

**IN THE HIGH COURT OF DELHI**  
**at**  
**DELHI**  
**INDEX**  
**IN**

**PIL Petition No.**

**Of 2004**

**Complanant :**

CPC Nath, C 679 Sarita Vihar, New Delhi 110044

**Respondant:**

1. Union of India (Minstry of Home Affairs)
2. Commissioner of Police, Delhi
3. Commissioner of MCD, Delhi
4. Mr. H Dutt, C 562 Sarita Vihar, New Delhi

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(CPC Nath)

Date: 24/02/2004

Petitioner

## List of Dates &

## Synopsis

in

**PIL Petition No.**

**Of 2004**

Sl.No.	Dates	Events
1.	30/11/01	Obstructions in the form of locked gates and barriers imposed on the public streets in C Block Sarita Vihar
2	20/12/01	FIR lodged with SHO SaritaVihar and a copy of the FIR was delivered to Deputy Commissioner MCD Lajpat Nagar on 21/12 reporting the commission of the "cognizable offence".
3	07/01/02	A copy of the FIR was delivered to Deputy Commissioner Police, South District, Haus Khaz, New Delhi along with analysis of offences committed
4.	06/05/02	The Police Commissioner, Delhi was first appraised of the failure of the officers under him to prevent a "cognizable offence" and there after many number of times
5	10/11/03	MCD ordered 4th respondent to open the obstructions within 15 days on recommendations of DCP Traffic(South) and in "compliance with directions from Delhi high Court' as stated by them.
5	3/12/03	PGC Member Mr Gautham Kaul,IPS(Retd) directed Delhi Police to take cognizance of the "cognizable offence"and call explanation of SHO
6	15/12/03	MCD forced open the Main street gate at 10.00Am but the 4th respondent closed it again at about 10.30AM
7	28/01/04	PGC declared that these obstructions were against the law and directed MCD to remove all the obstructions on the streets within 7 days.
8	06/02/04	DelhiHigh Court Justice R S Sodhi ordered that "gates to residential colonies can not be closed during the day time." ruling in a different case
9	Till Date	C block gate still kept closed by the 4th respondent

## Synopsis

Cause for action in this PIL was construction of obstructions on the "public streets" in Sarita Vihar C Pocket by the 4th respondent and resultant interference with access to homes of the property owners in the colony. All administrative remedies to make Delhi Police and MCD act in fulfillment of their statutory duty as per the Acts quoted have failed to this day. 4th respondent has continued to ignore the directions from MCD to open the gates as recommended by DCP(Traffic). On one occasion (15 dec 2003) MCD forced open the gate, but the 4th respondent shut the gate again within half an hour thus proving himself to be a **perpetual offender**. Directions from the Public Grievance Commission to Delhi Police to take cognizance of the cognizable offence is not acted upon by them. Directions from PGC to MCD to remove all gates is not acted upon by MCD. Directions from the Delhi High Court on 6 feb 2004 that all gates will be kept open is not complied with nor enforced. Nearly 1200 property owners and nearly 5000 Residents are suffering injury due to "cognizable offence" for more than 26 months to this day. The plight of many other colonies in Delhi are almost similar. The state bodies involved had shown: 'imperviousness to duty, callousness ... and utter lack of supervisory, administrative and regulatory control over the area in question' (V. Lakshmi pathy vs. State of Karnataka and others AIR 1992 Kant 57). The root cause of the failure of the machinery to restore law and order are analyzed and remedial measures through judicial intervention are prayed for.

## **Acts on which Action is Sought**

- I. Code of Criminal Procedure 1973
- II. Indian Penal Code 1960
- III. Delhi Municipal Corporation Act
- IV. Motor Vehicle Act
- V. Constitution of India and 74th Amendment

(CPC Nath)

Date: 24/02/2004

Petitioner

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**(Original Jurisdiction)**

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**Of 2004**

**Complanant :**

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1. Union of India (Minstry of Home Affairs)
2. Commissioner of Police, Delhi
3. Commissioner of MCD, Delhi
4. Mr. H Dutt, C 562 Sarita Vihar, New Delhi

To:

The Honourable Chief Justice of the High Court of Delhi and his Brother

Judges,

( The Most Honourable High Court of Delhi )

Your most exalted and honorable Lordships,

Most respectfully showeth,

1. That this petition is being filed in public interest for suitable direction to the Respondents and others
2. The Petitioner is an ordinary citizen of India, and is not legally qualified or trained in the Law or its pleadings, and prays for the Hon'ble Court's pardon for any deficiencies in this petition present, which has not been drafted or vetted under legal counsel for reason stated after, and prays that an opportunity may be given to the Petitioner to suitably amend these deficiencies if any, and that such initial deficiencies may not be held against him in the interest of natural justice. It is relevant to state here that a public matter inherent to this petition is :- whether an ordinary citizen of India - Mr. X, deficient in knowledge of the rules of procedure etc. of your most Hon'ble Court, is able to directly and humbly approach the Hon'ble Court and the other Higher subordinate courts at the present time or be disadvantaged, procedurally or otherwise, therein ? It is relevant to humbly submit at the outset that there may be procedural defects in this plaint, but it is well established that procedure is a mere handmaiden to Justice and should not stand in Her way.
3. As a law abiding, though presently private for reasons stated after, person and citizen of India, the Petitioner is apparently legally bound to inform the nearest magistrate u/s 39 of the CrPC of any possible offence being committed under sections. At the present time the Petitioner is

unable to discharge his civic obligation in the form prescribed as above for reasons stated after, and in the alternative is constrained to forward this communication for your intimation under the vast powers of your most Hon'ble Court, and in the **public interest** as detailed after.

#### **Why Public Interest is involved?**

4. The complainant is an ex- Lt.Colonel and a practicing Software & Security Engineer & Architect of highly secure cryptographic systems, a researcher & an activist of "Save Our Streets: Delhi" advocacy movement and has instituted a web site <http://sosdelhi.tripod.com/> to educate the lay public on the gravity of deterioration of the streets of Delhi with gates, barriers and humps.
5. The public interest served by this initiative is to propagate the truth that despite all the high blown rhetoric, the real reason some residents support gates, barriers and humps is to divert traffic to somebody else's street or neighborhood.
6. Gates, barriers and humps tend to privatize public streets, giving undue power to one person (or persons) who live on a street while depriving the rest of the neighborhood a voice. It is still unfair to other residents who use the street and paid as much in taxes for it as those who happen to live along it.
7. If we reject the surrender of our freedoms for the false promise of security we will have rendered this violent criminal act of obstructing "public Streets" with gates and barriers impotent and futile. Freedom is



not given, it is taken. Freedom is not lost, it is given away.

8. The Public Interest site points to many scientific studies which say response time for ambulances is 4 minutes or less because, after 4 minutes heart attack victims can suffer brain damage from lack of oxygen so, every second of delay increases the chance of a bad outcome. Children and adult drowning or choking/ blocked airway victims face the same danger. The cumulative impact of a series of gates, barriers and humps turns seconds of delay into minutes, because emergency vehicles are unable to regain cruising speed between the devices.
9. Unlike traffic congestion, which is sporadic and difficult to correct, gates, barriers and humps deliberately cause delays to emergency response 24-hours a day.
10. A study performed by the Austin, Texas Fire Department shows an increase in travel time of 100% for ambulances traveling carrying injured victims. Emergency vehicles are faced with accepting the delays and damage caused by these devices, or taking less direct routes -- either choice costs time and thus lives.
11. The complainant is a responsible citizen of Delhi who has done extensive research on the detrimental effects of these traffic calming devices and the Public Interest site <http://sosdelhi.tripod.com> is a proof of such studies. Thus, the complainant is a fully qualified expert to represent the larger public interest against the deterioration of the streets of Delhi in a Public Interest Litigation.
12. Legal mechanism and the role of judiciary have proved to be very effective process in any advocacy or activism. It has been quite

successfully used in our country. Although in most cases on environment, the honorable judiciary may not respond the way an activist would like (due to its own limitation), such attempts create awareness that marks the making or remolding of values in the society. The complainant is fully aware of this truth while initiating this PIL.

13. Hence, the case is buttressed purely on the existing law which is sufficient to protect the rights of the Delhi citizens provided the statutory authorities who derive their statutory power from these very laws do not take the law into their own hands in a cavalier manner and violate the covenants of protecting the very same rights these laws are meant to protect the ordinary citizen.
14. It may be humbly submitted that a large number of property owners of colonies in Delhi under both MCD and NDMC are similarly placed like the complainant with respect to denial of due process before the use of "public streets" defined under the appropriate Acts are denied to them or interfered with.
15. In view of the large number of sufferers of injustice on almost similar grounds, the Honorable court may declare the complaint a fit case as a complaint under PIL so that a general writ or direction or what ever the Honorable court considers fit may be given to settle the matter once and for all so that a large number of cases do not come up in future on more or less similar background and in the overall interests of speedy and cost effective administration of Justice.
16. Every right thinking citizen felt the pain of injustice when he was denied access to "public streets" which he has been using for very many

years, but was at a loss to take concrete steps to bring in justice because each one was unwilling to invest the time, energy, money and effort and the mental agony of going to the court for a trivial problem a beat constable should have solved in a couple of minutes after receiving a call from a citizen.

17. Each one expected others to do it for them. Thus the issue suffered the "tragedy of the commons" in a new sense. The law enforcement authorities should have come forward to solve such issues for the citizens, but unfortunately, the the law enforcement authorities instead acted in collusion with the lawbreakers. This proved to be the tragedy as will be seen in the following submissions.

**Some Questions of law and fact raised in the Complaint including, but not limited to**

18. Can a property owner A residing in the city impose his will on his neighbor B as to which road B will take to gain access to B's property?
19. Does the will imposed on the neighbor B above become any more legal just because A uses the forum of RWA (Resident Welfare Association) or his position as a "Special Police officer" to impose his will on the neighbor B?
20. Can a property owner living on a public street impose restrictions in the form of gates and barriers on a public street to allow residents whose properties are accessed from the street to obtain access but to deny the same access to non-residents?

21. Can a property owner living on a public street impose restrictions in the form of gates and barriers on a public street to deny access to residents whose properties are accessed from the street and to allow the same access to himself, the local police and the MCD ?
22. Is a complete permanent closure of a local street or local street segment to all or some sub-set of traffic legal and if so who is authorized to order such closure?
23. A complete temporary closure of a street or street segment is legal for special occasions or events and if so who is authorized to order such closure?
24. Under what circumstances can a public street be abandoned, and thereby potentially converted to private use and who can order such abandonment?
25. Can the authorities responsible for enforcement of IPC, CrPC, the Motor Vehicle Act, including the Local Police, the Traffic Police, the Police Commissioner, the local MCD office and the MCD Commissioner ignore their responsibility towards the citizens with immunity even when the citizens complain such transgressions of the respective laws?
26. Should those responsible for enforcement of such laws fail to enforce such laws, shouldn't they be punished under IPC 166, whoever being a public servant, knowingly disobeys any directions of the law as to the way in which to conduct himself as such public servant intending to cause or knowing it be likely that he will, by such disobedience, cause injury to any person shall be punished with simple imprisonment for a

term which may extend to 1 year, or with fine or with both?

27. In considering installation of speed humps, can the city abdicate the responsibility and leave the decision and actual installation to the residents living on the street and serve their self interest?
28. Can the city base its design of the speed humps and the proposed locations where it is to be installed on the basis of recognized engineering standards or leave every thing to the haphazard decisions of the residents living on the streets to the detriment of road users?
29. Can the city ignore the requirement that the circulation element of the city's general plan does not conflict with the speed hump program?
30. Can the city ignore the requirements that the speed humps are constructed, sited and managed in accordance with rules and standards contained in a program as per the laws passed in this regard ?
31. Can the city ignore the requirements that it ensures that the process of approving the speed humps is done in compliance with standards and process approved by the city council?
32. Can the city ignore the requirement that the consideration and approval of "cul-de-sacing" a street be consistent with the general plan's designation for the affected street, be designed in accordance with established standards, be approved by the city council and accomplished in compliance with well laid down standards ?

### **Cognizable & Other Offences and Public Injury**

33. Obstruction in the form of **illegal gates and barriers** in "Public Streets" in Pocket C of Sarita Vihar was placed by Mr H Dutt, 4th respondent at mid-night on 30 November 2001 or there about.
34. These illegal obstructions continue to exist preventing public from using public streets enjoyed by the residents for the last 12 years since the inception of the colony in early 1990's.
35. IPC S 431: "Mischief by injury to public road...: Whoever commits mischief by doing any act which renders any public road .. impassable, shall be punished with imprisonment of either description for a term which may extend to 5 years, or with fine or with both. Gates and barriers erected by 4th respondent made them impassable.(Count I)
36. DMC Act 1957 S 299 (2) To close a public street, previous sanction of the Corporation is required. Corporation shall by notice publish as per bylaws give reasonable opportunity to the residents likely to be affected by such closure to make suggestions or objections with respect to such closure. No sanction or notice was given by the Corporation. (Count II)
37. DMC Act 1957 S 299 (2): Corporation shall consider all suggestions or objections which may be made within one month from the date of the publication of the said notice.This was violated (Count III)
38. DMC Act 1957 S 303 : Commissioner only can take action to close the public street, provided that the Commissioner shall not take action without the sanction of the Corporation in cases under clause. The fourth respondent has taken law in his own hands.(Count IV)
39. DMC Act 1957 S 320 (1) read along with S 466A ('an offence under

sub-section (1) of section 320 in relation to any street which is a public street, as if it were **cognizable offence**") Prohibition of structures or fixtures which cause obstruction in streets- (1) No person shall, except with the permissions of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank. The fourth respondent has taken law in his own hands and closed the public streets in Sarita Vihar Pocket C for free flow of traffic from 30 Nov 2001 by construction of barriers and gates which are kept closed.(Count V)

40. Criminal offence was committed on 30 Nov 2001 and continues to be committed till date. People against whom the offence is committed are suffering injury for more than 26 months.

41. Motor Vehicles Act (MVA) 1988 Section 115: Power to restrict the use of vehicle. The State Government or any authority authorized in this behalf by the State Government, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed

or erected under section 116 at suitable places. No notice in the Official Gazette was given, though the restriction/ denial lasted more than 26 months.(Count VI)

42. MVA 1988 Section 115: Power to restrict the use of vehicle. Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or restriction. No local publicity was given by the local authority of prohibition/ restriction prior to the completion of 1 month of this obstruction.(Count VII)

43. MVA 1988 Section 116. Subsection (1) Power to erect traffic signs. (1) (a) The State Government or any authority authorized in this behalf by the State Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice any speed limits fixed under sub-section (2) of section 112 or any prohibitions or restrictions imposed under section 115 or generally for the purposes of regulating motor vehicle traffic. The fourth respondent was not authorized by the state government to place traffic signs but had put up signs on the "public streets" on his own.(Count VIII)

44. MVA 1988 Section 116 Subsection (2) Traffic signs placed or erected under sub-section (1) for any purpose for which provision is made in the Schedule shall be of the size, color and type and shall have the meanings set forth in the Schedule, but the State Government or any authority empowered in this behalf by the State Government may make or



authorize the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the State Government may think fit provided that the transcriptions shall be of similar size and color to the words, letters or figures set forth in the Schedule. The unauthorized traffic sign placed by the fourth respondent is not of the authorized size, color and type.(Count IX)

45. MVA 1988 Section 116 Subsection (3) Except as a provided by sub-section (1), no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road. The traffic sign was illegally placed. by the fourth respondent after the commencement of the Act i.e. 1988 (Count X)
46. The gates and barriers were constructed ostensibly for so called security purposes but any one aware of security knows that it is ridiculous to believe that the security will be improved by preventing resident traffic from plying in a small stretch of the main Sarita Vihar C-B Block road. It may be relevant to point out that the current RWA President, the fourth respondent and Secretary, Mr Mandani live on the stretch which is blocked for resident traffic.
47. It may be relevant that the complainant is a retired army officer and an Internationally Certified Security Professional (CISSP) and the claim of security in this case is just bunkum to prevent traffic in the road where the RWA President and the Secretary reside.
48. The obstructions of gates and barriers were constructed to throw the traffic from the arterial main street to small lanes(12-16 feet) in front of some one else's houses.

49. The above obstructions in the "*public streets used by all the residents for more than 10 years from the time residents started living in the colony*" prevented the residents from taking the main entrance closest to Mathura road and use of the main street of the Colony Pockets C leading to Pocket B. The closure of the main entrance and denial of the right to use the arterial main street forced the residents to use B & C pockets' back entrance which is nearly half a kilometer from Mathura road and then drive all the way back through the narrow by lanes (12-16 feet wide single lane with large number of blind corners and with parked cars on both sides of the lane) of the colony.
50. When all the traffic meant to ply on the C pocket arterial main street leading to B Block market was closed for traffic, there was considerable reduction in noise and other pollution due to the traffic and the children could safely play badminton on this street.
51. The traffic that disappeared from the above street did not vanish into thin air. It naturally got redirected to 12-16 feet narrow lanes in some one else's neighborhood.
52. The residents on these lanes felt cheated and as a reaction each resident put up road bumps in front of their houses to calm the traffic. They could not have closed this lane as then the only way to egress from the colony would be in a helicopter.
53. The complainant and other similarly placed property owners are **prevented by barriers** from taking our four wheelers
- i. to offload our senior citizens and sick and infirm members in front of our flats.

- ii. to **designated parking** area for the property. These parking areas were constructed originally by DDA at the property owners' expense.
- iii. to the **nearest shopping centers** provided as per the Master plan of the architects of the Colony.
- iv. to the **Medical facilities** available within the colony.

54. The above barriers in the middle of the streets created cul-de-sacs on the traffic carrying roads and the through traffic turning around at these barriers caused utter confusion, noise and pollution and increased risk of accidents and collisions head on as well as gracing.

55. The law breakers put up signs saying that these are "Emergency Gates only". There is no such term defined in the DMC Act, but some MCD staff who were in league with the law breakers were found to explain the gating and barricading as "Emergency Gates". DMC act defines "public streets" and "private streets" and not "Emergency Gate".

56. Scooters and cars are seen parked in front of the gates and barriers blocking the road completely at these gates and barriers for traffic even in case of unforeseen emergency some body were to open these obstructions.

57. All this for false Security (there is no authentication, access control, regulation of visitors or any other sensible security measures) and reduced traffic in front of the houses of RWA officials!

58. RWA instead of coordinating civic amenities of residents has become an extra constitutional authority for harassment of residents in the name of maintenance of law and order!

59. Residents pay taxes to the state for maintenance of a police force for this purpose.
60. This law breaking has led to favoritism, capriciousness, unfounded claims of community support and maneuvers to elude and obscure dissenting voices not to talk of subverting the law enforcement machinery.
61. Law breakers got the local police on their side by inviting the local SHO as the chief guest at a drinks and dinner party before the actual crime was committed during midnight on 30 Nov 2001. Trust the criminals to befriend the police before committing a crime!
62. The barrier near B/C block border on the main road which was chained and locked was raised partly to allow low height vehicles to pass through on first week of January 2004 or there about.
63. The barrier near C 291 on the internal road between C Block and B Block which was permanently welded with iron chain was un-welded and removed on the first week of February 2004 or there about.
64. The cause of the above two concessions to the residents after almost more than 26 months of chaining remain a mystery to the residents who suffered the humiliation of being chained in for more than 2 years. The concessions perhaps were like what usually happens in Tihar and other Central Jails: those granted by the "Prison Warden" on the basis of "good behavior" of the inmates. In our case, it was the concession granted by the fourth respondent to the members of CAGE -"Citizens Against Gated Enclave".
65. The residents who are denied access to the "public street" are the ones

who had paid to DDA for development of these streets. The neighboring village residents who are denied access to these "public streets" are the ones who were real owners of the land when they were displaced by acquisition of land by government agencies for "public purposes" for a pittance and now denied the use of the "public streets" constructed on their ancestral land. If their land and the "public streets" on it were to be private fiefdoms, then they should be compensated at commercial rates and not government acquisition rates.

66. Many residents who felt outraged at the caging when it was installed initially, protested but their protests fell on deaf ears. The villagers who were not aware that it was their rights to use of these "public streets" because they were presumed to be "criminals unless proved otherwise" did not even protest!
67. Police also failed to prevent the law breaking as can be seen in the following paragraphs.

#### **Existing Law & Law Enforcement Response**

68. Under Cr PC Section 133 (1) (a), "any unlawful obstruction or nuisance should be removed from any place or from any way, river or channel which is or may be lawfully used by the public" and is a Public Nuisance under "Maintenance of Public Order and Tranquility" the construction of gates and barriers on the public street by respondent 4 is a Public Nuisance.(Count XI)
69. IPC 268 Public Nuisance-"A person is guilty of public nuisance, who

does any act or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. **A common nuisance is not excused on the ground that it causes some convenience or advantage.**"(Count XII)

70. The complainant filed an FIR with the SHO Sarita Vihar Police Station on 20 December 2001 for the offence committed by the fourth respondent above, and requested the Police to report the "**cognizable offence under 302 (1) Delhi Municipal Corporation Act 1957**" to the Commissioner MCD as required under Section 475 of DMC Act.

71. DMC Act 1957 Section 466 A & Criminal Procedure Code: SHO, Police Station is required to register an FIR against a criminal offender who commits a cognizable offence under Code of Criminal Procedure. Under Section 466A of DMC Act, Certain offences to be cognizable-The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to an offence under sub-section (1) of section 320 DMC Act . SHO, Sarita Vihar Police Station failed to record the FIR given to him on 20 Dec 2001. (Count XIII )

72. DMC Act 1957 Section 475 It shall be the duty of all police officers to give immediate information to the commissioner (MCD) of the commission of, or the attempt to commit any offence against this Act. SHO Sarita Vihar failed to provide immediate information to the Commissioner MCD though this requirement was pointed out to the

- SHO through the request to lodge the FIR on 20 Dec 2001 (Count XIV )
73. The Police failed to take any of the actions under CrPC 149 (Police to prevent cognizable offences), (Count XV)
74. The Police failed to take any of the actions under CrPC 150( Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.)(Count XVI)
75. The Police failed to take any of the actions under CrPC151 (.Arrest to prevent the commission of cognizable offences) (Count XVII)
76. The Police failed to take any of the actions under CrPC152 (A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of injury of any public landmark)(Count XVIII)
77. A copy of the FIR was delivered on 30 December 2001 to Deputy Commissioner Police, South District, Haus Khaz, New Delhi reporting the commission of the "cognizable offence under 302 DMC Act 1957" along with complete analysis of violations of various laws.
78. Under CrPC S154(3), Dy Commissioner Police, South District, Haus Khaz failed in his responsibility to take cognizance of the offence, thus failing the provisions of Cr PC 149.(Police to prevent cognizable offences.- Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission

of any cognizable offence.)(Count XIX)

79. The Police Commissioner, Delhi was appraised of the failure of the officers under him to prevent a "cognizable offence" on 6 May 2002 and many subsequent communications there after with no avail.
80. I had expressed my anguish that it is real sad that what a beat police constable should have solved in 5 minutes of receiving a call is finally reaching the doors of the Delhi High court after umpteen petitions after petition to the law enforcement authorities specifically maintained at the expense of the public money.
81. As a result, the residents of Pocket B & C **continues to suffer injury** till this day.
82. Many other residents also attempted to file FIRs at many occasions thereafter, but every time the local police thwarted the attempts and these complaints went unregistered thus Delhi Police actions supported "crime enforcement and law prevention" and not the other way for which the public money is spent to support them.
83. On a complaint to the Public Grievance Commission, the PGC Member and a very distinguished Ex-Police Officer of the Independent India, Sh Gautham Kaul applied his mind to the provisions of the appropriate laws and has already directed the Delhi Police vide F 15(99)/03/Delhi Police dated 12/12/03 to take cognizance of the "cognizable offence", take action against SHO for his failure and organize training of the Delhi Police on the provisions of DMC Act. Delhi Police has failed to implement the directives of the PGC also so far and the residents continues to suffer the consequences of a criminal "cognizable offence".



84. Many attempts by many other resident's to file FIRs also came to naught because of the local police complicity in the crime. Many residents claimed that they would go to the courts but the effort, cost and the mental agony in going to the courts dissuaded them from approaching the courts against the law breakers and the police.
85. On one occasion (29 January 2004), a complainant, Mr HS Sawhney (B 411) was asked by the SHO to provide the copies of the relevant Acts and the complainant had to oblige the SHO by providing the xerox copies of the relevant portions of Cr PC, IPC and DMC Act. Even then his FIR was not registered in spite of his bringing to the attention of the SHO about the directions of the PGC.
86. The saddest part of the fact was that the Delhi Police Headquarter had forwarded the directions from the PGC to record the FIR for the same offence and was awaiting action with the same SHO for more than a month.
87. As any one who had more than one encounter with the police, one probably realizes that there is something about the job of police officer that draw some of the best and worst people. If a police officer breaks the law he/she has sworn to uphold while on duty and we as Tax Payers are paying their salary not only have they wasted our money, broken the law they were sworn to uphold but tarnished the reputation of the few good policemen that are still out there.
88. A crime under IPC 268 Public Nuisance, under Cr PC Section 133 (1) (a) offence under Maintenance of Public Order and Tranquility B Public Nuisance takes place, cognizable offence under 320 (1) Delhi

Municipal Corporation Act 1957 is reported, the police officer with full responsibility for law enforcement and crime prevention refuses to not only to prevent the crime but fails to take cognizance of it, all appeals to a Deputy Commissioner of Police with responsibility for Law and order of the area, is ignored by him with out any application of mind and continues to ignore continually for more than 2 years, repeated appeals to the Commissioner of Police about failure of the machinery under his command does not even receive his attention leave alone a recording of the FIR and nearly 1200 residents have been suffering from deprivation of their right guaranteed under the law of the land passed by the parliament, there is some thing drastically wrong with the command responsibility mechanism within the police organization and the correction mechanism through complaints to higher officers.

89. The complainant approached the PGC against the failure of MCD and obtained a declaration that these gates were against the law and a direction from the PGC to MCD asking them to demolish all the obstructions on the streets. MCD organized and collected their demolition party and resources to demolish the gates on the morning of 10 February 2004 but had to abandon the project after reaching the Sarita Vihar Police Station on 10 February 2004 as the Delhi Police had failed to provide the promised force for protection of the demolition party of the MCD.

90. The fact that MCD had declared the gates illegal and are to be demolished did not still trigger any response from the Delhi Police to initiate criminal proceedings against the fourth respondent, who is also

the Special Police Officer, Sarita Vihaar Thana, New Delhi and a "cognizable offence" committed by this "Special Police Officer " was allowed to continue to cause injury to nearly 5000 residents of the colony.

91. The second respondent was appraised on 7 February 2004 by email requesting to implement the direction of Delhi High Court Justice R S Sodhi on Friday 6 Feb 2004: "that all gates and barriers to residential colonies can not be closed during the day time. And if they have to be closed during the night time, RWA's should post guards there so that no inconvenience is caused to people who wants to visit somebody in the area".

92. The email to the second respondent was sent in response to the newspaper advertisement on 7 Feb 04 at the tax-payers' expense under the headings: "Citizens First: Taking efficiency to a higher level, Delhi police offers prompt solution to your problems. Now if you have any problem at any police station just fax or email your grievances for immediate action". Even after receiving the email by all concerned senior officers of Delhi Police, Citizens continued to suffer injury because of the "cognizable offence" committed on them for almost 26 months with out any remedy by Delhi Police. Even 72 hours after the email, Delhi Police did not only take any action but did not respond to the email and faxes from citizens including senior citizens of the colony.

93. Delhi High Court Justice R S Sodhi on Friday 6 Feb 2004: "that all gates and barriers to residential colonies can not be closed during the

day time. And if they have to be closed during the night time, RWA's should post guards there so that no inconvenience is caused to people who wants to visit somebody in the area".

94. Even when the High Court orders explicitly on exactly the same subject of keeping the colony gates open, Local Police tries its best to thwart the letter and spirit of the order. When some Senior citizens approached the local SHO on 7 Feb 2004, for enforcing the High Court order, he claims that the gates will be opened. But when these Senior citizens actually approached the colony through these "public Streets", the people who have locked them up refused to budge. Not that the beat Police is not witness to this gross violation of "law and Order"!
95. If local police were really worried of the high crime probability just outside the gate, what have they done to protect the 20 odd families who live just outside the gate or the government School located just outside the gate. Are they not supposed to protect these kids and the families? Should they be not given entry and exist through "highly protected security island " that is Sarita Vihar C pocket ?
96. It is possible to give these families and school children entry/exit through C pocket compound! But Delhi Police is not bothered about them because they are not from the upper middle class or middle class! In fact, they are from the lower class and Delhi police is trying to protect the middle class from these lower class who are presumed to be criminals and Sarita Vihar has to be protected from them! How undesirable it is from a sustainable society point of view!

## **Police Reform**

97. All the following allegations are part perception and part reality. They may not all be applicable every time to Delhi Police, at least, not with all members of the force, anyway. They are listed as perception and not specific allegations about Delhi police.
98. If an educated, reasonably well to do middle class person with full knowledge and awareness of his rights and aware of ways of asserting these and living right here in New Delhi perceives the police in this fashion, one can only imagine the plight of an uneducated, poor villager living in some remote corner of Bihar.
99. Police in general all over the world have come under severe criticisms for their inability to reform themselves. It is not unusual that the Police force in general is accused of what has come to be termed as "police abuse". By police abuse, we mean the inappropriate and illegal use of police powers to coerce, harass, intimidate, arrest, assault and kill members of our community.
100. Police abuse also occurs in the form of class profiling, illegal roadblocks and illegal searches. Because of this abuse and the lack of accountability to the community, many people don't see the police as "public servants".
101. Police are perceived as part of the power structure in this community that oppresses them. And the problem is worsened by the fact that our political leaders rarely speak out against this and sometimes give a wink and a nod when it happens blaming the victims.
102. Police abuse and other forms of criminal injustice pose a threat

to the foundations of our democracy. It adds to the frustration and hopelessness of people who already feel abandoned and serves to further undermine the trust that citizens have in their government.

103. The police departments are perceived to have bad policies and "internal cultures": They do not do enough checking of the backgrounds and complete psychological tests on candidates. The departments have a habit of having men who have a "power-hungry and gung-ho mentality" and often hold class, sexist or homophobic views. We do not want anyone like that in a position of power carrying guns.

104. Police are not perceived to be trained properly. This has led to shooting suspects (many of whom may have been unarmed) and abusing people in the community regularly. They tend to "shoot first and ask questions later". It appears that instead of being trained to deal with people in a respectful manner they operate under the assumption that everybody is a potential criminal.

105. Police Department is perceived to have vague "use of force" policies that allow officers and men to interpret them the way they want.

106. There is no accountability when an officer violates the department's own policies. Police Officers and men are rarely found guilty of wrong doing by the police department's own internal investigations.

107. In fact, in many cities nationwide, officers who shoot people dead, end up getting promoted. This gives them the go-ahead to abuse more victims. **Clearly, the police cannot police themselves.** 90% of

citizen complaints against the force end up in "no action".

108. There is no "quality control". Bad officers and men with many complaints are not adequately tracked and therefore never get fired, leave alone get booked on criminal charges though quite many cases nothing less than criminal charges will be appropriate.
109. One could ask just how many cases in which gross crime under IPC was charged against the Police staff and officers for their omissions or commissions ? Internal disciplinary action is a sham as in other Polices of the world!
110. There is strong unwritten code amongst Police officers to protect each other. There is an unwritten "Code" of silence which means that police officers and men cover up for each other.
111. The Delhi Police may also be accused of tolerating this conduct. Atleast the perception of the public in these matters are more important than reaching an agreement whether these are true.
112. Most abused citizens are discouraged from filing complaints and are sometimes intimidated into not doing so. This results in much abuse not ever being reported.
113. When they do file, victim's complaints are often ignored by a stone wall of silence or distorted and sometimes falsified . Accused officers and men lie to cover themselves. Again, it is the perception that matters.
114. Policing is a stressful job and the police department may not have an adequate social support system within the department to help them deal with the stresses.

115. Each and every perception painted above are true or have been true to a large measure about Police in general whether it is in USA, UK, Australia, New Zealand, Hongkong or any where else for that matter.
116. What have these countries and cities done to rebuild the confidence in the ordinary citizens about the Police ? Fundamentally they have come to the conclusion that a reliable police complaint system is of utmost importance if the confidence is to be built up. Rather than starting afresh in this front, it would be socially advantageous that these models are replicated with benefits of their experience.
117. Two models worth emulating are those of New York and London.
118. Critics are of the opinion that there is a need to establish an oversight scheme that is external to the existing internal method. At issue are the procedures, or the lack thereof, employed by police to assure accountability in the investigation of complaints, that have often been initiated by citizens, and in the forthright resolution of such allegations of professional misconduct. This issue raises a host of controversial questions about process: Who should receive the complaint; who should determine the authenticity of the charge; who should investigate the issue; who should adjudicate or mediate the case; and who should impose a sanction, if the officer has not been exonerated? These are the recurring policy questions that confront proponents of citizens oversight.
119. Finally, it is also important to acknowledge that other occupations or business endeavors, that are invested with a significant



amount of power and/or trust, may also be in need of an external oversight scheme. Police have been singled out for such scrutiny because of the nature of their tasks, the powers deferred to the organization, and the significant discretion accorded to individual patrol officers. This last factor is particularly important, for in both private and public sector organizations, there are few, if any, who grant as much personal discretion to line employees as does law enforcement. The gravity of that authority is enhanced further by the fact that these line officers are usually mandated to carry lethal weapons.

120. At issue was the internal process, that was employed by many police departments to handle citizen complaints about questionable police conduct. Critics of the process suggested that an oversight scheme be established that was external to the existing hierarchical and systemic forms of accountability. Such a scheme could be characterized as an illustration of democratic accountability. It is essentially based on the premise that irrespective of the public relinquishing to the police the authority to enforce law, the public retains the right to control the police if and when the need arises.

121. The Police Complaints Board is composed of prominent citizens who serve on a part-time basis. The Board has an executive secretary who is a full-time employee and coordinates its activities. It also has a chief investigator and staff, who handle the investigative stages of the work.

122. The Police Complaints Board entertains three kinds of complaints: original, inquiry review, and appeals. Original complaints

can be filed with the police department, the Board of Police Commissioners, the office of the chief investigator, or with other municipal agencies, such as the mayor's office. The complaints are then forwarded to the executive secretary who attempts to resolve the matter informally. If this is unsuccessful, then it is turned over to the office of the chief investigator. The initial investigation can be handled either by the supervisory staff at the precinct involved in the complaint or handled by the office of the chief investigator. The Board advises the chief of its findings. Disciplinary proceedings are then taken either by the chief or by a departmental trial board.

123. The Board of Police Commissioners for the city of Detroit has the authority to receive complaints, monitor the investigation or conduct it personally, and can affirm or set aside disciplinary actions that are imposed by a departmental trial board. Among the jurisdictions in the United States that have created citizens oversight schemes, some will have a more limited role to play in the complaint process from that highlighted in the Detroit scheme, while others may have more extensive responsibilities.

124. In England, till recently, The Police Complaints Authority is composed of citizens who are appointed to full-time duty by the Home Secretary. Excluded from service are all current and former English police officers. Under this system the Authority is more actively involved in the complaints process. In such instances the Authority must be notified of the complaint. The Authority appoints a police investigator, usually from another force, to conduct an investigation.

Less serious complaints, that might be criminal as well as disciplinary in nature, are also immediately called to the attention of the Authority. In these cases the Authority simply supervises the investigation. In some instances the chief constable requests the Authority to oversee an investigation, even though it is not required. The rationale is usually that the chief constable wants to assure that there is a public presence throughout the investigation.

125. Once an investigation is completed, and if it is determined that it involves a noncriminal matter, the chief constable is left with two avenues to follow. If the officer admits guilt, the chief can impose a sanction. In this instance the chief sends the Authority a report outlining the complaint, the investigation, and his decision on what sanction to impose. If the case involves a criminal matter, it is sent to the Director of Public Prosecutions. If the officer does not admit guilt, there is a disciplinary hearing before a tribunal. The tribunal is composed of a chairman (the chief constable of the force in which the complaint occurred) and two members of the Police Complaints Authority who have not been involved in the investigation of the case. The tribunal weighs the merits of the case and reaches a decision by a simple majority. If the officer is found guilty by the tribunal, the chief constable imposes a punishment. The decision to allow the chief to impose the sanction is based on the belief that he alone should have the responsibility to discipline members of his force.

126. Of late, the PCA has been replaced by IPCC (Independent Police Complaints Commission). The Police Reform Act 2002 which

established the IPCC is a good guide for the exact functioning of the IPCC.

127. The Honorable court may give a general writ or direction or what ever the Honorable court considers fit ordering the first respondent for establishment of an Independant Police Complaints Commission (IPCC) on the lines of UK or on the lines of Citizen Complaints Board of New York. Our country needs a system for investigation of complaints against the police, which is fair, effective and commands the confidence of the public. There is some thing close to the consensus that the present system, however good it may be in reaching the right result when a complaint against the police is investigated, does not enjoy full public confidence. This is because people are not convinced that a system which relies on police officers to investigate the most serious complaints against other policemen and officers can be inherently fair.

128. This reform is unlikely to come from with in the police force. In fact, there is likely to be stiff resistance to this from with in the police force.

129. Police often measure their own performance by low number of FIRs, high number of arrests and crimes solved, while the public tends to hold them accountable for crime rates. If the performance indicator of a police officer is on the basis of low number of FIRs registered , he will reduce the FIRs by refusing to register as happened in this case for 26 months. If the performance indicator of a police officer is on the basis high number of arrests made, he will arrest wantonly to boost his career. If the performance indicator of a police officer is on the basis of high

percentage of crimes prosecuted, he will drop all cases where there is even slightest fear that the prosecution might be difficult to obtain.

130. The lesson for the policy makers is that the behavior of the Police will directly depend on the metrics used for performance evaluation. A natural conclusion for the police failure to perform in the interest of the society is direct consequence of the policy of the higher ups in their performance indicators. Blaming the individual policemen or their community in general is useless if these policy mistakes are not corrected.

131. No behavior change can be expected with out such a change. Research on good performance indicators to encourage correct response from the police are available from the research community. Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector, ([http://www.vera.org/publication\\_pdf/207\\_404.pdf](http://www.vera.org/publication_pdf/207_404.pdf)) Vera Institute of Justice November 2003 is a good guide in this area.

132. Police often measure their own performance by number of FIRs, arrests and crimes solved, while the public tends to hold them accountable for crime rates. But it may be just as important for the police to track how often they investigate complaints from the poorest citizens, for example. Vera's new global guide to the design of performance indicators for the justice system provides information about the role of innovative indicators in policing.

133. Table 8.1 of the above report is provided in Paras below:

134. Suggested Outcomes, Indicators, and Data Sources for Policing

Institutional outcome Potential indicators Possible data sources

135. Change in proportion of poor citizens who express confidence in the police
- i. National and local public opinion surveys, dis-aggregated by income (or a proxy such as neighborhood of residence), as well as gender, religion, ethnicity, etc.
136. Change in proportion of leaders of poor communities who express confidence in the police
- ii. Polls of community leaders
  - iii. Views expressed during community meetings
137. Improve public confidence in the police among the poor
- Change in proportion of poor victims who report crimes to the police
- iv. National and local surveys of victims dis-aggregated by income (or a proxy such as neighborhood of residence), as well as gender, religion, ethnicity, etc.
  - v. Interviews with victims who seek hospital treatment dis-aggregated by income (or a proxy such as neighborhood of residence), as well as gender, religion, ethnicity, etc.
  - vi. Interviews with local service agencies
138. Change in proportion of poor victims who are satisfied with police service
- vii. National and local surveys of victims dis-aggregated by income (or a proxy such as neighborhood of residence), as well as gender, religion, ethnicity, etc.
  - viii. Focus groups with victims who reside in poor

communities

139. Change in proportion of victim advocates (or other figures who have regular contact with victims) who express confidence in police response

ix. Polls of advocates

140. Improve responsiveness to poor victims of crime seeking help from the police Change in proportion of crime complaints by poor people that are investigated

x. Review of police files on public crime complaints.

xi. Ratio of prosecutions to crime complaints

141. Because citizens are likely to have more experiences of, and perhaps stronger views about law enforcement, compared to less visible sectors of the justice system, indicators of police performance should rely substantially (although not exclusively), on data collected directly from the public through surveys, consultations with community figures, or other data collection mechanisms. This emphasis is reflected in the above measures.

#### **MCD Response & Remedy**

142. A copy of the FIR was delivered on 21 December 2001 to Deputy Commissioner MCD Lajpat Nagar reporting the commission of the "cognizable offence". Though under DMC Act Section 42 (p), *the removal of obstructions and projections in or upon streets, bridges and other public places* is a mandatory function of the Corporation, **no**

**cognizance** was taken by the Dy Commissioner MCD of the above reports (Count XX)

143. DMC Act Section 42 **Obligatory functions of the Corporation**-states: Subject to the provisions of this Act and any other law for the time being in force, **it shall be incumbent on the Corporation** to make adequate provision **by any means or measures which it may lawfully use or take**, for each of the following matters, namely:- (p) the removal of obstructions and projections in or upon streets, bridges and other public places. What is **incumbent on the Corporation** to make adequate provision **by any means or measures which it may lawfully use or take** was not undertaken.(Count XXI)
144. Hence, the removal of obstruction is an **obligatory function** and **NOT** a Discretionary Function given under Section 43 DMC Act.
145. MCD has thus failed in **Obligatory functions of the Corporation under** the DMC Act 1957 and protect the citizen's rights to use of "public streets" enshrined in the law of the land passed by the Parliament.
146. The **Commisioner MCD** failed to perform **DMC Act S 59 Functions of the Commissioner**-Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act 1 [\*\*\*] 2 [\*\*\*] and of any other Act for the time being in force which confers any power or imposes any duty on the Corporation, shall vest in the commissioner who shall also-(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in



force; (Count XXII)

147. The staff of MCD abdicated their responsibility saying that it is an internal matter between the residents and ignored all the complaints made to them for resolution under the authority vested in them by the DMC Act..

148. Under IPC 166, whoever being a public servant, **knowingly disobeys any direction of the law** as to the way in which to conduct himself as such public servant intending to cause or knowing it be likely that he will, by such disobedience, cause injury to any person shall be punished with simple imprisonment for a term which may extend to 1 year, or with fine or with both. (Count XXIII)

149. An organization which imposes stiff penalty against citizens delaying payment of house taxes, **delayed indefinitely an obligatory function** it is required to take under the law passed by the Parliament with total disregard to its statutory responsibility to be guardians protecting its citizens from the municipal law breakers.

150. These streets though currently rest with the MCD, are originally constructed by DDA with the money of the property owners and they can not be denied the use of these streets except under due process.

151. The law of the land lays down a **stringent process** to be executed by appropriate officials ("the Commissioner and that too **provided** that the Commissioner shall **not take action with out the sanction of the Corporation**": Section 303 DMC Act) before restrictions can be placed. **Substantive due process violations** by appropriate authority prescribed under statutes passed by the

Parliament in their wisdom, are as follows (Count XXIV):

1. One months notice by appropriate authority before closure
2. Call for objections from the affected parties.
3. Considerations of suggestions and objections
4. Appropriate orders by the appropriate authority for closure (Commissioner only can take action to close the public street, provided that the Commissioner shall **NOT** take action without the sanction of the Corporation :Section 303 DMC Act.)
5. Notices of such prohibition as are imposed under sub-section (1) shall be posted in conspicuous places at or near both ends of public streets or portions thereof to which they relate, unless such prohibition applies generally to all public streets under Section 303 C (2)of DMC Act.
6. Publication in the gazette if streets are closed for more than 1 month under Section 115 of Motor Vehicle Act.(Count XXV)
7. Appropriate traffic signs (of proper size, color and type) posted by **appropriate** authority under MV Act S 116.(Count XXVI)

152. Edmund Burke stated as early as 1777 : ``Among a people generally corrupt, liberty, cannot long exist." In 1778, he observed :

“An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will, who did not soon find that he had no end but his own profit.”

153. It may be relevant to humbly submit here briefly that the gates and barriers and a system of alarms through siren were **originally instituted illegally** by the office bearers of RWA against the demolition party of MCD to prevent/delay the lawful demolition of the "unauthorized and illegal constructions" carried out by some law breaker residents including the President and the General Secretary of the RWA. Usurping the RWA to impose their will on other law abiding residents by means that are patently illegal and conniving with the local police before committing the "criminal offence" does not provide legitimacy to their actions. They were relying on the sluggishness of the state machinery to take for ever before the law is enforced.

154. Dy Commissioner Traffic South on a complaint from some other residents, after survey of the area by their staff, had ordered removal of the gate as they are illegal and obstructing smooth flow of traffic. MCD with the assistance of the police has opened the gate for public traffic on 15 Dec 2003 only to be closed by the miscreants within 1 hour. It took law abiding citizens 6 months of constant attempt to make a reluctant MCD to act on the DCP Traffic report. The law breakers took just 1 hour to close the "public street" again.

155. Potential Liability for Installation of unauthorized and illegal Traffic Measures: All the unauthorized and illegal traffic measures impose the risk of accidents in the area and risk to public money

because of the failure of the MCD in removing these unauthorized traffic measures if the affected party can prove that either the dangerous condition was created by the city's act or omission or the city had actual or constructive notice of the condition a sufficient time before the injury occurred to have taken reasonable measures to protect against such injury.

156. Thus failure of the city officials in this regard is risking public money for their failure to abide by the existing law or enforce the existing law on the alleged criminals breaking the law.

157. This is further aggravated by the fact that these gates and barriers and other traffic interference measures are not properly marked with authorized road signs as per the Motor Vehicle Act.

158. An internal noting of MCD currently circulated by the alleged miscreants in the colony reveals how grievously **MCD Commissioner erred grossly and failed** its tax paying, law abiding citizens in withdrawing the the letter of EE, MCD (Central Zone) in opening of the closed main public street for public traffic.

159. It may be relevant to point out that the gated colonies are socially undesirable even in wholly private colonies leave alone colonies vested with MCD.

160. Gated community could have a harmful effect on urban sustainability in terms of the urban economy, social coherence and solidarity, building liveable cities and democracy. Economic growth is not enough as an objective of a sustainable urban economy: there is also a need for equitable income distribution, democratic participation and

empowerment. Gated communities can create a barrier to interaction and may add to the problem of building social networks that provide an opportunity for social and economic activities. They could also add to social and political exclusion, which touches on the social dimension of sustainability. “A city that prospers economically, but fails to distribute the wealth with some degree of equity, runs the clear risk that it disintegrates into civil war between the haves and have-nots, a war in which both sides are losers”. There is no substitute for an inclusive city with supportive neighborhoods and integrative labor markets. Therefore, social and political exclusion is harmful both for the included and excluded and such a society is likely to have severe tensions when experiencing such fundamental social divisions.

161. For many, gated communities provide an illusion of stability and control. It allows those who can afford it to opt out of shared public services and places. Many residents are solely concerned with taking care of themselves and their immediate neighbors. This reflects a stance of social segregation and exclusion. Neighbourhoods have always been able to exclude certain classes of resident through discrimination and housing costs. But now, with gates and walls they can exclude not only undesirable new residents, but even casual passers-by and those people from surrounding neighborhoods. In every case, gate proponents basically want gates to keep the lower class neighbors from being seen using their streets. Justification is, the lower class is supposed to be criminals and they need to protect themselves from these criminals.

162. This complainant firmly believes in the proposition that you

cannot build community by dividing it. Our neighborhoods have problems that will not be solved by barriers; serious problems that risk being forgotten while neighbor argues with neighbor about gating this or that street.

### **Economic Costs, Class Action ad Damages**

163. The **economic cost on a conservative estimate** to nearly 1200 owners of residential and commercial property of Pocker B and C, of the unlawful action or failure to act under law by Respondents 2, 3 and 4 is to the tune of Rs 9.36 crores for the two years plus in addition to the enhanced risk of accidents, additional pollution and risk of emergency services not reaching the residents on time and the consequent loss of life and property.

164. The above has been arrived at conservative estimates as given here. One family of 4/5 people making an average of 5 trips (round trips including to and fro) per day and travelling an additional distance of 2 KM per round trip thus incurring an additional 10 KM per day costing Rs 100 per day, and that is Rs 3000/= per household per month. This amount is sufficient to hire a private guard to be posted at the front door of each property where the public space ends and private space begins. For an year, it works out to Rs 36,000/=, almost 10 times the house tax chargeable to the property owners for the year.

165. 1200 property owners incur a rough cost of Rs 120000/= per day. This works out to Rs 36,00,000 per month and for the last 26 months, it works out to Rs 9.36 crores on a conservative estimate, in addition to the enhanced risk of accidents, additional 93,60,000 KM

vehicle pollution and risk of emergency services not reaching the residents on time and the consequent loss of life and property.

166. This is a classic case where the **class action** meets the ends of justice better than individual suits. The class action is intended to improve court efficiency by allowing a large group of people with similar claims to join together in one lawsuit. One or more representatives of the harmed group go to court on behalf of every one else who was similarly affected. If those representatives meet certain criteria, they are allowed to prove and settle not only their own claims, but the claims of everyone in the larger group as well.
167. The hon'ble Court may set strict parameters to assure that a few people can adequately represent the interests of many. Here are the basic elements:
- a. Numbers: The actions of the defendant have to affect so many people that it is more practical for a few representative plaintiffs to address the claims than for all the individual plaintiffs to join together in a regular lawsuit. If twenty people are swindled in a business venture, they can file their own lawsuits. But if hundreds or thousands have been harmed, a class action allows a few to represent the multitude.
  - b. Common claims: The claims must raise similar questions of law or fact so that it saves time to lump everybody together. If a hundred people all bought cars with defective seatbelts from the same company, a class action may be the way to handle the complaint.
  - c. Typical cases: The people bringing the lawsuit on behalf of others

(the “named plaintiffs”) must have the same claims and defenses as those they are representing.

d. Fair and adequate representation: The plaintiffs and the class lawyers must be good caretakers for other people’s claims.

168. If these four criteria are met and all the class wants is an order telling the defendant to stop doing something, a hon'be court may agree to “certify” the class. (Certification allows a few designated appointees to represent the other members of the class.) If the class also wants damage money, they have to prove that the claims and injuries are so similar that they can be well managed in one lawsuit.

169. The vast majority of class action cases may be settled if they are certified or if the defendant believes they will be. The class members may be notified of the proposed settlement and given an opportunity to join in or object to its terms.

170. The main benefit of class actions is that they level the playing field when individuals join together to take on a big company or group or the government.

**171. Compensatory damages** exclusively aim at compensation of victims’ losses, including lost profits. They are awarded in order to compensate for damages the plaintiff has suffered or is expected to suffer and to replace something the plaintiff has lost or is expected to lose because of the wrongful act. Their one and only purpose is to restore those losses. By awarding compensatory damages, the court shall put the victim in the position he or she would have been in had the defendant not committed the wrongful act.



172. **Punitive damages**, on the other hand, are aimed at punishment, deterrence, and law enforcement. They are awarded to punish the tortfeasor for his outrageous conduct and to deter him and others like him from similar conduct in the future. Punitive damages focus on the tortfeasor and his intent, recklessness, or similar attitude that not only determine whether punitive damages are awarded, but also influence the amount of those damages.

173. Punitive damages reflect the enormity of the offense of the tortfeasor. Punitive damages are awarded to deter the tortfeasor from committing similar acts in future. In determining whether or not the Hon'ble Court should award punitive damages, Hon'ble Court may bear in mind that the purpose of such an award is to punish the wrongdoer and to deter that wrongdoer from repeating such wrongful acts. In addition, such damages are also designed to serve as a warning to others, and to prevent others from committing such wrongful acts.

174. It is established by clear and convincing evidence that the defendant consciously and flagrantly disregarded the rights or interests of others in causing the injury. An award is necessary to punish the defendant for the conduct or to deter the defendant from similar conduct in like circumstances. The fact that the actor "just does not give a damn" about the consequences to others embodies the same type of dereliction that is found in the terms commonly used to describe the necessary scienter to support an award of punitive damages.

175. Compensatory damages redress the concrete loss that a plaintiff has suffered by reason of the defendant's wrongful conduct, but

punitive damages are private fines intended to punish the defendant and deter future wrongdoing.

176. Article 21 of the Constitution of India mandates an **obligation upon the State to enforce law and order** to maintain public order and public peace so that all sections of the society irrespective of their religion, caste, creed, color and language can live peacefully within the state. Culpability, it appears, continues to develop around instances where foreseeability, complicity and positive inaction are discernible.

177. The Supreme Court of Victoria in *Farrington v. Thomson*, 1959 VR 1080 awarded damages against a licensing inspector and a police officer who had ordered the plaintiff to close his hotel and cease supplying liquor, though they knew they did not possess such a power. Smith J. referred in that case to the statement of Best CJ. made in *Henly v. Lyme Corpn.*, 1858(5) Bing 91 to 107 reading as below: "Now I take it to be perfectly clear that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer. The instances of this are so numerous that it would be a waste of time to refer to them."

178. The need for awarding exemplary damages was felt by Sawyer, J. because of the arrogant, abusive and outrageous disregard shown by the police for the law. The learned Judge award \$ 40,505 as special damages; \$ 75,000/- for assault, battery and false imprisonment; \$ 1,00,000/- for malicious prosecution and \$ 40,000/- for breach of the plaintiff's constitutional rights. Reference may also be made to the

decision of Supreme Court of Jamaica in *Samulls v. Attorney General*, 1996(1) Commonwealth Human Rights Law Digest (CHRD) 120 to 122, in which Reckford, J. by his decision dated 11.11.1994. awarded exemplary damages for assault, battery and malicious prosecution. The award was quantified at \$ 1,00,000/-.

179. The world jurisprudence has thus accepted misfeasance in public office as a species of tortious liability and, to prevent misuse, different courts across the sea have been awarding exemplary damages.

180. Even so, the aforesaid cases have been referred for two purposes. Firstly and primarily to bring home the position in law that misuse of power by a public official is actionable in tort. Secondly, to state that in such case damages awarded are exemplary. There was injury to the high principle in public law that a public functionary has to use its power for bona fide purpose in a transparent manner only and a failure to use this power where required at will should attract equally the remedy of punitive damages.

181. In "*Winfield and Jolowicz on Tort*" (14th 1994, Edn.) by W.V.H. Rogers at page 4, it is stated under the "Definition of tortious liability" that "tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages". A cause of action in modern law is merely a factual situation the existence of which enables the plaintiff to obtain a remedy from the Court and he is not required to head his statement of claim with a description of the branch of the law on which he relies, still less with a description of a

particular category this backdrop, it would be seen that in the tort liability arising out of contract, equity steps in and tort takes over and imposes liability upon the defendant for unquantified damages for the breach of the duty owed by the defendant to the plaintiff.

182. The learned author has then opined that the cases establish that the tort of misfeasance in public offices goes at least to the length of imposing liability on public officer who does an act which to his knowledge amounts to an abuse of his office. We may also note what has been stated in this regard in "Cases and Materials on Administrative Law" by Sh. Bailey and others at pages 826 et al of 2nd Edition. The authors have noted the decision rendered in *Bourgoin S.A. v. Minister of Agriculture, Fishery and Food*, (1985) 3 All ER 585, on the subject of misfeasance. In that case damages were claimed against a Minister, which was held permissible. Lord Diplock's observation in *Dunlop v. Woollahar Municipal Council*, 1982 AC 158 that this was "well established" position was noted.

183. From the aforesaid it is clear that the above has been accepted as a part of the law of tort practically all over the world. What is more, in some countries exemplary damages have been awarded for misuse of public power. Reference may be made to *Deshpriya and another v. Municipal Council, Nuwara Eliya and others*, 1996(1) Commonwealth Human Rights Law Digest (CHRD) 115 to 117, which is a decision of the Supreme Court of Sri Lanka dated 10.3.1995.

184. The Supreme Court of Bahamas in the case of *Tynes v Barr*, decided on 28.3.1994 (Supreme Court of Bahamas) by a decision

rendered on 28.3.94, ordered for exemplary damages for arbitrary, oppressive or unconstitutional action by State Officials. A summary of this decision is reported at pages 117 to 120 of the aforesaid Law Digest.

185. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom Under the Law', Lord Denning in his own style warned: "No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence... **This is not the task for Parliament..... the courts must do this. Of all the great tasks that lie ahead, this is the greatest.** Properly exercised, the new powers of the executive lead to the welfare state; but abused, they lead to a totalitarian state. None such must ever be allowed in this Country."

186. All the above have been quoted to strengthen the view that **compensatory damages and punitive damages be awarded against the one who broke the law with wanton regard for others rights and also the statutory authorities like Delhi Police and MCD who allowed the laws to be broken by their commissions or omissions.**

### **Universal Human Rights**

187. It may be humbly submitted that under **Universal Human Rights Article 12**, no one shall be subjected to illegal and arbitrary interference with ones home and illegal interference with access to ones home is a violation of Human Rights enshrined under article 12. Everyone has the right to protection of the law against such illegal interference or attacks and subversion of due process under the law of the land before denial or interference with access to ones home is instituted.

188. Lastly, under Article 20 of Universal Declaraton of Human Rights, no one may be compelled to belong to an association against ones will. The Resident Welfare Associations (RWA) which have mushroomed in Delhi are hence purely voluntary association of **subset** of citizens residing in an area.

189. Any restrictions or interference against movement or other liberties imposed either by dictat or by physical infrastructure on citizens by RWA is illegal.

190. Such restrictions are neither binding nor enforceable and hence

should be removed under protection from the law enforcement.

191. The only enforceable laws are the ones passed by the statutory lawmaking bodies. This principle seems to have been either forgotten or unclear to the Delhi Police and MCD.

### **Resident Welfare Associations & their Legitimacy**

192. RWAs that have mushroomed in Delhi of late are purely **lobbying associations of strong special interest groups(SIG) of a sub-set of residents in a particular area.** The reason these have come to represent strong special interests is because the ordinary law abiding citizen has no adequate incentive to take an active part in these strong SIGs. The strong motivation of special interests to dominate these RWAs is note worthy.

193. The motivations are other than monetary compensation in these RWAs as the financial compensation for work in these organizations is non-existent or minimal to attract an ordinary citizen. The motivations could be one or many of the following non-exhaustive list:

- Opportunity to manipulate the security personnel under RWA for extra security for self and own property.
- Misuse of personnel under RWA for personal errands.
- Protect ones own encroachments on public property from action by law enforcement.
- Protect ones unauthorized construction being demolished by the MCD.

- Exercise access to powers of law enforcement like local Police, city administration like MCD to meet vested interests.
- Illegally close traffic on roads in front of their houses and throw the traffic on other people's homes.
- illegally restrict heavy traffic in front of their houses and redirect to other people's homes.
- Illegally construct traffic calming devices like humps in front of their own houses to throw the traffic in front of some one else's house.

194. Why should the Honorable court exercise its mind to this aspect ? Vested interests are using RWA to assert legitimacy to impose their hidden agendas on other unsuspecting ordinary law abiding citizens. The facts of the above analysis have been unclear or forgotten by government organizations like law Enforcement (Police), traffic police, city government (MCD) and other governmental organizations. In their mistaken belief that these are elected bodies and hence truly representative of the citizens, these government bodies are found to favor the concerns of these RWAs over concerns and rights of individual law abiding citizens.

195. When a beat constable confuses this aspect, there is less to worry about the creation of this extra constitutional authority with powers to harass the ordinary law abiding citizens.. But when the Police Commissioner, MCD Commissioner and even the Chief Minister of Delhi starts falling in the trap of **devolution of power** to the RWAs on the grounds of empowering local self government on the lines of



empowering local Panchayats in villages, the RWAs assume powers to harass the citizens in proportionately larger than ever imagined ways unsuspected by these well meaning government functionaries.

196. The reason why the ordinary law abiding citizens have to suffer the humiliation of being denied their rights to use of the "Public Streets" is only a tip of the ice bergs if these RWAs are given legitimacy beyond a lobbying groups.

197. Local self government may be a very catchy word for the politicians to catch votes in their favor, but the dangers of creating a body that is law unto itself is the real danger and with powers to harass the ordinary citizens, it may prove to be the worst reform in local self government.

198. RWA's elections are least regulated. Voting is NOT based on adult franchise unlike in the case of Panchayats and City Council. These elections are not supervised by a regulatory body of the government on the basis of a voters list based on adult franchise.

199. Voting in RWA is invariably done by even as low as 10% of the constituents. Unlike in the case of political elections to city council, assembly and parliament, citizens do not feel the citizenship duty to participate in these elections. The officials do not vacate their seats after stipulated period, the period for which they are elected.

200. Most importantly, under Article 20 of Universal Declaraton of Human Rights, no one may be compelled to belong to an association against ones will.. The Resident Welfare Associations (RWA) which have mushroomed in Delhi are hence purely voluntary association of

**subset** of citizens residing in an area with the specific intention lobbying for the local interests.

201. Providing legitimacy to RWA as part of self government is ultra vires the Constitution of India because, in the wisdom of the founding fathers of our constitution, and the the Parliament that enacted the 74th amendment to the constitution, we have contemplated local self government in three tiers only ( and **NOT** four tiers ) in the cities: city council at the local level and Assembly and the Parliament at the government level.

202. In view of the arguments cited above, the Honorable court may declare the **devolution of power to the RWAs as ultra vires the Constitution of India** so that the government functionaries do not fall into the trap of perceiving the RWAs as part of Local Self Government.

203. The loss of rights guaranteed expressly by the law of land was denied to the law abiding citizens of Sarita Vihar because the officials of the law enforcement and city administration confused the false legitimacy of the RWA sufficient to deny the rights of the citizens.

#### **Case Laws & Research Results across other Cities/ World**

204. "The streets of a city belong to the people of the state, and the use thereof is an inalienable right of every citizen, subject to legislative control or such reasonable regulations as to the traffic thereon or the manner of using them as the legislature may deem wise or proper to adopt and impose." ... "Streets and highways are established and

maintained primarily for purposes of travel and transportation by the public, and uses incidental thereto. Such travel may be for either business or pleasure ... The use of highways for purposes of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public and individuals cannot rightfully be deprived ... [A]ll persons have an equal right to use them for purposes of travel by proper means, and with due regard for the corresponding rights of others".! " (City of Lafayette v. County of Contra Costa, supra, 91 Cal.App.3d at p. 753.)

205. As noted by the Supreme Court, the court in Lafayette ordered the "removal of the barrier because the city had no authority partially to close the street, not because closure discriminated between residents and nonresidents." (Rumford v. City of Berkeley (1982) 31 Cal.3d 545, 554, fn. 7 [183 Cal.Rptr. 73, 645 P.2d 124].) In Rumford, the court determined that although the Vehicle Code permitted local authorities to close streets no longer needed for vehicular traffic, it did not expressly permit a city to close a street to through traffic while allowing its use for neighborhood purposes. (Id., at p. 551.) [23 Cal.App.4th 820]

206. "Even though Whitley Heights is arguably in a discrete and isolated area of the City, under appellant's reasoning, there is nothing which would prevent the City from applying this alleged power to withdraw streets from public use in other areas of the City. Although we understand the deep and abiding concern of the City and appellant with crime prevention and historic preservation, **we doubt the Legislature wants to permit a return to feudal times with each suburb being a**

**fielddom to which other citizens of the state are denied their fundamental right of access to use public streets within those areas.**

fn. 8 If such action is necessary, then it should be expressly authorized by the Legislature along with whatever safeguards it deems necessary to protect the public interest in public streets. Furthermore, as the streets are still public, it does not matter that the gates were erected by appellant rather than the City; they were erected via City [23 Cal.App.4th 824] authorization. **Appellant cannot erect gates on public streets.** (See § 21465; Civ. Code, § 3479.)

**207. Gating a public street to allow residents whose properties are accessed from the street to obtain access but to deny non-residents the same access is not permitted.**(Vehicle Code Section 21101.6; *City of Lafayette v. County of Contra Costa*, 91 Cal.App.3d 749 (1979); *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.*, 23 Cal.App.4th 812 (1994).)

208. A complete permanent closure of a local street or local street segment to all traffic is authorized by Vehicle Code Section 21101(a) when, in the opinion of the city council, the highway is no longer needed for any vehicular traffic. Closure may be prohibited if the street is regionally significant. (*Poway, supra* and *Hawaiian Gardens, supra*.)

209. A complete temporary closure of a street or street segment is authorized for special occasions or events (Section 21101(e)), when necessary for safety of persons using the street (Section 21101(e)), when there is gridlock (Section 21101.2), when there is serious and continual criminal activity in the street, and to address other specified

problems and issues (*see* Vehicle Code Sections 21101 and 21102).

**210. *Privatizing Public Streets*** A public street may only be abandoned, and thereby potentially converted to private use, pursuant to the provisions of the California Streets and Highways Code. Section 8324 of that Code provides that a city may vacate a public street if the city council, after a public hearing, determines that the street is unnecessary for “present or prospective public use.” (California Streets and Highways Code Section 8324(b).)

211. Government Code Section 835.4(a) provides that a public entity is not liable for injury caused by a condition of its property if the public entity establishes that the act or omission that created the condition was “reasonable.” Thus, the City must prove that the installations were carefully considered by it and that there was a rational basis for deciding “yes” in one instance and “no” in another yet similar instance.

**212. *Preferential Parking*** Preferential parking is authorized by Vehicle Code Section 22507. An ordinance or resolution establishing a preferential parking zone or district should contain findings showing why the designated zone or district is necessary to reduce traffic congestion and provide space for parking by adjacent property owners. A preferential parking zone or district designed merely to either preclude non-residents from parking on a street or to allow residents to park on streets longer than the posted limit, but where the street is not already congested, is subject to a risk of court invalidation on the grounds that the program violates the equal protection rights of non-residents. (*See County Board of Arlington City v. Richards* (1977))

434 U.S. 5, 54 L.Ed.2d 4, 98 S.Ct. 24 (1977); *Commonwealth v.*

*Petralia*, 362 N.E.2d 513 (1977).)

- 213. "Cul-de-sacing" and Narrowing** Although the purpose of installing a pair of cul-de-sacs or narrowing a street may be expressly for traffic control and diversion purposes, these improvements are permanent physical improvements that are roadway design features not precluded by the Vehicle Code. (See *Carsten v. City of Del Mar*, 8 Cal. App. 4th 1642 (1992).)
214. Street closures, street narrowing, speed humps and other measures designed to restrict vehicular traffic along particular streets must be consistent with the circulation element of the general plan with respect to the planned capacity and designation of the street. (*Uhler v. City of Encinitas*, 227 Cal.App.3d 795 (1991).)
215. Potential Liability for Implementation or Installation of Traffic Measures : There are four prerequisites to establishing liability of a public entity for a traffic control device or roadway design feature: 1. The traffic control device or roadway design feature created a "dangerous condition" of public property; 2. The traffic control device or roadway design feature was the proximate cause of the accident; 3. The kind of injury that occurred was reasonably foreseeable as a consequence of the dangerous condition; . Either the dangerous condition was created by the city's act or omission or the city had actual or constructive notice of the condition a sufficient time before the injury occurred to have taken reasonable measures to protect against such injury. (Government Code Section 835)

**216. Traffic Calming Programs & Emergency Response: A**

**Competition of Two Public Goods** by Leslie W. Bunte, Jr.,

B.S. Professional Report Presented to the Faculty of the Graduate

School of the University of Texas at Austin May 2000 examines the

disagreement that had occurred in communities throughout the United

States where traffic-calming programs were found to be in direct

conflict with providing prompt emergency services. Negative impacts

upon emergency services were substantiated by various emergency

response time tests conducted by leading U.S. Fire Departments.

Information was also obtained on injuries that have occurred to

firefighters from traffic calming devices as well as documented

mechanical damages to emergency vehicles. Traffic calming programs

were found to contribute to air pollution as verified by several previous

environmental studies conducted specifically for traffic calming

devices. A policy analysis was conducted specifically for the conflict

that had arisen in Austin, Texas. Based on quantitative processes, this

analysis showed that Austin would lose an additional 37 lives per year

with patients of sudden cardiac arrest if the Fire and EMS Departments

experienced a 30 second delay in response times due to traffic calming.

The analyses also concluded that at best, only one pedestrian life could

be saved each year from traffic calming as pedestrian fatalities rarely

occurred within residential neighborhoods. A risk/benefit analyses also

demonstrated that traffic-calming devices have more of a negative

impact than a positive impact to the community.

217. Relevant findings are given in the following paragraphs in the

words of the learned author.

218. The term traffic calming is complex, meaning different things to different people and locales. “Traffic calming is a process whereby people are encouraged to find alternative means of transportation, to drive more slowly, to drive alternate routes, to drive with respect for the neighborhood through which one is traveling.”
219. The issue of traffic calming is certainly not immune from the realms of **civil jurisprudence**. In most instances, the legal aspects are usually centered on three elements of law. The first one generally questions the statutory authority of local governments to provide for traffic calming devices. Second, for local actions and decisions, it is reasonable to expect legal challenges to the constitutionality of infringing upon the rights of residents. And the third area for review will usually involve the level of exposure the local government might incur from those seeking personal and/or property damage relief as a result of the public policy. Obviously, for these reasons, **legal review is recommended** for good public policy formation. With no authorizing laws, standards or accepted professional practices, a local government has potential exposure to unwanted legal challenges and claims.
220. Recently, more and more concern and debate is emerging regarding the impacts that traffic-calming devices have upon persons with disabilities. Disabled citizens charge that these devices cause undue pain, suffering, and injury whenever they routinely encounter these roadway modifications. Generally, **these citizens are opposed to the vertical devices such as speed humps, raised crossings and**



**traffic circles on public right of ways.**

221. “In *Kinney v. Yerusalim* (812 F. Supp. 547[F.D. PA, 1993]), a Federal district appeals court decision held, **‘if a street is to be altered to make it more usable by the general public, it must also be made more usable for those with ambulatory disabilities.’**”

222. This ruling makes traffic calming, particularly vertical devices, more vulnerable to potential litigation. Most recently, the Berkeley Commission on Disability further asserted their concerns prior to City Council action slated for November 23, 1999: **The Commission opposes installation of any traffic management tool preventing equal access.** If vertical deflection devices were scientifically evaluated and show to be safe for vulnerable populations, there would be no such opposition; but it is not acceptable to install any vertical deflection devices for traffic management if they are designed to cause discomfort by generating up-and-down motion. Devices differing from current designs, but causing similar discomfort, also would restrict access for persons with disabilities. Examples of such variations included speed tables or raised pedestrian crosswalks, raised sections of roadway designed for vertical deflection of vehicles...Until adequate biomedical and engineering research is conducted, the moratorium should be retained on vertical deflection devices. Obviously, concerned about the legal implications regarding the ADA statute, the **Berkeley City Council voted to indefinitely extend the moratorium on speed humps that had been in effect since July 1995.**

223. Like other issues with traffic calming, the impacts upon

disabled residents are difficult to quantify or qualify. There is little doubt that traveling over speed humps can be painful for those with orthopedic medical conditions and disabilities. “Contacts with disabled residents in Berkeley indicate that a number have problems with speed humps...they feel pain riding over humps in a vehicle, and they know of others who also do...Some slow down to nearly a full stop before crossing the humps, or cross them at an angle to lessen the impact.” The Berkeley report also revealed that crossing humps in para-transit vehicles was frequently cited as a problem. Like EMS units, these para-transit vehicles have a high center of gravity and heavy suspension systems.

224. After automobiles were invented at the turn of the century, and their use became abundant and common, local governments were immediately confronted with how to control their speeds. As such, the traffic calming issue of today is by far nothing new for policy makers. The actual idea of using physical barriers began early on with the installation of speed bumps on public streets.

225. **Speed bumps differ greatly than speed humps as they are much narrower and have a greater degree of rise**, as do the more modern speed humps of today. Speed humps generally are 12 feet to 22 feet wide, and are generally 3 or 4 inches in height. Whereas, the older speed bump were only 3 to 36 inches wide and 3 to 6 inches high. However, **their public use was short lived in the US as they were declared extremely dangerous.**

226. Clear case law has been established which bans the use of speed

bumps on public streets. One such case was *Vicksburg v. Harralson*, 101 So. 713 (Miss.1924); whereby the court issued a directed verdict against the City of Vicksburg. In upholding this verdict, the Mississippi Supreme Court asserted: **We do not think the city had the right to place a dangerous device or obstruction in its street, making it unsafe, and which would likely injure persons traveling in automobiles over it.** This scheme or method of warning drivers appears to us to be unreasonable, too drastic, and perilous for the purpose intended. **The method of injuring one person in order to prevent danger to another is wrong in principle**, as we see it, and is not such a reasonable regulation for the public safety as is warranted under the law, but is negligence. **Creating one danger to prevent another is not in accord with the public safety – the very thing involved and desired.**

227. “A locality has no right to interfere with the free flow of traffic unless expressly authorized by State statute. This fact led to the best-known legal challenge to traffic calming. *Rumford v. City of Berkeley*, 31 Cal.3d 545, 645 P.2d 124 [1982]...The California Supreme Court ruled that the diverters and half closures were traffic control devices not authorized by State law...Hence, the diverters and half closures were declared illegal.” In a June 29, 1998 ruling from the Twelfth Judicial Circuit Court of Florida, Judge Robert B. Bennett ruled in favor of the plaintiffs. In his order, the judge explained that "Sarasota can put up only the traffic-control devices that are noted in the Federal Highway Administration's Manual on Uniform Traffic Control Devices (1988 Edition). **Speed humps and speed tables are not included.**"

228. This Court also adjudged: “**Defendant [City of Sarasota] is permanently enjoined from erecting speed humps or speed tables on the streets or highways of the City of Sarasota.** [Further, the] Defendant is **permanently and mandatorily enjoined to forthwith remove from the streets and highways of the City of Sarasota all speed humps and speed tables previously erected and to restore the affected streets and highways to the condition they were in prior to the construction** of the speed humps and speed tables.”

229. **Personal Injury** :There is great potential for vehicle occupants to be injured from traffic calming devices. Severe injuries can occur to the head, neck and spinal vertebrae, along with various strains and/or bruising whenever a vehicle becomes out of control after crossing a device and striking another vehicle, fixed object and/or pedestrian. Local governments lie dangerously close to the liability for such injuries. A state court appeals case from Ohio, **Sanchez v. Austintown Township Trustees, 1986 Ohio App., LEXIS 5410 (Ohio App. 1986)** serves as notice to local governments for personal liability claims. After a passenger was unexpectedly thrown to the floor of a motor home when it crossed over a speed bump in a public park, the court ruled that a municipality could be liable for the personal injury and damage resulting from such a device.

230. Such a liability was also found in the private sector in *Harrington v. LaBelle's of Colorado, Inc.*, 765 P.2d 732 (Mont. 1988). In this case, a bicyclist was awarded a \$125,000 settlement against the parking lot owner when he was injured after striking a speed

**bump.**

**231. Noise Nuisance:** The creation of additional noise as a nuisance is potential for another legal liability. Residents often complain of increased noise from vehicles downshifting, decelerating, accelerating, or actually making physical vehicular/street contact while navigating calming devices. This is noted in the case of *Friends of H Street v. City of Sacramento*, 24 Cal.2d 607, (Cal. Ct. App. Oct. 21, 1993). “The court ruled against the residents, holding that the routing of traffic is at the discretion of the city council, that **the rerouting of traffic in this case would hurt other streets, and that the city council could not please everyone.** As the court saw it: ‘[I]oss of peace and quiet is a fact of life which must be endured by all who live in the vicinity of freeways, highways, and city streets.’”

**232. Airbags:** With more and more vehicles installing airbags, there is a growing concern that accidental deployments of these safety devices will increase. This has been evidenced by Nissan’s four confirmed incidents of air bag deployments involving Maxima sedans after striking speed bumps. “**The vertical jolt of going over a speed bump can trigger some crash sensors to go off and inflate the airbag...** Air bags have been triggered when going over speed bumps and potholes on the road, hitting curbs at low speeds, and by other minor disturbances... Air bag-caused injuries to the face, chest, hands, and arms could occur to the driver and passenger, as have occurred in crashes as low as 8 to 15 miles per hour. Of the approximately 42 children who have been tragically killed by airbags, the vast majority

has been in low speed accidents below 15 miles per hour.”

**233. Failure to Warn Drivers:** Associated with unexpected impacts, **significant liability could be imposed particularly when the local government fails to properly sign and adequately warn the motorist** of traffic calming devices. This duty to warn was established in *Polk County v. Donna M. Sofka*. “If, however, the governmental entity knows when it creates a curve that a vehicle cannot safely negotiate the curve at speeds of more than twenty-five miles per hour, such entity must take steps to warn the public of the danger.”

**234. Vehicle Damage Claims:** In some cases, one could certainly argue that calming devices cause damages likewise to the undercarriages of vehicles while traversing over humps at posted speed limits. In turn, one could expect a higher frequency of damage claims rather than actual law suits. **“Montgomery County has paid two claims involving speed humps.** In one case, the driver of a community college van went over a hump at a speed alleged to be too high, and a student was injured. The county agreed to pay \$2,500 in medical expenses to avoid the expense of litigation. In the other case, hump markings came off on the undercarriage of a car that had bottomed out traveling too fast. Because the hump markings had been improperly applied, the county assumed liability...”

**235.** The research was carried out in Austria on a mile long stretch of road with six humps and a 40 kmph speed limit. Scientists found that cars negotiating the bumps belched out 10 times more nitrogen oxide, 3 times more poisonous carbon monoxide, and 25% more carbon dioxide,

linked to global warming, than vehicles maintaining a constant speed. Fuel consumption rose from 7.9 litres to nearly 10 litres per 100 km. The report concluded: "A regular traffic flow would therefore always be more environmentally friendly".

236. In a study conducted in Houston, Texas, USA, it is claimed only one child is killed on Houston neighborhood streets in three years. Even if you pretend speed humps will save every child, all of Houston's speed humps put together can only hope to save one life about every 400 years. As for Mrs. or Mr. HumpRequester, it would take about 250,000 years to save one child on their particular street. And, to save one of Mrs. or Mr. HumpRequester's children specifically, they would have to live there, with children, for about 12 million years. So, asking neighbors to increase their risk during life-threatening emergencies, and taxpayers to pay to ruin streets they paid to construct, in order to 'save their child' is an irrational or selfish request.

237. **Summary:** On the surface, one would not expect significant liability potential with the use of traffic calming devices. However, **there are numerous legal vulnerabilities that exist for local governments with traffic calming programs.** The largest exposure appears to rest with the modifications to roads while complying with Disabilities Act. Another area that is not very clear is the authority of the local government to use traffic calming devices since they are not recognized within national transportation standards. However, there is strong evidence that some citizens are turning more towards the court systems in an attempt to suspend traffic calming programs. As such,

local governments must fully examine their legal liability potential prior to adopting traffic calming initiatives.

238. One of the members of the committee going into the Speed Humps issue quipped, **if these impediments are a good idea, why 'spend' money making them? Just stop repairing the streets and put up signs saying, "Traffic Calming Speed Holes Ahead."**

239. The Honorable court may give a permanent injunction directing respondents 2 and 3 to conduct a survey and order and execute removal of all traffic humps which have come up illegally on Delhi roads including public roads inside the colonies. All traffic bumps are to be removed immediately as they are extremely dangerous.

240. Policy makers should make sure that a traffic solution on one street doesn't move the problem to an adjacent street. Perhaps a better-cost benefit would be utilizing traffic-calming funding to expedite the construction of larger arterials. This directly addresses the root problem, as commuters would stay off the neighborhood streets in preference for adequate arterials.

241. Emergency service departments should have the authority to disallow traffic calming plans that will adversely impact their response service delivery.

#### **Right Questions to be Asked**

242. Are the streets, blocked by the 'alleged offenders', "public Streets" vested with MCD & maintained with public money ?

243. Was appropriate processes & procedures by appropriate authority prescribed under statutes (notice, calling for objections, whose



sanction, whose orders, publication in gazette, traffic signs ) followed?

244. Was a "cognizable offence" under DMC Act (Section 320(1) read along with S 466 (a)) committed in closing these public streets used continuously by the property owners and general public for more than 10 years since the inception of the colony in late 80s?
245. Was a "cognizable offence" reported to the Commissioner of Police and Commissioner, MCD ? Was cognizance of the offence as mandated by the statutes passed by the Law-makers taken ?
246. If not, whether a gross negligence of the "statutory " responsibility occurred?
247. And if so, who should be accountable for such "gross failure" in fulfilling the "statutory responsibility"?
248. Who should be accountable to pay the economic costs suffered by the property owners for more than full two years, in addition to the compensation for the mental agony due to the risk of accidents, loss of life and property owing to the emergency services not reaching on time?

### **Some Additional Facts**

249. The Petitioner does not personally know any of the accused and bears no grudge or malice to them.
250. The Petitioner is not affiliated to any political party or politico-legal organization etc. in any way whatsoever, and has no malafides, or financial or professional interests in the affairs of the

accused concerning the matters stated in this petition to the best of his knowledge.

251. The Petitioner does not seek any publicity of any form what so ever, and would petition for in-camera proceedings in this matter if required to personally attend, and also for a non-publication and non-disclosure order for any and all materials submitted by the Petitioner and all references to him, except as part and parcel of a judicial order or judgement. The Petitioner desires absolute privacy and is unwilling to be drawn into a media circus.

252. The Petitioner is an adult male citizen of India resident at Sarita Vihar and is a respected and qualified professional in a field unrelated to the law or the press and media etc. It is relevant to state here that public knowledge of the Petitioner's present and reluctant petition may be harmful to his social and professional reputation, and if there is such a protection as the right to privacy or secrecy the Petitioner invokes such right. It is also submitted that privacy of the Petitioner's identity may be necessary in the event your Lordships endorse the matter to a Deputy Commissioner of Police etc. for investigation or some such similar procedure wherein such option for protection of non-disclosure of complainant's identity exists, and which flows from provisions such as found in section 125 of the Indian Evidence Act, 1872 etc.

253. The Petitioner most humbly submits that he be allowed to modify or amend his petition in light of any new information being available, or at the pleasure of the most hon'ble court.

254. The Petitioner humbly submits that in the event of the current matter already being under the hon'ble court's cognizance that he would be most honoured to be discharged from his civic obligation via this petition, or else enjoined in such action in any suitable capacity at the hon'ble court's pleasure, with the proviso that in the most unlikely and reluctant event of a "complaint case" as defined u/s 210 of the CrPC being instituted with Petitioner as a complainant, he is presently unable to produce much evidence in support of such complaint except that which is available in the public domain or which may be summoned for.

255. The Petitioner not having access to the cause-list etc. of the most hon'ble court, or in fact any court, has no obvious or ready means of determining if the hon'ble court has taken notice of this petition and this fact may be kindly noted. However, if at all the Petitioner's participation is required, suitable and prominent publicity within the geographical jurisdiction of the Sarita Vihar Police Station may be given by the town crier and by publicity and public advertisement in the English press and public notice outside the SDM's Court (Patiala House) or otherwise at the hon'ble courts pleasure in the near future.

256. The Petitioner has personally and solely drafted this petition present. The Petitioner has hitherto never initiated any legal proceedings whatsoever. It is relevant to state here that the Petitioner has no legal training, legal qualification, formal legal experience etc, and cannot afford to engage the services of a suitable pleader to appear on his behalf, and hence petitions the hon'ble court to appoint suitable pro bono amicus for the Petitioner if required to preserve the proprieties,

dignity, decorum, efficiency and accuracy of any future proceedings involving the Petitioner in this matter. Till such time the Petitioner desires to be known as "Mr. X" if such a thing is possible for reasons stated earlier. It is further relevant to state here that the Petitioner under normal circumstances would not approach this hon'ble court with such a petition, except that the Petitioner believes himself by fact of law bound to inform the Law of offences under the said IPC sections, and with no other motive.

#### **Prayer for Relief**

WHEREFORE, complainant, on behalf of himself and all other persons similarly situated, prays that:

- A. A preliminary and permanent declaratory relief that the actions of the fourth respondent is a cognizable criminal offence under IPC, DMC Act, Criminal Procedure Code and Motor Vehicle Act (Counts I to XIII)
- B. A preliminary and permanent injunction directing the appropriate authority to indict on all Counts I to XXVI all those who broke the law viz. **IPC, DMC Act, Criminal Procedure Code and Motor Vehicle Act** and bring to book and provide the maximum punishment under the above acts in view of the fact that nearly 5000 citizens residing in Sarita Vihar and countless many others, were denied their right to use of the public streets for more than 26 months.
- C. Pass **severe strictures against the appropriate government servants (successive SHOs Sarita Vihar, Dy Commissioners MCD Central Zone, Commissioners MCD and Dy Commissioners of Police,**

**South District, Hauz Khas and Commissioners of Police**), for failure in fulfilling their statutory obligation of protecting the rights of the citizens of Delhi to the free use of "public streets" as enshrined in the Law of the Land.

- D. A preliminary and permanent injunction directing the appropriate authority to file **criminal charges** against the errant Police and MCD officers under IPC 166, a public servant disobeying law:- whoever being a public servant, knowingly disobeys any direction of the law as to the way in which to conduct himself as such public servant intending to cause or knowing it be likely that he will, by such disobedience, cause injury to any person. Ignorance of law, unlike in the case of lay public, may not at all be condonable for officers and staff of these statutory bodies who derive their statutory authority from these very laws they are enforcing to protect the citizens.
- E. Directive relief ordering a **rigorous training program** for all errant Delhi Police and MCD officers and staff whose ignorance of the operating law caused violation of our rights and protection under the laws passed by the Parliament in their wisdom and given consent to by the Honorable President of India.
- F. Directive relief ordering the first respondent for establishment of an open and accountable citizen complaint tracking system using technology of database and Internet against the Delhi Police and a system of application of mind at every level of the hierarchy and disposal of complaints on reasoned judgement that is visible and trackable by every one openly and institutionalizing a policy of

managing this complaint system by an independent citizen council.

- G. Directive relief ordering the first respondent for establishment of an **Independent Police Complaints Commission (IPCC)** on the lines of UK. Our country needs a system for investigation of complaints against the police, which is fair, effective and commands the confidence of the public. there is some thing close to the consensus that the present system, however good it may in reaching the right result when a complaint against the police is investigated, does not enjoy full public confidence. This is because people are not convinced that a system which relies on police officers to investigate the most serious complaints against other policemen and officers can be inherently fair.
- H. Directive relief ordering the appropriate authority for establishment of a Database accessible to ordinary citizens through Internet about the crime against the citizens committed by the staff of the statutory bodies of Delhi Police and MCD so that the citizens are warned in advance of the background of the staff with criminal record against the citizens so that they can protect themselves against these officials and get relief with out waiting indefinitely for relief appealing to them with petition after petition for a long time in order to exhaust all the administrative remedies and thus suffer denial of legal rights enshrined in the law of the land for as long a time as in this case viz. 26 months.
- I. Directive relief ordering the first respondent to order total discarding of the out-moded performance indicators that bring out undesirable response from the Police force currently practiced and adopting a more scientific performance indication system for Police force which

generates the response from the Police that is aligned to the citizens expectations of the Law Enforcement force. This reform is unlikely to come from within the Police force.

- J. A preliminary and permanent injunction for immediate lifting of all **unlawful restrictions** of access to the public streets leading to home of residents of all Delhi colonies for free flow of traffic for residents, their families, friends and visitors and similarly placed owners of property in all the areas of Delhi.
- K. A preliminary and permanent injunction directing the appropriate authority ordering both the Commissioner of Police and the Commissioner of MCD to remove immediately all restrictions or constraints imposed on the citizens by unlawful physical structures like gates, barriers and other obstructions interfering with access to their homes and allowing smooth flow of traffic.
- L. Directive relief ordering appropriate authorities that where ever violations are suffered by the citizens, they be suitably and appropriately compensated for the monetary losses and the mental agony under the existing laws.
- M. The Honorable court may give a general writ or direction or what ever the Honorable court considers fit to settle the matter once and for all so that a large number of cases do not come up in future on more or less similar background and in the overall interests of speedy and cost effective administration of Justice.
- N. The Honorable court may give a general writ or direction or what ever the Honorable court considers fit to respondent number 2 and 3 so that

they be permanently enjoined from erecting speed humps on the streets or highways. Defendants may permanently and mandatorily enjoined forthwith to remove from the streets and highways all speed bumps and unauthorized speed humps previously erected and to restore the affected streets and highways to the condition they were in prior to the construction of the speed bumps and humps.

- O. The Honorable court may give a general writ or direction or what ever the Honorable court considers fit declaring that Emergency service departments would have the authority to disallow traffic calming plans that will adversely impact their response to service delivery.
- P. Directive relief ordering appropriate authorities / Policy makers make sure that a traffic solution on one street does not move the problem to an adjacent street. Perhaps a better-cost benefit would be utilizing traffic-calming funding to expedite the construction of larger arterials. This directly addresses the root problem, as commuters would stay off the neighborhood streets in preference for adequate arterials.
- Q. Directive relief ordering appropriate authorities / Policy makers to make sure that the Rules of the Road are redrafted in line with the western countries like USA with a long usage of motor transport to make it totally tight for the road users and easy for traffic law enforcers to charge the law breakers with specific charges for infraction of these rules of the road so that enforcement is made easy. When laws are vague like every one will drive safely, it neither helps the road user nor the traffic police.
- R. Directive relief ordering appropriate authorities to print and distribute



Drivers Handbook carrying the Rules of the Road and other useful information free of cost (as is done in the western nations) using the funds obtained from the law breakers who pay fine for traffic violations. Traffic calming measures should not be used for failure to define strictly, publish and distribute the Rules of the Road or failure to enforce these.

- S. Declaratory relief that devolution of power to RWAs by which ever government or functionaries is ultra vires the Constitution of India as RWAs are purely Special Interest Groups/Associations and not local self-government entities as conceived by the founding fathers of our Constitution.
- T. Costs in this action and reasonable professional fees and expenses.
- U. Compensatory damages in an amount according to proof.
- V. Punitive damages against respondents who consciously and flagrantly disregarded the rights or interests of others in causing the injury and to deter the respondents and others from similar conduct in like circumstances.
- W. Exemplary damages in an amount as the Court deems just and proper.
- X. On all Claims, such additional and further relief as the Court deems just and proper.
- Y. Additional prayer: In addition to the various prayers inserted at the contextually appropriate places before, the Petitioner specifically prays that he will be excused from any procedural deficiencies in this petition and given an opportunity to rectify the same if required. It is relevant to submit here that apparently in the earlier SC Contempt Petition, (CrI) 2 of 2001, case of M/s.J.R.Parashar and ors. v/s Mr. Prashant Bhushan

and ors., that Petition was admitted and registered despite graver procedural deficiency in the similar overall interests of administration of Justice.

**Solemn Affirmation**

257. I, the Petitioner, Lt Col CPC Nath(Retd) solemnly affirms that the facts or statements contained earlier in this petition are true and correct to the best of my knowledge or are on the basis of information received by the Petitioner and submitted for Judicial scrutiny, and the same may be construed as affidavit under section 3(3) of the General Clauses Act.

258. Most humbly submitted for the most hon'ble court's information with prayers as contained before or at your Lordship's pleasure.

New Delhi

Lt Col CPC Nath(Retd)

24 Feb 2004

Petitioner / Declarant