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Police & Criminal Justice System in India

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ABSTRACT

The rule of law, democracy, development and the human rights of their citizens determine how successful governments can be in criminal justice system in India. The goals of criminal justice are to prevent and combat crime, maintain law and order and peace, protect the rights of victims and those who get into trouble with the law, punish and rehabilitate those involved in crime, and more generally the protection of life and property of Crime. According to the Constitution of India, this is considered the primary responsibility of the state. The paper sheds light on the different layers of the Indian criminal justice system and the different problems that arise within them. In addition, the book mentions the different causes that lead to crime and the different groups that are subject to such crimes. In addition, the document highlights recommendations and suggestions that can be considered to fill the existing gap in the criminal justice system.

Keyword: Criminal Justice, Police Justice, Crime Prevention, Criminal Justice System (CJS)

1.1 INTRODUCTION

The Indian Police provides a valuable information on issues relating to Crime Prevention, Crime Detection, Police Training, Forensic Science, Information Technology, Cyber Crime etc. The eminent serving and retired officers, experts in the above fields, contribute their experience for the benefit of our readers and investigation agencies. It is our endeavor to make this journal more attractive and useful for personal working in the criminal justice system in the country.

At the time of Independence, India inherited from the British two All India Services – the Indian Civil Service (ICS) and the Indian Police (IP). These were subsequently renamed the Indian Administrative Service (IAS) and the Indian Police Service (IPS) respectively. These services were constituted under Article 312 of the

Constitution of India and legislation was framed to govern them. Recruitment of officers to the IPS is done by the Central Government on the basis of a competitive examination conducted by the Union Public Service Commission annually. Depending on the vacancies available, the number of officers selected for the IPS varies every year, with the average intake at approximately 65 each year. After selection, the officers receive their professional training in the National Police Academy, Hyderabad. The IPS cadre is controlled by the Ministry of Home Affairs of the Government of India. The officers selected to the IPS are allotted to the various state cadres. They join as Assistant Superintendents of Police and remain on probation for a period of two years, after which they are confirmed as Assistant Superintendents of Police. It is the IPS officers who man the senior posts in the police forces of all States/Union Territories and in Central Police Organisations. All matters relating to postings, transfers or promotions of IPS officers in the states are handled exclusively by the State governments, while similar administrative control is exercised by the central government in respect to officers working under the central government. An IPS officer can be removed or dismissed from service only by the central government.

India, with an area of 32,87,782 Sq.Kms and a population of 1.02 billion, is a union of 28 states and 7 union territories¹. The powers and responsibilities of the union and states are demarcated in the Constitution of India. Article 246 of the Constitution distributes the legislative powers between the Parliament and the State Legislative Assemblies. It refers to three lists of subjects given in the Seventh Schedule of the Constitution:

List 1: Union List - includes subjects in respect of which the Parliament has the sole power to make laws.

List 2: State List – includes subjects in respect of which the State legislature has exclusive powers to make laws.

List 3: Concurrent List - consisting of subjects on which both the Parliament and the State Legislatures have concurrent powers to make laws.

Article 246 of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List.

Understanding the criminal justice system is a prelude to understanding the police. It is important to discuss a few important *characteristics of the system* before explaining the organisation and working of the police in India.

Procedural law describes the procedure to be followed in a criminal case from registration, investigation and to its final disposal after a proper trial by a court of law. The police are not empowered to take cognizance of all penal offences. Criminal law makes a distinction between two categories of offences- cognizable and non-cognizable 2.

The process of criminal justice has the following main steps:

Step-1: Registration of the First Information Report (FIR) The process of criminal justice is initiated with the registration of the First Information Report. The FIR is a written document prepared by the police when they receive information about the commission of a cognizable offence.

Step- 2: The police officer proceeds to the scene of crime and investigates the facts of the case. Police investigation mainly includes:

1. Examination of the scene of crime
2. Examination of witnesses and suspects
3. Recording of statements
4. Conducting searches
5. Seizing property
6. Collecting fingerprint, footprint and other scientific evidence
7. Consulting records and making entries in the prescribed records, like case diary, daily diary, station diary etc.
8. Making arrests and detentions
9. Interrogation of the accused

Step-3: After completion of investigation, the officer in charge of the police station sends a report to the area magistrate. The report sent by the investigating officer is in the form of a

charge sheet, if there is sufficient evidence to prosecute the accused. If sufficient evidence is not available, such a report is called the final report.

Step-4: On receiving the charge sheet, the court takes cognizance and initiates the trial of the case.

Step- 5: The charges are framed. The procedure requires the prosecution to prove the charges against the accused beyond a shadow of doubt. The accused is given a full opportunity to defend himself.

Step- 6: If the trial ends in conviction, the court may award any of the following punishments:

- Fine
 - Forfeiture of property
 - Simple imprisonment
 - Rigorous imprisonment
 - Imprisonment for life
 - Death Sentence
1. **States** are - Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamilnadu, Tripura, Uttar Pradesh, Uttaranchal and West Bengal. Union Territories are areas, which do not form part of states' jurisdiction and are under the control of the central government. These are Andaman and Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Lakshadweep Islands and Pondichery.
 2. The First Schedule of Cr.P.C lists all offences in the IPC and mentions whether they are cognizable (255 of the offences) or non-cognizable (122 of the offences).

Criminal Justice System (CJS) is the combination of various organs of a government, entrusted with the job of ensuring justice to the people. The functioning and the efficiency of this system is the backbone for the very foundation of any society. Unfortunately, today the criminal justice system as is functioning in India is facing a sort of crisis. It is unable to fulfill the expectations of the society to the fullest extent. The paper argues that lack of commitment of the governmental functionaries such as police, prosecutors, judiciary and jail and non governmental such as witnesses, advocates, and non-governmental organizations concerned with the system to the cause and the effective control instruments to ensure their responsibility for their lapses in performance of the assigned obligation are the primary reasons for the current state of things. The paper discusses various lacunae that are associated with the system that have resulted for lack of commitment and controlling measures. An attempt is also made to provide solutions to achieve better commitment to cause for the overall benefit of the society

The criminal law consists of the substantive law contained in the Indian Penal Code (IPC) as well as the special and local laws enacted by the central and state legislatures from time to time and the procedural law laid down mainly in the Code of Criminal Procedure, 1973 (Cr.P.C) and the Indian Evidence Act, 1872. These three major Acts, i.e. the IPC, Cr.P.C and the Indian Evidence Act were enacted by the British during the second half of the 19th century. Of these, the only major law that has been revised since Independence is the Cr.P.C, which was revised in 1973 on the recommendations made by the Law Commission of India. The other two laws, except for some minor amendments, have remained unchanged.

The IPC defines different types of crimes and prescribes appropriate punishment for offences. Offences are classified under different categories- offences against state, armed forces, public order, public justice, public health, safety, morals, human body, property and offences relating to elections, coins, government stamps, weights and measures, religion, documents and property marks, marriage and defamation. The IPC has 511 Sections, of which 330 are about punishments.

Besides IPC, the local and special laws (SLL)² also contain penal provisions. These laws have been enacted from time to time mainly to deal with new emerging forms

of crime 2 Local Law is applicable to a specific area/jurisdiction and Special Law is applicable to a particular subject.

1.2 Crisis in Policing

For a variety of reasons collapse of public order, ineffective policing and delays in justice affect society in an extremely adverse way. Police, by the very nature of their functioning, are the most visible arm of the state. While we keep complaining against the police forces for many acts of commission or omission, the fact is we cannot do without an efficient and well-functioning police force even for a short period of time. In a fundamental sense, the first and most vital function of the state is maintenance of public order and peace in society and ensuring protection of citizens. The role of the police is critical in any society, and particularly in a society with a remarkable monopoly power of the state in most human endeavours. The importance of policing stems from the fact that in the ultimate analysis the sanction behind state power is the use of force. As police are the agency to enforce the will of the state, the way the police function is an index of liberty and rule of law in a democratic society. When police powers are abused, the weak tend to be more oppressed. Whether it is corruption in the police forces or indeed in the general run of the administration, or criminalization of polity, it is always the poor, under-privileged, weak, and disadvantaged sections of society that are at the receiving end.

Rule of law is the cornerstone of any democracy. Rule of law essentially means equality before law, and all individuals being subjected to the same laws in the same measure. The ultimate test of rule of law is the way the police and criminal justice system enforce law, protect innocent citizens, and use coercive power to ensure compliance of law. Given our colonial legacy, the police in India have for long exercised enormous power and prestige. It is not uncommon even today for mothers to frighten young children in the name of the police. The fear of police force is extremely common in most parts of India, particularly in the middle and lower strata of society. A policeman is seen as a symbol of state power and as an agent of coercion and retribution; and not as a friend and protector of the people. This image was largely a creation of the colonial era, when the police force was used essentially to protect the empire from within and to suppress all rebellion or even dissent. In a country in which even today nearly half the people are functionally illiterate, any person with a modicum of education is vastly superior to the

bulk of the population. When we consider that only 2.7% of Indian population is engaged in organized sector jobs with a regular monthly wage, it is easy to recognize that every one of these employees is socially, educationally, and politically more influential than 90% of the population. In particular when the employment is in the state sector, with all the colonial hangover and undue prestige and fear evoked by government, such employees wield disproportionate power in the society. When that employment is with the police force, with the uniform as a symbol of authority and prestige, with the habitual use of force which is almost entirely unchecked, with hardly any instruments of accountability, this awesome power of an ordinary constable has to be seen to be believed.

This situation is further complicated by an increasingly illegitimate political and electoral system, which is largely based on abuse of unaccountable money power, regular deployment of criminal muscle power and many distortions in the electoral arena. Obviously such an illegitimate political system is inclined to use the police force illegally to buttress itself. In a democratic governance system, willing compliance with the law, respect for authority, and governance by consent are the norms. When the rules of the power game are so distorted that honesty and survival in elective public office are no longer compatible, governance can only be sustained by illegitimate use of coercive power. The police as the ultimate agents of coercion are therefore perceived by the general public as instruments of oppression and abuse of power.

Such a situation is undesirable in any society. It is particularly distressing in a society which is rapidly getting urbanized, with organized crime and transnational syndicates on the rise. On the one hand with increasing urbanization there is breakdown of tradition. The old-fashioned communitarian village society is increasingly replaced by the impersonal atomized urban individuals and families. As religion and other social controls have weakened, there is an increasing resort to law enforcement to ensure desirable behavior. On the other hand as the police forces are largely ineffective, based as they are on primitive methods and antiquated laws, their capacity to enforce public order or to control crime is significantly eroded. As the police are still largely controlled by the political executive, the tendency to abuse the police force for partisan and personal ends is irresistible in an otherwise immature polity. In a society in which power is always regarded as a personal attribute, abuse of power is the norm rather than the exception.

Public servants are rarely regarded in India as servants of the public. Instead they are seen as powerful individuals with access to state resources and influence over decision making.

If power is defined as the ability to influence events, resources or human behavior for the larger public good, such power is extremely restricted in the hands of state functionaries in India. If power is however defined in a negative sense as the ability to use state resources and influence for personal aggrandizement and private benefit, then such power is unlimited in the hands of our state functionaries. The police are no exception to this general rule. However as the police are the visible symbol of authority and are arguably the most important agency of state entrusted with the vital responsibility of maintenance of public order and control of crime, abuse of police powers have far more profound and grievous consequences in every society.

1.3 Politicization of crime investigation

Any serious effort to improve the functioning of police forces and to make them effective tools of human happiness in a modern society must take into account the fundamental failings of policing in India today. The most important feature of the police in India is the high degree of centralization of functions in a single police force. In almost all states there is a common police force for crime investigation, riot control, intelligence gathering, security of state properties, and protection of important citizens. Once all these functions are concentrated in a single police force, many distortions have inevitably crept in. Firstly, the police functioning has become increasingly complicated and highly specialized. Each function requires a degree of training, knowledge base, skill, and sophistication which are not possible to sustain when many functions are concentrated in the same force. Secondly, in the absence of specialization, the police forces have to deploy more resources and time to achieve the same results in any given area of work. Thirdly, certain areas of functioning have to be necessarily under political control and monitoring whereas certain other functions have to be independent of political supervision and are in fact quasi-judicial in nature. Since the functions are all clubbed in one police force, it is impossible to separate control of one function from another. As a net result the politician has been playing a very prominent role in influencing crime investigation, crime control and such other functions. Given the centralized polity and distortions in electoral politics, abuse of police powers has become an integral part of our governance crisis.

The legislative office theoretically gives the incumbent the power to make laws, and keep the errant executive under check through various parliamentary procedures. However, in reality, the legislators as well as the general public do not perceive the legislative office as one of law making and keeping the executive under check. Legislators are seen by the people and themselves as disguised executives. As the government is entirely dependent for survival on the support of the majority of the legislators on a given day, most of the time, energy, attention and efforts of governments are concentrated on mere survival. As huge investments in money are made to get elected, there is a natural propensity on the part of the legislators to seek patronage and share the spoils. There is an implicit understanding that the support of the legislators to the government is contingent upon the political executive doling out favours to them. Rarely is this support based on principles, ideology or public opinion. Invariably there is a price extracted for such support in many forms. Appointment of public servants in key public offices, transfer of inconvenient employees, licensing, distribution of patronage in the form of subsidies and benefits to the poor, public distribution system, government contracts and tenders, mining licenses, permissions to exploit the forest produce, maintenance of law and order, crime control, crime investigation and prosecution, execution of public works - all these are often at the mercy of legislators. Even a well-meaning and honest political executive is helpless in enforcing high standards of probity, fairness and competence as it is at the mercy of the legislators on whose continued goodwill and support its survival depends. As a consequence, integrity in public office at the political executive level and survival in power are increasingly incompatible.

1.4 Independent crime investigation

Given this complex political and governance scenario, the horizontal fusion of all functions in a single police force has proved to be very damaging to our governance process. There is almost no single police station which is not subjected to pressure from the political class on any given day in its discharge of crime investigation functions. As criminalization of politics, and politicization of crime have both become the order of the day, increasingly criminals have greater and greater influence in governance. The election commission has gone on record that more than 700 of the 4072 legislators in all the states of India have a record of crime against them. Once the electoral process throws up such undesirable elements into public office, it is inevitable that the police force is subjected to

unwarranted pressure in crime investigation. Infact most criminals are tempted to enter the electoral fray only in order to be able to influence the police through public office. Given this, the most important reform measure to be undertaken in the police forces is the separation of crime investigation from other branches of policing. Crime investigation is a serious quasi-judicial function to be exercised entirely independent of partisan politics. By law the police officials are supposed to be independent in discharging this function. However once the police officials can be controlled by their bosses and elected politicians through a mechanism of transfers, postings, promotions and disciplinary action, it is impossible to insulate this function from the rest. As the government of the day has complete powers over the police machinery as well as the legal authority to drop criminal charges against the accused, crime investigation has become a plaything of partisan politics.

It is therefore vital to create an independent wing of police force fully in charge of crime investigation, which should obviously be controlled by, and be accountable to, an independent constitutional machinery. Several mechanisms and models have been suggested by various committees and commissions. Whatever may be the nomenclature, such a crime investigation wing should be under the supervision and control of a colligeum at the state level headed by a chairperson drawn from the judiciary. Once a high court judge becomes the head of prosecutions, s/he shall cease to be member of judiciary forever. The other members could be jurists, independent prosecutors, serving police officials at the highest levels, former police and civil officials and eminent citizens from various walks of life. The appointment of this prosecution wing itself should be by a committee comprising of the members of the government, the leaders of the opposition, speaker of the legislature, and judges of the high court. Such a body, be it called the state security commission or the state board of prosecutions or the state police board, should be fully in control of all matters of appointment, promotions, transfers, postings and disciplinary action relating to crime investigation wing. The crime investigation police should be permanently insulated from other wings of police with no possibility of transfer from this wing to others or vice versa. Only when such fool-proof institutions are evolved is it possible to make sure that crime investigation is a truly professional, independent exercise in search of justice rather than making it a partisan tool in the hands of those in power.

1.5 Speedy and efficient justice

An independent and impartial judiciary and a speedy and efficient system are the very essence of civilization. However, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society. As NaniPalkhiwala observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives. Any one, who is even remotely exposed to the problem of land grabbing in our cities, or a house owner who finds it virtually impossible to evict a tenant after due notice even for self occupation, can easily understand how the justice system failed. In the process, a whole new industry of administering rough and ready justice by using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns, and increasingly in recent years in rural areas. The clout and money these hoodlums acquire makes sure that they are the ones who later enter political parties, and eventually acquire state power. There are countless examples in almost every state in India of slum-lords, faction leaders, and hired hoodlums acquiring political legitimacy. Most of them started their careers attempting to fill the vacuum created by judicial failure through extra-legal, and often brutal methods. In addition, the courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively trivial matters.

Essentially, the failure of the civil and criminal justice system is manifesting in abnormal delays in litigation and huge pendency in courts. While accurate statistics are not available, it is estimated that approximately 38 million cases are pending in various law courts all over the country. While 20 million cases are pending in district courts, High Courts and Supreme Court, about 18 million cases are said to be pending in lower courts. At the end of 1995 it was estimated that around 58 lakh criminal cases were pending trial, while 17.3 lakh cases have been disposed of during the year accounting for 23 percent. In 1994 for example, disposal of cases in our courts was around 17 percent. The conviction rate is abnormally low with only 6 percent cases resulting in conviction. Even in cases involving extremely grave offences with direct impact on public order and national security, there are abnormal delays. For instance, it took our criminal justice system more

than seven years to convict the murderers of Rajiv Gandhi in Sriperumpudur in 1991. There are harrowing tales of innocent citizens accused of petty offences languishing in jails as under-trial prisoners for decades. Most often, the time spent in prison during trial exceeds the maximum punishment permissible under law even if the person is proved guilty!

The delays, the habitual use of English as language of discourse even in trial courts and the extreme complexity and the tortuous nature of our legal process made justice highly inaccessible to a vast majority of the people. It is estimated that India has only about 11 judges per million populations, which is among the lowest ratios in the world. The cases pending exceed about 30 thousand per million populations. Obviously it is unrealistic to expect the law courts to deal with this abnormal case-load or to be accessible to people. The delays, the complexity and the unending appeals make litigation inordinately expensive in India. While astronomical fees are charged for legal consultation by high-priced lawyers practicing in the higher courts, even in the lower courts cost of litigation is prohibitive and beyond the reach of most citizens.

The failure of the justice system has several disastrous implications in society. As Gladstone observed, the proper function of a government is to make it easy for the people to do good and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. Even in civil matters, the sanctity of contracts and agreements has lost its relevance because of the courts incapacity to adjudicate in time. Equality before law, though constitutionally guaranteed, has remained a notional concept on paper. In reality the vast masses of the poor and illiterate people are relegated to the margins of society in the absence of a fair and effective justice system which is accessible to all. As a result, extra-legal mechanisms for redress of grievances and for providing rough and ready justice have sprung up all over the country. The foremost cause for increasing criminalization of society and politics is the failure of the justice system. Even if heroic and successful efforts are made to disqualify all these persons with criminal record from contesting, the problem will continue to grow unless justice administration improves dramatically. While a section of criminal gangs indulges in violent crime and graduates into politics using the money power so acquired, most organized crime in recent years is involved in informal adjudication of disputes

backed by a threat of brute force and violence. As the courts have failed to deliver justice, there is a growing demand for such gangs which can enforce rough and ready justice.

CONCLUSIONS AND SUGGESTIONS

When we see someone violating the law, we immediately think of informing the police. After a person is arrested, it is a court of law that decides whether the accused person is guilty or not. According to the Constitution, every individual charged of a crime has to be given a fair trial. A successful criminal justice system is one which is able to function effectively as a watchdog of the people. This can be achieved by effective participation of the people. Because of the lack of awareness of the role which a citizen has to play in the fulfilment of the law, he does not step forward to become an accessory to the system. If every citizen were to take upon himself the duty to be a part of the law, help its administration in the capacity of a group or a movement, the criminal justice system would be far more effective. There is no substitute for public consciousness. This is only a counter check against misuse or abuse of power and the failure of the law in the stages of initiation as well as investigation, and in the trial of cases. It is not meant to subvert the judicial process, but it can certainly make the judicial process accountable.

One important function of the police is to investigate any complaint of a crime. An investigation includes recording statements of witnesses and collecting different kinds of evidence. On the basis of the investigation, the police are required to form an opinion. If the police think that the evidence points to the guilt of the accused person, then they file a charge-sheet in the court. It is not the job of the police to decide whether a person is guilty or innocent, that is for the judge to decide.

Everyone is subject to the law of the land. This includes the police. Therefore, police investigations always have to be conducted in accordance with law and with full respect for human rights. The Supreme Court has laid down guidelines that the police must follow at the time of arrest, detention and interrogation. The police are not allowed to torture or beat or shoot anyone during investigation. They cannot inflict any form of punishment on a person even for petty offences.

When a crime is committed, traces of the event are left at the scene of the crime and elsewhere. The task of the investigator is to collect these traces. The application of this

technology in a criminal case involves four phases: investigation, interview, scientific testing and judicial adjudication. The salutary canon “let hundred guilty go un-punished rather than one innocent is punished” creates a situation unhealthy to arrive at a fair disposal of the cases by the Courts. In the criminal Jurisprudence this canon has to give way to “let hundred guilty punished rather than one innocent not punished”. To achieve this goal, in the light of our observations in the foregoing paragraphs regarding the re-defined role, duties, powers and responsibilities of the police, we recommend that the new Police Act may spell out the duties and responsibilities of the police to—

- (i) Promote and preserve public order;
- (ii) Investigate crimes, and where appropriate, to apprehend the offenders and participate in subsequent legal proceedings connected therewith; (Hi) identify problems and situations that are likely to result in commission of crimes;
- (iv) Reduce the opportunities for the commission of crimes through preventive patrol and other appropriate police measures;
- (v) Aid and co-operate with other relevant agencies in implementing other appropriate measures for prevention of crimes; '
- (vi) Aid individuals who are in danger of physical harm;
- (vii) Create and maintain a feeling of security in the community;
- (viii) Facilitate orderly movement of people and vehicles;
- (ix) Counsel and resolve conflicts and promote amity;
- (x) Provide other appropriate services and afford relief to people in distress situations ; I
- (xi) collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
- (xii) Perform such other duties as may be enjoined on them by law for the time being in force. Item (ii) above will give legal scope for police to be associated with the process of prosecution and have effective interaction with the prosecuting agency: Items (iii) and (v) will afford scope for police to be associated in a recognised manner with the other wings

of the criminal justice system for preventing crime and reforming criminals. Items (ix) and (x) will facilitate the performance of service-oriented functions and will also recognise a counselling and mediating role for the police in appropriate situations.

As the CBI established a reputation of being India's premier investigative agency with adequate resources to deal with complicated cases, demands were made on it to take up investigation of cases of more conventional crime such as murder, kidnapping, terrorism, etc. Apart from this, the Supreme Court and even the various High Courts of the country also started entrusting such cases for investigation to the CBI on petitions filed by aggrieved parties. Taking into account the fact that several cases falling under this category were being taken up for investigation by the CBI, it was therefore decided in 1987 to constitute two investigation divisions in the CBI, namely, Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crime, besides economic offences. The CBI reports to the central Indian government and not to the individual states. The Indian Police system as organised by the Police Act of 1861 was specifically designed to make the police totally subordinate to the executive government in the discharge of its duties. No reference was made at all to the role of police as a servant of the law as such. Thus when on 17th August, 1860 the resolution appointing the Police Commission was issued by the Governor-General in Council the Memorandum attached to the resolution stated, for the guidance of the Commission, the following "characteristics of a good police for India". The first was "that it should be entirely subject to the Civil Executive Government.

The modern criminal justice system has evolved since ancient times, with new forms of punishment, added rights for offenders and victims, and policing reforms. These developments have reflected changing customs, political ideals, and economic conditions. In ancient times through the Middle Ages, exile was a common form of punishment. During the Middle Ages, payment to the victim (or the victim's family), known as wergild, was another common punishment, including for violent crimes. For those who could not afford to buy their way out of punishment, harsh penalties included various forms of corporal punishment. These included mutilation, branding, and flogging, as well as execution. The Indian Police system as organised by the Police Act of 1861 was specifically designed to make the police totally subordinate to the executive government in the discharge of its duties. No reference was made at all to the role of police as a servant

of the law as such. Thus when on 17th August, 1860 the resolution appointing the Police Commission was issued by the Governor-General in Council the Memorandum attached to the resolution stated, for the guidance of the Commission, the following "characteristics of a good police for India". The first was "that it should be entirely subject to the Civil Executive Government". The failure of the justice system has several disastrous implications in society. As Gladstone observed, the proper function of a government is to make it easy for the people to do good and difficult for them to do evil. The only sanction to ensure good conduct and to prevent bad behavior in society is swift punishment. In the absence of the state's capacity to enforce law and to mete out justice, rule of law has all but collapsed. Even in civil matters, the sanctity of contracts and agreements has lost its relevance because of the courts incapacity to adjudicate in time. Equality before law, though constitutionally guaranteed, has remained a notional concept on paper. In reality the vast masses of the poor and illiterate people are relegated to the margins of society in the absence of a fair and effective justice system which is accessible to all. As a result, an extra-legal mechanism for redress of grievances and for providing rough and ready justice has sprung up all over the country. The foremost cause for increasing criminalisation of society and politics is the failure of the justice system. Even if heroic and successful efforts are made to disqualify all these persons with criminal record from contesting, the problem will continue to grow unless justice administration improves dramatically. While a section of criminal gangs indulges in violent crime and graduates into politics using the money power so acquired, most organised crime in recent years is involved in informal adjudication of disputes backed by a threat of brute force and violence. As the courts have failed to deliver justice, there is a growing demand for such gangs which can enforce rough and ready justice.

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DVSIJMR
ISSN NO 2454-7522