not come up to the expectations. NBFCs and Cooperative Banks did not have a streamlined and effective regulatory

system. A number of committees were set up relating to NBFCs. It is true that the volume of work involved was huge. But the investor protection is the primary concern of the regulator. The role of the State Government and that of RBI provided enough grounds for mutual shifting of blame when things went wrong. In effect, instances of investors being cheated by the NBFCs increased and the credibility of the Cooperative Banks - issuing pay orders without funds - has eroded. The Madhavpura Cooperative Bank scam and its subsequent collapse in Gujarat were followed by a series of failures of Urban Cooperative Banks in Andhra Pradesh. The need for introducing streamlined regulatory system and enforcing the rules were accepted but not followed up and implemented.

In the financial scam of April 1992, SEBI took the plea that it was not a statutory body and the rules were approved only in October 1992. This was a very good *alibi*. But after October 1992 there was an opportunity for it to start with a clean slate and take action in the light of past experience against incomplete disclosure, insider trading and price rigging. The enforcement of its own rules was not effective as evidenced by the surfacing of MS Shoes Scam and CRB Capital Scam. CRB Capital was given 'AAA' rating even when things were not all right with the Company. Again, the absence of coordination and synergy among the three regulators continued. Improving and streamlining the audit system remained a matter for Committees and workshops only. No concrete and effective action was taken. It was even felt that a "Super-regulator" to coordinate is needed since they were operating in separate compartments with no interface and coordination.

This is an area, which requires immediate attention. All the three regulators should work out a forum in which information and intelligence reports are shared. Preventive and

investigative vigilance measures are to be worked out systematically and the progress monitored meticulously.

### **Institutional Level**

The financial intermediaries which played a key role in the scam of April 1992 were scheduled commercial banks in the public and private sector, foreign banks, cooperative banks, Bombay Stock Exchange and non-banking financial companies, such as Fair Growth Financial Services Ltd., CANFINA, ABFSL and SBI Caps. The most important lesson that emerges for the financial intermediaries based on the experience of the scam is that of ensuring an effective system for internal monitoring control and vigilance.

The irregularities could continue for nearly seven years undetected, because the internal control system and monitoring were either absent or did not function. The management did not exercise any control and handled the inspection reports in a casual and callous manner. In State Bank of India, the Deputy Managing Director in charge of treasury was made to continue in the same post beyond three years against the normal guidelines regarding rotation in senior posts for the simple reason that he played a key role in getting good profits from the transactions in Government securities. The top management never bothered to inspect the department or question the procedure followed or verify whether the transactions were in accordance with the rules and guidelines. After the scam surfaced it came out that the Chairman and the Board of Directors were not even aware of what was actually happening. No senior official who appeared before the Joint Parliamentary Committee ever admitted to knowing what was happening.

All wrongs, mistakes and irregular transactions were invariably attributed to the misconduct of lower level officials. The top management including that of foreign banks pleaded their ignorance and even attempted to interpret the guidelines of the RBI to justify the irregularities as permissible "market practices" prevailing at that time. Influential brokers virtually took over the investment portfolio of the bank and in collusion with the bank staff managed the department. There is enough evidence to conclude that if the top management in the financial institutions had followed an effective internal control mechanism and reporting systems the irregularities could have been prevented. The lesson, therefore, is obvious. The only way to avoid the scam is to put in position an efficient reporting system. Internal and external audit internal control and vigilance mechanism. The Board of Directors should periodically review and monitor the working of this system. If each institution is taken care of then it will have its effect on the entire financial system. What is required is an effective enforcement. The objective should be detection of violations in time and dealing with them in an exemplary way to prevent them in future.

### **What could have been learnt**

We do agree that lending business has to cope up with risks and losses. Banks and financial institutions are inherently fraud-prone. It may not be possible or feasible to have a financial system in which no irregular transaction takes place. With computerization and screen-based scripless transactions, there will be more scope for irregularities of highly sophisticated nature, which will be very difficult to be detected. However, it is possible to learn from the past experiences and take immediate corrective action. The experience of the financial scam clearly points out the areas for policy changes and systemic changes in the financial system.

Ensuring an adequate legal framework for economic offences is an immediate necessity. What is needed is a strong will and determination to effectively implement the lessons drawn from the experience and ensure transparency and accountability in the financial system. This is the only way to avoid scams in future. Making mistakes is understandable. But not learning from mistakes is unpardonable.

### **RECOMMENDATIONS**

**F**rauds have been committed in the banks and on the banks almost since their inception. But in India a single major fraud in the region of nearly Rs.3000 crores in the form of Harshad Mehta Scam in 1992 made all to sit up and have a peek at what exactly had happened.

A concomitant stock market crash from a Sensex peak of 4467 to 3897 in a matter of a week took the wind out of the sails of most of the small investors. There was a sudden gloom in the markets. The public in general felt that they had been taken for a ride.

In 1992, several guidelines based on the recommendations of the Ghosh Committee set up to enquire into various aspects relating to frauds and malpractices in banks were issued by RBI to curb occurrence of frauds in various sensitive areas of banking. These were followed up with the recommendations of the Jilani Committee on Internal Controls and Inspection/Audit Systems in Banks in 1986.

### **Recommendations of BD Narang Committee**

RBI constituted another Study Group on Large Value Bank Frauds under the chairmanship of Shri BD Narang, which submitted its recommendations on March 24, 1999.



■ “Know Your Customer” – Know him in all respects

■ Proper Credit Audit – Appraisal, Sanction, Monitoring, Supervision Policy should be perfect

■ Old Borrowal Accounts should be thoroughly verified

■ Exchange of Information between all financial agencies should be streamlined.

■ Credit Information Bureau should be established

■ A Fraud Risk Management Policy shall be pursued in:

✓ Investigation and Disposal of Fraud Cases

✓ Rotation of Staff

✓ Codification of Procedures

✓ Surprise Inspection

✓ Scrutiny of Control Returns by Controlling Offices

✓ Processing of Internal Inspection/Audit Reports

✓ Accountability

✓ Reporting Obligations & Relationship

✓ Monitoring of Key Areas of Concern

✓ Building up Institutional Memory

✓ Mode of Business Communication

✓ A codified system in the issuance of Letter of Credit/ Bank Guarantees

✓ A proper Management Audit System in place

✓ Resort to computerized and telecommunication banking as early as possible

✓ Safekeeping of Critical Stationery of Banks

✓ Amendment to Criminal Procedure Code, and certain other laws and service rules

✓ Re-organization of Branches to keep them well-organized

### **Practicability of these recommendations**

Know your customer simply means that the bank should know its customer very thoroughly as also his sources of funds. How exactly is it possible for a banker to know all the customers? Even an average bank branch has customers running into thousands. With the cut-throat competition that is on hands any delay in catching (literally) a customer will cost the bank a lot because there are number of banks waiting to hook him.

Then, which banker is having the time and resources to know from where his customer is getting his money? Even if he knows the channel what can he do about it?

Again it is advised that special attention should be paid to all complex and unusually, large transactions as far as non-permanent customers are concerned. Again, which bank is having the time and resources to find which transaction is of what nature until unless something intriguing comes out of it prominently.

Another suggestion is proper credit audit which means that the credit appraisal, sanction and monitoring should be done perfectly. In MS Shoes scam of 1994, Pawan Sachdeva, the promoter, used company funds to buy shares of his own company only to rig the prices of his own shares prior to a public issue. What were the bank officials doing? It is evidently clear that small loan takers who have less amount of clout are monitored intensely and big borrowers are not even touched with a barge pole because they are influential, any way.

Way back in 1957, Feroz Gandhi sourced the confidential correspondence between the then finance minister TT Krishnamachari and his principal finance secretary, and raised a question in Parliament on the sale of ‘fraudulent’ shares to LIC by a businessman, Haridas Mundhra. Justice MC Chagla who investigated the case at the behest of Prime Minister Jawaharlal Nehru concluded that Mundhra had sold fictitious shares to LIC and defrauded Rs1.25 crores. TT Krishnamachari was forced to resign and Mundhra was sentenced to 22 years in prison. Will this happen now?

It is also suggested that old borrowal accounts, which had small exposures initially and had expanded suddenly be seen with an eye of guard. The banker is always in search of a borrower who is reliable and has maintained a good track record. There is a very natural tendency that old borrowers who have maintained a good record are always trusted. It is impossible to be suspicious or guarded about them.

Every fraud or lapse on the part of the staff need not and should not be viewed as a vigilance case. Investigation and staff accountability should be separated in the initial stages itself. Three angles can be seen (1) systems failure (2) staff negligence/vigilance (3) involvement of a third party. The cases having negligence or vigilance angle should be referred for fixing the accountability without any undue delay. There is a tendency that each lapse that is a slip because of the systems failure is dubbed as a fraud and swept under the carpet for years in police investigation. Actually, any systems lapse should be recognized and, if possible, rectified immediately for the benefit of all.

## Efforts of Reserve Bank Of India

In view of the increasing level and complexity of frauds in the banking industry, RBI has constituted a Committee on Legal Aspects of Bank Frauds under the Chairmanship of Dr NL Mitra to define financial frauds, lay down procedural laws, examine the process of investigation of bank frauds and prosecution of persons involved.

## RESEARCH RECOMMENDATIONS

This author from the findings of this research project proposes the following to help mitigate bank frauds:

**1. Creation of Banking and Economic Intelligence Agency** which is a multi disciplinary, constitutional body with total independence will keep the bankers abreast with integrated intelligence/information about all economic and banking affairs in the country. It will create a full-fledged database of all information regarding depositors and borrowers of all banks, so that the risk taking activity of bankers will be more scientifically oriented. The present attitude of borrowers misrepresenting or not disclosing proper facts and thereby defrauding the banks can subsequently be minimized.

As this agency will inform by forewarning the trends in economic and banking affairs in the country regularly, the tendency of the bankers to take blind and rash decisions are very much reduced.

The basic functions of this agency would be to:

- ◆ Collect intelligence about all economic and banking affairs in the country
- ◆ Create a data bank of all depositors and borrowers of all banks with a unique number to each of them

- ◆ Inform or forewarn about all irregular trends in the economic and banking affairs in the country.

This agency should have

- Specialists from Intelligence Bureau (IB)
- Specialists from CBI
- Specialists from State Special Branch/CID
- Specialist Legal Luminaries
- Specialist Bankers
- Specialist Forensic Experts
- Specialists in Business Field

This can be a nodal agency from which all banks, non banking financial institutions, insurance companies, recognized financial markets, government agencies, other legally recognized bodies can get financial information of any nature from its data bank by paying nominally for it. Because this agency is an independent body and is headed by a senior official with a team of highly professional personnel it can also act as a catalyst in the economic activities of the country. The head of the Agency gets a 5-year tenure and has a vast experience in banking, finance, law, forensic sciences, intelligence and investigations.

**2. Creation of Special Investigating Agency**, which again is multi disciplinary, statutory and independent to probe only bank fraud cases, will relieve the burden of the bankers who run from pillar to post in getting fraud cases registered for investigations. As this body will have personnel from all walks of economic activity based agencies, there will be a coordinated effort in deciding the cases strictly on merits. The actual *mens rea* of the alleged accused can be established or

ruled out when the agency has experienced bankers actively assisting the investigations. As this agency has, at least, one unit in each state, there will be speedy investigations. As there will be a component of immediate recovery mechanism of defrauded money because of some quick action, further bank frauds are discouraged. In the present day scenario, bank frauds have become very lucrative, as there is no way available to the agencies to confiscate the defrauded money immediately.

This Agency should be a statutory independent body, which specializes in investigating only bank fraud cases. In the year 2000 the commercial banks in the country have reported nearly 3,072 cases of bank frauds, which is quite a big number.

The local police is not interested in these long drawn, document oriented bank fraud cases. They feel that these cases are a drag on them. They are assigned to cold storage once they are reluctantly registered.

The CBI is such an over burdened organization now that to deal with bank cases in spite of its specialized wings like Banking Securities and Frauds Cell (BS&FC), Economic Offences Wing (EOW), etc. is becoming more and more unwieldy.

This situation has been of serious concern both for the enforcing authorities and also for the affected banks. The bankers can think in terms of a specialized agency, which does both investigations and also can help them recover lost money in frauds by some quick and diligent action. Most of the cases that come to either police or CBI are the ones, which have certainly lost their steam. The bankers can neither recover their lost money nor can hope to

bring the culprits to book. To overcome this, the banks can pool up their resources to fund for this agency, which has legislative authority.

The Special Investigation Agency will have an all India level Head, who would be a very senior official of police who has a specialized interest in financial and money related frauds. He will be having Heads who would be situated in all the states of the country. Each state unit will have the following:

- ◆ Experts in Banks
- ◆ Experts in investigation of document related cases
- ◆ Experts in Forensic Sciences
- ◆ Experts in Financial Markets
- ◆ Experts in Legal matters

All cases pertaining to bank frauds and scams are referred to the respective state agency which has a mandate to take up the cases as soon as they occur/reported without any delay. The banks can directly refer the cases to this agency. The agency with all its expertise will initially try to recover the money lost. This will be the most important task of the agency because if the crime is made non-lucrative by some fast action, this itself acts as a major deterrent in curbing future frauds. The agency has a maximum of 3 months time to complete its investigations and put up a report. The charge sheeted cases should be referred to a Special Court for Financial and Bank Frauds which is as proposed.

**3. Creation of Special Courts only for Financial and Bank Frauds** is to ensure that the cases are disposed of expeditiously which ultimately enables the culprit to be brought to book in the shortest span of the time. This would send proper signals to all that 'bank frauds are not paying propositions'. This is a very useful and effective method of preventing further frauds.

These courts should be in the pattern of Special Courts (Trial of Offences relating to Transactions in Securities) Act 1992. There will be a Special Court of this nature in each State. It will consist of a sitting Judge of the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of Chief Justice of India.

This Special Court shall take cognizance of or try such cases as are instituted before it or transferred to it which are connected with financial or banking frauds. The Special Court will have jurisdiction to try cases which fall under the head of Financial and Banking Frauds as presently covered by IPC, PC Act 1988, Indian Evidence Act 1872, Indian Contract Act, Reserve Bank of India Act 1944, Negotiable Instruments Act 1881, etc.

#### 4. Single Regulatory Body

Presently, there is a plethora of regulatory bodies, which sometimes seem to be working for cross-purposes. Creating a **Single apex Regulatory Authority** will help the coordination and effective regulation of financial and bank fraud crimes.

The following are the different regulators in India which function independently of each other:

- Reserve Bank of India (RBI) which regulates the banks and non-bank finance companies
- Securities Exchange Board of India (SEBI) which regulates the capital market and mutual funds
- Insurance Regulatory and Development Authority (IRDA) which regulates the insurance industry
- Department of Company Law Affairs (DCLA) which regulates the corporate companies

- National Housing Bank (NHB) which regulates the housing finance companies

It is proposed that an umbrella regulatory legislation, creating an apex regulatory authority without disturbing the existing jurisdiction, with the Governor of the RBI as its chairman be created. This was proposed by one RBI Deputy Governor, which is highly appropriate. Narasimham Committee-II recommended in 1998 that an integrated system of regulation and supervision be put in place to regulate and supervise the activities of banks, financial institutions and NBFCs with a body called Board for Financial Regulation and Supervision (BFRS). In view of the increasing overlap in the functions being performed by the various participants in the financial system, the Khan Working Group had explicitly recommended the establishment of a super regulator to supervise and coordinate the activities of all the multiple regulators, in order to ensure uniformity in regulatory treatment to different entities.

This body can provide diversified financial groups with better coordinated and more constituent supervision based on a single and rationally constructed set of principles and rules which result in an equal regulated treatment of financial entities. This agency can also operate more efficiently because of the economies of scale.

#### 5. Regulation Of Urban Cooperative Banks

There has been a sudden spurt in frauds and scams in the Urban Cooperative Banks (UCBs) of late. Lack of trusteeship, low capital base, bogus memberships, family members on board, centralized sanctioning powers, irresponsible lending to kith and kin have been identified as the main reasons for the sickness/fraud/collapse of these banks. The following suggestions are made to protect the interests of the small customers:

- Banks should be bracketed and declared as weak if their Non Performing Assets (NPAs) are between 10 to 15 percent
- Should be declared as sick if NPAs are more than 15 percent
- Should be categorized as weak if the Capital Adequacy Ratio (CAR) is 75 percent below minimum prescription or if the bank incurs losses for 2 out of 3 years
- Should be categorized as sick if CAR is less than 50 percent and suffers losses for all 3 years
- Banks with less than Rs 5 crore deposits should be merged with other banks
- The integrity of all Directors should be verified by intelligence agencies
- One seat on the board of directors should be ear-marked for nomination by regulatory authorities
- The Directors or their relatives should not be made eligible for any loans
- The personal properties of Directors – present, past and key management personnel should be immediately seized/forfeited in case of frauds
- Pressure should be mounted on the promoters and directors to recover the loans/discharge the liabilities

## 6. The Clearing Of Local Cheques

There is one rule in the clearing system followed by the banks with regard to local cheques. When the drawee bank does not return a cheque to the branch that collects the cheque through clearing up to a certain determined time, the latter branch would treat the cheque as honoured.

A small example will clear how clearing works:

- ☐ Mr Anand maintains a Savings Bank account in State Bank of Hyderabad (SBH), Shivarampally branch
- ☐ He issues a cheque favouring Mr Kumar, who maintains a Savings Bank account in Canara Bank, Shivarampally branch for Rs 2000
- ☐ The easiest way for Mr Kumar to get his money is to encash it over the counter at SBH, Shivarampally if the cheque is an uncrossed one
- ☐ But he prefers to get it credited into his account maintained at Canara Bank, Shivarampally. So he deposits the cheque at that branch
- ☐ Canara Bank at Shivarampally sends the cheque to its Service Branch in the city where all such cheques are collected
- ☐ The Service Branch in turn sends it to the Clearinghouse where it is given to the representative of State Bank of Hyderabad Service Branch
- ☐ The SBH Service Branch sends it to SBH, Shivarampally branch for debit into the account of Mr Anand
- ☐ If the account of Mr Anand is having a credit balance to clear that amount of Rs 2000 the cheque will be paid and this voucher would be retained in SBH, Shivarampally branch itself
- ☐ The Canara Bank, Shivarampally branch after

waiting for a certain specified period presumes that the cheque has been paid by SBH, Shivarampally and affords credit to the savings bank account of Mr Kumar, thus completing the transaction

- ☐ If the savings bank account of Mr Anand at SBH, Shivarampally is not having sufficient balance, the cheque has to be returned to the Canara Bank, Shivarampally via the Clearinghouse.
- ☐ It is here the fraud occurs. It is seen that the cheque is lost or made to be lost in this long process which is quite a simple thing and because of the rule that cheques which are not returned to the collecting branch are *presumed* to have been paid. The credit would be *automatically* passed after the prescribed period

In such a complicated maze of clearing there are at least 12 to 15 employees/officers involved. It goes without saying that anyone in the chain can deliberately attempt to defraud by simply pinching the **cheque** taking advantage of the rule that *unreturned cheques are presumed to have been paid*.

The main hurdle to change this rule seems to be that there is not enough **connectivity** between the banks and clearinghouse. Another reason is that there is no time for the bankers to communicate, as instruments that pass through clearing are very large in number. The main recommendation/suggestion of this project is that this system should be replaced by the adopting the following procedure:

- All banks that have participated in clearing should

- communicate to the Clearinghouse about the clearance of all cheques transacted through it in the day.
- Clearinghouse in turn should compulsorily communicate by quickest means possible (by telephone, by fax, by internet, etc.) to all the participating banks about the fate of each and every instrument that has been transacted in the day.
  - Clearinghouse should be able to give positive information to all the participating banks with regard to information about the instruments.
  - In the course of time as the internet connectivity increases all the information regarding clearinghouse transactions can be exchanged through it effectively.

#### NOTES AND REFERENCES

1. *Report on Trend and Progress of Banking in India, 2000-01* p. 73, Rath DP, Reserve Bank of India, 2001
2. *Business Today*, p 88, Tenth Anniversary Issue, Jan 20, 2002, Living Media Ltd., 2002

3. *Report of the Study Group on Large Value Frauds, Chapter 9, Narang BD, 1998*
4. *Report of Committee on Legal Aspects & Bank Frauds, Dr NL Mithra, 2001-02*
5. *Extracts from the paper presented by Dr. Srinivasan, National Seminar on Economic Crimes, Committee on Criminal Justice Reforms, International Institution of Development Research, Mumbai March, 2002.*



*To achieve the marvellous,  
it is precisely the  
unthinkable that must be thought*

*Procrastination is like a credit card:  
it's a lot of fun until you get the bill*

*If your success is not on your own terms,  
if it looks good to the world  
but does not feel good in your heart,  
it is not success at all*

## ACADEMY PUBLICATIONS

01.	Management Concepts for Effective Police Admn.	- Rs. 60/-*
02.	Law of Evidence - by Shri Ahmed Hussain	- Rs. 55/-*
03.	Custodial Deaths in India ( A Research Study ) - by Shri Sankar Sen, Shri P.S.V. Prasad, Dr. A.K. Saxena	- Rs. 75/-*
04.	The Handbook for Trainers (Practices & Innovations) - by Shri Sankar Sen and Dr. A.K. Saxena	- Rs. 75/-*
05.	Gallantry Awards - Academy Alumni	- Rs. 25/-
06.	Compendium of Supreme Court Rulings on Criminal Law and Police Work - by Shri R.K. Bag	- Rs. 70/-
07.	Prime Minister's Silver Cup Essay Competition : Prize Winning Essays	- Rs. 60/-
08.	Sardar Vallabhbhai Patel Memorial Lectures	- Rs. 80/-
09.	Professionalism at the Cutting Edge Level - by Shri Subhash Joshi, IPS and Dr. A.K. Saxena	- Rs. 50/-
10.	First Charge - A handbook for newly promoted and junior Superintendents of Police - by Dr. Trinath Mishra, IPS (Hard bound book)	- Rs. 150/-
11.	Stress Management In Police by Dr. Anil K. Saxena	- Rs. 125/-**
12.	Gender Issues in Police - by Shri Subhash Joshi, IPS & Dr. Rekha Pandey (Hard bound book)	- Rs. 195/-**
13.	Organised Crime by Shri V.K. Deuskar, IPS	- Rs. 200/-
14.	Professionalism in the Constabulary by Shri Giridhari Nayak, IPS	- Rs. 200/-

---

\* 25% discount is offered on the rate.

\*\* These books will be sold at 50% discount, if they are purchased for personal use by individual police officers

### Instructions for Authors

1. *Articles submitted to the journal should be original contributions and should not be under consideration for any other publication at the same time. A certificate to this effect should invariably accompany the article.*
2. *The length of the article should not generally exceed 5000 words.*
3. *Two copies of the article typed or printed on any type of computer printer in double space with wide margins on good quality paper should be sent. If the articles are typed on computer, a floppy containing the article may also be sent.*
4. *An abstract of the article in 100-200 words and a brief autobiographical note about the author including full name, designation, postal address/e-mail address should also accompany the article.*
5. *One copy of the article may be retained by the author as the original article sent for publication cannot be returned.*
6. *The article should be proof-read and free of corrections.*
7. *Foot-notes and bibliographical references wherever required should be provided along with the article with proper numbering.*
8. *References should be cited in the text by using the last name(s) of author(s) and year of publication, using page numbers only in the case of a quote. Multiple citations should be alphabetized. For references with more than two authors, only the first author should be listed, followed by et al. If more than one work published in the same year by the same author(s) is cited, they should be designated following the footnotes, if any. Example of a bibliographical reference: Raj.S (1989) "The Effects of Crime Rates". The SVP NPA Journal, Volume XV No.2 Jan-June,89.*
9. *A submission to SVP National Police Academy Journal is regarded as a commitment to publish. Submission to other journals under review is not acceptable.*
10. *The copyright for articles published is transferred to SVP National Police Academy.*

PUBLICATION TEAM	
Ashish Gupta Assistant Director (Publication)	
K Savitri DTP Operator	
R Chandrasekhar Stenographer	
Y V Murali Printing Technician	
Creative Team Raghavendra Prakash Chandrasekhar RaviTeja Pullela Murali Mohan	

