

The dodgy underbelly of India's war on terror

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Global Research, August 27, 2005

The Hindu 27 August 2005

Region: [Asia](#)

Theme: [Terrorism](#)

In their search for quick results, the police have allowed the real conspirators behind the terrorist attack on Parliament to get away.

Coincidences, Arthur Koestler once said, are not really happenstance but “puns of destiny” in which two strings of events are knitted together by invisible hands. Around the time the Supreme Court of India upheld the innocence of three individuals accused by the Delhi police of conspiring to attack Parliament on December 13, 2001, the investigating officer in the case — Assistant Commissioner of Police Rajbir Singh — found himself facing charges of conspiring with drug traffickers to force down the purchase price of a valuable piece of property. Singh is a highly decorated ‘encounter specialist’, a star of the Delhi Police Special Cell that oversees and executes antiterrorist operations in the city. However, a phone tap run by the anti-narcotics branch recorded him conversing about subjects quite unrelated to any conceivable official line of work. The upper echelons of the Delhi Police are apparently still in shock. Though the incriminating conversation — which is in the nature of an allegation still to be proved — took place in April, it is only now that its “authenticity” is being investigated.

It is my belief that these two strings of events — judicial confirmation of the Special Cell’s mishandling of the Parliament case, and aural corroboration of its probable links with criminal elements — are part of the same fabric of impunity knitted together by the invisible hands of the state for its trusted foot-soldiers in the name of protecting us from terrorism. While it is valid to posit a moral or normative argument about how impunity leads to the violation of human rights, there is a larger point to be made about the police in India being above the law: since it is far easier for them to frame an innocent person — or an individual on the margins of criminality — the real terrorists invariably get away. Worse, the police eventually corrode their own standards to the point that many end up crossing the line themselves. But I am getting ahead of the story.

When the Parliament complex was attacked by five heavily-armed terrorists on the morning of December 13, 2001, it was only logical that the case would be investigated by the Special Cell. The erstwhile Vajpayee Government — which used the attack to bring India and Pakistan to the brink of war — wanted quick results. And among all the antiterrorist outfits in the country, the Special Cell had a proven record of timely delivery.

So efficient is the Special Cell that it is able to secure precise intelligence about the movement of dreaded terrorists, intercept them surreptitiously, and shoot them down in isolated but public places like Ansal Plaza or Pragati Maidan amidst heavy exchanges of fire with absolutely zero casualties on its side. Apart from being really, really clever, the officers of the Special Cell are also brave. Despite knowing that there will be firing, they are almost

never seen wearing bullet-proof jackets at the scene of an encounter. They are also blessed by providence, for the terrorists they shoot invariably carry with them a complete set of identity papers. Finally, those who are captured alive tend to sing like canaries, confessing to many unsolved terrorist crimes across the length and breadth of India.

As soon as the firing ended that morning, the Special Cell's 'sleuths' swung into action. Some aspects of their initial investigative work were indeed impressive. Based on the cell phones and SIM cards recovered from the bodies of the slain terrorists, call records were summoned and analysed. The terrorists had frequently called one number, which in turn had been in touch with another, which in turn had been in touch with a number belonging to S.A.R. Geelani. From Prof. Geelani, the police tracked down Afsan Guru, Shaukat Hussain Guru, and Mohammad Afzal, whose number was the one the terrorists had been in touch with. It was at this point that the investigators made a fatal error. Instead of treating these discoveries as merely the preliminary stage of a more extended investigation, the police chose an easy path for themselves. They decided to pin the crime of conspiracy entirely on these four, forsaking the more arduous task of investigating who the actual organisers and paymasters were and who else was involved.

Armed with the extraordinary powers provided to them by the Prevention of Terrorism Act (POTA) on the admissibility of confessions, the Special Cell was confident of securing convictions. The upper echelons of Government were not interested in a long, drawn-out investigation. A political determination had already been made that 'Pakistan' was responsible. In order to sustain that charge, a quick conviction was deemed necessary and the police were confident they had an open and shut case.

In the event, it is now obvious how foolish that assumption was. Two of the four persons accused by the Special Cell (and initially convicted by the Special POTA court) — Prof. Geelani and Ms. Guru — were innocent and were acquitted by the High Court and the Supreme Court. While Afzal's conviction was upheld, Shaukat was acquitted of conspiracy but found guilty of the lesser charge of concealment. Legal experts are unanimous that Justices P. Venkatarama Reddi and P.P. Naolekar have delivered an exemplary judgment based on classical criminal jurisprudence. On all points of law — evidence, discovery, admissibility of confessions — their disquisition is of a standard we have not seen in Indian courts in recent years. Though it is difficult to square the quality and tenor of their reasoning with the off-hand expression of suspicion they made that Prof. Geelani had approved of the Parliament attack after it happened, the two judges were at pains to emphasise his innocence of any criminal charge — that the police, in effect, had gone after the wrong man.

If the government of the day had not demanded instant results and if there had been no POTA to allow the police to deviate from the evidentiary standards of civilised criminal jurisprudence, it is possible the Special Cell might have investigated the case more thoroughly and identified the real conspirators.

Given a terrorist attack of this magnitude — after all, the five armed men had planned to kill Ministers and MPs and blow up Parliament — I find it shocking, for example, that the police did virtually no forensic investigation. Fingerprint samples were not lifted from the car the terrorists used to enter the complex, or from apartments where the five men stayed, or the bomb-making equipment that was recovered from there. Some samples lifted might have matched fingerprints already on file, or suggested the close involvement of others.

Secondly, the police made no attempt to enlist the public's help in identifying the five slain terrorists. True, their faces were disfigured in the shoot-out but investigators had proper photographs of each of them because they were all carrying (fake) ID cards. If the police had immediately placed a 'hue and cry' notice in the newspapers with the five faces, it is possible members of the public might have come forward with crucial details about their activities in the days leading up to December 13. The U.S. investigators had no hesitation in releasing the photographs of the 9/11 perpetrators and, indeed, were able to reconstruct their activities precisely because their faces were widely publicised.

Thirdly, the investigating officer revealed during cross-examination that the police made no serious effort to trace the identity of the numbers in Dubai and Pakistan the terrorists dialled shortly before launching their attack. Sat-phone numbers are not easy for a national police force to track, let alone trace, but in the wake of 9/11 and India's enthusiastic offers of help to the U.S., some attempts should have been made to enlist the FBI's help in identifying at least who the Dubai-based handlers of the five terrorists were.

A lot of other loose ends were left untied by the Special Cell. Where the laptop computer recovered from Afzal was purchased from, for example. On at least two occasions, Afzal sought to make a statement before the trial court but this was disallowed. Given that it was Afzal's disclosures that allowed the police to accumulate whatever material evidence they did, the police failed to tap him adequately as a source and seemed interested only in using him for a dubious confessional statement — wisely disallowed by the Supreme Court — to falsely ensnare the other accused as co-conspirators.

This is not the first time a police force has chosen the easy way out in order to close a case. The March 2000 massacre of Sikh villagers in Chittisinghpora in Kashmir was wrongly pinned on five men from around Anantnag who were killed in an encounter. Though the innocence of the five men is now conceded by the authorities, the Chittisinghpora case remains closed and the terrorists who committed that heinous crime remain at large. In the Parliament attack case, too, the real conspirators are still unknown and there is no effort being made to identify them. It is time the Government woke up to the fact that there is no alternative to good old-fashioned policework. Police officers or cells that are given the 'special' protection of impunity and the impenetrable armour of black laws will never be up to the task. Instead, they are likely to become 'specialists' of a different kind.

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