

# CORRUPTION IN INDIAN POLICE

KV Thomas

**C**orruption is a complex problem having its roots and ramifications in society as a whole. The Santhanam Committee Report 1964 defines corruption as “improper or selfish exercise of power and influence attached to a public office or to a special position one occupies in public life”<sup>1</sup>. In fact, corruption in one form or other had always existed in the country. During the last one decade, several cases of corruption and scandals have come to the public notice due to vigilant press, efforts of public spirited individuals and a pro-active judiciary. The Bofors, HDW Submarine deal, Airbus deal, ABB Loco deal, Jain Hawala Racket, Sugar scam, Security scam, Urea scam, Fodder scam in Bihar and Tehelka tapes, etc., are a few instances. These scams, which surfaced were only the tip of the iceberg. Majority of these scams related to “public expenditure” by the Central and State governments. Equally alarming are the cases of corruption in the collection of public revenue and arrears thereof. The corrupt practices in the realization of direct and indirect taxes, non-recovery of loans from industrialists, money-laundering in the banking sector, etc., have resulted in the loss of thousands of crores to the national exchequer. Thus, Transparency International,<sup>2</sup> the Berlin based NGO has rated India as the 22<sup>nd</sup> most corrupt country in the world in its year 2000 corruption perception index. Over the years, the tentacles of corruption have spread to the system of governance – civil, political and military. Now, no institution can honestly claim that it is totally free from corruption. Majority of citizens find corruption practically at every level and every sector of life.

One can undoubtedly say that corruption is not a myth, it has become a way of life in the country. But, mythicising corruption by camouflaging the real from the unreal and exploiting the emotions and psychic energies that were dormant in the collective unconsciousness of the masses has the inherent danger of people forming false or distorted impressions on the image of organisations. The Santhanam Committee has also referred to this trend and observed “we heard from all sides that corruption in recent years spread even to those levels of administration from which it was conspicuously absent in the past... The general impressions are unfair and exaggerated. But, the very fact that such impressions are there, cause damage to the social fabric.”<sup>3</sup> Gunnar Myrdal<sup>4</sup> speaks of this trend as the “folklore of corruption”.

2. Unlike the other executive wings of the government, the police, which has maximum visibility in the society, is a pet theme for such folklore. Their omissions and commissions rapidly attract public attention and spread like a wild fire through gossip and hearsay. As the police wears a mantle of defensiveness and many of their functions are shrouded in secrecy, there is a tendency to mythicise or sensationalize such lapses like corruption. The image of police so created in the minds of people always remains poor and sullied. For example, studies carried out by Benarus Hindu University in 1972 and Indian Institute of Public Opinion, New Delhi in 1978 on the public image of police revealed a very unattractive image in the minds of the people<sup>5</sup>. These studies had disclosed that those who had personal experience or some interaction with the police had a better impression of police than those who had formed their opinion on hearsay without any personal knowledge. Another recent sample survey conducted by ‘The Statesman’ in Delhi also demonstrated the above trend. Though the main conclusion of the survey was

that “police are power-drunk, corrupt, immoral without any professional ethics,” more than 90 percent of the respondents denied even having given bribe to any policeman; nor did they ever see a policeman beating an alleged offender<sup>6</sup>. Another research study by Shri UNB Rao, IPS was more revealing in the regard<sup>7</sup>. Out of 2,071 respondents (adolescent students from 9 different mega/metropolitan cities of India), who responded to a question “whether they have ever met a policeman and talked to him”, 72 percent claimed in negative. The overwhelming majority of these students had negative impressions on the style of functioning and image of police. For example, 75 percent of them spoke ill of police and policing mechanism; 61 to 71percent stated that public are afraid to lodge complaint with police; 60 to 90 percent held that police are corrupt and 32 to 56 percent disagreed that police are sympathetic to public (percentage indicated pertains to different questions). The basis for such impressions of young adults was mainly the media (63 to 70 percent) while 21 to 30 percent of the respondents stated that they heard about police from others. Significantly, only 13 percent of them confirmed that they have had personal experience or interaction whatsoever with the police. Thus, one of the major findings of the study was that lesser the awareness about the police work and police constraints, the more is the mistaken impressions of students or public about the police.

3. The reality is that majority of the people especially of the rural areas do not have any personal or specific knowledge on issues like corruption in police. But, their impressions in such matters have been crystallized mainly at the instance of media or hearsay. The visual media with their effective network throughout the country plays up such factors detrimental to the image of police. The instances of corruption and other misdemeanors of police personnel and their stories of prosecution and conviction are frequently given

prominence by the media. All too frequently facts are overtaken by fiction, built around speculative characters or instances and it becomes difficult to determine where the true stories end and the fiction begins. No doubt, public awareness of policing has risen tremendously, but issues like corruption are such hidden areas where facts, fiction, myth, perception and reality are very intricately interwoven. The defaulting policeman becomes a symbol of the entire organization and his misconduct would be used as a powerful weapon to tarnish the image of the force. Many people adopt the infamous “guilt by association technique” of Senator McCarthy<sup>8</sup> and smear the police with the failings of a few personnel.

4. The para-military orientation and general regimentation in the organization are the major contributory factors for the galvanization of such impressions on police by the public. There is a general tendency at police hierarchy not to admit the lapses of the personnel. On many occasions, they consciously try to cover up or whitewash these omissions and defend the delinquent personnel on the pretext of safeguarding the morale and image of the organization. Lord Delvin had rightly observed “it is the general habit of police not to admit the slightest departure from correctness”<sup>9</sup>. But, this approach, instead of protecting the image of the organization, causes more embarrassment to the force when the media or the detractors of police come out with highly exaggerated speculative ‘stories’ on the misdeeds by the personnel. This underscores the need for fostering a more candid, transparent and open door, fulfilling police-public relationship based on mutual respect and understanding of each other’s roles and responsibilities.

5. Police leadership should defeat the efforts to mythicise the corruption by adopting sound organizational strategies and innovations, especially attitudinal

change of police managers towards the media and the society. They have to develop a realistic approach towards endemic corruption in police, which no longer can be buried under the carpet or kept away from the eyes of vigilant public by enforcing the canons of the culture of secrecy or regimentation. In fact, corruption of police is not a new phenomenon, but the irony is that the issue has seldom been seized by the organization with a sense of seriousness. The British Government appointed Police Commission namely the Second Police Commission (1902-03) that looked into the working of the police had observed "one of the strongest proofs that the Commission has received of the corruption in police is the testimony of responsible parents, teachers and other gentlemen of the difficulty experienced by a young man in accepting one of the direct appointments as Sub-Inspector and Inspector which are sometimes offered. He finds himself a member of a corrupt service, he is surrounded by influences that forbid his acting uprightly, the evidence provided is that the canker of corruption affects the force in greater or less degree from Constables to Inspectors."<sup>10</sup>

6. The First Police Commission of free India (1977-1981) headed by late Dharma Vira also found rampant corruption in the police and commented "in the perception of the people, the egregious features of the police are politically oriented partisan performance of duties, partiality, corruption and inefficiency, degrees of which vary from place to place and person to person ... What the Police Commission said in 1903 appears more or less equally applicable to the conditions obtaining in the police today".<sup>11</sup> More than two decades had passed since the submission of the report by the Police Commission, but not much appears to have been done in combating corruption or other maladies in police.

7. As the popular adage goes that "Power corrupts and absolute power absolutely" two cognitive features of police viz. power and discretion give ample scope for the personnel to indulge in corruption. They enjoy wide powers while discharging the core functions of police viz. maintenance of peace and order and prevention and detection of crime and criminal activities. Similarly, police discretion is a double-edged sword that can be used or misused by the personnel on the mosaic of law and order situation. Though the personnel are bound to exercise these unique features strictly in accordance with the procedures that lay down processes and formalities, those intoxicated with tremendous powers and dominated by selfish motives can misuse them with a view to attaining private gains. Such "deviant behaviour" of the personnel appears in different forms in many areas of policing. Basically, these personnel behave rudely and are overbearing towards ordinary citizens who approach police in distress. They refuse to register FIRs of hapless citizens who otherwise should carry a recommendation from political middleman or be prepared to entertain the concerned personnel. Even if FIR is lodged, investigation or other follow up action as per law would proceed only if the subordinate police functionaries are greased by way of payment of bribe in proportion to the gravity of the complaint. Further, period payments are to be made to ensure that paper work is completed without any lapse. A small slip up in the bribe payment schedule would result in immediate dropping of the case from the priority list and inordinate delay in investigations or prosecutions. Influenced by corruption or other extraneous factors, police resort to illegal practices and procedures such as use of third degree methods, fabrication of evidence, false implication of innocent persons in criminal cases, padding or concoction of evidence to buttress or weaken cases, illegal detention, "burking" of cognizable crimes, delaying arrest of persons and

allowing them to obtain anticipatory bail thereby avoiding arrest, etc. In the case of more serious offenses like murder, rape, dowry deaths, accident cases, etc., in which the accused are poor or under-privileged, the corrupt personnel exploit them and their relatives monetarily to the maximum extent, on the pretext of helping them and bailing them out of trouble. But ultimately, they land up in jails after trial and conviction. Most of the sensational murder cases involving the rich and the influential as accused are simply hushed up and closed. Thus, Shri KF Rustamji, IP had commented "the age old belief that if you kill anyone, you will be hanged is now giving way to the new belief that if you kill anyone, you can bribe your way out or be acquitted for lack of evidence."<sup>12</sup>

8. Over the years, the corruption has spread to other areas of police as well. This was largely due to the steady expansion of the role of police in view of the enactment of a number of social and other legislations that are to be enforced by the police. "The success of any social legislation depends on the effectiveness of its enforcement and police have a protective as well as promotional role to perform in this sphere"<sup>13</sup>. However, police have many limitations on the effective enforcement of such legislations. The ambiguities in many of these legislations coupled with the police discretion "to act or not to act" in respect of certain offences under them give ample opportunities to the personnel to resort to corrupt practices during the enforcement of such acts. For example, police discretion would prevail upon all other factors when a question is to be decided whether the provisions of the 'Prevention of Sati Act - 1987' can be attracted against the relatives of a widow who committed Sati at her own will. Same is the case with a number of other offences like child labour, untouchability, immoral traffic on woman, indecent representation of women, etc., which are brought under the ambit of a plethora of social legislations. An equally disturbing trend

is the mounting incidence of corruption in police while dealing with gender issues like dowry deaths, exploitation of women, etc. Hundreds of unnatural deaths, which fall under the above categories, are closed without proper investigation. For instance, out of 714 unnatural deaths of married women below the age of 40 reported in Bangalore in 1997, 455 were death by burning. These cases were routinely classified as 'stove burst' or 'kitchen accidents' and subsequently closed as accidents without investigations.<sup>14</sup>

9. The misuse of police powers and discretion in contravention of established procedures and practices with the ulterior motive to gain "illegal gratification" is only one aspect of police corruption. Open instances of corruption by the lower ranks of the police, who are in direct contact with the public, have wider implications on the image of the police and the police-public relations. Shri PE Somaiah of Bangalore University who has undertaken a research project "Bangalore City Police: A study in organization and personnel problem", has given a panoramic account of some of these unhealthy practices: "As Civil rules in our cities and towns are not specific and definite, several types of criminal activities are carried out on pavements and open places. The police personnel especially the Constables harass and extort money from the people many times a day. In most of the places there is a deal of understanding between the street vendors and police regarding the "Mamool amount" (bribe) to be paid to the police. According to the grapevine in the police circles, money extracted from these people also reaches the higher levels. Many of the night beat constables in all the Bangalore City Police station limit immediately after reporting for duty at 9 pm rush to snack vendors and cart sellers to extort mamools which range from just 1 rupee to 20 rupees or even more. Small shopkeepers, groceries and stationery marts are not spared either. Lower ranks

take away stationery items like pens, refills, white paper, carbon sheets, ink, torch batteries and newspapers from the shops that fall in close proximity to the police station for their regular office work. At times they harass a complainant to buy these items for their official use. On the eve of festivals or when a new officer takes charge of the jurisdiction or any personnel retires from service, the constables go on a spree of collecting money and household items from certain people and shops which fall within their jurisdictions".<sup>15</sup> The city of Bangalore is not an isolated case from the point of view of police corruption, but it symbolizes the earthy realities of corruption that are glaring among the lower rungs of police personnel in almost all the mega/metropolitan cities and urban agglomerations in the country.

10. The increasing nexus between police personnel at various levels and mafia operators is another disturbing trend in most of the cities like Mumbai, Delhi, Kolkata, Lucknow, Ghaziabad, Hyderabad, etc. These mafia syndicates bribe the police and the organized crimes such as periodic extortion, kidnapping for ransom and "supari killings" committed by them go undetected. Similarly, some personnel connive at smuggling, blink at alcohol-induced crimes and wink at anti-social offences like trafficking in women, peddling in drugs, etc. The criminalization of politics and the political patronage coupled with muscle and money power enjoyed by the underworld prompt many police personnel to collude with such forces in order to make material gains. Shri NN Vohra Committee<sup>16</sup> which was constituted by Government of India in April 1993 in its report had highlighted that there had been rapid spread and the growth of criminal gangs, armed Senas, drug mafias, smuggling gangs and economic lobbies, which have over the years, developed an extensive net work of contacts with police, bureaucrats, government functionaries, politicians and media persons. However, much

could not be done yet to free out polity and governance from the unholy nexus of such groups.

11. On issues like corruption, there is dichotomy on the approach of police and public. The general public aspire an honest, impartial and professionally competent "people's police", whereas the general psyche of many police personnel is that if the public wanted the policemen to behave like London bobby, then they too should be honest, transparent, refined and helpful as the public there. Very often, police personnel put forth apparently convincing arguments such as police is a mirror of image of society or the behaviour of policeman living in a corrupt society would be the same and honesty and integrity spring from the community in which he lives. But, on a closer analysis, we can find these arguments as emotional. As the very popular dictum goes that "chastity begins at home" it is true that reforms or changes can be easily initiated in a small (as compared to society) definite, compact and disciplined organization such as police than in society as a whole. A person not less than Lord Denning had said that between the police and the public the former had a duty to change first.

12. When we discuss the coping mechanism to counter corruption and organized efforts to mythicise it, the first and foremost task should be implementation of reforms/changes, especially on organizational and personnel levels. However, such reforms should form the grass root level, i.e., the recruitment and training of police personnel. It is regrettable that in our country there is no uniformity in the recruitment of constabulary of the middle level police personnel such as Sub-Inspectors. In some states like Kerala, the constables are recruited by Public Service Commission, while in other states like Tamil Nadu by a Uniformed Service Recruitment Board headed by a Director General of Police

or Addl DGP with all the members drawn from the police force and co-opting one or two members like psychologists or sociologists from outside. The problem lies not in the status or the complexion of the Recruitment Board, but transparency and integrity of the persons undertaking the whole exercise. The recent exposure of the Punjab Public Service Commission Recruitment scandal, in which the Chairman himself was allegedly involved in corrupt practices in the recruitment to the State Civil Services including the Police create genuine doubts on the integrity of constitutional bodies like Public Service Commissions, which are now under greater political influence. The case is not different in respect of Uniformed Recruitment Boards (of police), which also resort to unethical practices during the recruitment of personnel. Unfortunately, those personnel who get appointment in the force by paying the highest bid (of bribe) to the Recruitment Boards or their agents strive to recoup the bribe money from the very day they join the service. Such unhealthy trends, which breed corruption in police organization can be countered only by ensuring transparency in the recruitment process, for which the police hierarchy and government should work out joint strategies. Improving the image of Public Service Commissions by inducting persons with proven integrity and honesty, inclusion of retired judges or management experts in the department level Recruitment Boards, entrusting selection test/examination to independent professional agencies, etc., are some viable mechanism to ensure transparency during recruitment.

13. Another equally important area is training, which inculcates proper attitude and modifies undesirable one among new recruits. But, police training is in a pathetic stage in the country. Except a few premier institutions like National Police Academy, Hyderabad, majority of the police training establishments in the states are ill

equipped in terms of infrastructure and resources and also handicapped due to poor level of human resources. An unfortunate trend in respect of these institutions, especially those engaged in the training of lower and middle ranks in many states is that they cannot inspire and motivate the new recruits in line with the mission and objectives of the organization. Instead, the adverse 'imprints' that are created in their minds during the training period due to the lethargic, indifferent and overbearing attitude of some training instructors reappear in the form of unhealthy traits such as lack of integrity, corruption, etc., during their active service.

14. It is often said that the general working environment, poor salaries and lack of financial incentives force public servants to adopt corrupt practices to make both ends meet. Though there is some truth in this argument, corruption basically is 'habit forming' and once an officer starts taking bribe, he develops this as permanent habit and explores all modus operandi to amass wealth by hook or crook. But, in organizations like police, where large number of personnel become coarse and turn cynical due to stress, strain and frustration of law enforcement profession, the improvement in their working conditions, pay and other facilities would have positive impact in curbing corruption. Thus, it is necessary to take a new look at the work environment and style of management for the police organization and see how it can be moulded into a more humanistic professional and service oriented department. A number of innovative mechanisms can be thought of in this regard. The Human Resource Development in the police units through 'micro-economic governance'<sup>17</sup> by involving police personnel and their families in sustainable development schemes such as Police Public School, Banking/Co-operative institutions, IT Kiosks, housing society, horticulture and production units like police garments, bakery, etc., would help to enrich the

quality of living of the members of police organizations. Most of the police units in Madhya Pradesh have successfully implemented such schemes. Similarly, a police hospital with all modern facilities and staff in all the state capitals on the pattern of military hospital for the treatment of serving and retired police personnel and their dependents and police departmental stores in all district headquarters to supply provisions and house hold items at subsidized rates would help to increase the police morale. A system of monetary incentives like rewarding the police personnel an amount of money equivalent to 5 to 10 percent of the total value of stolen or recovered property will motivate the personnel to give their best during investigations leading to greater professionalism and reduction of corruption, etc.

15. The success of such innovative mechanisms depends on the attitude of police leaders who wield substantial powers in the organization. Two aspects are vital in this regard. Firstly, there should be effective decentralization of powers and functions at various levels of police administration. Secondly, the police organization should be transformed into a horizontal one with more flexibility, fluidity and individual innovativeness and initiative so that there would be meaningful deliberations and interactions at all levels of the force. Simultaneously, efforts should be made to redefine the core areas of policing and identify and delink those duties and tasks that give ample scope for the lower rungs of police to resort to corrupt practices. Very often there are allegations of rampant corruption among traffic police personnel in booking false cases and slapping fines on motorists, especially two-wheelers, taxis, rickshaws, etc. The function of traffic management may be delinked from the police department and an exclusive traffic management department can be constituted with thorough overhauling of existing rules and regulations. Similarly, the police can be dissociated from the other duties like

passport verification, enforcement of local laws such as Excise Act, etc.

16. Delay is attributed to be one of the main causes of corruption. The Santhanam Committee noted that administrative delays are one of the major causes of corruption and quite often, delay is deliberately contrived so as to obtain some kind of illegal gratification. "Speed money" is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licences, permits, etc. Police organization is not an exception to this general trend. For example, in many police stations, registering a complaint, especially by a poor or less privileged person has become a big problem. In such cases, a complainant will receive due attention only if he pays a bribe. Another disturbing trend is the improper or delayed investigation in respect of major offences like murder, rape, dacoity, etc. This will not only destroy the vital clues and the evidences, but also lead to large number of acquittal of cases. The innovative schemes such as encouragement to maximum registration of cases, departmental action against those officers encouraging "burking" or introduction of special rewards or medals to the personnel who conduct maximum number of investigation of cases with conviction in the court, etc., would help to improve the overall functioning of the police. For example, Punjab Police, which had introduced such mechanism in Patiala district, could achieve spectacular results with regard to free registration of cases and their speedy investigation<sup>18</sup>. The total number of cases in the district, which was 2,978 in 1988 had increased to 5,752 in 1999. Another notable achievement was the greater involvement of constables and head constables in the investigation/inquiry tasks under the close supervision and monitoring of sub-divisional police officers. The empowerment of police constables, who constitutes more than 80 percent of the total force, would help

to improve their motivation and productivity level.

17. The police leadership should take firm steps to eliminate corruption in the force. The process of cleansing has to start at the top echelons, which should not only be honest, but should ensure honesty at lower level. In a disciplined organization like police, the basic responsibility of curbing corruption vests with the senior officers. In the current scenario, they should seriously exercise this task. They should ensure active functioning of internal vigilance set up which can take care of preventive vigilance to a greater extent. It is important in this context, to reiterate the statutory guidelines, which are already in existence and issue new ones wherever necessary. These guidelines should be practical and sacrosanct. The self-regulatory mechanisms, which have become dysfunctional, have to be strengthened after successfully identifying and updating them. Another concept, which needs consideration, is that a graded scale of punishment be meted out depending on the status of policeman found involved in the corruption. Some state police organizations have already introduced mechanisms in vogue in this regard. For example, Kerala police has recently initiated steps to link up transfer and posting of personnel with their attitude, behaviour pattern and professionalism. Adverse traits such as involvement in corruption, rude and indecent behaviour towards public, etc., would be incorporated in the Annual Performance Appraisal of personnel, which would form main criteria during posting/transfer, etc. A move is also in the offing to constitute a Police Review Board with the inclusion of members outside the police with a view to objectively assessing the professionalism of the personnel and to work out remedial measures to refine the police.

18. There is some misconception in certain quarters that effective anti-

corruption drive would demoralize the personnel and adversely affect the police image. But, the reality is that prompt action against the corrupt personnel will have wholesome deterrent effect. The 'anti-dote' to the prevention of folklore of corruption lies in such stringent action to putdown corruption at all levels. This would also help contain the conscious efforts by organized groups or critics of police to mythicise corruption with a view to discrediting and demoralizing police at cutting edge level. The police leaders should take initiative to demolish the walls of the "Culture of secrecy" in the force without prejudicing the investigations and subsequent judicial proceedings. In fact the "closed mouth" and "no comment" policy of the police organization has been exploited by the media and the public for 'police-bashing'.

19. The National Police Commission had examined these issues at great length and made a number of recommendations to harmonise relations between the police and the media. The Commission had strongly advocated the sharing of as much information as possible (by the police) with the media so that the tendency of the latter to come out with highly exaggerated stories on every omission and commission of the police can be effectively curbed. It had also suggested that Dist. Superintendent of Police (DSPs) should be empowered to deal directly with the press, while the police station should be permitted to furnish routine statistics such as a number of cases registered, arrests made, etc. In the current scenario, the endeavour of police hierarchy should be to establish 'mutual code of honour' between the police and the media by appreciating the role and responsibilities of the both so that their interests and of the public that are ultimately served by the both, would be well protected. Side by side effort should be made to bring the police closer to the public. Public talks, seminars, symposia and workshops on different aspects of police

administration will help to project the real image of police with more transparency. Reputed local NGOs and community liaison groups should be involved in such programmes. They should be used as effective channels for sensitizing the general public on various aspects of police functioning and their constraints. The concept of Community Policing (CP) becomes relevant in this context. As the concept is basically a philosophy of client-oriented effectiveness of police by focusing on problem solving, experiences and perceptions of citizens on policing issues such as corruption should be properly assessed while formulating long term strategies and planning as part of problem oriented policing. Such proactive decentralization approach with the active involvement of citizens at grass root level would act as a major deterrent against corruption and other maladies in police organization.

20. Corruption seems to have become a way of life in the country. Though the quantum of corruption in police is not as high as that in several other departments, its extent is quite wide spread and the consequences are more serious. The cancer of corruption in police very often jeopardizes constitutional governance and acts as catalyst in the violation of Civil and Human rights of the citizens. The fact that bribe giver is often in distress and the capacity of the personnel to use or

misuse their powers and discretion to extort bribes leads to wide spread propagation of the image of police as the most corrupt wing of the State. The lack of consonance between the empirical existential reality of police and its cognitive perceptions in the public mind also contributes to the crystallization of such an image, which to a great extent is the product of hearsay and media built stories. A police force whose image is corrupt and partisan is bound to evoke negative feelings among the public and cannot effectively enforce the role of the law in a democratic set up. Thus the major task of the police in the new millennium is to refurbish its image for which reforms at organizational and personnel levels are imperative. A number of innovative mechanisms focusing on the attitudinal change of personnel especially the constabulary and pro-active schemes to harmonise the relations between the police and the public/media are vital to combat corruption in police vis-à-vis organized moves to mythicise it. The success of this programmes depend on the attitude of police managers who wield considerable powers in the police organization.

#### REFERENCES

- 1) The Santhanam Committee was appointed in 1962 when late Lal Bahadur Sastri was the Union Home Minister
- 2) Quoted from the annual report of Transparency International

- 3) From the report of Santhanam Committee 1964
- 4) Quoted from Gunnar Myrdal-the author of 'Asian Drama'
- 5) Corruption in Public Services in India by Sri Sankar Sen
- 6) The Statesman, Delhi (January 1990)
- 7) Pro-active techniques tried out for improving performance of police – Shri UNB Rao, IPS
- 8) Police Today by Shri Shankar Sen
- 9) Ibid – Sl.No.8
- 10) From the Second Police Commission Report (1902-03)
- 11) From the report of National Police Commission (1977-1981)
- 12) Quoted from the Article 'Police and Policing in India' an overview by Shri KF Rustamji
- 13) 'Role of Police in a changing society' by Ms Aparna Sreevastava (APH Publication, New Delhi).
- 14) 'Through blazing darkness' Deccan Herald/Spectrum – July 9, 1999
- 15) Quoted from 'Bangalore City Police – A study in Organization and personnel problem' by Shri PE Somaiah, Bangalore University.
- 16) Sri NN Vohra Committee was constituted by Govt of India in 1993
- 17) Quoted from an article 'Micro Economic Governance' by Sri Rajendra Mishra, IPS
- 18) Quoted from the article 'Reform initiative in police at district level' by Shri HS Sandhu, IPS

# DOES THE INDIAN POLICE NEED AN ETHICAL FRAMEWORK

Jayanto N Choudhury

**T**he reputation of the Indian police leadership took a beating in 2003. Images that will haunt this generation of police officers were the arrest of CP, Mumbai in the Telgi scam, a DIG of CBI led away in handcuffs on charges of corruption and an IGP wanted for murder. Earlier, top police officers have been arrested for involvement in recruitment rackets and demanding payments for transfers. Senior officers have also been accused of other sins of omission and commission, whether deliberately remaining inactive (or partisan) during riots, fake encounters and participating in or turning a blind eye to the torture or killing of suspects.

## A QUESTION OF ETHICS

Is ethics a relevant issue in contemporary society? This is 'kaliyug' after all, when ends are more important than means. If many of today's rulers do not follow the path of 'rajdharm', how can police officials be expected to work within a framework of ethics? Generals have been caught on camera, trading their honor for Blue Label. Many captains of industry and commerce believe that anything goes so long as it makes a profit. The black economy today is estimated to have reached hundreds of thousands of crores. The burgeoning of vigilance machinery in the public sector has had little impact



on the scale and spread of corruption at all levels. Today's social icons boldly proclaim that 'anyone who isn't corrupt lacks either the opportunity or guts.'

This article is not about corruption. Instead it asks whether there is a need for ethics in policing, explores some specific issues that generate ethical dilemmas in policing, and finally proposes a focus on ethics from the training stage.

### CLASSICAL ETHICAL CONCEPTS

**C**lassical ethics in the West has ranged from the concept of Plato concept of an 'absolute good' to the Aristotelian belief that good actions or good persons could be judged only in a particular context. Socrates' view was mid-way between these extremes. He held that happiness, as the goal of human life, was not the outcome of wealth, power or reputation, but in living a life that is good for the soul. The key to human happiness is, therefore, the development of a rational moral character.

Indian philosophies reflect a similar divergence. The Ramayana represents a belief in 'absolute good', with Shri Rama as the archetype of ethical conduct. Right conduct is a continuum that has 'sadachar' or the embodiment of 'dharma' (Shri Rama) at one end and 'atyachar' or demonic conduct (Ravana) at the other. The Mahabharat represents a more pragmatic approach to ethics in an imperfect world. This accepts a degree of elasticity in ethical standards in order to overcome evil. Other philosophies like Buddhism stress on right conduct as the path to 'nirvana' or salvation.

### NEED FOR ETHICS IN POLICING

**T**he profession of policing is one that is essential to the functioning

of society, like the professions of healthcare or education. That is why the police have been entrusted with a monopoly in exercising the authority of the state in depriving an individual of his liberty, using force when necessary against the state's own citizens or invading his privacy. Often working far from oversight by superiors, the courts or other public authority, the discretionary power of even the lowest levels in the police is indeed overwhelming. This vast discretionary power and the old predicament, "who will guard the guardians", makes imperative the need for a framework of values and professional ethics to guide the police in their dealing with citizens.

### ETHICAL CHALLENGES IN POLICING

**L**et us now examine situations when a police leader could face an ethical dilemma. No attempt will be made to offer 'right' answers, this being left to the reader.

1) Obedience versus professional competence. Consider a situation when a police leader is ordered by his official superior to execute an order that in his judgement would result in a disaster. Should the police leader obey, if the professional superior persists even after he is briefed regarding the possible consequences? What if the police leader knows of certain factors unknown to the superior, that makes it possible to achieve the actual objective of the order only by disobedience? How can the benefits of disobedience of operational order on grounds of professional competence be weighed against the disruption of hierarchy and discipline?

2) Conflict between obedience and political direction. In case of a conflict between professional competence and political direction, the situation is more straightforward. Unlike in the case of a professional superior, the political

superior cannot presume superior professional competence in operational matters. However, is the police leader justified in resisting political as against operational direction that he knows will lead to catastrophe and has presented his views? Since the political leadership in a democracy represents the will of the people how can their political wisdom be challenged in the accepted framework of governance?

3) Conflicts between obedience and legality, and obedience and basic morality. What does a police leader do when he receives an order, which his political or administrative superior does not have the legal authority to issue? If the authority recognizes he is acting illegally, obviously the police officer is justified in disobeying. He is after all the servant of the state only in the case of legitimate authority. What if the boss claims to be acting legally, but the action seems illegal to the officer? When there is the opportunity to refer the matter to legal experts, the police officer can of course defer to their opinion. When this is not possible, is the police officer justified in making a decision based on his judgement?

What if there is a conflict between obedience and basic morality? How can the police leader surrender his right to make moral judgements even if the political authority cites *raison d'état* (reasons of state)? The stark choice confronting the police leader is to follow his own conscience or justify his actions on grounds of the good of the state or his professional duty.

4) Conflict between means and ends. Police officers often face the dilemma of whether to use wrong means to achieve good ends. In the interest of protecting society – 'the greater good', is it all right to plant evidence so as to implicate known terrorists or narcotics dealers? Is it acceptable to record false statements or give false statements under oath in court (perjury) to secure

the conviction of known criminals? The most extreme cases are when dreaded terrorists and violent criminal like dacoits are eliminated because it is difficult to secure evidence to convict them. Conforming to the strict technicalities of the law could leave the terrorist or criminal free to kill again or to prey on society. However, supporting illegal actions violates the very laws that the police are sworn to uphold. Should the police over-step their role as enforcers of the state's laws, to become 'judge, jury and hangman' in order to protect society when the legal system is perceived as inadequate to do so?

5) Torture of terrorists. A conundrum that best presents this is the 'ticking bomb dilemma': a captured terrorist knows the location of a ticking time bomb that threatens hundreds of innocent lives. The only way to prevent this mass murder is to torture the terrorist into disclosing the location of the bomb. There is no time for reflection; an immediate decision must be made. Does the good end of saving innocent lives justify the wrong means of using torture? Can use of third degree ever be rationally justified by the principle that 'necessity knows no law' ?

## A PROFESSIONAL ETHIC

**C**orruption is not discussed since it is not a moral dilemma like the issues above. Any police officer who takes pecuniary advantage in exchange for official favours, is unequivocally doing so for self-interest not for the 'greater good'. The ethical issues described above are the real dilemmas that police officers face everyday when deciding whether an action will achieve the goals of their profession, like protection of the general public from criminals or maintaining social order. What makes such decisions difficult is that there is no articulated professional code of ethics to guide the police officer. It is easy to be a moral opportunist and

use unethical conduct as a means of career advancement. Many who fall by the way side are morally weak-willed or self-deceivers who plead that they were only 'following orders' or that such actions are part of 'police culture'. Integrity requires a leader to have a coherent and stable set of core principles that are important to achieving the goals of the organization. The Hippocratic oath of the medical profession states: *Primum non nocere* – "Above all, not knowingly to do harm." This is the basic rule of ethics of public responsibility. No professional, whether doctor or lawyer, can assure a cure or acquittal. All he can do is try honestly and to the best of his ability.

The skill of the physician is diagnosis and treatment; his responsibility is the health of his patients. The skill of the police leader is management of the authority delegated by the state; his responsibility is responding to crime and disorder for his client, the society. His conduct in relation to society is guided by awareness that the delegated authority of the state can only be utilized for purposes approved by the state through a complex of matrix of law, regulation and tradition. He cannot impose decisions upon the state that have implications beyond this field of competence. However, he also has the role of expert advisor to the state through its political leadership to explain what is needed to meet his responsibilities, how to meet these needs and once the political agent of the state has made decisions, to help implement these decisions.

## RESPONSIBILITY OF POLICE LEADERSHIP

**P**olice leadership has a special responsibility to evolve such a code of ethics. As a member of a leadership group, police officers particularly the IPS enjoy considerable status and authority.

There is, therefore, a reciprocal responsibility of regulating decisions within a framework of professional ethics. The methods of exercising the authority of the state are intimately related to the cultural pattern of any society. Modern policing skills, therefore, require not just knowledge of the law, but merges into history, politics, economics, sociology and psychology. It also shares frontiers with scientific fields like chemistry, physics and biology and advances in modern technology. A police leader cannot develop required analytical insight and judgement if he is trained simply in the technical enforcement of law. His constant dealing with human beings requires him to have a deep understanding of human attitudes, motivations and behaviour. Such abilities can be acquired only through learning outside his profession. These intellectual skills and sense of professional responsibility are the only qualities that differentiate higher police leadership from the rank-and-file and subordinate ranks. If there was no such difference, there could be a single hierarchy from the junior-most constable to the highest rank. That is why the education and training for senior police services are designed separately from that for other levels.

## CAN ETHICS BE TAUGHT ?

**S**ome IIMs (IIM-C) have a separate course on business or corporate ethics. LBS National Academy of Administration has a Center for Ethics in Governance. Effective education in ethics can offer guidelines on how to evaluate moral issues. In Plato's Republic, the wearer of the ring of Gyges is rendered invisible. Once he knows that he can use it without getting caught, the shepherd's Gyges kills the king of Lydia and then rapes the queen. Plato uses this fable to present two contrasting views on ethical conduct. The first, that anyone in the shepherd's

position would be foolish not to take full advantage of the power of ring, since it gives the wearer the ability to do wrong with impunity. Anyone possessing such a ring would have no rational reason to do good. Justice is, therefore, merely a system of checks on the natural inclination of people to indulge their desires even when it involves wrongdoing. The contrasting view is that people act ethically because they know and believe in morality, not because of fear of getting caught. The moot issue is whether the integrity of an individual provides a 'moral compass' that distinguishes between right and wrong. If this is accepted, only sociopaths are amoral since they cannot distinguish between good and evil.

Modern research postulates that ethical conduct is part of the personality of an individual, but positive ethical conduct can be learned and reinforced by factors like peer pressure. It is true, however, that the effective time to teach ethical conduct is in the formative years and those who display a lack of ethics in childhood, often have problems with integrity as adults. Though people's behaviour can change, and fear of exemplary punishment or peer censure has sometimes deterred habitual behaviour, effective change usually

takes place when the person has a clear goal and incentive for changing.

Accurate personality tests are yet to be developed that could help in recruiting those with a predisposition to ethical conduct or rejecting those with sociopathic traits. If we adopt the 80:20 rule, we can expect about 20 percent people to be pre-disposed to unethical conduct. Another 20 percent may just be morally and mentally lazy and cannot be bothered about thinking ethical issues through. The remaining 60 percent are likely to benefit from training efforts. Once aware of an ethical code, that is accepted as the basis of their professional conduct and of methods that help differentiate the ethical from the unethical, the majority will work towards maintaining the highest possible ethical standards.

The impact of ethics training in educational institutions like the IIMs or LBSNAA is yet to be usefully evaluated. In any case, training cannot implant an ethical code in individuals that guides leaders to right action. All it can do is introduce concepts in psycho-philosophy and emphasize critical thinking skills, reasoning ability, and problem-solving techniques, with the right blend of theoretical and practical

content. Despite these inadequacies, it is important that premier training institutions for the Police like SVP National Police Academy take the lead in initiating informed discussion on ethical issues in policing from the basic course onwards, perhaps in tandem with institutions like IIM-C or LBSNAA. It can also look to a state like Maharashtra or a CPO like CBI to fund a Chair for the Study on Ethics in Policing. Will such academic exercises make Police leaders more ethical? Perhaps, or perhaps not. What it will develop is a general sense of collective professional responsibility of the IPS that is essential to its role and responsibility as the highest leadership level of the Indian Police. What can be a more significant training outcome than this?

#### REFERENCES

- 1) The Passion of the Western Mind: Richard Tamas – Published by Random House Inc.
- 2) The Soldier and the State: Samuel P. Huntington – Published by Harvard University Press
- 3) Management: Peter Drucker – Published by Harper & Row
- 4) Shouting Fire – Civil Liberties in a Turbulent Age: Alan M. Dershowitz – Published by Little, Brown and Company.

*"If he really thinks there is no distinction between virtue and vice, why sir, when he leaves the house, let us count the spoons."*

Samuel Johnson  
Letters

## MALIMATH COMMITTEE

PR Parthasarathy

**T**he Malimath Committee report was submitted in April 2003 with its recommendations on reforms of Criminal Justice system in India. It evoked mild squeaks and protests in the media for a couple of days and after that did not figure much to the extent to provoke a debate as it should have done. But strange though it may sound, The International Commission of Jurists, Geneva and the Human Rights Law Network, New Delhi jointly organized a conference on the 9<sup>th</sup> and 10<sup>th</sup> of August 2003. The paper prepared for this conference says that the objectives are as follows. One, to give a preliminary response, two, to highlight the problems and lacunae with regard to the major recommendations and three, to raise a debate within the legal community with a view to achieving a criminal justice

reform based on dignity and human rights. The manner in which the internationalizing a purely national problem has been attempted appears to be a manifestation of the fear of the status quoists who are concerned about the human rights but not the human responsibilities.

While Justice Malimath has indeed highlighted the fact that the system devised more than a century ago has become ineffective and his report touches a very wide spectrum of issues connected with the India's Legal System, what comes out very prominently is his emphasis on "truth" and its inevitable impact on "Justice". This starts at the Preamble stage itself. Of the three parts of the Preamble two pertain to the "Quest of truth".

Though he has not spelt it, truth today is the biggest casualty in the courts and the provisions relating to punishing people for perjury are hardly if ever invoked. So, he has rightly gone about making efforts to bring about changes in this area.

One does not know how to react to the oft quoted maxim that 'Justice is truth in action'. Let us take the recently decided Bakery case. There were 41 witnesses for the prosecution. All of them turned hostile which means they resiled from the statements that they had made before the investigating officer and did not support the prosecution's case. Strange though it might sound just two out of them were pitchforked and they said that they did that under fear and duress. This did not happen with the other 39. It is not unlikely that they too went back on their statements for similar reasons. Making three different statements at three different stages, will discredit any witness and a fourth version in a retrial at a far away place as demanded will not change the situation. Retrial of an acquittal case is unlikely to produce a different result that can hold good till the last stage of appeal. At least not under the present Criminal Justice system. If anyone should know this, it is the National Human Rights Commission which has unfortunately joined the chorus demanding a retrial.

As the law stands today, the trial judge pronounced the judgement of acquittal "on the basis of evidence that was produced before him in the court". That is the crux. Regardless of the elusive concept of perjury being an offence, compare the number of witnesses turning hostile to the number of people taken to task for perjury. The ratio will be a million to one (even that one is doubtful).

This is because it is so very easy to resile from the statement made earlier. If the witness who has to be tampered

does not know this there are people to put him wise. And the present law facilitates it and the players in the criminal justice system, each in his own way exploiting it makes justice becoming analogous to the will of the wisp. It is not that the judges do not realize that the witnesses are lying. It is not that the lawyers are not aware of it either, even in the event of their not having played a part in coaxing, advising, pressurizing or threatening the witness - personally or through emissaries. The comments of the former Chairman of the Bar Council of India are very telling. And how does society respond to this sad state of affairs - with apathy and indifference mostly - cynism and dismay playing a miniscule part if at all in the case of a negligible few.

Let us recall the famous case of JMM in which the ex-PM was implicated. The CBI, the premier investigating agency investigates the case under the gaze of the court. One day one of the top industrialists is supposed to have made a statement about having offloaded a huge sum to the concerned. Later, at the appropriate stage he denies having made that statement without batting an eyelid. In the JPC report on Harshad Metha scandal some of the MPs appended a separate note and said among other things "witnesses, bankers, brokers, public sector executives, bureaucrats and businessmen were quick to discover that they could bluff their way out of the witness box with impunity and aplomb. What a sad commentary? The situation in the criminal courts trying cases involving moneyed or otherwise influential accused persons is no different. This will indicate what happened in the "Bakery" case.

Coming back to Malimath report, he has tried to some extent deal with the "bluffing their way out with impunity and aplomb". He has recommended that Section 162 Of the Criminal Procedure Code should be

amended to require that the statement of the witness "should then be read over and signed by the maker of the statement and a copy must be furnished to him".

Almost half a century ago, the Law Commission in its 41<sup>st</sup> Report, had said the same, but it did not see the light of the day. Why because you cannot trust that the investigating officer would not have played foul and forced the witness to sign the document supposedly the statement made by him. The National Police Commission recommended more or less the same but for a different reason - that the investigating officer will not have a chance to tamper with the statement once made and signed. And the witness was in any case supposed to be supplied with a copy. Sections 161 and 162 only say that the police officer may examine orally any person supposed to be acquainted with the facts of the case and such person shall be bound to answer truly all questions put to him. This will be reduced into writing but shall not be signed by the witness making the statement. This is what facilitates witnesses - like all of them in the "Bakery Case" to turn hostile or for that matter the witnesses from the elite segment of the society also to do the same with impunity and aplomb - which is happening every day in the lower courts where trials are being held and witnesses examined. So a simple solution that the statement of the literate witness should be signed so that when he is shown his statement bearing his signature he will at least not go back on it with "aplomb" is unacceptable to the status quoists.

Justice Bhagwati while dealing with Nyay Panchayats had said that the Nyay Panchayats would be able to discover the truth more easily than the ordinary courts and it was not necessary to follow the adversarial system. "It is self evident that the possibility of perjury is largely reduced if the venue of enquiry is nearer the place of occurrence and in

the presence of fellow citizens. The witness may without much reluctance perjure himself in the witness box in a court some distance away from his village but would hesitate considerably to tell an untruth in the presence of his fellow citizens who know all about what in fact had happened". Well this may still be applicable to the lower classes of people who generally abhor falsehood. But if it is the elite segment of the society, they on their own or backed by legal counsel resist because of both lack of conscience and convenience. Justice Bhagwati too emphasised on "requirements of natural justice and the search of truth" and "no technicality should be allowed to stand in the way of discovering the truth". Truth and nothing but the truth-but what is one to say about our experiments with truth? When witnesses lie in the court it does not hurt their conscience or that of the members of the Bar or the Judiciary who know perjury is being committed as the Criminal Justice system stands today. Nor are they hurt in any other manner for telling lies on oath, though Justice Malimath has made recommendations to amend the law to enable the trying judge to resort to summarily deal with perjury before him. Once lying witnesses start getting punished one will see the desired improvement.

A word about the admissibility of the confessions made before the police officer - dealt with by Section 25 of the Evidence Act. Justice Malimath has recommended the amendment of Sec 25 of the Evidence Act on the lines of Section 32 of POTA. This is too strong and will not be digested by the judges as well as the members of the legal fraternity both of whom have the same mindset. However, I reproduce the relevant portion of the report of the Select Committee on the Draft Bill of the Evidence Act on the 31<sup>st</sup> of March 1871, "We have not thought it necessary to transfer from their present position in the Code of Criminal Procedure the rules as to the confessions made to the Police.

This appears to us to be a special matter relating rather to the discipline of the police than to the principles of Evidence". The mindset then and the mind set now ossified due to the passage of over a century has not undergone any change. And what has discipline to do with confessions?

Justice VR Krishna Iyer had said "Every legislation, when times and conditions change in society, needs revision so as to cope with the new challenges. Justice Malimath has also advocated a revision every fifteen years. But when the recommendations in the 41<sup>st</sup> Report of Law Commission is gathering dust along with several such recommendations, it is futile to expect that the Law Makers will show enthusiasm in amending the Law which suits those dealing with the Criminal Justice system. Vested interest and the present legal system that has tied itself in knots of technicalities will ensure status quo. More particularly when the Law making body is getting filled up with more and more persons who have criminal cases pending against them no such sensible and desirable amendments will find favour. That will be as good as recommending Harakiri. Seen in that light the recommendation of Justice Malimath". In a criminal proceeding, the fact that the accused has a bad character is relevant. Explanation A "previous conviction is relevant as evidence of bad character" does not meet the requirement of today's society. Because like the accused in the "Bakery" case if people are not convicted at all the question of their being referred to as bad characters does not arise. This particularly applies to mafia chiefs, the underworld adulterators and the present day Robin Hoods that brings us back to where we started. Justice is truth in action. Take away truth or even damage it a little and justice is unattainable.

The words of Justice Chagla in his book "Roses in December" are worth reproducing. "I was however morally certain that the accused was guilty of

taking the life of an innocent child, but here was a case where law and justice did not coincide and I had to acquit the accused which I did most reluctantly. Administration of the Criminal Justice System in India is such that there must be countless number of judges who must be feeling the same way".

## REPORT ON TRIAL

The media reports that the Bar Councils and the Advocates are opposing the recommendations of Malimath Committee report does not come as a surprise. Generally the human tendency is to resist change. Malimath Committee tried to set right the anomaly of over 150 years. He stated in his report that "the Criminal Justice System devised more than a century back, has become ineffective, a large number of guilty go unpunished in a large number of cases, the system takes years to bring the guilty to justice and has ceased to deter criminals". He also added that not only crime was increasing day by day but types of crimes are also proliferating. Malimath considered the pros and cons of the systems of Justice available and for valid reasons has advocated that we stick to the Adversarial System as fairness to the accused is better protected under this system than the Inquisitorial System prevalent in France, Germany, etc. He, however, felt that some of the good features of the Inquisitorial System can be adopted to strengthen the Adversarial System to make it more effective.

Among the various criticisms levelled was that most of the recommendations undermined the basic principles of criminal jurisprudence. They further said that recommendations relating to confession to police officer, burden of proof beyond reasonable doubt, presumption of innocence, right to silence and extension of period of Police custody could not be accepted. Justice Ahmadi too joined the chorus in a Seminar held in August last and

characterised the report as basically pro police and went further to question Malimath's expertise in the area of criminal law saying that he had no experience of the trial court work.

The basic principles of Criminal Jurisprudence that they talked about was the Anglo Saxon jurisprudence that we borrowed from the British. It is not known whether they are aware of the moves to change the system in England itself where we borrowed it from. They felt that in an evolving society the legal system should keep adapting itself to the changing needs. When British Prime Minister, John Major came out with what is called the "Back to Basics" theory there was some element of objection by the British Parliamentarians. But the basic premise that "Crime is not just a problem for the well to do. It often hits hardest the people who have the least" was not objected to. The British Government with UK being the fountain head of the Anglo Saxon system contended "Defendant's right to silence" will be modified, allowing courts to draw an inference from the suspect's refusal to answer questions in a police station or during the trial. It was also stated that the Government had decided to act thus after pressure from the judges and police officers who complained that the balance of criminal justice system had moved too far in favour of the defendants. We have to understand that these developments in the UK took place exactly ten years ago. Therefore, there is nothing sacrosanct about the so called principles of Criminal Jurisprudence if the Criminal Justice System is collapsing. The victim having a say to safeguard his interests was also given recognition at that stage in the UK.

Now, why are the Advocates protesting the way they are doing now? Why should the Bar Council of India give instructions to the state units to mount pressure? Why should the retired Chief Justice air views the way it was

done. Why is the International Commission on Human Rights pitch in? And none of these agencies would contend that the Criminal Justice System is in good shape. In the first place, their minds are all attuned to the system that has been in vogue since the days of Macaulay and they would not like to accept that there can be another way to effectively deal with the problem of crime and criminals. Secondly they are all status quoists. Thirdly, and most importantly they are having it good under the present system which is acquittal oriented (another way of saying "too far moved in favour of the defendant"). If the present system is being obsessed with protecting that "rare innocent" (to borrow the words of Justice V R Krishna Iyer) and allows most of the accused to go scot free, which means that all the Defendants' Lawyers are benefitted by the system which is their bread and butter. Well, in the legislature it is not going to be different because people with the same mindsets will create obstructions. Why try and meddle with this and try to seek out a more effective system? After all in a system in which criminal record means previous convictions, which are hard to come by and more and more "so called respectable people" increasingly facing trials you stand to benefit by the present day system "which allows a large number of guilty persons go unpunished" in the words of Malimath, it is probably unrealistic to expect those who can bring about a change no being particularly enthusiastic. If and when their bread and butter is under jeopardy the Lawyers do make noise. For example, it would be worthwhile recalling who starts protesting first as a body whenever Martial Law is proclaimed and normal legal procedure is held in abeyance depriving the lawyers of what they deem to be "their share".

There are thus going to be several stumbling blocks. The statement of Arun Jaitley, taking part in the seminar held in Delhi in August last that a

number of recommendations made by the Malimath Committee and the Law Commission were being considered at the highest level, including the law relating to hostile witnesses must be causing discomfort to the status quoists. The Law Minister, who is also an eminent criminal lawyer further stated that he, along with the Law Commission had given a presentation on the manner in which the Criminal Procedure Code can be amended to effectively deal with the problem of hostile witnesses resulting in miscarriage of justice. After all, Malimath had recommended precisely that viz., to give due and proper consideration to the various Law Commission reports and the recommendations of the National Police Commission over twenty years ago. Further, he not only emphasised that the 150 year old codes were no longer valid to deal with today's India, as over a period of time the Law and Legal procedure has been misused by the various agencies connected with the Criminal Justice system, but suggested that a review be undertaken every fifteen years. How one wishes that the legal fraternity is not myopic and sees the larger interest of the society!

Malimath has made several recommendations which, if implemented will go a long way in making the system effective. The inherent vulnerability of the anachronistic Criminal Codes, exploited by the resourceful lawyers and criminals with resources have made a mockery of the system. As for the judges they have to willy nilly operate within the framework prescribed by the Legal System. Though this applies to the Bar as well, they seem to have discarded strict adherence to the ethical codes if one goes by seeing what is happening in cases like the "Best Bakery".

Malimath has shown the way to get out of this impasse. The advocates

and the retired Judges are refusing to shed their blinkers, and to look at things with an open mind in the interests of the society at large. Long winding judgements which are merely skirting around the point at issue but not grappling with it due to the technicalities in the procedure and obiter dicta which by themselves might be literary gems but not of use to the cause of justice are all of no avail. The gap between morality and legality should be as narrow as possible if it has to be there at all. Ideally, they should merge and become one. Similarly, we should not face the present

day problems with century old tools. The post independence era has brought in a host of Economic Offences and the normal IPC/CrPC/Evidence Act methods leading to delayed investigations by the investigating officers who are ill equipped to handle them, followed by tardy trials do not satisfy the victims or complainants. They are interested in the recovery of the financial damage done. They are not interested in the accused going or not going to jail. Ask all the victims in economic offences and this will be clear. Malimath has tackled that problem as

well. He has also touched upon compensations as well as punishments to the victims and perpetrators of bigamy. He has touched upon the offences relating to women and children. He has shown receptivity to the present day problems and has dealt with the problems and suggested solutions, relating to all agencies involved in the Criminal Justice System.

To associate with any attempt to bury that report dubbing it as “pro police” will be not just denial but contempt of Justice.

*The mind like a mirror  
is brightly illuminating  
and knows no obstructions,  
it penetrates the vast universe  
to its minutest crevices.*

*All its contents,  
multitudinous in form  
are reflected in the mind  
which, shining like a perfect  
gem, has no surface,  
nor the inside*

- Yoka Daishi



# COMBATING THE DRUG MENACE BY COMMUNITY PARTICIPATION

N Venu Gopal

**K**ullu district is located in central part of Himachal Pradesh with an area of 6500 sq kms. This district was popularly known as “Dev Bhoomi” since several hundred years. However, in recent times, Kullu District has acquired a bad name of “Drug Bhoomi” because it has transformed itself into a hub for drug production, trafficking and consumption.

## MAGNITUDE OF THE PROBLEM

**O**ne can comfortably say that more than 16 percent of cultivable area of Kullu district is under direct or indirect cultivation of illegal Narcotic crops like poppy or cannabis sativa.

Narcotic problem of Kullu district can be broadly classified into three dimensions.

Dimension One, is organic drug which is Hashish oil and high quality Hashish often with THC content exceeding 15 percent. Just because of its super fine quality with high THC, this product is in great demand in countries like Isreal, Italy, Holland and UK. More than 60 percent of this breed of drug is smuggled outside the country for its final destination in countries mentioned above. Rest of which are finding its final reach in Kathmandu, Goa or parts of middle east.

Dimension Two, is illegal cultivation of Poppy crop /Opium plants

in many areas of Kullu District. Opium and opium derivatives after their extraction are partially consumed inside HP and partially smuggled outside the state. The organic drugs namely Hashish and Opium are illegally grown in abundance in most of the hilly areas of this district. Initially, the cannabis crop was considered as wild growth but, in recent days, lot of drug peddlers systematically started cultivating cannabis using all modern techniques including hybrid seeds derived as a byproduct of biotechnology. The same is the case with poppy plants.

Geographically, illegal poppy cultivation is confined to Banjar and Sainj subdivision of this district, whereas, cannabis cultivation is spread all over the district. However, good quality cannabis plants are grown mostly in Manikaran valley, upper Manali, Malana, Ghoziani and Anni subdivision.

The Third dimension is Inorganic Drugs like LSD, Brown Sugar, Mandrax, Methaqualone and Amphetamine which are very commonly used by drug addicts in abundance in this district. Most of these drugs flow from outside Kullu district to cater to the drug addicts who periodically graduate in their addiction from one level to another level. In nutshell, we can say that organic drugs namely, opium derived from poppy and high quality Hashish Oil and Hashish derived from cannabis flow outside the district and the inorganic psychotropic substance drug mentioned above flow inside to cater to the demand of huge number of drug addicts both of foreign and Indian origin.

### REASONS FOR THE GROWTH OF DRUG MENACE

**T**he narcotic problem of Kullu district is not something new. This

phenomenon is known since 1960s. However, it is true that this drug menace has reached an alarming proposition in the recent years for different reasons listed below:

**Fragmentation of land holding :** Over the years, the population of this district has increased in an exponential way due to the different reasons like massive migration of people from Punjab, adjoining districts like Kangra and Lahul Spiti. Increasing population has resulted in fragmentation of land holding in a family clan. This particular aspect has made agriculture unsustainable for any family forcing them to look for all other options including drug production and smuggling since other sources of livelihood like industry is virtually zero.

**Frequent failure of apple crop :** Many enterprising locals started increasing their income by venturing in horticulture especially, apple orchards. However, in the recent years, due to extensive exploitation of forests and interference of human beings with natural environment has led to very less snow fall and rainfall. This drastic change in agro-climatic conditions resulted in frequent failure of apple crop and other orchard industry

**Unemployment Problem :** The frequent failure of apple crop clubbed with fragmentation of land holding has resulted in growing unemployment. Hence, most of these unemployed youth are left with no other option other than resorting to short cut methods like growing poppy or cannabis illegally to augment their income.

### MASSIVE INFLUX OF FOREIGNERS

**W**ith the advent of hippie culture in early 1980s, thousands and thousands of foreigners especially, from countries like Italy, Israel, Nigeria,

Kenya, United Kingdom and several other countries started marching towards this land for easy access to drug at cheaper rate. This particular factor has altogether changed the dimension of drug menace of Kullu district.

On an average, nearly 26,000 foreigners visit this district alone in a year of which more than 45 percent of them prefer to stay for more than five or six months. It is important here to mention that Kullu has highest number of foreigners settled permanently. In many places like Kasol, Pulga, Tulga, Malana, interiors of Manikaran valley one will find more foreigners than Indians in restaurants or in public places forcing a stranger to think that whether he is in India or some other part of the world.

Earlier, illegal drug producers had to smuggle drug outside Himachal for marketing either in Delhi, Pathankot, Goa, Kathmandu and other parts of Western UP. With the arrival of massive number of foreigners as gypsies, no longer locals go outside for marketing their illicit drug. It is a simple factor of demand and supply. Since, the demand has increased near the root of supply, this illegal trade has flourished like cancer in the recent one decade.

### WHY COMMUNITY PARTICIPATION?

**W**hen the problem was considered for eradication, the following factors forced the district police and the author to look up to community participation as the only means for bringing this menace under control. This was followed by a socio-economic approach to eradicate the menace permanently.

- More than 10 percent of population is directly or

indirectly involved in narcotic cultivation, extraction, refining, trafficking or consumption.

- There was a general mistrust among public about police department resulting in little or no cooperation from public for fighting this menace.
- There was strong nexus between drug peddlers, politicians, police, prosecution, and forest department.

These factors mentioned above made the tasks of police like identifying the smugglers, identifying and destruction of narcotic crop cultivated in thousands of acres of land a Herculean task. If one has to destroy the entire narcotic crop cultivated in a year, probably district may need to launch Kargil-like operation which may require not less than two battalions for twenty days for ensuring that destruction is 100 percent. This is not possible considering the manpower constraint in the state and also it may not serve as permanent solution since every year police may need to repeat this exercise spending huge amount of resources and manpower.

### **CONFIDENCE BUILDING MEASURES AND COMMUNITY PARTICIPATION TOOLS USED**

Since Public were having apprehensions about police, for gaining the confidence of general public, police department launched a massive public contact programme. Entire police department was mobilised and sensitized about the mission objective and all undesirable elements in all government departments were identified and weeding out process started.

#### **TOOL NO:1**

In the first step, all school and college students were regularly

contacted into our operation by motivating them. This was done by regularly addressing the school and college children in their morning prayer meetings. By this, message spread from children to parents and parents to society at large. All the officers including District SP visited schools and colleges regularly as part of their first step in community participation. Adults in the society may be having fixed notions, which may be difficult to change, whereas children's can be easily moulded since they were not having any bias. By continuous effort and initiative, the author was able form a big group of school and college students as well as teachers to form an ANTI NARCOTIC TASK FORCE.

#### **TOOL NO:2**

Police also started other Schemes like *Samart Yojana* which intends to teach (UAC) unarmed combat for school and college girls free of cost using UAC instructors of police department. This was started originally with an objective of making school girls self dependent and also to over come the problem of eve teasing. This was a great success resulting in positive inclination towards police department and also in its anti-narcotic mission. Thousands of parents whose girls were imparted training have become close to police department.

#### **TOOL NO:3**

Third strategy was that all retired police, army, teachers, para military personnel and government employees were met door-to-door as part of community participation scheme. All the important towns were divided into sectors and in each sector 5 to 10 general public were made active members of the community policing scheme. They were constantly and continuously contacted by police personnel for collecting information

about smugglers and drug addicts.

#### **TOOL NO: 4**

The Fourth step used was all the parents of drug addicts were approached anonymously by maintaining confidentiality and their co-operation enrolled for controlling this menace.

#### **TOOL NO: 5**

Since most of the endemic area for cultivation is spread in remote villages, Dist Superintendent and all other officers made frequent trips to villages as part of their campaign to increase awareness about ill-effects of drugs.

During such "*Gram Police Camps*" by Police officers, public were encouraged to switch from Narcotics to other lucrative safe crops like ayurvedic medicinal plants, flori culture, hybrid garlic, etc., since climatic conditions are best suited for all such kind of projects. Recently, many private enterprises successfully implemented projects for cultivation of *Zinco byloba*, *taxus bacata* and several other medicinal plants. Police also indirectly promoted cultivation of medicinal plants with the help of Ayurveda Department of HP government and private enterprises which give good returns to ensure that farmers are kept away from drug cultivation.

#### **TOOL NO: 6**

Police department systematically brought different bodies/groups like beopar mandals, employees union, mahila mandals, people involved tourism industry and all govt employees, gram panchayat pradhans, panchayat members, chairman zilla parishad, block smiti members, members of municipal committee, etc.

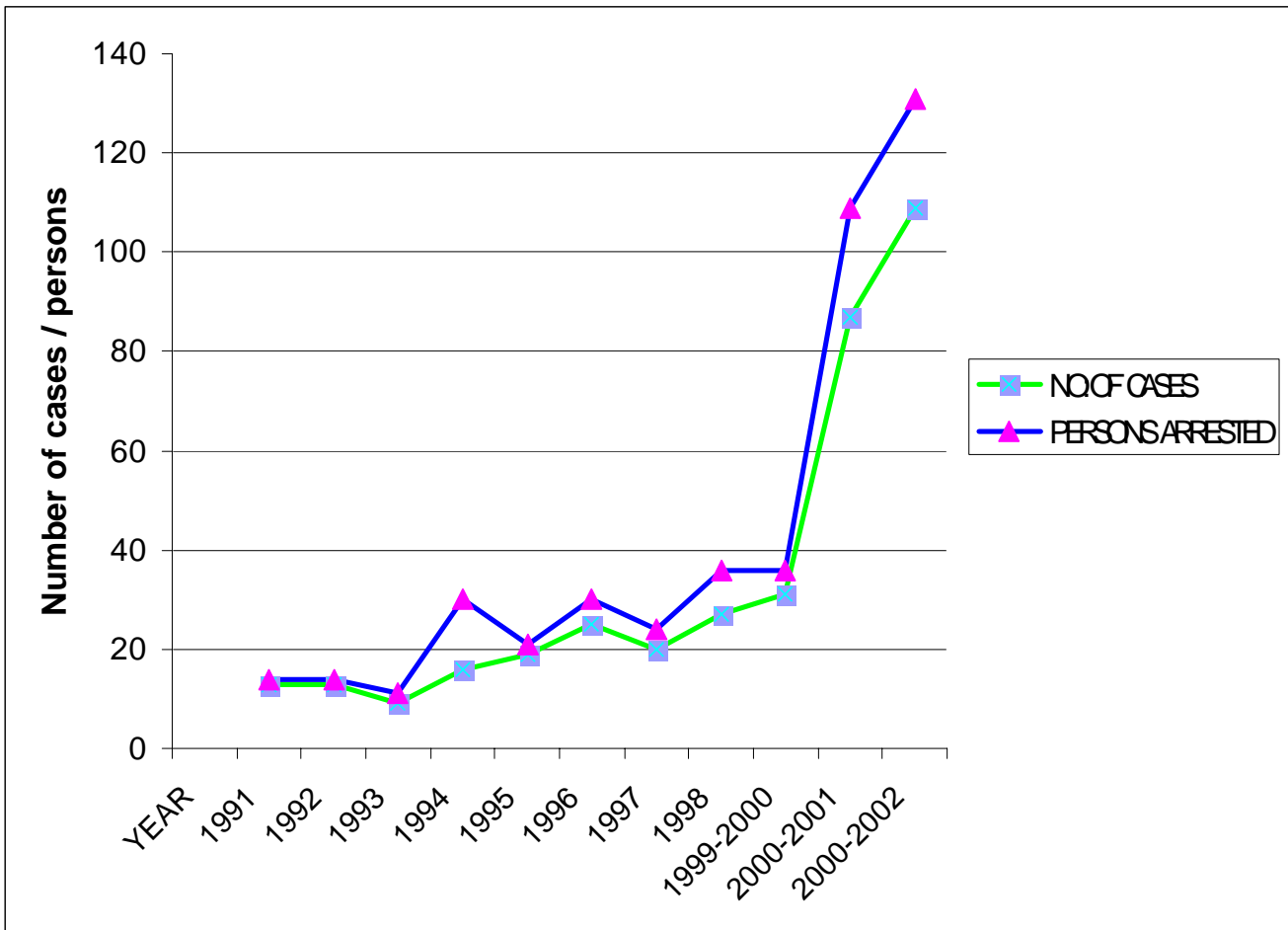
By all these efforts in each and every sector of community policing,

police created a strong set of bodies predominantly consisting of retired government personnel and other respectable persons who along with beat constable played an active role. Every sector has a register which has

information about all good and bad elements which virtually served as an encyclopedia of that area. The criminal intelligence of police has increased by this and it has directly resulted better detection in NDPS Act (see the graph).

This strong set of people representing community policing scheme along with School and college children greatly helped police department in destruction of poppy and cannabis fields in thousands of acres of land.

**DETECTION IN NDPS ACT DURING LAST TEN YEARS**



## FROM THE HILLS OF MT. ABU TO THE ROCKS OF HYDERABAD

AK Abrol

**I**t has been a long and arduous journey through many ups and downs (including the ones between the Rajputana Hotel and Naiki Lake), pot-holes and pitfalls (including the two falls from the horseback in Trevor Oval), light and shade (including the dark tunnels of the early career, the limelight of the mid career, and light at the end of every tunnel). These vicissitudes have not made me a genius but they have certainly made me wiser. Of course, wisdom does not necessarily come with age – sometimes age just shows up all by itself. In my case, the last 25 years have contributed just about a smattering of wisdom and lots of age.

Talking of the service during my formative years, the first and foremost

thought that comes to my mind is of the quality of life that we had in National Police Academy, Mt. Abu, our darling Alma Mater. The entire set-up somehow looked ramshackle and improvised and yet I wonder how easily most of us adapted ourselves to it, like fish to water. Talking of water, I am reminded of hot water in half-filled GI buckets, those antique thunder boxes and Bhelaji, my diminutive batman. In spite of the strict regimen, the discomfort and vagaries of weather, life at Mt Abu was rather interesting and not necessarily so because of the Langurs and Dilwara Temples or the Brahama Kumaris or the Gujarati tourists or the ubiquitous and yet so elusive Acharya Rajneesh and his gorgeous disciples (or to be more precise, discipleses) whom some of us went wild-goose-a-chasing sometimes.

I am also reminded of the flood that was said to be the first of its kind in decades at Mt Abu where deforestation had played a havoc with ecological balance and rains had become few and far between. The flood caused the ancient roofs to leak but provided some respite to our young bones from the daily drudgery of drill and the 'outdoors' as the shafts of water lashed fiercely against the old and decrepit buildings as though the floodgates of heaven had opened. Sunshine was on a premium and food was in short supply; so also were the Gujarati tourists. Nakki Lake was brimful. I am particularly reminded of the eerie howling of the dogs – both the stray and the pet variety – which preceded the boat disaster in which some 7 or 8 tourists had perished. I have distinct memories of the help 'rushed' by the Academy and the way some of the CBI Cadets and Probationers as well as the instructional staff went about rescuing the drowning and salvaging the drowned.

There are several living memories of my living days at Mt Abu – particularly those associated with Room No. 8 of Rajputana Hotel and also of leaving Mt Abu on occasions like Holi and Diwali for a much-yearned-for and much sought-after "chhuti" at home (spent mostly with the girl friends and not necessarily with brothers and sisters); an occasional furlough to Abu Road and for those who ventured further, even upto Jodhpur and Ahmedabad. I am sure many of us would remember the bloody-Holi that was played on Marwar Railway Junction while we were returning to Mt Abu by Delhi-Ahmedabad Express after a binge at home in early March, 1973.

But memories of the occasion when we left for "Bharat Darshan" come cascading down the hills and mountains. I remember I was with the group that went to Ahmedabad, Bombay (now Mumbai), Aurangabad and Hyderabad

circuit. There is neither enough space nor time to reminisce about the lovely trip that we had under the command and tutelage of Shri MM Khatri, our esteemed Law Instructor who went on to become a Judge in Bombay High Court and subsequently "tried" Shri AR Antulay in that historic case. One can never tire of talking about Ajanta and Ellora and Golkonda Fort or Salarjung Museum but two particular incidents have remained foremost in my mind though a quarter of a century has elapsed. In Bombay, we had gone to call on Mr Ramakanta Kulkarni, the then Dy Commissioner of Police (Crime) of the Wal Scott fame. While we nursed our cups of tea in his office, he pontificated as follows:-

"The seniors in the police should be treated as fire: never get too close to them lest you should burn yourself. Never remain too far lest you should deprive yourself of the little warmth that might be rightfully yours".

"Policemen are like dogs – they bark at their subordinates and wag their tails before their superiors."

Mr Kulkarni, however, did not mention that they also run away with their tail between their legs when the occasion so demanded. The other incident happened at Daulatabad Police Station in Aurangabad District where we had been taken for a 'study tour' after a particularly late night. Not being much interested in 'VCNB, 'Dagi Register' and 'Crime Maps', I must have dozed off at some stage. Mr Khatri, the hard task master, wasted no time and took me to task and called for my written explanation which I jolly well furnished within the stipulated twenty-four hours. I have yet to get any further orders, my Lord, you never know..."

As I write these lines, nostalgia runs through my veins like adrenalin

used to run when I was at Mt Abu. Leaving Mt Abu on that damp and cold morning in early December 1973 was really a painful parting. I am reminded of Hamlet:-

*"Good night sweet ladies,  
goodnight!*

*Parting is such a sweet sorrow*

*That I shall say goodnight*

*Till it be 'morrow!'"*

I distinctly remember the 'hi's, the 'byes' and the 'Thumbs up' signs which simply would not stop. Little did many of us realize at that philosophical moment that many of us might not see each other again for the rest of our lives. At the Re-union Seminar, only 38 of us turned up. I am not very sure about the 30<sup>th</sup> Anniversary Re-union. Vikram Seth's inimitable lines inevitably ring in my mind –

*"How rarely these few years, as  
work keeps us aloof*

*Or fares or one thing or another*

*Have we had days to spend under  
our parents' roof.*

*Myself, my sister, and my brother*

*All five of us will die; to reckon  
from the past*

*This flesh and blood is unforgiving*

*What's hard is that just one of us  
will be the last*

*To bear it all and go on living"*

*A little morbid perhaps, yet how  
true!*

Much of what we see depends on where we stand. In retrospect, things look different, not necessarily better or worse, but just different. The years between Mt Abu and Hyderabad were full of agony and ecstasy – almost all of us had our share of triumphs and debacles. Although we were all shaped and nurtured by the same Alma Mater, our careers and lives have been so

dissimilar, so unidentical that one has to accept the concept of 'fate' and 'destiny'. Most of the 'destinies' were determined by the cadres to which one got allotted, and what is allotted cannot be blotted. The 'destinies' of others were made or marred by the fact whether they did or did not choose to have a godfather or a choice of godfathers. In short, we all went our own ways – some astray, some wayward – some remaining steadfast to the ideals that had been drilled and instilled into us at Mt Abu by Shri Gokhale, the worthiest of all worthy Directors, and did not make any compromises. One might as well tell the Alma Mater, like Kahlil Gibran's Prophet told the woman with the babe held against her bosom:-

*"Your children are not your children*

*They are the sons and daughters of Life's*

*Longing for itself*

*They come through you but not from you,*

*And though they are with you yet they belong not to you*

*You may give them your love but not your thoughts*

*For they have their own thoughts*

*You may house their bodies but not their souls."*

Although we have come a long way – each one of us his/her own way, yet the Re-union at Hyderabad re-asserted the existence of the umbilical cord that runs through the entire Batch like the string through the necklace of

'cultured' pearls which many of us brought when we were at the 'Treasure Island' on 18.12.97... If we are different, that is partly because of our different characters and different attitudes. Character is, after all, destiny. Our lives and careers are largely what we choose to make of them:

*"Life itself cannot give you joy*

*Unless you will it,*

*Life just gives you time and space,*

*It's upto you to fill it."*

All said and told, ours has been a very special Batch and it is a great privilege to be a part of this heritage and to be associated with all those stars who have shone more brightly than the others. At least the lesser mortals like me can bask in the reflected glory and legitimately so; last but not the least!

*Truth has many aspects,  
infinite truth has infinite expressions.  
Though the sages speak in diverse ways,  
they express one and the same  
truth*

- Srimad Bhagavatam

## **ECONOMIC OFFENCES CODE - NEED FOR EARLY LEGISLATION**

Amiya K Samanta

**T**he liberalization of the market in the wake of the signing of the World Trade Agreement, underscores the point that far too many regulations inhibit the growth of trade and industry and consequent economic development of the country. So the legal restrictions on trade and commerce should be brought to the minimum. As a matter of fact, it is very often contended that the regulations should have a facilitative role, instead of restricting the economic growth. The freedom from restriction need not be construed as reckless immorality and unfairness but it should also ensure fairness in competition and freedom from fear and insecurity of the investors. A criminal justice system that ensures such fairness and safety and security is, in fact, likely to promote

economic development in a better manner.

That there is rampant violation of economic laws and regulatory rules in the country is a common knowledge. The big security scams “immortalizing” Harshad Mehta, Bhupen Dalal, et al, followed by bank and chit fund frauds involving huge quantum of money, benami and hawala transactions, food and drug adulteration, tax evasion, import-export offences, information technology offences, insurance frauds, corruption in the government, etc pervaded the public consciousness with suffocating regularity. As a matter of fact, with trade liberalization and capital consciousness the ever-increasing number of corrupt elements in the corporate world are becoming desperate



in looting the public money. The recent Unit Trust fraud and other security frauds establish the fact convincingly that without the patronage of the administrators and the politicians, the crooks could not have taken the public financial institutions for a ride. In the face of such powerful nexus of the operatives at the highest levels of politics, administration and the corporate world, it will be a futile exercise to remind such people of private morality and social responsibility. The only way to control the rampant looting of the public exchequer is to bring the offenders to speedy justice, which alone can restore the lost public confidence in the government.

The Vohra Committee Report submitted to the Government of India about a decade ago revealed the nexus between the unscrupulous businessmen, politicians, bureaucrats and underworld criminal gangs. They all derive benefit from such an unholy alliance. The state of affairs partially revealed by Vohra's report indicated a dangerous slide towards criminalisation of the polity and consequential degeneration of the social values and public morality. But the corrective measures that Vohra had recommended are somewhat lackadaisical and unrealistic. He suggested the formation of a "nodal group" under the Union Home Secretary as chairman, and Revenue Secretary, Chairman Board of Direct Taxes, Director Revenue Intelligence, Director, Enforcement and Director CBI as members. The nodal group, on receiving the information about serious economic offences, will utilize the existing agencies for investigation and legal action. Such an arrangement is unsatisfactory as a means of preventing serious economic crimes, investigating those crimes and promptly prosecuting the criminals. It only bureaucratizes the process of investigation, which will certainly reduce the credibility in the process itself. Besides, the group will be directly under the Government and members of

the nodal group will all be senior serving officers of the Government, and as such they will be exposed to political influence. Our bureaucracy, it is well known, has not lived up to the Weberian standard of impartiality and rectitude. The 'nodal group', as suggested by Vohra is, in fact, a ploy in the power game between the bureaucrats and the politicians, because the politicians are made to look untrustworthy vis-à-vis the top bureaucrats. A group of top bureaucrats, according to Vohra's suggestion, will be the repository of all the secret information regarding illegal transactions of big money, the linkage between the politicians, businessmen, underworld dons and bureaucrats. They will decide when and against whom to investigate and to take action. In Vohra's scheme of things there is little transparency and less authenticity because, unfortunately, the nation has as little faith in the cartel of bureaucrats as in the politicians. In practice, the nodal group, instead of breaking the nexus between politicians, bureaucrats, businessmen and the Mafiosi, will eventually strengthen the nexus. Subsequent events bear testimony to this kind of nexus between the designing bureaucrats and politicians. It is well known how the Supreme Court's directive (1988), authorizing enquiry against any official, irrespective of his rank, has been subverted jointly by the bureaucrats and the politicians, much to the dismay of the Central Vigilance Commission (CVC) and the Central Bureau of Investigation (CBI). This order, which has since been upgraded as a law, thanks to the bureaucrat-politician nexus, will shelter corruption at the higher echelons of the government. The most serious lacuna in Vohra's report is that, before suggesting remedy to free the polity of unholy nexus, it has not examined the inadequacy or otherwise of the existing laws and therefore has failed to suggest any measures for streamlining the law. Thus Vohra's "nodal group" will certainly not be an effective instrument for dealing with economic crimes.

## TOLL TAKEN BY CORRUPTION

India's standing in the international community with regard to human development, according to the UNDP report, is 135 out of 175 countries. But with regard to corruption, according to the Corruption Perception Index (CPI) released by the Berlin Transparency International in August 2002, India occupies 71<sup>st</sup> position in a list of 102 countries. Presently, India scores 2.7 in a 10-point scale, while in 1995 it was 2.78, 2.9 in 1999, and 2.8 in 2000. It is well known that the Scandinavian countries are the least corrupt ones, and according to the UNDP report, if India could bring the corruption down to the level of the Scandinavian countries, then the GDP will grow by 1.5 percent and foreign direct investment will go up by 12 percent. Such is the quantum of estimated corruption in India.

The economic offences in which generally the corporate houses, political leaders, civil servants, individual market manipulators and underworld dons are involved are putting a severe strain on the economy, as evident from various studies and reports. The enormities of non-repayment of bank loans, which are in the ultimate analysis are nothing but bank frauds, involve a staggering amount. At the beginning of 2004, various firms owe over Rs 91,000 crores to banks and financial institutions and this is known as non-performing assets. According to Attorney General Soli J Sorabji, "almost 60 percent of the NPA estimated at Rs 53,777 crores are due to public sector banks". The debts that the large firms and business houses owe to the banks and financial institutions is estimated at Rs 1,50,000 crores with interest. With a view to facilitating recovery of the debts, the Government has brought "the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act" which provided for the attachment of the properties of borrower. But some

provisions of the act have been challenged in the Supreme Court, the verdict of which is awaited.

The method of ascending the ladder of political power itself breeds corruption in India. The report of the Dinesh Goswami Committee has never been seriously studied, not to speak of making even a half-hearted effort at implementation. The report suggested radical electoral reforms so the legislatures are not packed with Mafia and musclemen, and the electoral expenditure is kept at a decent level. When the expenditure is exorbitant, the candidates are required to make money while in office not merely to pay off the debt, but also to remain in power. Therefore, all foreign trade deals, purchase deals and even the big industrial concerns under the state government, are hotbeds of corruption. As a matter of fact, in India the electoral reforms should precede the reforms in other spheres.

In so far as the corruption in the private and public sectors is concerned, there is no equality in the method of dealing with corruption or any other aberrant behaviour of their employees. As a matter of fact, in the private sector the terms 'corruption' and 'corrupt practices' do not have the same connotation and legal implication as in the case of public sector. The private sector does not have CVC, which though not a part of the criminal justice system, has the CBI under its control.

## **RULES AND LAWS TO CONTAIN ECONOMIC OFFENCES**

**T**he criminal justice system in the country is practically in a state of collapse. With as many as 30 million cases pending trial, the inability of the system to deal effectively with the law breakers in the society is evident. The conviction rate of serious crime is as low

as 5 to 6 percent only. Above all, the delay in the dispensation of justice makes the entire system more an instrument of oppression than a system upholding the rule of law and ensuring social defense. All the rules of procedure and the law of evidence are heavily loaded in favour of the accused persons. Public interest and victims' rights are least protected under the existing system of criminal justice. It has failed to have a deterrent effect on the criminals, who generally command better resources and technology than the state agencies. The general belief that crime does not pay has been proved to be wrong in the Indian context. Crime does pay in the Indian system of criminal justice at a higher rate than in many democratic countries of the world.

At present we try to fit in the economic crimes within the definition of theft, forgery, cheating and misappropriation whenever such activities come within the purview of criminal offence. But under the Indian Penal Code these crimes have a different concept, and they do not include the crimes of enormous magnitude which we find in today's business and corporate world. As a matter of fact, our traditional concepts are inadequate to understand the present day crimes. No doubt new laws have been enacted to define new crimes outside the Indian Penal Code, but that has not changed the police attitude to such crimes. From time to time, new procedure for prosecution has been suggested, new evidence have been introduced and thus almost a new jurisprudence, different in many ways with the existing criminal justice system, has been created. But such changes, which appear to be somewhat tentative in nature, have not been quite effective in containing economic crimes.

It is, however, not correct to state that the government is totally impervious to the threat of being swamped by crime in general and the nation's economy being ruined by the

unscrupulous businessmen and industrialists. Changes in the criminal law and procedure have been effected from time to time but with little change in the ground situation. These changes include:

1. A few new laws have been enacted with separate authorities to administer them. These authorities have been vested with preventive, investigative and prosecutorial powers, and thus a multiplicity of agencies has created problems for effective enforcement.
2. Some of these new laws, while defining the new crimes have either modified the concepts of *mens rea* or dispensed with it altogether.
3. The legislature has also shown somewhat firm attitude in this regard. Signifying a departure from the ordinary criminal law, the burden of proof in some cases has been shifted from the prosecution to the accused, and has allowed the trial court to make presumption of fact under given circumstances.
4. Denial of bail, summary trial, confiscation and forfeiture of property, deprivation and even denial of civil rights have been used to control economic crimes.

Such stringency of law could not eliminate the delay inherent in the judicial process and the sluggishness of the investigating agencies. What an eminent newspaper editorially commented on the investigation and trial of a case of economic offence is worth quoting "A truly independent investigative agency, coupled with a fast track judicial process, is the only way to prevent high profile investigations and trials from

degenerating into low utility farce. Till that happens, those who are involved in cases being heard now will hope that they too may laugh at Indian justice from wherever crooks go after death.” (The Statesman, 5 January, 2002).

Some encouraging judicial decisions in recent times have sought to strengthen the system which often look helplessly as the white collar criminals go on cheating justice one way or the other. The Supreme Court in *Vineet Narain Vs the Union of India* tried to protect the investigating agency against unjustified political interference. This action of the apex court resulted in giving some degree of professionalism and independence to CBI and the Central Vigilance Commission. It also struck down the ‘single line directive’ as it encouraged corruption and unfairness in the official circle. Although the Supreme Court is canvassing the need for deterrent punishment for economic offenders, it is ‘nonetheless’ doubtful whether the conventional mind-set and practices prevailing in the criminal courts of the country have been influenced by it. It may be noted here that the government has since reintroduced the ‘single line directive’ and the executive order is now being modified through an Act of Parliament.

Serious bank frauds and other irregularities have engaged the attention of Reserve Bank of India and the government for some time. Expert committees were set up from time to time to reform the law and policies of bank management with a view to controlling economic crimes. Some of the suggestions are as follows:

1. Relax the bank secrecy laws
2. Compel banks to report suspect transactions
3. Strictly regulate non-banking business
4. Make financial frauds, including money laundering, serious crimes

5. Deterrent punishments, including preventive detention of CEOs in serious crimes
6. Enhance the status of surveillance, intelligence sharing and co-ordination among enforcement agencies
7. Special cells in different regions for monitoring, reporting and acting expeditiously in case of suspected frauds
8. Trial procedures in Special courts to be simplified and expedited
9. Senior police officers are to be trained in investigation of serious cases reported by various enforcement agencies
10. Enact a separate criminal code for serious economic offences threatening national security, to be enforced by a central investigating agency.

Alarmed at the increasing number of bank frauds in the country, in 2000 the Reserve Bank of India set up a committee to look into the legal aspect of the bank frauds. The committee admitted that the criminal jurisprudence of the country based on ‘proof beyond doubt’ is too weak an instrument to control bank fraud. “Financial frauds” the committee contends, “is not an offence, in spite of the fact that the banks and financial institutions suffer heavily in frauds committed by the borrowers, often in collusion with the employees and financial institutions,... the situation is becoming explosive and can lead to anarchy at any time, unless the scams are legally contained.” The committee has, therefore, recommended that there should be a preventive strategy of system reform by strictly enforcing the regulatory measures and insisting on a compliance certificate from the banks and financial institutions. Besides, the committee recommended a

punitive approach by defining scams (financial frauds) as a serious offence and as such a separate central investigating agency should investigate them. Special courts with special prosecutors should try such cases, and during trial the burden of proof should be shifted to the accused. The committee has also suggested empowering of the investigating agency with increased powers of search, seizure and attachment of illegally obtained funds and properties. To deal with allegations against the employees of the financial institutions, the committee recommended the formation of a Statutory Fraud Committee under the Reserve Bank of India.

Of late, some serious economic crimes have exposed the vulnerability of the financial regulatory institutions such as the RBI, the SEBI, though they have been vested with enormous regulatory powers. Special legislation, no doubt, has created fast track procedures, like special courts for trial of serious economic offences with the Supreme Court alone having the appellate jurisdiction. But all this has not succeeded in reducing the delay in investigation or improving its standard, nor is there expeditious trial of the cases. The end result is continuation of rampant looting of public money and consequent erosion of public confidence in the rule of law. It is, therefore, imperative to develop and foster expertise in newer areas. And for that a new legal code and enforcement machinery has to be evolved.

Having been pushed to the wall due to multiplicity of economic crimes, the Ministry of Finance has hurriedly created a Serious Fraud Investigation Office (SFIO) in 2003 with a view to undertaking investigation of serious fraud cases. The charter of SFIO includes (1) it will detect and prosecute or recommend prosecution of white collar crimes/fraud. (2) The SFIO will take up investigation of :

- a. those complex cases, which have inter-departmental and multi-disciplinary ramifications.
- b. cases with substantial involvement of public interest, to be judged by the volume of monetary misappropriation or by the number of persons affected
- c. The possibility of investigation leading to or contributing towards a clear improvement in systems, laws and procedures

The order that launched the SFIO has created a Coordination Committee under the chairmanship of the Secretary DCA, with Chairman SEBI, Chairpersons CBDT and CBEC, and Directors, CBI, Revenue Intelligence, Enforcement and SFIO as members. They will decide on the cases to be investigated and also after the investigation, decide on the prosecution.

Besides, the SFIO will have an advisory body consisting of experts from various financial institutions and investigating agencies, which will also act as the expert investigating team. The SFIO has little difference with Vohra's 'nodal group' because it (SFIO) is also directly under the control of the government and to that extent its credibility will be a suspect. There is no guarantee that the impartiality and autonomy of the investigating unit will be protected.

## **REFORM OF THE CRIMINAL JUSTICE SYSTEM**

Terrorism, both internal and cross-border, has been the prime concern of the Governments since long as the enormity of violence makes big headlines in the newspapers and the television channels beam the gory details right into our drawing rooms. The problem deserves careful and vigilant attention. But the persons who are bleeding the country white by siphoning

off unbelievably huge amounts from the public exchequer, the crash of the financial and public saving institutions and the resultant crisis in the developmental programs are no less dangerous to the security and stability of the nation. Besides, some economic crimes are directly linked with terrorism like narcotic crimes and multi-million dollar gun running business. Moreover, some underworld dons boost terrorism by contributing to the coffer of the terrorists in consideration of their patronage. The economic crimes, therefore, should be dealt with equal firmness and to achieve that objective, there should be laws and procedures to measure up to the economic criminals who are monetarily and politically more powerful than the terrorists. Therefore, the Malimath Committee, set up to reform the Criminal Justice system, has stated that there is a crying need to deal with economic offences (including some cyber offences) as a special category of offences and they have to be dealt with not only in a manner different from other crimes but will also a group of highly trained experts with sufficient powers and resources to handle them." Clearly the existing laws and investigating agencies are not adequate in the reckoning of the Committee.

In setting aside the acquittal and ordering a retrial of the notorious Best Bakery Case of Gujarat on 12<sup>th</sup> April, 2004 the Division Bench of the Supreme Court has said, "We do not think it necessary to highlight all the infirmities in the judgement of the High Court or the approach of the trial court, lest nothing credible or worth mentioning would remain in the process ... . This appears to be a case where truth has become a casualty in the trial."

It is quite encouraging to note that the Supreme Court is now clearly underscoring that truth is also one of the concerns of the trial courts. Normally, the courts in criminal trials are engaged in scanning the evidence

on records, and then trying to determine whether the case has been proved 'beyond reasonable doubts', an expression, which in ultimate analysis, is more subjective than a practicable proposition. The courts are happy when the defense lawyer creates some doubt, and an escape route in the form of an acquittal is provided. The judge simply, has to establish the doubt as a reasonable one and after that the inevitable course of justice is acquittal. In suggesting some kind of paradigm shift in the criminal trials, the Malimath Committee has stated, "The Committee has given anxious consideration to the question whether this system (the adversarial system of criminal justice) is satisfactory or we should consider recommending any other system... . The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate, and this results in high rate of conviction. The committee on balance felt that a fair trial and in particular fairness to the accused are better protected in the adversarial system." So the Committee decided to make an amalgam of the two – retaining the adversarial system but grafting "some of the good features of the inquisitorial system" to make it more effective. This include the duties of the court to search for truth, to assign a proactive role to the judges, to give direction to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victims." Thus the trial courts will not be passive onlookers merely scanning evidence to trace 'doubts' in the prosecution case; on the contrary, they will join in the quest for truth, "which shall be the fundamental duty of every court."

2. The Malimath Committee has recommended recognition of victim's right to participate in the criminal trial, which will "inter alia include, to produce evidence oral or documentary with leave

of the court, to ask questions to the witnesses” at the time of trial. Besides, “victim’s compensation in all serious crimes” as suggested by the committee in case of financial frauds will act as deterrent.

3. All the changes and modifications in the criminal justice system suggested by the committee will facilitate the investigation and prosecution of the serious economic crimes. They are:

- a. Confession before the police officers should be admissible in economic offences.
- b. Accused’s right to silence may be disallowed and in case of silence, the court may take adverse presumption in case of silence.
- c. The probative value of scientific evidence may be enhanced, and the burden of proof may be shifted on to the accused.
- d. Corporate criminal liability should be clearly defined and spelt out and the provision for adequate punishment in corporate crimes should be made.
- e. Corruption in the enforcement and investigating agencies should be put down with a heavy hand.
- f. It is necessary to protect and encourage whistle blowers in economic offences.
- g. In select economic crimes ‘plea bargaining’ in a transparent and institutionalized manner may be allowed.

These are some of the suggestions of the Malimath Committee Report intended to tone up the entire criminal justice system in general; but the impact of these changes will be felt more on the economic crimes.

Apart from changes in the law and procedure, the Committee suggested a

few administrative measures, such as the creation of a mechanism by name “Serious Fraud Office”, to be established by an act of Parliament with strong provisions to enable them to investigate and launch prosecution promptly. “To inspire confidence of the people and ensure autonomy,” the Committee recommended that the Chairman and the members of the Serious Fraud Office should have fixed statutory tenure. The committee also recommended that the state governments should set up Serious Fraud Offices; but they should be sanitized from political and administrative influences.

The Committee recommends the strengthening of the economic intelligence, induction of state-of-the-art technology, adoption of a common preventive strategy and closer coordination between the national authority, the SFO, the intelligence units, etc.

The Indian laws should be made compatible with the foreign laws in this regard.

The responsibility of recovering assets should be given to a new agency called the Asset Recovery Agency, which will reduce the workload of the trial judges and streamline the judicial process of forfeiture and confiscation.

According to the Committee, a law should be enacted to protect informers, covering major crimes.

#### **NATIONAL ECONOMIC OFFENCES CODE**

Formation of a comprehensive Economic Offences Code has been thought of at the higher echelons, of the administration during the last several years. In April 2002, the then Union Finance Minister said in a seminar in Delhi, “Economic offences are still not

regarded as seriously as criminal offences. We have to look at our laws in the liberalized environment. If people can get away with economic offences, then we cannot run a liberalized economy.” He also stated that the Finance Ministry would look into judicial arrangements to deal with laws dealing with economic offences. A seminar attended by Union Ministers of concerned departments suggested enactment of an Economic Offences Code, which will identify, segregate, classify and consolidate, what are called serious economic crimes now spread over 30 or more economic criminal statutes and the Indian Penal Code. Accordingly, an Economic Offence Code is now under preparation in the National University of Juridical Sciences, Kolkata. In the meantime, the Government of India has taken certain measures to strengthen the legal and investigating apparatus against economic offences. As noted above a Serious Fraud Investigation Office (SFIO) has been set up under the Department of Company Affairs of the Union Ministry of Finance in 2003. A draft legislation to give a sound legal status to the SFIO is now pending.

The Malimath Committee submitted its report in 2003. The recommendations of the Committee drew a howl of protest from the vested interest in the legal community, its recommendation of a paradigm shift in the role of the court from the position of a passive onlooker to a seeker of truth is likely to adversely affect the unscrupulous legal practice. The simplification of investigating and trial procedures is also strongly resented. In the teeth of such opposition, the Government of India has presented a Criminal Law (Amendment) Bill, 2003 (Bill No. LX of 2003) in the line of the Committee’s recommendations, but not fully in consonance with them. It is yet to be passed into a law and it is only likely that there will be strong lobbying for sending the bill to the cold storage.

## **FRAMEWORK OF THE PROPOSED CODE**

### **A. Definition of Economic Offence and Substantive Laws in the Code**

At present no single agency deals with the whole spectrum of economic offences. In fact, there are as many enforcing and investigating agencies as there are departments dealing with economic offences.

The Police and the allied agencies like the Central Bureau of Investigation (CBI) and the Enforcement of the State Police deal with economic offences under the Penal Code or under the state laws, which specially empower the Police to take cognizance and investigate. The CBI has created an Economic Offences wing in 1994 to concentrate on the investigation of the economic offences alone.

There are other departmental enforcement, investigating and intelligence agencies, which deal with economic offences as defined by the law of the respective departments. The Central Board of Excise and Customs (CBEC), assisted by the Director General of Revenue Intelligence (DGRI) and the Director General of Anti-Evasion (DGAE) deals with the evasion of customs and excise duties and other malpractices in this regard. The Central Board of Direct Taxes (CBDT) administers Income Tax Act and other related matters and takes cognizance of their violation, while the Enforcement Directorate administers the Foreign Exchange Management Act along with collection of intelligence in this regard. The Narcotic Control Bureau (NCB) administers the Narcotic Drugs and Psychotropic Substances Act in cooperation with various departments of the state and the central governments. The Central Economic Intelligence Bureau (CEIB) is an umbrella organization providing intelligence to all investigating and

enforcement agencies for action against economic offences.

These prominent establishments apart, there are as many as more than thirty Acts, which have created new economic offences and for many of them remedial measures have also been suggested. All these offences are to be incorporated in the proposed Code. It is not necessary to try to chisel out an all-inclusive definition of economic offence. Instead, it will suffice to say that economic offences are those, which have been defined as such in these acts incorporated in the code and also those offences, which Parliament may create from time to time.

As a matter of fact there cannot be a standard and inflexible definition of economic offence. In a volatile social and economic scenario, new areas of clandestine and unlawful economic transactions may crop up and new types of irregular activities may emerge. They may not come within the description of any offence now in vogue. Parliament may then be obliged to declare them as economic offence. A few such instances may be relevant here.

International purchases by the government from the governments or big foreign companies or trade agreements are often plagued by under-the-table deals of crores of rupees. A parliamentary committee is required to endorse the deals, but that is an inadequate safeguard against corruption. Overseeing such deals should come within the charter of duties of the code, and the authority by the code, should monitor all such purchases and agreements, and when necessary investigate.

Payments made by industrialists and businessmen to political parties and leaders and the election expenditure of the party and candidates should also come within the overseeing authority of the code.

Thus, new areas may be incorporated within the supervisory authority of the code by Parliament by creating new economic offences. Besides certain changes in the Company Act, the responsibility of the Auditors should be put under scanner and suitable changes introduced. Similarly, a few sections of the Indian Penal Code such as 379, 381, 407 to 409 may be recast in view of the enormity of offences under these sections, so that the perpetrators do not get away with a light punishment.

### **B. Law of investigation and prosecution**

It has been discussed above that the changes recommended by Malimath Committee in the Evidence Act, Criminal Procedure Code and Indian Penal Code for improved criminal justice administration may be accepted and adopted as the investigation, prosecution and trial procedures in economic offences. Since certain provisions of the law relating to the Prevention of Terrorist Activities (POTA) and Maharashtra's Control of Organized Crime Act are applicable in case of economic offences, they may be discreetly used to strengthen the investigating process.

### **C. Institution to administer the Code**

#### ***1. The Code of Authority***

The Act of Parliament will create an Authority to enforce the Code, an investigating agency to investigate the offences, a prosecuting agency to prosecute the offenders and fast track trial courts to try and punish them. Both the investigating and prosecuting agencies will be under the control of Authority. It will consist of three or five members and will be headed by a sitting or retired judge of the Supreme Court with a reputation for honesty and integrity. Other members, each of them with reputation of impeccable integrity may be appointed from All India Services, Central Services, from the High Court judges, Academicians and social workers. The modality of appointment may be similar to the one followed in

case of appointment to the National Human Rights Commission. The Authority will perform the following tasks:

- i. It will not take over the responsibility of all the institutions created by the laws in force. It will oversee the enforcement of laws and regulations on economic offences by respective agencies and departments. They will monitor the developments and scrutinize the results. The Code will empower the Authority with the power of overseeing and monitoring and also to call for reports as and when necessary.
- ii. The Authority will take over the investigation into the cases where there are complaints of irregularity or negligence from the respective agency.
- iii. The Authority will take over the investigation of the complaints in

which the loss to the public exchequer is to the tune of Rs 50 crores or more.

- iv. The Authority will protect the independence and impartiality of the investigating and prosecuting agencies by effectively insulating it from extraneous influence in discharging their duties.
- v. The Authority will submit annual report to the government. It will be mandatory for the government to place it before Parliament.

## **2. Investigating Agency**

- i) The Code will provide for an investigating agency under the Authority for investigation into the cases taken over by the Authority.
- ii) It will be headed by an officer of the Indian Police Service of the rank of DGP or an officer of the Indian Revenue Service of the

rank of Member, Board of Direct Taxes.

- iii) Other officers may be drafted according to necessity.

## **3. Prosecuting Agency**

In appointing a set of prosecutors, the rules and modalities followed by the Central Bureau of Investigation may be followed. The agency will function under the control and direction of the Authority.

## **4. Special Courts**

Four Special Courts may be set up in four metropolitan cities, namely, Delhi, Kolkata, Chennai and Mumbai.

Each Court may be headed by an officer of the rank of District Judge of unquestioned integrity. However, there may be three judges bench in place of one Judge for better scanning of evidence and for guarding against human errors.

*Every prophet and  
every saint hath a way  
but it leads to God :  
all the ways are really one*

- Jalal - A din Rumi

## NEW DIMENSIONS TO POLICE LEADERSHIP

**T**hough the Indian Police has acquitted itself creditably over the years in successfully tackling complex and grave problems threatening not only the peace and tranquility of the society but also its integrity and national security and has developed an enviable professional expertise in multifarious aspects of police functioning, it is presently facing certain serious challenges, which call for urgent attention and suitable responses from police leadership.

2. We need to identify these serious challenges and problem areas faced by the police today and plan effective and timely counter-measures. The planning and execution of these counter-measures is the task and responsibility of the top police leadership of the

country. This calls for vision, determination and commitment of a high order, which have generally been the hallmark of the police leadership in the country. It is while articulating and responding to the grave challenges threatening the Indian Police and the Indian society that we get glimpses of certain dimensions of police leadership, which are unique, innovative, new and an effective counter-poise to the malaise afflicting the Indian Police and the Indian polity in which it functions.

3. The problems presently faced by the Indian Police are complex and at times suffocating and they threaten the professionalism of the police and the survival of the society at large. We got definite indications of this malaise in recent times in terms of the Emergency



excesses, the 1984 anti-Sikh riots, the rise of terrorism of different hues, and most recently, the Gujarat riots. Failure to defuse explosive problems in time by the police leads to prolonged and immense suffering for the people of the country, protecting whom is the very rationale for the existence of police. The top police leadership itself is plagued with a crisis of profound proportions which is threatening the police's commitment to the rule of law and its professionalism due to multifarious extraneous forces that have come to stifle various aspects of police functioning. The standing and authority of the top police leadership is getting badly eroded which has started seriously affecting their control of the huge forces at their command, their discipline, their morale, their ethics and their very ethos of the police which has hitherto seen us through trying times.

#### **CHALLENGES POSED BY THE RAPIDLY CHANGING POLITICAL SCENARIO AND THE EXTRA-NEOUS FORCES STIFLING POLICE FUNCTIONING**

4. Police is ultimately answerable to the people, whose protection is its sacred duty. Police is answerable to the people through the effective enforcement of the rule of law. Police is answerable to the law of the land through the courts to whom it reports. Police is also answerable to the representatives of the people in our democratic polity and the government in power whose responsibility it is to ensure peaceful living conditions for the people.

5. Peaceful living conditions for the people means effective crime control and maintenance of law and order by strict enforcement of the rule of law. There is no other way of ensuring peaceful living conditions for the public in which they can grow and develop.

6. The rapidly changing political scenario in the country, the emergence of self-serving politicians, criminals

turned politicians and the nexus of politicians with crimes of different varieties are the harsh reality of today. Failure to enforce the National Police Commission recommendations to insulate the police from interference in its day-to-day functioning by the political leaders in power has brought the police to such a situation where quite often the criminals are calling the shots through the politicians and preventing the police from doing its duty fairly in accordance with law. This is a situation which needs to be taken serious note of by not only the top leadership of the police but by the society, leaders and media at large as it can spell disaster for the country unless emergent remedial measures are thought of and implemented.

7. It is the police leadership which is facing the brunt of this problem vis-à-vis the politicians, especially those in power. Nobody will be get concerned with this problem and do anything about it unless the police leadership first gets seized with it, understands its sinister dimensions and projects it in every fora possible. Unless the police leadership develops awareness about it and educates all concerned about the extreme dangers of playing with the rule of law and those entrusted with its enforcement, who else will. We still have very many men and women of reasonable integrity in our political system who can understand and appreciate the crying needs of the police to function independently, freely and impartially. Many instances can be cited where political leaders in power have worked in unison with the top police leadership in preserving and promoting its professionalism and fair functioning. The need of the police leadership is not only to constantly endeavour to bring about changes in the system which can safeguard police professionalism but also, till such a change is accomplished, to work with determination within the existing system to protect and promote police professionalism. The greatest danger to police professionalism lies

within the police leadership itself because it is the police leadership which stoops and crumbles due to its own infirmities. Rising above such infirmities is the crying challenge to police leadership.

8. Thus, police leadership has to function within the system till it is changed for the better, which may not materialize in the near future. Hence, it is for the police leadership to come out with innovative and practicable initiatives to protect and promote police professionalism. This is the prime duty of the police leadership. A new breed of highly educated, suave and techno-savvy young politicians are also entering politics. The police leadership should be able to take advantage of this to advance its professional interests while also gearing itself to match their dynamism and energy.

9. Another area in which police leadership can devise and institutionalize suitable measures and systems to not only protect professionalism but also to promote welfare of police personnel is the one relating to transfers and postings, which is the prime instrument in the hands of politicians to make the police do its bidding. Police officers of different ranks are authorized to make transfers and postings of defined ranks. Police officers often yield to the unwritten dictates of the politicians and abdicate their powers. There is often murky and stinking corruption in all this. All this makes the police utterly incapable of delivering the goods especially when faced with serious problems. Discipline is lost, hierarchical control is destroyed and there is no way the police leadership can deliver the goods and enforce the law in such a situation. Hence, the police leadership must stand firm and fight the erosion to its authority tooth and nail if the police forces of the country have to be saved and if the larger good of the public has to be ensured. Further, when transfers are sought on legitimate grounds, the police leadership must

devise systems to ensure that these are granted fairly and in a transparent manner and there should be no need for such police personnel to think of approaching the politicians. Where transfers are done on firm administrative grounds, it must be made sure by the police leadership that no amount of political pressure succeeds in undoing it, and there should be effective systems in place to deter police personnel from approaching extraneous authorities.

### **CHALLENGES POSED BY FALLING ETHICAL STANDARDS AND PROFESSIONALISM**

10. Basic police work is failing. Standards of investigation are falling. It is corruption which is increasingly eating into the vitals of police professionalism. Police leadership needs to get seriously concerned with it and constantly take deterrent measures coupled with training and close supervision to check this menace. This is one of the prime responsibilities of the police leadership, whose task it is to ensure that justice is done to the common man and the criminal is punished. It is also the duty of the police leadership to ensure that the criminal justice system is not allowed to collapse though the judiciary is also equally responsible. But the police leadership must do its bit because controlling crime and criminals is its primary task.

11. Constantly improving and strengthening police systems is another primary task of police leadership, especially at the highest levels. Well formulated systems can facilitate easy monitoring of police work and reduce the chances of misconduct. They can contribute to preventing corruption and enhancing professionalism, achieving higher standards of investigation, etc. The police leadership must be constantly alive to this challenge and constantly evolve well thought out counter-measures to ensure that there is no compromise with the rule of law

due to falling standards of integrity or of professional skills. Suitably devised training courses and on-the-job training is also the responsibility of the police leadership, to which it must respond.

### **CHALLENGES IN TACKLING TERRORISM AND EXTREMISM OF DIFFERENT HUES**

12. India has been having more than its fair share of terrorism and extremism of different hues. A lot of it has been tackled successfully all over the country and even defused completely through skillful handling of the highest order. Yet, the problems are not over. Fundamentalist terrorism and left wing extremism is still a major problem in the country. Such terrorism/extremism has national and international ramifications and has links with other organized crimes of different varieties such as narcotics trade, counterfeiting of currency, money laundering, human trafficking, etc.

13. The ever newer dimensions of terrorism and extremism need to be constantly understood, analysed and data bases built up on systematic/scientific lines so that a proper back-up of information, constantly updated, is available. Fighting terrorism calls for skills of the highest order and appropriate responses from the higher police leadership. The greatest danger in fighting terrorism is violation of human rights which strengthen the forces of terrorism and create a vicious circle in which the public is the greatest sufferer. Police leadership has to show the way as to how terrorism can be fought successfully and defused permanently without any human rights violations. In today's world when the awareness about human rights is growing and we have Human Rights Commissions at the national and state levels, it is of utmost importance that police leadership shows the way to its subordinates and strengthens the investigative machinery. The police

leadership must not allow the problems to grow to terrible proportions but defuse them at the initial stages. No interference of any kind in the professional police work relating to terrorism/extremism must be allowed by the police leadership and the rule of law must be upheld.

### **CHALLENGES IN COMMUNITY POLICING**

14. Society has created the police for its protection. The members of the public have great stakes in the police performing their duties effectively and are ever willing to contribute in this in whatever way they can. Not only must police understand that members of the public are the ones whom they have ultimately to serve through the efficient performance of their duties and the enforcement of law but also that there is vast potential help available in the community itself, which it must tap. It is the police leadership which has to show the way as to how the willing cooperation of the public can be elicited in tackling problems, be they be of communal riot situations or outbreak of conventional crime. A lasting solution to most such problems can in fact not be achieved without the active cooperation of the public.

15. Community policing has become a growing subject of great topical interest. Police leadership needs to imbibe the spirit behind the concept and effectively disseminate the message to all ranks of the police. It is the responsibility of the police leadership to ensure that the policemen who come in contact with the public adopt such a helpful and humane approach that the image of the police in the eyes of the public is enhanced and feelings of trust and confidence towards the police are strengthened, which in turn can make law enforcement a much easier task. These new dimensions of policing have to be given life to by police leadership. If the police works in isolation and has a poor image amongst the public, it is the police leadership to blame,

which must relentlessly work to rectify the situation. One police leader in a district can convert a hated police into a loved one.

### **TECHNOLOGICAL CHALLENGE TO POLICE LEADERSHIP**

16. The twenty first century is the era of science and technology, which has changed the way we live and has affected mankind in all facets of life. The advances in science and technology have also placed superior tools in the hands of the criminals, who consequently become more lethal, more precise and more difficult to catch. The

police leadership has not only to constantly sensitize itself and its ranks, about the latest sophisticated tools in the hands of the criminals so that intelligence can be collected about them and investigations can be suitably geared but also that suitable initiatives are taken to continuously upgrade the equipment available with police so that it can effectively match those available with the criminals, and also utilize the same in an optimum manner in discharging its multifarious duties in different aspects of policing. Modernization grants given by the government can be effectively put to use only if the right equipment is

acquired and put to right use. This calls for a complete involvement of higher level police leadership in constantly planning for the future.

### **CONCLUSION**

17. A better working environment can best be created by an enlightened leadership, fully aware of the growing dimensions and complexities of modern police work. The police leadership needs to effectively respond to every such dimension. This calls for true, honest and selfless work of the highest order from the police leadership of today.

*Do not occupy  
your precious time  
except with the most precious things,  
and the most precious  
of the human things is the state  
of being occupied between  
the past and the future*

- Ahmad bin Isa al-kharraz

# COMMUNITY POLICING

Ashish Gupta & PM Mohan

**T**he police has been entrusted with the task of controlling crime, maintaining order and providing security to the society. Over the years, reacting to crime has been the standard for the police. The conventional police strategy has been “incident driven”. The phone rings – a victim or bystander calls to report a crime and the police responds by recording information relevant to the crime and then takes steps to solve it. However, now it has been realized that fighting crimes that have already been committed are proving ineffective in reducing crime. It is true that criminals have to be caught and have to be punished but police organizations are beginning to understand that quality of life would be so much better if crime could be prevented rather than “treated”.

Realization has also dawned that the public order, as also security the police had been providing, was not what the community perceived or even wanted. Unlike the police, which seeks to provide security by controlling heinous crimes, the community may actually be viewing security from a different point of view like moving out with their family members on the road with full sense of personal dignity, fearlessness and confidence.

Police practices currently in vogue have isolated the police officers from the very communities they wish to serve. The emergence of “Community Policing” as a concept was to address the elements related to all the aspects of providing security, reducing crime and maintaining order in the community.

## COMMUNITY POLICING

As the phrase 'Community Policing' goes, it is community first - significance given to the role of community in defining and guiding the police in their localities. It encompasses and addresses to this basic question as to "who defines what order is to be maintained and whose is to be maintained?"

Community Policing is based on the democratic principle that "anyone who exercises authority on behalf of the community (like the police) is accountable to the community for the exercise of that authority".

It is to say that Community Policing concept stresses policing *with* and *for* the community rather than policing *of* the community.

The Community Policing philosophy frees the police from the image of being faceless and removed from the public in order that the police officers can maintain direct, face to face contact with people in the same defined geographic beat (area) every day. Community Policing is an active and equal partnership between the community and the police where the police and the people work together. It is a pro-active approach where, with the help of the community members, the police identifies the problems and concerns of fear of crime and puts preventive measures in place with the help of "people it wishes to serve". It is to be clearly understood that Community Policing is area specific and each community will have to evolve its own mechanisms to improve the quality of life in the neighbourhoods. The practices will have to be continuously evolved, assessed and modified as and when need arises.

Community Policing envisages to bring about reduced incidence and fear of crime through effective "partnership

policing" which increases the community's satisfaction. It means increased job satisfaction, self-esteem, buffeted support to police resources and prioritization of services from the police point of view.

### DEFINITION OF COMMUNITY POLICING

"Community Policing is an area specific proactive process of working with the community for prevention and detection of crime, maintenance of public order and resolving local conflicts and with the objective of providing a better quality of life and sense of security".

### IMPEDIMENTS TO COMMUNITY POLICING

#### Public view -

In Community Policing, the main elements are partnership, problem solving, preventive policing and proactive policing. To incorporate all these elements, willingness and active participation of the community and its members are very crucial ingredients. The main inhibiting factor in preventing people from coming close to the police is mainly its poor image. Most members of the society think that the police is not available and not accessible when they need them the most. Even if they are available, they are perceived to be discourteous and insensitive to the community's needs. Generally, the public are not very comfortable with the police outfit and do not feel welcomed by them.

#### Police view -

Community Policing, as a concept, poses many a problem to the police personnel. On a continuum it can be graded from skepticism to total opposition. These are the posers:

1. Will adoption of Community Policing concept relegate basic policing?

2. Would not this concept dilute fear element which is understood as so necessary for effective policing?
3. Will it have an adverse bearing on police professionalism?
4. Will it not curtail the discretion and thus undermine the authority and power of the policemen?
5. Will this concept not reduce the scope of corruption, which is presently a vested right at various levels in police department?
6. Is Community Policing concept a practically feasible proposition?
7. Would it not overburden the police as it is already attending to multifarious tasks with scarce resources?
8. Challenges, dilemmas, fears, perceptions and realities of shifting police emphasis and roles that individual officers play within Community Policing is best illustrated by Robert R. Friedmann as -

*"During the yearlong Israeli experiment in Community Policing (1983/84), the neighbourhood police officers were closely monitored. They were frequently debriefed of their experience in and perceptions of the project's progress. All officers were veteran car patrollers with many years on the force, most had supervisory experience, and most were sergeants or sergeant majors. Yet these officers 'were volunteered' to become neighbourhood police officers and initially displayed displeasure and even resentment. This reflected, more than anything, their fear of the unknown as they entered a new role they were not sure how to handle. One officer probably expressed the sentiment of his peers when he said that "... this is not a job for real officers,*

*this is a job for sissies". After the project was well under way, that same officer was asked in one of the ensuing debriefing sessions to describe his progress in some detail. He, as did his peers before and after him, provided a, rather lengthy, detailed, and enthusiastic account of the ties he, successfully established with block and neighbourhood associations, with volunteers, with several PTAs, and with individual residents on his beat (section) who now recognize him and receive him well.*

*He even entered into a tirade against his (former) fellow car patrollers whom he accused of being inconsiderate when entering the neighbourhood for purposes of detaining suspects and arresting people. This because they then leave it to the neighbourhood officers to 'pick up the pieces' in the aftermath. The officer was clearly talking about 'they' in reference to car patrollers, 'us' in reference to the neighbourhood officers, and 'ours' in reference to the neighbourhood residents and its geographical boundaries."*

With all the inhibitions of the members of the community and also the apprehensions of policemen, Community Policing, as a concept and practice, has an appeal which cannot be discarded because of its umpteen symbiotic advantages both for the community members and the police personnel. It is the only vehicle which can provide desired services to the community and job satisfaction to the members of police.

## **REQUISITES OF COMMUNITY POLICING –**

**M**ore than anything else, it must be realized that Community Policing is not a programme, but a philosophy. It is not a set of dis-jointed schemes like 'neighbourhood watch', or,

involvement of school children in road safety patrols, but a long-term strategy to develop a partnership with the people. It takes a long time, effort and patience for it to take roots and succeed. It calls for a total change in the mindset of the police throughout the entire organization and, therefore, requires the long-term commitment from the top leadership for such change.

Most importantly, the philosophy must pervade the entire police organization and, over a period of time, everyone in the organization should be trained in the basics of community policing. The skepticism and apprehensions enumerated above will have to be dispelled so as to achieve full commitment to the concept. They have to understand that:

- The assumption that community policing is opposed to basic policing is fallacious because the two are not contradictory but complementary as the basic task of the police still remains the same, i.e., crime prevention and maintenance of public order. In fact, community policing and basic policing strengthen each other.
- The premise that fear of police is an essential element for effective policing is based on flawed logic and is a legacy of the colonial and feudal thinking. Love and understanding attitude will bring about more cooperation and trust for ensuring order.
- In Community Policing, the community resources will be made available to the police, thereby reducing their burden once the participative relationship develops.
- The discretion of the subordinate police officers in the Community Policing concept will increase and not

decrease. It will not in anyway undermine the authority of the policeman, rather, community policing envisages wider scope for policemen to discharge their responsibility to the society. This form of policing will certainly enrich and empower the cutting edge level of police officers giving an opportunity to them to attain high levels of self-esteem.

- Main thrust area still the same, professionalism would not get adversely affected, rather increased accountability to the public will enhance it creating higher levels of opportunity to respond positively and effectively.
- Of course, Community Policing will reduce scope for corruption – but then it is a highly desirable scheme of things. Slowly as the policemen will realize that Community Policing will make them empowered, loved and accepted, this aspect will reduce in significance.

Trust of the public is a necessary ingredient for Community Policing to operate in its full glory. This will come about if and only if the police officers set their basic policing right. They will have to learn to be courteous, professional, empathetic and service oriented. They will have to do their regular job without fear or favour, with truthfulness as the cornerstone and guiding principle in their work. They will have to change their attitude to work and their interaction with the public. Community Policing requires that the police should consciously strive to create an atmosphere in which potential community partners are willing and able to cooperate with the police. Training methodology will need a change with emphasis on attitude, communication skills and service orientation.

It would also require new systems of performance evaluation. Evaluating crime prevention strategies such as Community Policing is more complex than traditional assessment of law enforcement based on crime registered, convictions, etc. Evaluations will have to be mostly collective and will have to consider the level of community satisfaction, fear reduction and other less tangible products of improved community relations. In some cases, the number of crimes reported to the police may increase following the introduction of Community Policing as a result of increased community-police dialogue and trust, creating the statistical appearance of an increase in crime, when

in fact the rise in reports may be an indicator of a success in improving relations.

Community Policing require the senior echelons of police leadership to trust their subordinate police officers. They will have to develop the maturity to delegate, to have faith in the subordinates and provide them with autonomy, independence and authority to decide local issues along with maintaining accountability.

Community Policing would also require a change of attitude on the part of the other public organizations, namely, the local bodies which should

perceive the community police officer as a community liaison officer.

If all the above are done to perfection then the public will not perceive Community Policing efforts as an exercise on the part of the police department to transfer some of their burden to community or as a mere public relation exercise.

Rome was not built in a day. Even in countries from where this concept owes its genesis, it has taken a decade or more to set in. We will have to discuss, deliberate, conceptualize, practice and evolve our own system of Community Policing with full dedication, sincerity and perseverance.

*The past must no longer  
be used as an anvil  
for beating out the present  
and the future*

- Paul-Emile Bordaus

# TRAINING AND NON-TRAINING METHODS FOR CREATIVITY AND LEADERSHIP DEVELOPMENT IN POLICE

Dr AK Saxena  
Avantika

**C**reativity is defined as the ability to generate new and useful ideas. It is the insightful rearrangement of known information and it deals with getting ideas.

How do we do it ? Is it by free association, intuition, meditation, “remote associations” ? Who knows ? We are still quite ignorant about how the brain functions. But it is fortunate that it works so well.

Though the debate over whether creative abilities are inherited or acquired through training is unresolved, it is a well-acknowledged fact that creativity has a very important and prominent role to play in the police functioning. Consider the following important creative skills.

- ◆ The ability to associate remote stimuli in the environment with elements in the mind and combine them into new and unusual ideas;
- ◆ The ability to keep an open mind and see new perspectives;
- ◆ The ability to generate many ideas;
- ◆ The ability to adopt many different problem-solving approaches;
- ◆ The ability to generate a variety of really different ideas;
- ◆ The ability to develop ideas;
- ◆ The ability to generate infrequent and uncommon ideas;
- ◆ The ability to hang in there when going against consensus and to be persistent in the face of criticism.



**Table - 1**  
**Subject Matter Coverage on Leadership and Creativity**

State	Subject Matter on Creativity	Subject Matter on Leadership
Rajasthan	- A topic on 'creative thinking' is being covered for Dy S.P. level trainees only. - For SI/Inspector Level- No inputs are being given	For Dy S.P. level some topics are being covered at length. For lower ranks, no coverage of topics
Tamilnadu	Nil	For Dy S.P. level some topics are being covered at length. For lower ranks, no topic coverage
West Bengal	Nil	For Dy S.P. level some topics are being covered at length. For lower ranks, no topic coverage .
Maharashtra	Nil	For Dy S.P. level some topics are being covered at length. For lower ranks, no topic coverage

**Table - 2**  
**Consolidated recent research findings**  
**on the use of Training Methods in Developing Creativity and Leadership**

<u>Method</u>	<u>Use of Method in Training</u>	<u>Comments</u>
1. Case-Method	To some extent	Most desirable after training the faculty in its use.
2. Simulated Exercises	To a very limited extent	Most desirable after training the faculty in its use.
3. Brainstorming Method	Not at all	Training in creativity methods to the faculty is necessary.
4. Role-Playing Method	To a very limited extent	Train the faculty in behavioural processes and role playing
5. Project Work	To a very limited extent (unstructured)	More use is recommended.
6. Individual and Group Experience sharing	Not at all	To be inducted in in-service training.
7. Field work	To a great extent (but unstructured)	Structure is to be provided through effective planning, implementation and review mechanisms.
8. Hands on Experiences (attachments in field)	To a great extent (but unstructured)	Better structure is to be provided.
9. Problem-Oriented Exercises	To some extent	Most desirable method. Research for identification of exercises is necessary.
10. Training films on Creativity and Leadership	To a very little extent	May be shown from time to time.
11. Exposure interactions to the eminent personalities. (a) Police Officers. (b) Others	To a considerable extent  To a very little extent	Eminent people from all walks of life to be invited for interacting with the trainees for better exposure to concepts and practices.
12. Tutorials	To a very little extent	SVP NPA practices may be followed.
13. Guide Scheme (Counselling)	To a very little extent	SVP NPA practices may be followed.
14. Use of Psychological/OB tests for giving feedback on Creativity and Leadership.	Not at all	SVP NPA practices may be followed.
15. Discussion on Best Practices in Policing	To a little extent	NPA's books on Best practices may be used. Training institutions may develop literature on 'Best Practices' in various domains of police work in their respective states for training purpose.

Only few of the creative skills listed above seem to be inheritable; instead, most seem learnable. Most people can learn to be more creative.

Creativity and leadership development in police are very neatly and intricately interwoven. An analysis of how training methodology in police training institutions would enhance leadership and creativity has been conducted by thoroughly examining the contents of various training programmes being conducted in Police Training Institutions in randomly selected States.

Leadership and creativity development takes place when varied topics contained in curricula are covered extensively through experiential learning methodology. In this study the nature and extent of the use of training and non-training methods for leadership and creativity development were also examined.

**CONTENT ANALYSIS**

Syllabi of various training programmes being followed in various police training institutions of sample states were studied. The findings are reported in Table 1.

**DISCUSSION**

From Table 1, it is evident that training curricula in Tamil Nadu, Rajasthan, West Bengal and Maharashtra did not cover ‘Creativity’ and ‘Leadership’ inputs for SI/ Inspector levels. For Dy SP level, a topic on creativity is placed in curriculum in Rajasthan only. Attempts should be made for sufficient coverage of these topics in the curricula for both levels of police officers.

**TRAINING METHODOLOGY**

In Table 2, extent of use of training methods in Police Training

Institutions to enhance leadership and creativity in SI & DySP level police officers in training is reported.

Use of experiential learning based methodology is very less. These methods develop creativity and leadership competencies very significantly. One of the reasons for less use may be that the faculty of these police training institution is not very well versed with the training techniques.

**NON-TRAINING INTERVENTION FOR CREATIVITY AND LEADERSHIP DEVELOPMENT**

After discussing with the Senior Police Officers, following findings were arrived regarding the use of non-training organizational developmental interventions for developing leadership and creativity in SI/SHO and DySP level officers.

**Table - 3**  
**Discussions with Management of Training Participants of DIG and above level officers**  
**Use of Non-Training Methods for Leadership and Creativity Development**

Non-Training Intervention	Extent of use for Leadership Development	Extent of use for Creativity Development.
1. Research and Development Activities.	Not at all	Not at all
2. Challenging Assignments	To a considerable extent	To some extent
3. Counselling Techniques	To a very little extent	To a little extent
4. Coaching	To a great extent	To a considerable extent.
5. Job Rotation	To a considerable extent	To a very little extent
6. Rewards	To a considerable extent	To a great extent
7. Meetings	To a considerable extent	To a little extent
8. On-the-job Training	To some extent	Not at all
9. Potential Appraisal	To a considerable extent	To some extent
10.(i) Mentoring (ii) Delegation	Not at all To a very little extent	Not at all
11. Participative Management	To some extent	To a little extent
12. Team Building Mechanisms	To some extent	To a little extent
13. Inspections	To some extent	Not at all
14. Developing Subordinates.	To a little extent	To a very little extent.
15. Performance Appraisal and feedback	Not at all	Not at all
16. Motivating interactions with other Criminal Justice System Agencies.	To a very limited extent	Not at all
17. Crime-Prevention Programmes	To some extent	To some extent
18. Community Policing initiatives	To some extent	To some extent

## COMMENTS

**O**ver reliance on training to develop creativity and leadership in police personnel may not be very fruitful proposition. Above mentioned non-training organization development methods are to be used more. Police leadership will have to be trained more in the use of above-cited methods for better implementation.

## SUMMING UP

**I**n this paper, the investigator has given detailed account of the findings

regarding content coverage in the domains of Leadership and Creativity in various police training institutions. In tabular form, analysis on use of training methodology and non-training interventions for development of creativity and leadership has been presented. It is evident that content coverage is almost nil in training curricula. Training methodology and non-training organizational developmental interventions for development of creativity and leadership are not up to the mark. In the training institutions of public and private sectors, separate programmes of 2-3 days duration are run on various themes of leadership, creativity, creative

problem solving and decision making, best practices in leadership and creativity, etc. In some organizations, all employees are exposed to the concept of creativity and methods for enhancing creativity. Faculty of various HRD centers is trained through Training of Trainers programmes and Faculty Development programmes in the contents and processes of leadership and creativity development. Training is also provided in use of non-training methods like counselling skills, coaching, participative management, team building, performance and potential appraisal, on-the-job training methods, rewards management, development of subordinates, etc. These things may be tried in police.

*Cultivation of the personal life depends on  
the rectification of the mind.*

*When one is affected by wrath to any extent,  
his mind will not be correct.*

*When one is affected by fear to any extent,  
his mind will not be correct.*

*When he is affected by fondness to any extent,  
his mind will not be correct.*

*When he is affected by worries and anxieties,  
his mind will not be correct.*

*When the mind is not present  
we look but do not see,  
listen but do not hear,  
and eat but do not know the taste of food.*

*This is what we mean when we say  
cultivation of personal life depends on the rectification of the mind.*

Confucius,  
Great Learning

## CENTRAL POWER OF MAN: HIS OWN NATURE

TGL Iyer

**B**ill Gates of Microsoft said recently: “The only factory asset we have is human imagination”. The world we occupy today is a vastly different place than the world of a decade ago. For example, a decade ago, may be, about 500 people understood what is a website; today there are millions. A decade ago, Japan was riding high; now it is trailing behind. A decade ago, we had more decent politicians; now according to Mr Lyngdoh, the Ex-CEC, we have mostly criminals.

The key to a prosperous future is to create a social architecture capable of generating intellectual capital. Value-based leadership is the key to realize the full potential of intellectual capital. The challenge of leaders today is to recognize and employ untapped human

ability. A recent survey carried out by Kepner-Tregoe says that two-thirds of companies surveyed do not use more than half their employees brain-power. Only 16 percent said that they use more than half their talents at work.

A recent study of 3,200 US companies conducted by Robert Zemsky and Susan Shaman of the University of Pennsylvania, showed that a 10 percent investment on increasing the skill of the work force in the area of training and development, leads to 8.5 percent in productivity. Such findings explain why Jack Welch of General Electric said: “I have only 3 jobs as CEO: 1. Selecting the right people, 2. Allocating the right capital resources, 3. Spreading right ideas quickly”.

In a knowledge-based economy, leaders do not command employees to work harder, smarter or faster. Knowledge workers know the right buttons and when to press them. A recent research carried out at Princeton University identifies seven attributes to essential leadership. First, Technical Competence, i.e., Business-literacy and grasp of one's field. Second, Conceptual Skill, a facility for abstract or strategic thinking. Third, Track Record, a history of achieving results. Fourth, Moving Skills, an ability to communicate, motivate and delegate. Fifth, Taste, an ability to cultivate and identify talent. Sixth, Judgement, making difficult decisions in a short time frame with imperfect data. Seventh, Character, the quality to define who we are.

A leader may not have all the seven qualities but he will have some of them. Character is the key to leadership. Research at Harvard University indicates that 85 per cent of leaders' performances depends on personal character. Character is not quantifiable, but there are many ways to measure the individual.. (Warren Bennis on 'The Anatomy of Character'). The word character comes from the Greek language for 'engraved' or 'inscribed'. We should know who we are, and how to organise our experience. William James of Harvard University described character as "the particular mental or moral attitude most active and alive, a voice inside, which speaks, "This is the real me".

Police Officers are leaders. In their case, character is framed by drive, competence and integrity. They work for the law, community and general welfare. Without these qualities, it is difficult to engage others and sustain meaningful results. We often hear that "the people get the police they deserve", since they are from the community and would reflect faithfully the characteristics of that community. This is not true, because

the policeman should have that peculiar ability to insulate, fortify and stand solid in the midst of ruins. This can be achieved only through character. Remember that character is not for sale, show or bargain. It is a personal virtue, which gives joy, bliss and pride to the individual.

Lao Tzu writes "The wise stand out, because they see themselves as part of the whole. They shine, because they do not want to impress. They achieve great things, because they do not look for recognition. Their wisdom is contained in what they are, not their opinions. They refuse to argue, so no-one argues with them". May be, this definition or description applies to police. Character inculcates these qualities, because the person practicing it, knows that he will control his own destiny. Cultivation of a character mindset significantly increases the chance of health, wealth and happiness.

Samuel Smiles wrote in 1959 in *Self-Help*, "it is not eminent talent that is required to ensure success in any pursuit, so much as purpose; nor merely the power to achieve but the will to labour energetically". Energy of will may be defined to be the very central power of character in man. In a word, it is Man Himself. By cultivating character, if you could be different and achieve remarkable things, then why not practice it?

Police Officers may remember that the day people stop bringing problems to them, they cease to be leaders. Public lose confidence or gain confidence when they know that Policeman cannot or can help them. People ignore the Police when they know that they are not cared for. Real leaders make themselves accessible and available to others and not get entangled and submerged in unproductive meetings and discussions. A police officer is an outdoor man to be seen, to be

recognized and approached by ordinary people.

In the life of a Police Officer, everyday is a journey through wilderness to a promised land. All an officer has to do is to awaken his or her talents and the champion within. The opportunities are plenty, the track is limitless, stretching before him or her without end. In the deeper levels of the mind are resources of power, strength and courage, hardly imagined. The mind is not just an inert matter. Just as there are precious stones in the depths of the sea, there is a store of abundant energy in the depths of our minds. This energy is beyond the perception of ordinary senses. The Police Officer has to recognize this power, awaken it, use it and appropriate it.

Everyone admires the Bold, none honours the Timid. Common people have a sixth sense for the weakness of others. If in the first encounter, the Policeman demonstrates his willingness to compromise, backdown and retreat, then that brings out the lamb into the open than the lion. If he is on the defensive, willing to negotiate, he will be pushed around without mercy. If he is bold enough to face crisis and calamities, people appreciate and applaud, because boldness has many admirers and cowardice has many critics.

The life of a police officer is exceptional. If he chooses to lead his life like everyone else, then what exactly is it that he has to offer to the department? There should be some evidence that he has played a role, made a contribution and was of service to the common man. People of action do not stand in a crowd. They are in the forefront, doing things.

The Police Officer should have a philosophy to sustain him. He can adopt Swami Vivekananda's saying: "Take things as they come; leave things as they go; love things as they are". In

short, a Police officer can be successful, if he has a sprit of adventure; willing to travel along the road less traveled, willing to sacrifice comfort and choose a hard, risky life and has kindness, character, ideal, fearlessness, purity in

personal life, freedom from greed, quest for truth and has self-control, self-confidence and selflessness. It is difficult to find all these qualities in one individual but certainly some of them will be there and some could be acquired!

Somerset Maugham observed: "It is a funny thing in life, when you refuse to accept anything but the best, you very often get it". So, be persistent. A race is won by a man who will endure till the end.

## FAR FROM THE MADDENING THOUGHTS !

*Do you dwell on negative thoughts ?*

*You most probably are not a very happy person then. Do you know that your thoughts have a direct influence on the way you feel and behave? If you think that your job is giving you headaches, you will come home with your throbbing temples every day. It is sure that the mind exerts its power over the body.*

*Your sense of imagination can be a powerful tool to help you combat anxiety, tension or stress. Visualization can be used as a means to harness the energy of your imagination.*

*Try to visualize two or three times a day. The best time is to do it in the morning while you are still in the bed as also at night before falling asleep. With practice you will be able to visualize whenever and wherever you need it. To begin visualization, sit or lie down in a comfortable position and close your eyes. Scan your body for any muscle tension and relax the areas that need it.*

*After that, begin to visualize a scene, object or place that is soothing and pleasing to you. Imagine each aspect of the scene and involve all your senses fully. If, for example, you like to visualize a waterfall on a mountain, first imagine what this looks like: the rushing water, the stream flowing from it, the trees around, etc.*

*Another type of visualization involves the image that is normally associated with tension, which can be replaced with an image for relaxation. Like if you imagine a taut rope, you could replace it with its loosening. A thunder subsides and is replaced by a light rain; the darkness begins to lighten; the pounding hammer is replaced by the humming of the small flying birds around.*

*As you become more involved in your visual image, your body will relax and you will be able to let go of the problems or worries that were bothering you before.*

(from the collections of Pullela Murali Mohan)

# WALKING

RR Varma

**W**alking is many a splendid blessing. In fact, I call it 'seven in one.' It showers seven major benedictions benefiting various dimensions of the life canvas. They are fitness, mental joy, cure, relaxation, contemplation, introspection and meditation. Some people may raise their eyebrows or even wonder at my audacity to find a nexus between such antitheticals as walking and meditation but such a contradiction is only seeming as we will see that the two are tailor-made to help each other. In fact, by walking I don't mean mere plain walks; its spectrum includes brisk walking, leisure walking, pleasure walking, jogging and even running, plus the long walking which we call marathon.

Now, I may begin with plain walking. We all know that walking is a natural part of our life and is, therefore, inbuilt in all of us. Our experience as enhanced by specialists knowledge tells us that walking is the key to good health. In fact, the truth about the benefits of walking are too obvious to emphasize. The evolution of man from a quadruped to a biped stage is attributable to the ingenuity of walking. Walking facilitated acquisition or emergence of the erect posture of the early man. It led to the growth of spine, nervous system and ultimately the brain. Therefore, walking is one of the important secrets of our being and, sure enough, holds the key to our becoming even better.

For physical fitness in our daily life the role and contribution of walking are undeniably great. Appreciating this reality, medical doctors and specialists have evolved and prescribed various walking courses for different people keeping in view the age factor and individual health levels. My own experience is that early morning time is ideal for walks. It invigorates both the body and the mind. Pollution is the main bane of our time and also a major health hazard. The pollutants emanate from vehicles, factories and various carbon fuels burnt in houses. Since in the early hours in the mornings this type of pollution is less, morning time is more suitable for walking, jogging and running exercises. If the morning walks are concluded by seven a.m., even in winters, the benefits are manifold. It may be noted that to take the benefit of ozone content in air, which is said to be useful for the body and mind due to its decarbonising effect, it is recommended to undertake walks even earlier.

A sense of tingling joy and a feeling of happiness during and after walks, particularly pleasure and leisure walks, is a common and quickly felt experience. Some people may think that I appear to be unexposed to the joys of such sports and adventures as riding, swimming and a host of other sports like river rafting, rowing mountaineering and gliding. But most of these are not accessible to all for various reasons of age, opportunity, training, equipment, etc. Walking costs nothing and is welcome by all everywhere, with all its attendant benefits. My own experience is that in the early morning the panorama of nature unfolding its vastness of grandeur marvels the very core of our being. The golden hue squandered by the rising rays of the sun filling the horizons with bewitching charm, breeze wafting scents of earth and plants, muse of the trees dancing with air, melodies of birds, fragrance of the wild blossoms, form an all entralling vista. Light and shade, colour and sound, smell and

music fill the soul with solace and peace, I wonder why should anybody deprive oneself of this bounty offering both health and happiness.

The medicinal effect of walks figures eloquent in the prescriptions of most doctors. A doctor friend of mine told me, "We only treat, God cures". This really impressed me though most doctors may not agree with this dictum. But most doctors may not disagree with the twin benefits of walking; the curative and preventive medicinal uses of walking. According to doctors there are several diseases and symptoms which regular and suitable walking exercises can cure and prevent. There are quite a few important diseases, which are so common too, for which regular walking exercises are prescribed as a part of medication such as blood pressure, diabetes, obesity, etc. There are several physiological systems in our body which can be strengthened and rendered more or less disease proof—such as digestive system, cardiovascular system, nervous system and the like.

Talking of the relaxation, contemplation, introspection and meditation benefits of walking there are a couple of conditions. In the first place, as far as possible, such walks should be taken alone and on less frequented paths and avenues. Secondly, conscious effort should be made to charge the mind with positive and cheerful disposition. The illwill factor should be banished from the mind. Thirdly, physical tiredness should be avoided during such walks.

Talking of relaxation precisely means stress reduction and feeling of freshness. My personal experience is that when I undertake three/four kms walk in the wake of the above background my pulse rate drops and even blood pressure improves to the extent of 10/20 points to my benefit and delight. I experience a feeling of freshness. However, the blood pressure

should be checked before setting out on the walk and should be checked at half an hour's rest after the walk.

By contemplation I mean quiet and positive thinking or creative imagination and delighting visualization involving recapitulation of pleasant relationships and experiences. It is a sort of vicarious journey in the wonderland of fascination. This, of course, needs practice and the effects of contemplation are not far to feel. Contemplation generated by joy and leisure walks can boost the creative instinct of a person and benefit in artistic and research pursuits. Even students can use such leisure walks to learn and memorize their lessons.

Introspection is the key discovery of one's personality because more often we are in illusion about ourselves. It is extremely difficult to break the self-imposed fetters of ego and conceit. To turn the search lights of the mind on oneself it help in preparing a balance sheet of our good and bad points. To begin with, we should realize that we are essentially what our thoughts are. The other test is what other people think of us. So through this process we can know the areas of our weaknesses. Somehow people around us due to our conduct and behaviour feel and know our personality and their relation is an important clue which we should not ignore but use to improve ourselves. An important benefit of introspection is the awareness of how we affect others and their reaction towards us. The second way is to recollect during walks one's good and bad acts and thoughts of previous day. If this is done regularly during walks we will feel improvement in our character because the avenue to earn respect leads through the process of extending sincere respect to others.

Meditation essentially means concentration of mind and its application to God who is omnipotent and omnipresent but always hidden and



unmanifest. Skeptics may laugh at my endeavor to establish linkage between the abstract unmanifest God and a simple concept of walking, but I may assure them that my conviction is based on experience. The omnipresent-unmanifest God can only be seen by the penetrative spiritual vision. In fact, God contact is an intense endeavor meant only for the pure in the heart. In all creative pursuits of life, the degree of success is proportionate to the level of concentration. Meditation simply put is concentration on God alone. It must be total and fully undivided. Full devotion and undiluted concentration on God are the two prime rules of meditation which can get devotees various benefits. Meditation is not essentially offering prayers from a sitting posture at home or in temple. It means true and pure God love. To love God from the depth of heart, to feel Him during walks, as you are walking with Him, talking to Him, trying to feel his invisible presence, putting sincerely your problem before Him. Have full faith in Him. Such prayers He answers and it is this intensity and purity of prayer which is called meditation. The key factor being pure God love. Therefore, during early morning walks one can always open one's heart to God and continue repeating His name and thought. Quite a few elderly people are heard during morning walks chanting God's name but this does not have to be mechanical. I have the experience of the twin benefits of such walks; a sort of spiritual

satisfaction and the benefits of exercising.

Appreciating these diverse good effects of walking, we may pause and think that life is not walks alone. The other areas of life involve thorny paths, which are treacherous too. Life struggle is not a pleasure or leisure walk, it is a grim race and quite often in wilderness for want of the clarity of destination caused by the crowds and storms of pressure. Steering life to the shore of success needs grit and nerve. Fortunately, we know that regular walks, jogging and running impart the touch of steel to nerves, the only requirement for good life is to be fair to all.

Here I may put down a couple of my own memorable events in walking. Way back in 1965, I was transferred on promotion from North Police district of Delhi to Kinnaur in Himachal Pradesh as District Supdt of Police. In the wake of Indo-Chinese clash of 1962, extensive village touring in this border district adjoining Tibet region of China had assumed importance for the district SP. Indo-Pak clash of 1965 had intensified this job requirement. Therefore, visiting various far-flung villages on foot had made me pretty fond of walking. Sharp at 3.45 a.m., on the 4<sup>th</sup> of May, 1966, as I had decided the previous evening, accompanied by Constable Man Singh (a local resident of Nesang village), I set out on my marathon walk from Pooh rest house to Kalpa (the district

headquarters). The distance was fifty miles (80 kms). No doubt, the road, despite arduous patches, was by and large clear but the blazing sun never relented. The bigger cause of discomfiture was that I was walking in parade boots. Ultimately, with half a dozen blisters on both feet along with my courageous wayfarer Man Singh I reached Kalpa at 7.30 in the evening. I may have marveled at my achievement but my wife was agonizingly amazed. I must admit that the solid energy and spirit of Man Singh worked as booster for me during this Marathon walk.

In the month of January 1968 when I was posted as SP, Shimla district, I had to proceed on short leave to my village. However, an exigency of service required my presence in the office but it showed at night that all traffic remained suspended. I told my wife that I was keen to make it to Shimla on foot. I do not know what undaunting spirit gripped my wife and dismissing every council and persuasion she put on the proper walking dress and marched out. Four other young men accompanied us. Wow! their company turned our journey into a sport. They made it highly enjoyable and unforgettably memorable adventure. The journey of 40 Kms (through short cuts) was a hilarious episode - walking, singing, resting relaxing - enjoying with many villager on the way, we reached Shimla at 8 p.m.

*The suffering of each depends,  
not upon factual happenings,  
but upon the texture of each one's mind*

- Swami Chinmayananda

# CRIMINAL JUSTICE & SCIENTIFIC CRIMINOLOGY

Prof R Deb

**T**he edifice of our Criminal Justice System depends on the co-operation and co-ordination of efforts among the Police who conduct the pre-trial investigation, the lawyers on both sides who assist the Court to determine the truth at the stage of trial, and finally the judge who gives the final verdict declaring the accused either guilty or innocent. It is, therefore, very necessary that their training syllabi should contain such materials as would make them more suitable for grappling with the complicated problems of crimes and criminals in modern times when criminals are harnessing the knowledge of science for furthering their anti-social activities. Thus, study of modern science of criminology in all its bearings is, therefore, a must for all the above three categories of persons who together

administer our Criminal Justice System. While it is necessary to know the bio-psycho-social theories regarding the causes of criminal behaviour, it is perhaps of great importance to master the advancements in the field of Forensic Science or “Scientific Criminology” which go a long way to bring offenders to justice. Certainly, detection of crime is of no less importance than crime prevention, especially when all crimes cannot be prevented. Indeed, successful detection results in crime prevention by driving home a lesson to a would-be criminal that crime does not pay in the long run and nemesis overtakes him sooner than later. Some Universities have, of course, introduced optional papers in Criminology in their LLB syllabi even though the crying need appears to be

a compulsory paper on this ever-growing subject. It is also a matter of regret that in such syllabi, excepting certain bio-psycho-social theories of criminal behaviour, there is hardly any “Forensic Science” or “Scientific Criminology” topic which really helps to detect crimes and criminals. Criminology certainly does not consist of mere criminal psychology and criminal sociology. This aberration in the LLB Syllabus must be corrected forthwith, for now Courts are frequently called upon to discuss and appreciate evidence afforded by police and forensic sciences like modus operandi, handwriting, fingerprints, footprint, police dogs, ballistics, chemistry, microscopy, medical jurisprudence and even genetics (DNA Techniques) in cases of assault, rape, murder and paternity. “Scientific Criminology” (i.e., Scientific aids to the detection of crime), Police science, Police investigative procedure as well as criminal law must, therefore, find place in a meaningful compulsory syllabus on

criminology in all LLB courses throughout the country so that we get duly oriented Police Officers, Lawyers, Prosecutors and Judges who can appreciate scientific evidence properly in course of every step in the Judicial process. Criminology cannot, therefore, afford to ignore Forensic Science, Police science, Police investigation, etc., if it has to be a branch of human knowledge dealing with crimes and criminals in its etymological sense. As a matter of fact, all standard books on so-called pure Criminology with heavy sociological bias too devote chapters on police investigative procedures and administration of criminal justice though in a sketchy fashion. And yet some shortsighted Criminologists would venture to say that Criminology has nothing to do with “Police Science and Investigative Procedure” or even with “Forensic Science”. It is this kind of attitude which perhaps gives us our inadequate investigators and ignorant prosecutors who due to their own

ignorance of “Scientific Criminology”, fail to convince the court with proper arguments and grounds about the fool-proof nature of a piece of scientific evidence. In the circumstances, it is no wonder that we, contrary to highest scientific authorities, once had even a decision to say that opinion of an expert that a particular letter was typed on a particular typewriter does not fall within the ambit of S.45 of the Indian Evidence Act. It is gratifying to note that the apex court has now said that this decision needs to be reviewed by a larger bench in view of modern advancements in the field of scientific knowledge (CBS vs OST Choudhary, 1990 Cri LJ III: AIR 1990 SC 1050). So “Scientific Criminology” is a must for our LLB courses through which we, by and large, get our investigators, lawyers and members of the judiciary who constitute our criminal justice system. Further, its introduction would make our police and custodial officers more scientific minded and thus pave the way for abolition of third degree and custodial violence.

*The frog does not  
drink up  
the pond in which  
he lives*

- American Indian proverb

## FORENSIC GEOLOGY

**F**orensic geology is best described as the application of the principles of earth sciences to the law. Earth science is a broad-spectrum discipline that covers all of the mechanisms involved in the study of the land, sea and air. In our day-to-day activities, we must travel in one of those mediums. What we do in the medium and how we cross the boundaries affects the type of evidence that could be collected at a scene. A forensic geological examination may not just entail a routine study of soil evidence. Depending on the type of incident involved, a multi disciplinary examination may be warranted.

The main use of the science is to assist law enforcement in placing persons at scenes of crime. It can also be used to track pathways of serial

killers, terrorists and international thieves. We live in a highly mobile society that has many cross border criminal activities. These activities include drug shipments, smuggling, commercial theft, fraud and terrorist actions. The law enforcement officials who generally come in contact with these incidents are the front line officers. They then pass on the exhibits to the forensic investigators who continue the examination for trace evidence. However, the question remains, is the front line officer even aware of the option of a forensic geological examination in each of these main subject types. Where a drug shipment has truly originated or passed through is just as critical as knowing where a terrorist's vehicle was loaded and its path to the target. A forensic geological examination may be able to provide those answers.

In today's world, we must place as many tools as possible in the hands of law enforcement. With the collection of geological and soil products from exhibits and transport vehicles, evidence can be developed that would normally be lost. The greater the geographic distance between incident events, the greater the potential for significant evidence generation. Forensic geological analysis is based on the premise that every soil or mineral exhibit has provenance. Provenance is determined by the ability of the investigator to establish that the exhibits are site specific. The degree of individuality and nature of the specific mineralogical elements is the key in pronouncing the significance of that provenance within the confines of the incident. Being able to establish the regional provenance of a mineralogical exhibit will have more significance in an international case than a local incident.

However, localized site-specific determinations can be made by shape, textural and contamination features found within the confines of each exhibit. In highly industrialized areas, the presence and nature of localized contamination features may provide a host of statistically significant individual markers. The local geology may be homogeneous on many levels, but the position and nature of the human contaminants within the sample may provide the elements required in the investigation to merit weight in court.

In all legal proceedings, forensic examiners provide individual elements of a case. It is the duty of the courts to weigh the value and significance of each piece of evidence presented. Forensic examiners are first-degree legal historians that provide stepping-stones for the court to traverse the convoluted path of a criminal investigation. A forensic geological examination forces the investigator to examine all of the potential trace evidence that may arise from an incident. By reaching down to a

microscopic level, a case becomes finely focused and well defined. When the fine elements of an evidence chain are clear, the entire investigational process is strengthened.

A forensic geological examination may include air photograph or satellite imagery interpretation, or the use of geophysical or highly specialized analytical laboratory instrumentation. Each of these tools are important to the investigator in a range of incident types. The list of incident types is not confined to, but include, arson, bombings, locating and the examination of clandestine graves and poaching.

The power and value of a forensic geological examination can only be fully appreciated once its past uses are detailed in case studies. Enlightened investigators will then see how this type of examination can assist in developing other facets of an investigation that may otherwise be lost. Every criminal investigation deserves to have all potential avenues of examination explored and utilized, if appropriate.

#### **CASE**

In 1997, a gold shipment valued at \$3 million went missing. The shipment originated from a placer mine in the interior of the country. It was reportedly shipped to a facility in London, England and then to a warehouse in Amsterdam, Netherlands. The shipment was then sent to Toronto, Canada where it ultimately was opened and the gold was discovered missing.

The shipment had been made in a collection of locked wooden storage crates. The loss was not noticed as the contents had been replaced by sand and iron ingots. The Canadian police were now faced with the task of determining where the theft occurred to establish jurisdiction. The boxes had been properly sealed and tagged at Canadian customs which assisted greatly in ruling

out a switch on Canadian soil. However, the sand and iron were subjected to a forensic geological examination to try and establish provenance.

The iron was examined and determined to originate from Italy. The sand was examined and determined to have originated from a tropical/ sub tropical environment. The associated minerals, found in the sand and physical condition of the grains provided sufficient information to suggest that the switch would most likely have occurred in Ghana.

#### **GENERAL USES FOR A FORENSIC GEOLOGICAL EXAMINATION:**

- Placing persons and vehicles at scenes of violent crime.
- Tracking pathways taken to and from scenes and in abductions.
- Time of death determinations in grave sites by soil alteration.
- Matching stolen items to original sites.
- Placing suspects at poaching scenes.
- Placing suspects at arson scenes.
- Determining sources of drug shipments and transportation routes.
- Tracking border point violations.
- Locating clandestine grave locations.
- Tracking suspect movements and international ties in terrorist bombings.
- Reducing possible search areas for missing persons and graves.
- Providing forensic evidence at train and plane crash scenes.
- Tracking movements of serial killers across the country.
- Utilization of geophysical equipment in crime scene work.
- Airport data interpretation.
- Ground truthing for satellite data interpretation.
- Mine site disaster examinations.
- Development of protocol systems for policing.