1. INTRODUCTION

We are passing through a precarious period of world history under the shadows of catastrophic and impending dangers. Never before did we feel more strongly that we are leading a nefarious and neglected life. Is this the defective legal system; the corrupt role of police; the unfair use of the legislative Acts; the weak economic or political perspectives or the prevailing corruption in the judicial system which gives thrust to the administration of criminal justice and devoured everything worthwhile in respect of the victim perspective.

It is well documented that criminal justice system worldwide had a complete tilt in favor of the accused; hence pre and post trial rights have been recognized for them. India is not an exception to this above stated global position. However, peculiar to India have been the status-quo in its position as compared to other nations of the world. This has further been supported by the adversarial system of criminal justice to which India has opted. Our country has recognized the pre and post trial rights of the offender both constitutionally and procedurally. The important unit of the criminal justice mainly the victim has no place in Indian system except that it has been relegated to the witness that too when necessary.\(^1\) However, certain thunderous pronouncements by the apex court in India have made it possible to create an environment of "take off" relating to victim justice so much that latest amendments in Criminal Procedure Code\(^2\) are indicators in this direction. That is evident by the existing definition of "victim" in Sec.2 (wa).\(^3\)

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3. "A person who suffered directly or threatened physical, emotional or pecuniary harm as a result of commission of a crime, or in the case of a victim being an institutional entity, any of the similar harm by an individual or authorized representative of another entity or group who are essentially covered under civil or constitutional law and deserves assistance by the criminal justice system."
A criminal justice system is the system by which society first determines what will constitute a crime and then identifies the accused, tries him, and if found guilty convicts him and punishes him for violating the criminal law.4

Criminal justice administration is one of the major sectors of public administration, broadly comprising three principal components, viz., police (i.e., law enforcement); judiciary (i.e., adjudication); and correctional institutions. (i.e., jails, prisons, probation and parole). In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society. Its basic objective is not only to enforce law, but also to ensure equity and justice. Its success or failure determines the fate of societal progress.5

The principal purpose of criminal justice system is to preserve and protect the Rule of Law which implies enforcement of law, maintenance of order, fair trial and punishment of offenders, and their social rehabilitation through correctional system of justice.

To ensure that innocents are not victimized by the criminal justice delivery system, the accused has been granted certain rights and privileges.6 These rights of the accused or the convict are safeguarded by the constitution as well as various statutory provisions.

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The victims who put the law in motion are usually the forgotten people in the criminal justice delivery system. His participation remains at the periphery of the criminal justice system as the initiator of the prosecution and as witnesses of the prosecution when desires. He is neither participant in the proceeding launched against the offender nor a guiding element in any stage of the prosecution. There has been gross neglect of the victims need and interest. In addition he is made to suffer not only in the hand of accused and their associates but at the hand of prosecution agencies. The law even does not afford him any relief by way of compensation or reparation for the harm suffered except to a limited extent.

The justification given for the exclusion of the victim from prosecution scene is stated that the crime by and large is directed against the society as a whole and the state which has taken upon itself to protect the life; liberty and property of individual exercise the police power and its justice delivery system. It is also bound to restrain the individual from taking law into his own hands. Another reason forwarded is that the intervention of victim in prosecution process may vitiate the fairness of trial and open the door-way to retributive and vengeful traits that may vitiate fair trial.

While highlighting the apathy of our criminal justice system *Krishna Iyer, J.*, in case of *Rattan Singh v. State of Punjab* aptly remarked thus, it is the weakness of our criminal justice system that victims of crimes do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law.

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11 (1979) 4 *SCC* 719.
Even the “Committee on Reforms of Criminal Justice System” popularly known as the Malimath Committee in its report, it recognized that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration.\textsuperscript{12}

The Committee in its report focused a whole chapter entirely on “Justice to Victims” reiterating the need for more participation of victim so that the faith of people be restored in the entire justice delivery system. It also took into account the United Nation Declaration on the rights of victim and examined various systems prevalent in European Countries. It recognized that the victims’ rights can be categorized into two categories namely right to participate in criminal proceeding and the right to compensation for injuries suffered.\textsuperscript{13}

In our present criminal justice delivery system, the participation of victim is negligible and compensation though provided in certain cases are either inadequate or the offender usually does not have means to pay that. In order that criminal justice delivery system to enjoy the confidence of the people, the aspiration of the victim and his right to participate in criminal prosecution is \textit{sine qua non}. The criminal justice delivery system must ensure that the victim be furnished with information at the investigation and trial stages and facilitating victim’s active participation in judicial process. In addition he must be provided monetary relief and compensation as well as other facilities like medical and legal aid, counseling and rehabilitation. These steps will go a long way in ensuring the faith of people in our criminal justice delivery system by sending a message that the state is taking all possible measures to ensure that justice must not only be done but it seems to be done.\textsuperscript{14}


\textsuperscript{13} Subash C. Raina, (2005), "Malimath Committee Report on National Policy on Criminal Justice Reform; Myth or Reality" \textit{Nayakiran}; Delhi High Court Legal Aid Cell 2005.

(iii) **ROLE OF “VICTIM” IN THE INVESTIGATION PROCESS**

At present the role of victim is confined to lodging of complaint or First Information Report (hereinafter FIR) and to tender evidence when called by prosecution. The prosecution is overall in charge of conduct of criminal prosecution. The victim is not even a party to the proceeding except in cases where the private complaint is lodged before a magistrate. It is the police which conduct investigation on the basis of FIR and file the final report or charge-sheet. Then it is the magistrate/judge after looking into the record of investigation and report of investigation takes cognizance and frame charge paving way for the trial, if necessary.

Only opportunity available to the victim is that when the magistrate/judge is not inclined to take cognizance and propose to drop the proceeding, an opportunity is given only to the victim to present his own case on the basis of Supreme Court’s decision in case of *Bhagwant Singh v. Commissioner of Police*.

Necessary changes are required to be made in the existing law to make victim play an active role in prompt investigation and effective prosecution of the case. The effective participation must ensure that the victim does not feel neglected. This can be done by giving victim the right to information relating to investigation and trial.

The Right to Information Act, 2005 may provide an important instrument at the hand of victim to secure information regarding certain entries in diaries and record concerning the progress of investigation and trial but again the police can refuse to furnish the information on exclusionary principle which is the ground of interference in investigation and trial.

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15 AIR 1965 SC 1452.


17 Section 8(h) of the Right to Information Act, 2005.
The Malimath Committee also recommended that the victim be given the right to know the status of investigation and to move to the court to issue direction for further investigation on certain matter or to a supervisory officer to ensure effective and proper investigation to assist in the search of truth.\(^{18}\)

**(iv) VICTIMS AND PROSECUTION**

At present the prosecution is carried on by the Public Prosecutor. He is the officer of the court with duty to assist the court in arriving at its decision. At present the victim has no active role to play.\(^{19}\)

**(iv)a Representation at Trial.** In certain cases the court may permit an advocate authorized by the victim to assist Public Prosecutor, but such advocate does not have independent right to represent. The Supreme Court has stated that the role of private counsel in such cases is more or less that of a junior counsel who assists a senior. He cannot act independent of Public Prosecutor.\(^{20}\)

**(iv)b Bail Provision.** The victim can also intervene when the bail is liable to be cancelled. In the granting and cancellation of bail, victims have substantial interests though not fully recognized by law. Section 439(2) of the Cr.P.C, may allow a victim to move to the Court for cancellation of bail, but the action thereon depends very much on the stand taken by the prosecution. Similarly prosecution can seek withdrawal at any time during trial without consulting the victim. Of course, the victim may proceed to prosecute the case as a private complainant; but he seems to have no right to challenge the prosecution decision at the trial stage itself.

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\(^{18}\) Supra note 9 at p-10.


(iv) **Plea Bargaining.** The Criminal Law (Amendment) Act, 2006 introduces the concept of plea bargaining under Section 265A to Section 265L of the Cr.P.C. Notice is required to be given to the victim to participate in the meeting to work out a mutually satisfactory disposition of case, including payment of compensation to victim.

A non-exclusive list of sentence bargaining concessions include: Judges agreeing to impose specific time limits on probation; prosecutors recommending a specific sentence to the judge; judges agreeing to a specific range of time to be imposed; prosecutors refraining from invoking special sentencing provisions for repeat offenders; prosecutors remaining silent at the sentencing hearing; prosecutors not opposing defendant's request for leniency or specialized rehabilitation programs; prosecutors downplaying the harm to the victim; an agreement that defendant serves sentence in a particular institution; a special sentencing arrangement where defendant serves a period of probation and then his case is designated "non-adjudicated;" imposition of a fine or restitution; judges imposing concurrent sentences for defendant's other matters such as probation or parole violations; and prosecutors agreeing to schedule sentencing before a lenient judge.

This is a welcome step in direction of victim-oriented approach to criminal prosecution, but the experienced by victims is often far more complicated than apologies and restitution. Some victims move on with their lives fairly easily, but many suffer continuing trauma without the services and support they need. Victims often suffer lowered academic performance, decreased work productivity, and severe loss of confidence. Mental illness, drug and alcohol abuse, and suicide are far more common among crime victims than the general public.²¹

2. HOW THE PHILOSOPHY OF THE IMBALANCED CRIMINAL JUSTICE SYSTEM

THRASHING AND HURTING THE “VICTIMS OF CRIME”?

The fundamentals of our criminal justice administration have heavily loaded in favor of the accused.\(^{22}\) There is presumption of innocence even when the accused appears to be palpably guilty. The investigation has to discharge the burden of providing the guilt of the accused beyond reasonable doubt. The accused has the remedy of delaying a trial. A delayed trial ensures evaporation of evidence. With its inadequate evidence, the prosecution stands handicapped and accused runs away scot-free with the benefit of doubt. The high acquittal rate leaves doubt in one’s mind that crime today is high-profit, low-risk business.\(^{23}\)

Accumulation of cases and delay in disposal of cases has assumed gigantic proportion. It has shattered the very confidence of litigating public in the capacity of court to redress their grievances and to grant adequate and timely relief.

The criminal justice system now depends on two rules of practice. The police arrests and charge sheets a person on suspicion. The judge discharges the accused on the benefit of doubt. The offenders are not afraid of punishment as they know there is no certainty of punishment inflicted by any court. Convictions or acquittals depend on whether witnesses depose or turn hostile. The hostility of witnesses coupled with the unwillingness of several persons to depose, exhibits public indifference. Judges under this system are hardly expected to know the truth; they are expected to know only the evidence. The disconnection between truth and evidence is the stark reality of the legal system.\(^{24}\)

\(^{23}\) Arun Jaitley, "House for Jessica, Priyadarshini", Indian Express, July 5, 2006, p. 3.
Factors Responsible for the Imbalance in the Criminal Justice Administration

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DEFECTS OF THE ADVERSARIAL MODEL

The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. The adversarial system is two sided structure under which criminal trial courts operate that pits the prosecution against the defense. Justice is done when the most effective adversary (i.e., advocate from each side) is able to convince the judge that his or her perspective on the case is correct one. The whole investigation process remains in the hands of the enforcement agencies i.e., police. The defects of the adversarial system are as follows:-

- The adversarial system is heavily loaded in favor of the accused & is insensitive to the victims’ plight & rights. (i.e., accused oriented system).

- Since trial process is a part of the adversarial system, and therefore, the process can be delayed, prolonged and costly.\(^{25}\)

- In the adversarial system, there is a chance that a judge may be easily persuaded by a good counsel.

- In the adversarial system, the image of the Courtroom looks like a battleground. Each side of the advocate is primarily concerned with the resolving of controversies than with the finding of ultimate truth.

- In the adversarial system, there may be a chance of faulty and slipshod investigation depending on the socio-cultural status, economic power and political influences of people, police may adopt differential attitudes, violating equality and human dignity.

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The first and the foremost principle of the entire legal system of any democratic country is the rule of law, also called supremacy of law, simply means that the law is above everyone and it applies to everyone.26

In the ancient times of Smritis, Administration of justice was one of the most important and obligatory functions of a king and greatly emphasized that the very concept of kingship was conceived and brought into existence for the enforcement of dharma by the might of the king and also to punish the individuals for the contravention of dharma and to give protection and relief to those who were subjected to injury and whose favor dharma lay. Any indifference to this important function of the king, the Smritis cautioned would bring calamity to the king himself and to the people as well.

This aspect of Hindu jurisprudence reveals that there was a doctrine of the supremacy of law that means even the king was not above law; like an ordinary subject he too was subject to law. This historical anecdote, according to Justice S. Ratnavel Pandian, former Supreme Court Judge, "affirms that law was held to be supreme even if the King was the Law-giver." The maxim "The King can do no wrong" is no more an acceptable theory in a democratic polity & the Law-giver also has to subject himself to the supremacy of law.27 As mentioned in Rig-veda, "Law is the king of kings, far more powerful and rigid that they are, under whose aid even a weak can prevail over strong". Thus, the concept of rule of law prevails over every branch of the legal system. Our criminal justice system have further adherence on the three principles of criminal law i.e.,

B-1b.1 Presumption of Innocence;

B-1b.2 Burden of Proof; and

B-1b.3 Fair Trial.


27 Supra note 1 at p.161.
(ii)a PRESUMPTION OF INNOCENCE

The concept of presumption of innocence in the common law system means that everyone is presumed to be innocent until proved guilty i.e., beyond reasonable doubt.\(^{28}\) A person accused of a crime is not bound to make any statement or to offer any explanation of circumstances which tend to create suspicion against him.\(^{29}\)

Following the common law concept, the *Indian Supreme Court* said that one of the cardinal principle of criminal jurisprudence is the presumed innocence of an accused person till otherwise proved\(^{30}\) and cited *Woolmington v. Director of Public Prosecution*, \(^{31}\) to the effect that it is the duty of the prosecution to prove the prisoner's guilt subject to any statutory exception.

The Universal Declaration of Human Rights, Article 11, states: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defense.”

The Constitution of Russia, in Article 49, states that "Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the federal law and has been established by the valid sentence of a court of law"). It also states that "The defendant shall not be obliged to prove his or her innocence" and "Any reasonable doubt shall be interpreted in favor of the defendant".\(^ {32}\) Although the Constitution of the United States does not cite it explicitly, presumption of innocence is widely held to follow from the 5\(^{th}\), 6\(^{th}\) and 14\(^{th}\) constitutional amendments of the United States.

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\(^{29}\) Article 20(3) of the Constitution of India reads as under: “No person accused of any offence shall be compelled to be a witness against himself”.


\(^{31}\) AIR 1935, A.P. 462.

(ii)b BURDEN OF PROOF

In criminal cases, it is a fundamental principle common to England and India that the accused person must always be presumed to be innocent and the onus of proving everything essential to the establishment of the offence is on the prosecution. The rationale behind this principle is threefold:

(a) In a criminal trial, the prosecution has the advantage of being in a position to dictate the proceedings. Placing the burden of proof on the defendant will deprive him of a fair opportunity to answer the allegations against him.
(b) The prosecution has access to investigative resources that are superior to those available to the defendant in most criminal cases.
(c) If a burden of proof is on the accused, the court will have to convict if it is uncertain about certain facts in issue.

The words of Lord Atkin in Basil Reager Lawrencles v. The King,\(^{33}\) conveys that it is an essential principle of our criminal law that a criminal charge has got to be established by the prosecution beyond reasonable doubt.

There is no principle of proving beyond reasonable doubt present in Indian Statutes. It has been brought in from common law. Section 101 of the Indian Evidence Act, 1872 merely provides that the burden of proving a certain fact is on the person who wishes to establish that fact.

Hon’ble Supreme Court has held in Bhagwan Singh v. State,\(^{34}\) that a miscarriage of justice which may arise from the acquittal of a guilty is no less than from the conviction of an innocent. There is a maxim in criminal justice system that an innocent must not be punished even though hundred guilty men may escape from punishment. But this is not the mandate of law.\(^{35}\)

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\(^{33}\) 84, Cri. L. J. 896 (1933).
\(^{34}\) AIR 2002 SC 162.
\(^{35}\) In State of UP v. Anil Singh, 1989 Cri. L.J. 88, the SC held-Judge does not preside over a criminal trial merely to see that no innocent man is punished, a judge also presides to see that a guilty man does not escape. In State of W.B. v. Oriental, 1994 Cr. L.J. 2104, the Apex Court held justice cannot be made sterile on the plea that it is better to let the hundred escape than punish an innocent. Letting guilty escape is not justice.
The right to a fair trial is an inherent right of the accused in the administration of criminal justice. Our courts have recognized that the primary object of criminal procedure is to ensure a fair trial of accused persons. The major attributes of fair criminal trial are enshrined in Article 10 and 11 of the Universal Declaration of Human Rights. Article 10 provides that everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him. Article 11 provides that everyone charged with the penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defense.

The Law Commission has accepted the view that the requirements of a fair trial, speaking broadly, relate to the character of the court (i.e., impartial judge), the venue, and the mode of conducting the trial (with a fair prosecutor and atmosphere of judicial calm), rights of the accused in relation to defense and other rights so that justice must not only be done but it should seem to be done.

One of the important rights of the accused (suspects or under trial prisoners) is the right to life. In the Maneka Gandhi case the Supreme Court has given a purposive interpretation to the provisions of Article 21 of the Constitution. When it held that the procedure established by law means the law must be just and the procedure must be right, just and fair that embodies the principles of natural justice and not an arbitrary, forceful or oppressive procedure.

37 Talab Haji Hussain v. Madhukar Purshottam Mondkar, AIR 1958 SC 376; also see Iqbal Ismail Sodawala v. State of Maharashtra, 1974 Cri LJ 1291.
38 Adopted and proclaimed by the General Assembly on December 10, 1948.
39 The rights of the accused are: right to speedy trial; right to counsel; right to free legal aid; right against double jeopardy; right against self-incrimination; right against 3rd degree methods; right to fair treatment; right to bail; right to know of the accusation; right to be tried in his presence; right to cross examine prosecution witness, etc.
40 Maneka Gandhi v. Union of India (1978) 1 SCC 248.
### (ii)d FAIR TRIAL FOR “VICTIMS OF CRIME”

In India, it is widely recognized that victims do not have express legal rights and protection enabling them to be a part of criminal proceedings.\(^{41}\) For crime victims and their families, the right to be present during criminal justice proceedings is an important one. Victims want to see justice at work. They want to hear counsel’s arguments and view the reactions of the judge, jury, and defendant. But our criminal justice system imposes limitations on that right.\(^{42}\) The restrictions stem from concern that a victim’s right to attend proceedings may conflict with the rights of the accused. Thus, victims are often given a right to be present only “to the extent that it does not interfere with the rights of the accused” or are “consistent with the rules of evidence.” This tends to result in disinterestedness in the proceedings and consequent distortions in the criminal justice administration. During the process of fair trial, generally, two types of rights are recognized for the victims of crime. They are:

a. **The Victim’s right to Participate in Criminal Proceedings** such as right to know; right to be heard; right to plead; and right to assist the court in the pursuit of truth. But victim centered activism is often criticized for the reason that it sounds snatching the rights of the accused.

b. **The right to seek and receive compensation** from the criminal court itself for injuries suffered as well as appropriate interim relief in the course of proceedings. The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy.\(^{43}\)

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\(^{42}\) In the Criminal justice system, crime is committed against the State and not the individual, and therefore, the personal intervention of the victim in prosecution process may vitiate the fairness of trial and open the door-way to retributive and vengeful traits.

\(^{43}\) There is a provision of compensation for the “victims of crime” under Section 357 of the Cr.P.C. but this right has not been very expressly and prominently integrated in the criminal procedure.
(ii). DEFECTIVE POLICE ADMINISTRATION

Police as a functionary of the criminal justice system, has to play a crucial role in maintenance of peace and enforcement of law within its territorial jurisdiction. Its primary duty is to safeguard the lives and property of the people and protect them against violence, intimidation, oppression and disorder. But in this fast changing turbulent environment, the modus operandi of organized criminals and gangsters has made the role and responsibility of the police even more than mere trouble shooters.44 The expert committees and Police Commissions have gone into the problem and made weighty recommendations, but to no avail.45

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OUTDATED POLICE STRUCTURE

The Police organization is still based on the structure of the Police Act, 1861, Section 23 of which requires a police officer “promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority.” This allows civil and political executive authorities to control the police. Thus, third degree methods prevail since the order to use them on suspects in police custody comes from such ‘competent’ authority which may result in custodial deaths.46

Successive central and state governments have, consistently ignored recommendations for police reforms, such as those proposed by the National Police Commission since 1979.47 The police remain an “exploited, neglected and despised minority” who are denied the most basic minimum working conditions and who are “servient to the rulers rather than responsive to the people.”48 The police are poorly paid, suffer difficult working conditions, lack adequate housing and have little job security. Let us examine that how the outdated police structure affects the workings of the entire Indian Police Administration.

INSUFFICIENT MAN POWER

In the Indian Police Force, the powerless constabulary constitutes the overwhelming majority. A large number of police forces are deployed for VIPs’ securities. Not even a reasonable proportion of the police force is available for deployment for prevention, investigation and detection of crime. In addition to this, the police force is not divided under the law police and the order police. This results in over burden of work on each individual police man which clearly reflects the problem of inadequate man power in the police administration resulting in aggravating the problem for “victims of crime.”

(i)b LACK OF AND SOPHISTICATED WEAPONS AND MODERN EQUIPMENT

There is no “modernization” in the entire police administration. The Indian Police Administration is still not equipped with better communication system; better tools of investigation and latest sophisticated weapons as the criminals and law breakers are armed with the latest equipments and modern sophisticated weapons.49

(i)c SUB-STANDARD PROFESSIONAL ENVIRONMENT

Police personnel have very few holidays and very less time for their families. While on duty they have too many tasks and responsibilities, and duties are routine and monotonous.50 Police personnel, from the rank of inspector and below work for long hours sometimes more than twelve hours a day. They also face the problem of poor facilities in their stations and offices. Shortage of men, vehicles, stationary items, arms, communication equipment, furniture, etc. leave them severely handicapped most of the times. They suffer from inadequate housing health care facility.51

(i)d NO PROPER PROFESSIONAL TRAINING

The recruitment systems for the constable who constitute major segments of force are recruited directly from the open market with the minimum qualification. This method does not appear to be full proof as many lumped elements have entered into constabulary. Thus, the recruitment system appears to be defective.52

(ii). **OUTDATED POLICE ACT, 1861.**

The Police Act, 1861 was promulgated nearly a century and half ago. To meet the changing societal needs, law cannot remain static. Society of today is very much different from the society of the 1800’s. To cater to societal needs law must be dynamic and imbibe citizen’s aspirations, experiences in implementation and the many challenges of the times.\(^53\) The shortcomings observed over time are to be addressed so that legislation achieves the intended purpose. A review of the existing Act and the promulgation of a new Police Act is the required step forward.\(^54\)

With this intent the National Police Commission constituted a Police Act Drafting Committee (PADC) or the Soli Sorabjee Committee consisting of eminent legal luminaries to frame a model Police Act which seeks to replace the archaic Act.\(^55\) Police functioning has undergone a paradigm change. Focus has shifted from policing to service, from working in isolation to working with the people, from arbitrariness to accountability for actions, from secrecy to transparency. Clearly the time has come to herald change in statute.\(^56\)

(ii)a **CRITICAL EVALUATION OF THE POLICE ACT, 1861.**

The Police Act, 1861 is extremely authoritarian in nature, which is anachronistic to the present times where democracy, public participation and service to citizens must occupy centre stage. Issues like accountability of the police, co-operation of the police with the community is conspicuously absent in the Act.\(^57\)


\(^{54}\) *Ibid.*

\(^{55}\) *Id* at 156.

\(^{56}\) *Ibid.*

Furthermore, there is no mention of the need for public support or community cooperation in police work. Welfare provisions for the police are not covered. Under Section 227 of the Act deployment in far flung areas can be done at short notice without adequate time for preparation, quite often without a specified duration and making satisfactory arrangement for family left behind.

The police organization does not have functional independence as well. Illegal orders are issued orally from the top to evade accountability to the public or the Courts. Section 3 of the Act has been utilized by the State authorities to unabashedly interfere in the proper functioning of the police. Such vast power vested with the top officials is bound to result in abuse of power.

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### Defective Working of the Police Administration

#### Perspectives

- **Malicious nexus between Politicians, Police and Criminals**
- **Defective Police Investigation**
- **Police & Societal Relations**

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(I). MALICIOUS NEXUS BETWEEN POLITICIANS, POLICE AND CRIMINALS.

It is often highlighted by the media that there exists a ‘nexus’ between the politicians, police and the criminals. As a result police seldom take any effective crime-control-measures to curb the activities of criminals.

(I)a POLICE - POLITICIANS NEXUS

Throughout the country a pernicious police-politicians nexus exists. Mostly the police in their professional capacity are not a political and impartial in the application of laws. When police officers get directions from the political bosses, like not to promulgate orders under Section 144 Cr.P.C or not to interfere in gheraos or not to have recourse to firing or not to enter a place of worship or university campus or not to submit a charge sheet without first obtaining the approval they faithfully follow such instructions. On the other hand the police officers make use of their political connections for securing 'plum posts,' easy transfers to the places of their choice and 'quick promotions' by way of creation of new posts.\(^{58}\)

**POLICE – CRIMINAL (UNDERWORLD) NEXUS**

In most of the big cities like Mumbai, Delhi, Kolkata, Bangalore, etc., criminal activities are on the increase. Organized crimes in the form of periodic extortion, kidnapping, supari-killings etc. have become the order of the day. Well-organized criminal gangs are on the prowl. It is widely believed that most of the gang leaders have close links with high-level officers. There are several instances of these dreaded criminals continuing their 'activities' even from their prison cells. The escape of Bangalore underworld Don Tanveer in May 1999 by pushing aside the policemen, who were escorting him to a hospital and a gap of about four hours in lodging the complaint about his escape, is just one example of the police-underworld nexus.

**HOBNOBBING WITH HISTORY SHEETERS**

A very annoying fact about our police personnel at the lower levels is their proximity to history sheeters and the lumped elements in society. Instead of maintaining a distance from them, they converse, drink and dine with them and even tip them about the decisions and actions contemplated at the higher levels and inform them about escape routes. Most of the police personnel (with a few exceptions) are corrupt to the core.

**POLITICIZATION OF INDIAN POLICE**

The politicization of Indian police is now a commonly accepted phenomenon in every part of the country and no police force is immune from it. An impression clearly exists that police are unable to discharge their duties properly because politicians do not let them function fairly, impartially and in the best interests of the people.

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60 www.timesofindia.indiatimes.com (accessed on 20-12-2011).
In modern days, the police duties have increased enormously and are becoming more and more diversified. It is expected that modern police must protect the public against physical dangers, rescue lives, regulate traffic and preserve law and order in the streets and public places.\(^{63}\) For the purpose of all the above mentioned purposes the Criminal Procedure Code of our country vests the police with enormous powers. However, these powers are not unfettered and the code itself has imposed certain restriction on the exercise of these powers so that police could not exercise these powers in arbitrary manner and also the courts have framed guidelines from time to time for the efficient functioning of the police system.\(^{64}\) In short, if we summarize the whole system then we can say that if the criminal justice system is a vehicle, then the police system is the wheels upon which the vehicle is to run. Therefore, the effectiveness of the whole system rests on the efficiency of the police personnel.\(^{65}\)

(ii) \textbf{DEFECTIVE POLICE INVESTIGATION}

Nothing tarnishes the image of the police and arouses more public ire against them than the practice of third degree and fabrication of evidence. These abhorrent practices that are serious offences under the law can never be justified on any ground whatsoever. Deprecating the adoption of coercive methods, Justice V. Chandrachud (former Chief Justice of India), observed thus:-

“Before we close, we should like to impress upon the government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone, and none else can give evidence, as regards the circumstances in which a person in their custody comes to receive injuries while in their custody....”


\(^{64}\) \textit{Ibid}.

\(^{65}\) \textit{Id} at 51.
MANIPULATION IN FIRST INFORMATION REPORT

Most of our police officers deliberately make absence of material details like names of the accused, names of the witnesses, list of stolen properties, etc. from the FIR which ruins the prosecution case. Accordingly, there is often an attempt to add and interpolate information collected at the stage of investigations into the body of the FIR. Such subsequent additions and interpolations create a doubt about the reliability of investigations in the mind of the court and more often than not the prosecution case is rejected in toto.

Similarly, unnecessary delay in the examination of important witnesses, even when available, under the provisions of Section 161 Cr.PC, creates doubts in mind of the court and the evidence of such a witness may be rejected by it to the detriment of the prosecution case.

CORRUPTION IN INDIAN POLICE.

The apathy of the criminal judicial system in the country is such that it would never bother to find out the reasons why the investigation of a criminal case was inordinately delayed or derailed because delay is the most common practice. There can be no tackling of grass roots level corruption in police as matters stand now. Individual police officers or staff and politicians and bureaucrats who are honest and of whom there are many, cannot be effective in improving the system as they get easily marginalized since the system as a whole is corrupt.

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68 Ibid.

69 Singh Ashok Kumar, (2005), Aspects of Indian Police, New Delhi: Academic Excellence Publishers and Distributors, p-89.


71 Ibid.
THIRD DEGREE METHODS IN INVESTIGATION

Custodial torture has become a common phenomenon and a routine police practice of interrogation. The term ‘torture’ with reference to police custody implies infliction of severe pain or suffering, whether physical or mental, intentionally for the purpose of extracting from the person who is in police custody, or a third person, information or confession or coercing or intimidating him or a third person, to divulge the truth.

The police officials justify custodial torture as a ‘necessary evil’ to keep crime-rate under control on the following grounds:—

- Professional and hardened criminals understand the language of violence only. They would not tell the truth unless sternly dealt with.
- When these offenders have no respect for the rights of innocent persons i.e. victims, why should the police respect their rights?
- Lack of public co-operation frustrates the cause of police investigation and people are unwilling to give witness against the criminals. Therefore, the police have to resort to self-help for eliciting information about the crime from the offender by using third degree methods if the arrested person is stubborn and adamant in not divulging out the truth.

Whatever may be the justification for the institutionalization of custodial torture, but in D. K. Basu case, the Apex court observed—“custodial violence like torture, rape, death in police custody/lock-up is a matter of deep concern it infringes article 21 of the constitution as well as basic human rights and strikes a blow at rule of law”. It may be noted that there is no specific provisions in the code against custodial torture.

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The Supreme Court in *Raghubir Singh v. State of Haryana*,\(^{74}\) emphasize the need to organize the special strategies “to prevent and punish brutality of police methodology, otherwise the credibility of the Rule of Law would deteriorate”. The court suggested that in order to improve the police image any officer found guilty of concoction, fabrication and third degree methodology of investigation should apart from conviction, be dismissed as a matter of course to rid the police force of such undesirable elements.

The developing human rights jurisprudence demands that this dangerous practice should be eliminated completely. Reacting sharply against the tendency of custodial torture and use of third degree methods by the police, the Supreme Court in *Gaury Shankar v. State of U.P.*,\(^{75}\) observed thus—“it is generally difficult in cases of death in police custody to secure evidence against policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate. It is only a few cases that some direct evidence is available.”

In *Yusuf Ali v. State of Maharashtra*,\(^{76}\), Supreme Court held that if the accused is beaten or starved or tortured in any way during the course of investigation by the police, it will be taken as a case of custodial torture.

Elaborating the point further, the Apex Court in *Nandini Satpati v. P.L.Dani*,\(^{77}\) laid down certain guidelines to provide protection to an accused person in police custody. The court held that if there is any mode of profuse subtle or crude, mental or physical, direct or indirect, but sufficiently substantially, applied by the police in obtaining information from the accused, it becomes a case of custodial torture which is violation of right against self-incrimination. The court, however, clarified that though the accused is not bound to answer self-incriminatory questions, he can be asked non-incriminatory questions which he is bound to answer.

\(^{74}\) 1980 Cr.LJ 801 (SC).
\(^{75}\) AIR 1990 SC 709.
\(^{76}\) AIR 1968 SC 150.
\(^{77}\) AIR 1978 SC 1075.
In *Niranjan Singh v. Prabhakar Rajaram*\(^78\), while dealing with the cases in custodial torture in police stations, the Supreme Court observed, “the police instead of being the protector of law, have become the engineer of terror and panic putting people into fear”. Again in *Kishore Singh v. state of Rajasthan*,\(^79\) the Supreme Court expressed its concern for gruesome act of police torture and observed: “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human rights.”

The Supreme Court in *Dalip Singh v. State of Haryana*,\(^80\) took a serious view of police custodial death. In this case two constables along with a Sub-Inspector of Kurukshetra District were found guilty of causing death of the accused by beating. The court convicted them under section 304(II) IPC, i.e., for causing death by negligence. Since police custodial torture or death is a blatant violation of fundamental right to life as guaranteed by the Indian constitution, compensation has been considered as an appropriate relief in such cases.

The case of *Nilabati Behra v. State of Orissa*,\(^81\) is an illustrative point in this regard where the supreme court treated the letter of one Nilabati Behra as a writ petition under Art. 32 of the constitution, wherein petitioner had claimed compensation for death of her son Suman Behra aged 22 years in police custody in District Sundergarh in Orissa. The Government on behalf of the police raised the plea of sovereign immunity. The Supreme Court rejected the contention of the respondents and held that defense of sovereign immunity is not available in case of constitutional remedy and there was no evidence that justify the death of the deceased. The court awarded Rs.1,50,000 as compensation to the deceased mother.

\(^78\) AIR 1980 SC 785.

\(^79\) AIR 1981 SC 635.

\(^80\) AIR 1993 SC 2302.

\(^81\) AIR 1993 SC 1960.
In *Sunil Batra v. Delhi Administration*, the apex court observed that the most important right of an imprisoned person is the integrity of his physical person and mental personality. The court hurled against the ‘bar fetters’ and ‘solitary confinement’ unless it is absolutely necessary to do so.

In *Prem Shankar Shukla v. Delhi administration*, the humiliation caused to suspects or accused persons due to being paraded in handcuffs while being taken to the court or jail has been held repugnant to Art.21 in the light of personal liberty. The court condemned the ‘handcuffs’ in chaining the prisoners. Even where, in extreme circumstances viz. when the accused is dangerous or desperate and where handcuffs become necessary the escorting officer must record the reasons for so doing. The court *inter alia* observed thus:- “Handcuffing is *prima facie* inhuman and, therefore, unreasonable, it is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict ‘irons’ is to resort to zoological strategies repugnant to Art. 21 of the Constitution of India.”

In *Sheela Barse v. State of Maharashtra*, the apex court took note of the custodial violence to women lodged in police lock-up. It directed that there should be lock-up in good localities exclusively for female suspects. Further, the interrogation of the female suspects should be carried only in the presence of female police officers.

In *D.K.Basu case*, the Apex Court noted that the right to interrogate the culprits or arrestees in the interest of the nation must take precedence over an individual’s right to personal liberty. The state’s action, however, must be ‘right, just and fair’. Interrogation though essential must be on scientific principles and third degree methods are totally impermissible. To check the abuse of police power, transparency of public action and accountability are two possible safeguards. The police force needs to be infused with basic human values and made sensitive to the constitutional ethos. With a view to bring in transparency, the presence of counsel of the arrestee at some point of time during interrogation may deter the police from using third degree methods.

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82 AIR 1980 SC 1579.
83 AIR 1980 SC 1535.
84 1983 (2) SCC 96.
It must also be stated that custodial torture is an offence under the Indian Penal Code, the Code of Criminal Procedure and the Code of Conduct of the Police. Besides, it is also violation of the rights guaranteed under Arts.20 and 21 of the constitution.

(ii) **POOR RAPPORT BETWEEN PROSECUTION AND THE POLICE**

There is lack of understanding and cooperation between the public prosecutors and the police. As public prosecutors do not come under the police department, but the law department, there is a communication gap and no proper understanding exists between the police and the prosecution. As a result, most of the accused get acquitted, due to poor presentation of cases and facts in courts of law. The number of convictions therefore remains very low.

(III) **POLICE AND SOCIETY: THEIR INTERACTION.**

Police is an integral part of the society, but on account of hostility towards them, they feel that their occupation is in conflict with the community. If the aam aadmi is asked which organ of government hurt the most, the answer will invariably be the police; both in the negative sense of not doing what it is supposed to do – ensure the rule of law – and in the positive sense of doing what it should not do – harassment, rent-seeking. What are the causes for popular dissatisfaction with the police? What follows are the examples of popular discontent against the police. The issue is not whether all of these are absolutely true or not but whether they exist in the public mind & whether there is any justification for them.

Police exhibit rude behavior and abusive language; they indulge in all forms of corruption; Depending on the socio-cultural status, economic power and political influences of people who approach them, police adopt differential attitudes, violating equality and human dignity.

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Police are either ignorant of the percepts of human rights or they deliberately disregard them in the matters of arrest, interrogation, searching, detention and preventive policing.

While crimes are getting technical, the police are becoming less professional.

The police are insensitive towards victims of violent crimes. At least a section of policemen think of human rights as antithetical to effective law enforcement. They blame the law, lawyers and courts for their own inefficiency.

(iii) DIFFICULTIES AND PROBLEMS IN ENFORCEMENT OF HUMAN RIGHTS

There are many difficulties that are encountered in securing and enforcing human rights. First, we have a surfeit of laws and institutions but poor implementation. What is laid down in policies and laws about the priorities to be assigned to human rights needs to "be woven into the realities of the streets."

Second, many draconian laws have been enacted from time to time, which seriously limit and contain human rights. Thus, under Entry 9 of Schedule VII of the Constitution, we have the provision for preventive detention legislation. Then, we had MISA, the Criminal Law Amendment Act, the National Security Act and the Armed Force Special Powers Act. We have had the infamous TADA which was enacted in 1985 and has since been allowed to lapse. Maharashtra Control of Organized Crime Act (MCOCA) is law enacted by Maharashtra state in India in 1999 to combat organized crime and terrorism. But MCOCA has been misused by the corrupt police officers to book businessmen in false case for their personal gain.

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(iii)b  POLICE AND WEAKER SECTIONS

The situation in case of Crimes against Weaker Sections does present the police in a rather poor light, considering the continued atrocities being perpetrated against the weaker sections in general and Dalits in particular, this section attempts to look at the problem from an overall perspective.89

In the words of former President K R Narayanan, "We have to ponder over the conditions of not only women in our society, but of the Dalits, Tribals and other weaker sections. Untouchability has been abolished by law, but shades of it remain in the ingrained attitudes nurtured by the caste system…. Fifty years into our life in the Republic, we find that justice - social, economic and political remain an unrealized dream for millions of our fellow-citizens."

(iii)c  WRONG POLICE ATTITUDE

Courteous behavior is totally alien to our police culture, especially at the police station level where the maximum contact with the public takes place. The least that the members of public who approach a policeman with their problems expect is courteous behavior and sympathetic listening, if not prompt action. Usually what they encounter is rude manners, filthy language, lack of sympathy and total apathy.90

(iii)d  PUBLIC VIEW TOWARDS THE POLICE

A police force whose behavior is rude, brutal and unresponsive and which lacks impartiality and respect for human dignity is bound to evoke negative feelings among the public. The policemen in turn consider the public as a bunch of ungrateful self-seekers who violate laws whenever it suits them. The distrust and dislike between the public and the police are mutual and self-propagating, resulting in the hardening of negative attitudes among both.

90 Ibid.
III. DEFECTIVE JUDICIAL SYSTEM

Questions on the credibility of judiciary are being raised due to mounting arrears of cases, delay in disposal & high cost of obtaining justice, poor treatment and ignored protection of witnesses.\(^9^1\) So also the raising level of corruption in the judicial system added fuel to the fire.\(^9^2\) All these factors tend to encourage the \textit{rule of jungle} where there is one rule that is might is incarnated right, and rights are metamorphosed might.\(^9^3\)

\begin{itemize}
  \item \textbf{Defective Functioning}
  \begin{itemize}
    \item Delay in Disposal of Cases.
    \item Huge backlog of Cases.
    \item Lack of sufficient Fast Track Courts.
    \item Lack of Mobile Courts.
  \end{itemize}
  \item \textbf{Witness Related Problem}
  \begin{itemize}
    \item Poor treatment of witnesses.
    \item No protection for witnesses.
  \end{itemize}
  \item \textbf{Corruption in the Judicial System}
  \begin{itemize}
    \item Veeraswami case.
    \item Soumitra Sen’s case.
    \item Ghaziabad PF scam.
    \item Cash-for-judge scam.
  \end{itemize}
\end{itemize}

\(^9^2\) Ibid.
Although day-to-day hearing is envisaged by the statute, our tortuous and protracted legal procedures relating to the trial of criminal offences often obstruct the process of speedy justice.\textsuperscript{94}

We are never tired of telling that justice delayed is justice denied. But the fact remains that the trial of Indira Gandhi’s assassination went on for nearly four years, while implementation of the final judgment took a few more months. The trial of Rajiv Gandhi’s assassination was finally concluded after 12 years of the incident. Both were Prime Ministers of India.

The above diagram shows that as delays increase, fear of punishment decreases. Worse, the feeling of guilt reverses. So, whatever action is contemplated, that should be completed before fear fades away and before a sense of being ill-used absolves the conscience of all guilt to transfer the blame to others.\textsuperscript{95}

\begin{itemize}
  \item \textsuperscript{95} P.V.Indiresan, ‘Restructuring the Criminal Justice System’, \textit{CBI Bulletin}, 2000, Feb.; 8: p.12.
\end{itemize}
A procedure which does not provide trial & disposal within a reasonable period cannot be said to be just, fair and reasonable. Many times, inordinate delay contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time, or the witnesses do not remember all the details or do not come forward to give true evidence due to threats, inducement or sympathy.96

In our existing legal system, adjournments are more common than ever before. In an ordinary trial, an adjournment means postponement of hearing for another six months to start with. There may be any number of such adjournments on different reasons, including illness, lawyers' strike, strike by the court staff and transfer of the judicial officer etc.

(ii) HUGE BACKLOG OF CASES

Our Constitution provides for an independent and efficient justice delivery system. Delay in disposal of cases, not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an efficient and effective manner. On account of such deficiencies in the system, huge arrears of cases have piled up in courts at all levels, and ways and means are required to be found out urgently, to bring them to a manageable limit, so as to sustain the faith of common man.97 Influx of cases is also a sign of faith reposed by the people in the administration of justice and it is that faith which, inter alia, is one of the reasons for docket explosion. Prime Minister Manmohan Singh on August 16, 2009 talked tough by terming for the first time in judicial history -- the backlog of 3crore cases in courts as a “scourge” and promised that the government would take two steps for each step taken by the judiciary to eliminate this scourge.98

96 Id. at 15.
(iii) **LACK OF SUFFICIENT FAST TRACK COURTS**

On the recommendation of the 11th Finance Commission, 1734 Fast Track Courts of Sessions Judges were sanctioned for disposal of old pending cases and the said scheme were to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have been disposed of by these courts. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till March 31, 2010.99

In view of the contribution made by the Fast Track Courts of Sessions Judges towards clearing of backlog, and number of huge pendency of cases triable by Magisterial Courts being 1,66,77,657 as on 31-12-2006, there is an urgent need to formulate a similar scheme for setting up of permanent Fast Track Courts of Magistrates in each State and Union Territory.100

(iv) **LACK OF MOBILE COURTS IN RURAL AREAS**

Mobile courts are also being set up which would not only educate the rural folk about their rights and responsibilities and provide swift justice and create a feeling of law and judiciary being very close to them, but will also help reclog the expanding docket of our overburdened courts.

(v) **POOR TREATMENT OF WITNESSES.**

The present judicial system has taken the witnesses completely for granted.101 Witnesses are summoned to the Court regardless of the fact that they have no money, or that they cannot leave their family, children, business etc. and appear before the Court. Notwithstanding that they are not reimbursed appropriately for the trouble and expenses incurred. But that is not all. On reaching the Court, some are told that the case has been adjourned (for reasons that may into infinity) and the respective lawyer politely gives them a further date for their next appearance.


100 Ibid.

In the matter of Swaran Singh v. State of Punjab,\(^{102}\) the Supreme Court observed, “A witness has to visit the Court at his own cost, every time the case is differed for a different date. Now-a-days it has become more or less fashionable to repeatedly adjourn a case. Eventually the witness is tired and gives up.”

The Court further held that while adjourning a case without any valid cause, a Court unwittingly becomes party to miscarriage of justice. Most witnesses have to wait for their turn. And when the time for deposing their evidence comes, the lawyers examine and cross-examine them as if they themselves are the perpetrators of the crime.\(^{103}\)

(vi) **IGNORED PROTECTION OF WITNESSES**

Witness protection programs & laws are simply the need of the hour; & a strong reminder of this is the inability of the State to bring to justice those involved in the Gujarat riots. In fact, it is the absence of these laws that has helped in further strengthening the criminals & offenders. But ironically in India, such programs & laws are a far cry from reality.

A criminal case is built upon the edifice of evidence that is admissible in law. For that, witnesses are required, whether it is direct or circumstantial evidence, the witnesses are harassed. Besides this, the witness is bribed, threatened, abducted, even maimed or done away with. For all these reasons & many more, a person abhors from becoming a witness. And the less we speak of the venality of the system, the better.

In recent times the Delhi High Court, has on 14\(^{th}\) Oct. 2003, issued certain guidelines to the police in providing protection to the witnesses on the guidelines which have been issued by Usha Mehra & Pradeep Nandrajog, JJ. On a petition filed by Neelam Kataria, whose son Nitesh was allegedly murdered by Rajya Sabha MP D.P. Yadav’s son Vikas & nephew Vishal.\(^{104}\)

\(^{102}\) Swaran Singh v State of Punjab AIR 1976 SC 245.

\(^{103}\) Ibid.

Guidelines issued by the Delhi High Court on “Witness Protection” in Nitesh Katara Murder Case\textsuperscript{105}

1. The Court has also made it compulsory for the investigating officer of a case to inform the witness about the new guidelines.

2. The Court has appointed the Member Secretary of Delhi Legal Services Authority to decide whether a witness requires police protection or not.

3. The competent authority shall take into account the nature of security risk to him/her from the accused, while granting permission to protect the witness.

4. Once the permission is granted, it shall be the duty of the Commissioner of Police to give protection to the witness.

However, the High Court said that this order would operate until legislation in this regard is passed.

(vii) CORRUPTION IN THE JUDICIAL SYSTEM

In India, Judiciary is someway at a higher stand amongst legislature and executive because it is the only mechanism to keep the Executive and Legislature within their jurisdictions by confining them not to abuse or misuse their powers. Judiciary is the guardian and final interpreter of the Constitution. Judiciary is a place of utmost trust as it is last resort for the people.

No doubt, Indian Judiciary has a great past but recent incidents of the disclosure of the recommendation by the CJI for the impeachment of a Calcutta High Court judge,\textsuperscript{106} the alleged involvement of some high profile judges (from subordinate to superior level) in the Ghaziabad provident fund case and the money received at the residence of a judge of Punjab and Haryana High Court, shaken the faith of the people and call for an effective mechanism to ensure the accountability and honesty in the judiciary.

\textsuperscript{105} Ibid.

The case of Justice K. Veeraswami is of worth consideration at this point. Because this case disclosed the bitter truth that judges of higher judiciary are involved in corrupt practices. This case relates to corruption and their applicability on judges.

JUDICIAL CORRUPTION

Corruption is the misuse of entrusted power for personal gain. In the context of judicial corruption, it relates to acts or omissions that constitute the use (or it is better to say ‘misuse’) of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions. In corrupt judiciaries, citizens are not afforded their democratic right of equal access to the courts, nor do the courts treat them equally.

The merits of the case and applicable laws are not paramount in corrupt judiciaries, but rather the status of the parties and the benefit judges and court personnel derive from their decisions. A citizen’s economic level, political status and social background play a decisive role in the judicial decision-making process. In corrupt judiciaries, rich and well connected citizens triumph over ordinary citizens, and governmental entities and business enterprises prevail over citizens.107

(VII)a  VEERASWAMI’S CASE.

This was the first case where corruption charges were alleged against a judge of higher judiciary.108 This case dealt with many issues viz. whether judge of a high court or Supreme Court is a ‘public servant’ or not; who is the sanctioning authority for prosecuting a judge of a high court or Supreme Court; whether Prevention of Corruption Act, 1947 (hereinafter as Act) is applicable on judges or not etc.


SOUMITRA SEN’s CASE

Recently, in an unprecedented move by the CJI, wrote a letter to the prime minister, recommending that the proceedings contemplated by article 217(1) read with article 124(4) of the Constitution be initiated by for removal of Justice Soumitra Sen, Judge, Calcutta High Court. This recommendation was made on the basis of suggestions made by an in-house committee, in a report submitted to the CJI that Justice Sen be removed from the office. The committee has in its report charged accused Justice Sen of breach of trust and misappropriation of Receiver’s funds for personal gain.

GHAZIABAD PF SCAM CASE

This embezzlement is a very large scam of the judiciary involving 34 judges belonging to subordinate courts and higher courts and a misappropriation of Rs. 23crores from the PF of class III and IV employees. They are detected by the confessional statement made by Ashutosh Asthana, a Ghaziabad court official. Although the police had secured vouchers and delivery receipts as preliminary evidence, instead of granting clear permission to investigate the judges, the Registrar General of this Court, apparently under the orders of the CJI, wrote to the Ghaziabad SSP to submit written questions which were proposed to be asked to each of these judges along with the evidence against the judges. However, with the Uttar Pradesh police pleading its helplessness to investigate further the case with all its ramifications, the Supreme Court conceded the State government’s request to hand over the case to the CBI.

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109 indiatoday.indiatoday.in/…Calcutta+High+Court+judge/…/14848html (accessed on 15-12-2011).
110 Ibid.
112 Ibid.
(vii)d  CASH-FOR-JUDGE SCAM

CJI Balakrishnan is the first Chief Justice of India who has granted permission to an investigating agency to register a criminal case against judges of Punjab & Haryana H.C.113 This is for the first time that power conferred by Veeraswami case is exercised by any CJI. He allowed the CBI to interrogate two judges of the Punjab & Haryana H.C., Nirmaljit Kaur and Nirmal Yadav, in connection with the cash-for-judge scam. A law officer sent Rs.15 lakh to Justice Nirmaljit Kaur’s official residence and later claimed that it was meant for Justice Nirmal Yadav and had been delivered to Justice Kaur by mistake.114

The way Indian judiciary is working today, it seems that it is developing a protective wall around it in the veil of independence. No doubt, independence is indispensable for a better functioning of judiciary. But if we have a close look regarding the functioning of judiciary what we will find that they are regulating themselves by creating new laws. By taking one or two examples the picture would be clearer. First, judiciary interpreted the law related to appointment of judges in a manner that it stored all powers related to appointment within it and propounded the concept of ‘collegiums’. Secondly, in Veeraswami case judiciary evolved a new law that CJI’s consent is mandatory for registering a criminal case against a judge of a higher judiciary.

All these issues created a major doubt in the mind of public regarding the credibility and judicial accountability of judges. The demand of the society for honesty in a judge is exacting and absolute. The standards of judicial behavior, both on and off the Bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed on him. No excuse or no legal relativity can excuse such betrayal. From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a judge's dishonor. A single dishonest judge not only dishonors himself and disgraces his office but also jeopardizes the integrity of the entire judicial system.

114 Ibid.
(iv) **DEFECTIVE PRISON SYSTEM**

Prison laws in India were enacted by the British, who did not have the reformative and rehabilitative ideologies in mind. Thus, most of our prison laws reflect the need to maintain discipline in jails and treat it as a place for detention rather than reformation. This probably explains the reason why prison system in India is a failure as far as reformation is concerned. The remnants of the colonial past both in terms of law and attitude remain with us, which is a major obstacle to the reformation of the so called criminals in jails, and therefore, responsible for inducing “recidivism”.  

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PROBLEM OF OVERCROWDING IN PRISONS

It is known fact that prison in most parts of India overcrowded. The effect of overcrowding is that it does not permit to segregation among convicts those punished for serious offences and for minor offences.\(^{116}\) As a result of this, hardened criminals may spread their influence over other criminals, and therefore, inducing the possibility of ‘recidivism’.\(^{117}\)

The juvenile offender who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hard criminals and are likely to become professional offenders.\(^{118}\) And after release from the jail they might cause the harm in the society, and therefore, there is every possibility for re-victimization.\(^{119}\)

The law commission in its 78\(^{th}\) report made some recommendations for easing congestion to the prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of under trial on bail.\(^{120}\)

Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation. Overcrowding may also be reduced by release on parole, a prison after he has served part of the sentence imposed upon him. It is an conditional release of an individual from prison. The system of remission, leave and premature release may also be useful in talking the problem of overcrowding in prison institutions.


\(^{117}\) Paranjape, N.V., “*Criminology Penology*”, 12\(^{th}\) edition, Central law publication, 2005, p364

\(^{118}\) Society for Offenders (2012), report of the Committee of the Society for the Improvement of Prison Discipline, and for the Reformation of juvenile Offenders, Rarebooksclub.com, p-52.


\(^{120}\) *Ibid*
(ii) **THE PROBLEM OF PRISON DISCIPLINE**

In prison there must be rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. There is another reason for strict discipline in prison, one might be prison either for the purpose of custody, control and discipline or from prevented to escape or being sent to a correctional institution for treatment. Whatever be the object, it is certain that the life inside prison necessarily poses certain restriction on the liberty of inmates against their free will. Another problem faced by the prison authorities is to guard against the possibility of prison riot which is an essentially an outcome of the combined venture of inmates.\(^\text{121}\)

(iii) **PROBLEM OF CONFINEMENT**

Another problem related to prison discipline concern criminality among inmates inside the prison. The continuous absent from the normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life.\(^\text{122}\) The Indian prison management does not accept the idea of conjugal visits, as the system of parole serve more useful purpose so far marital relationship concern. And such conjugal visits cannot be appreciated for the reason of morality and ethical consideration keeping in view the Indian values and cultural norms.

Another case of criminality among prison inmates is their frequent quarrelling inside the institution. This is when inmates either try to establish his superiority over each other or When there are occasion when inmates quarrel on trifling matters like those of distribution of bread, toilets, etc. or the differences of their opinion about a particular warden, guard or jailor. The offences of petty thefts are also common in prisons because the inmates are supplied only the articles of bare necessities.\(^\text{123}\)


\(^{122}\) *Ibid*

\(^{123}\) *Supra* note 97 at 57.
3. **ECONOMIC AND THE POLITICAL FAILURE.**

The economic and political scenario of our economy is still not good. The prevailing pattern of recession and other natural factors both have pushed the economy to face lot of economic crisis in the form of poverty, unemployment, corruption, inflation, etc.\(^{124}\)

(i) **POOR VICTIMS ARE THE WORST SUFFERERS**

The poorer in India suffers because of two reasons. One is their ignorance and the second is lack of resources to approach the appropriate authorities.\(^{125}\) The Criminal Justice system is cumbersome, expensive & cumulatively disastrous. The poor can never reach the temple of justice because of heavy cost of its access & the mystique of legal ethos. The hierarchy of courts with appeals after appeals puts legal justice beyond the reach of the poor victim.

(ii) **POLITICAL CORRUPTION – A THRUST TO THE CRIMINAL JUSTICE**

The Corruption is rampant among the Ministers (M.L.As and M.Ps) who are elected by the people. The criminalization of politics gains much importance now-a-days. The elected representatives do have a criminal past which results in the establishment of monarchic form of government.\(^{126}\) This type of system gives impetus to the rule of jungle which is inherent with all the signs of bravery, indecency, immorality and no question of right and wrong.\(^{127}\)


4. **IS THERE ANY ALTERNATIVE TO THE COLLAPSING CRIMINAL JUSTICE SYSTEM WHICH PROVES TO BE MORE SECURE AND RELIABLE FOR THE ‘VICTIMS OF CRIME’?**

In contemporary Indian society, the spate of crime and violence in conjunction with the continuing failure of existing criminal justice administration resulting in the dire need for radical reforms in the administration of criminal justice.\(^{128}\)

- Do we have to still retain the old concepts in the criminal justice system which has devoured everything worthwhile in respect of humanity?
- How should we as a society respond to wrongdoing? When a crime occurs or an injustice is done, what needs to happen? What does justice require?
- Should we not think about a system in which equal justice to crime-doers and victims is ensured so that it minimizes the chances of recidivism and reoffending?
- Can we not welcome a crinmo-victim justice system to ensure repair, restore, reconcile, and reintegrate the offenders and victims to each other and to their shared communities?

The people discuss these aspects and the views/opinions expressed by them point to a fact that the existing system makes many unhappy and dissatisfied. The system should change and changes should be to the better. This seems to be vociferous demand of the people.\(^{129}\)

In recent years, a new way of thinking about how we should view and respond to crime has emerged and is beginning to make significant inroads into criminal justice policy and practice, which are less destructive and more effective responses to crime. This new approach is called ‘**Restorative Justice**’.


\(^{129}\) *Ibid.*
The field of *restorative justice* is an effort to transform the way we think of punishment for wrongful acts. It revolves around the idea that a crime or serious bad act affects the victims, offenders, and interested bystanders (such as family members, employees, or citizens), and the larger community in which it is embedded. These bad acts or ruptures in human interaction create needs and responsibilities for the direct participants in the act, as well as for the larger society in which their act(s) occur. In responding to a crime our primary concern should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent re-offending should be decided collectively by offenders, victims and members of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and the victim and to reintegrate the offender into the law abiding community.\(^{130}\)

Professionals will be involved in the process not as chief decision-makers but as facilitators. Their role is to ensure that the parties feel safe and to guide them towards the constructive dialogue and a mutually agreeable resolution.

At such meetings offenders are urged to account for their behavior; victims are encouraged to describe the impact which the crime has had upon them, materially and psychologically; and all parties are encouraged to decide upon a mutually agreeable form and amount of reparation - usually including apology.

So also, members of the offender’s family and community may resolve to monitor the offender and support them in their efforts to refrain from further law-breaking and anti-social behavior. There is an emphasis on persuading offenders, without threats, voluntarily to repair the harm they have caused. There is also an interest in reconciling offenders with their victims and with the community.

According to Howard Zehr,\footnote{Howard Zehr, \textit{The Little Book of Restorative Justice}, 2002, USA: Good Books, p-37.}

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”

Ultimately, restorative justice boils down to a set of questions which we need to ask when a wrong occurs. These guiding questions are, in fact, the essence of restorative justice.

**Guiding Questions of Restorative Justice :-**

- Who has been hurt?
- What are their needs?
- Whose obligations are these?
- Who has a stake in this situation?
- What is the appropriate process to involve stakeholders in an effort to put things right?

Restorative justice is about repairing the harm caused by crime. When an offence is committed, there is a gap between the person causing the harm and those who have been hurt. Western-style justice focuses on punishing the offender, while the victim is often ignored (unless needed as a witness to secure a conviction).

The difference between western-style criminal justice and restorative justice can be shown by an equation. Western-style justice carefully measures the 'seriousness' of the offence, based on the harm caused, and inflicts an equivalent amount of harm on the offender through punishment:

\[
\text{original harm} + \text{punishment} = \text{harm doubled}
\]
The original harm is doubled and the offender is often left feeling that they are the victim. This most often fails to resolve anything for the real victim of the offence. In contrast, restorative justice offers the victim and offender an opportunity to close the gap between them through communication, allowing as much of the harm to be repaired as possible and relationships to be restored.\textsuperscript{132}

\begin{equation*}
\text{Original harm} + \text{restoration} = \text{harm reduced or repaired}
\end{equation*}

This way, everyone wins.

In practice, restorative justice feels very natural, and rather like good parenting. If you break something or hurt someone, the important thing is to go to the person affected explain what happened and why, and explore with them what needs to be done to repair the damage. The offender learns about the consequences of their behavior and has an opportunity to take responsibility and to make amends. The person hurt may learn why it happened, be reassured that it won't happen again, and gain answers to questions that only the offender can supply.

Indeed, restorative justice reflects a sort of crimino-victim justice system where equal justice to crime-doers and victims is ensured. In its most idealized form, there are four potent features of Restorative Justice i.e., repair, restore, reconcile, and reintegrate the offenders and victims to each other and to their shared communities. Thus, restorative justice seeks to repair the harm done by a criminal act by bringing together those most affected by the crime. Meaningful conferencing may change the offenders thinking and allow him or her to take responsibility for the behavior and the effect that it has had on the victim. Restorative Justice is an alternative means of redressing imbalance that may arise from adversarial systems where both victim and offender may feel that their needs have not been adequately serviced.

5. **OBJECTIVES AND METHODOLOGY OF THE STUDY**

For an in-depth and focused study relating to restorative justice as a viable alternative to the prevailing defective criminal justice system, the present study is based on the following objectives:

1. It focuses fully on victims’ needs — material, financial, emotional and social. (Including those personally close to the victim who may be similarly affected).

2. It prevents recidivism by making efforts to reintegrating offenders into the community.

3. It enables offenders to assume active responsibility for their actions which resulted in lesser victimization of victims.

4. It recreates a working community that supports the rehabilitation of offenders and victims and is active in preventing crime.

5. It provides means of avoiding escalation of legal justice and the associated costs and delays by advocating the use of restorative justice.

**Methodology:** The methodology adopted in the research is mainly doctrinal. The study focuses on various statutes; case laws; and reports of various expert bodies constituted to study the Restorative Justice in India and considered critically the suggestions and recommendations made by them. The study considered primary and secondary sources for its accomplishment. A necessary part of study is the global position with respect to restorative justice which has provided the scope for making the study comparative and critical.
VII. CONCLUSION

The present condition of the Indian Criminal Justice System, as evidenced by the defective workings of its major principal components such as the police (i.e., enforcement agency); the judiciary (i.e., adjudication) and; the correctional institutions in conjunction with the prevailing mass corruption from the political perspectives has revealed the various anomalies/deficiencies therein which trample the victim’s rights and needs and, as a result, shattered the basic aim of the Criminal Justice System.

Though, a victim of crime is a universal phenomenon. India draws special attention because of its high prevalence of injustice to the victims of crime due to absence of any uniform law relating to compensating them. It is further frustrated by the fact that most of the offender do not have the capacity to pay – hence may prefer jail term which in no case serves the interest of the victim except his vengeance. Injustice to the victims of crime is a socio-legal problem. The Government of India from time to time has been taking measures to control the problem of injustice to the victims of crime and certainly there is some improvement but the progress is slow and something more have to be done regarding the elimination of injustice to the victims of crime.

In a nut-shell, the enormous deficiencies of the prevailing criminal justice system provides a justification for initiating the in-depth research on the use of restorative justice system as an alternate perspective for the worst situation to promote the rule of law and not the rule of jungle.