CHAPTER I

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"Long ago we made a trust with destiny, and now the time comes when we shall redeem pledge, not wholly or in full measure, but very substantially. At the stroke of midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely is story, when we step out from the old to new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity... We end today the period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough grasp this opportunity and accept the challenges of the future?... Freedom and power bring responsibility. This responsibility rests on this assembly a sovereign body represent the sovereign people of India... The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunities. The ambitions of greater men of our every eye. That may be beyond us, but as long as there are tears and sufferings, so long our work will not
be over. And so we have to labour and work hard, to give reality to our dream.”

Looking back over the years that have rolled by since then, one is apt to question and doubt, whether we have progressed well on the path of democracy and evolved smooth and successful working arrangements for the purposeful functioning of the three important wings of the society of the democratic system i.e. legislature, executive and the judiciary. While steering the country towards the promise objectives of the secular, socialist and welfare state for its hundred of million people. The government has had to regulate in an increasing degree the conduct and business of different sections of people through present criminal justice system. This has meant increasing exercise of the power by the Government through its widely spread apparatus of the courts and the police in several matters effecting the daily life of the people.

In every civilized society, the primary role of a criminal justice administration is to protect the members of that society. In this respect, it is a formal instrumentality authorized by the people of a nation to protect both their collective and individual rights. Another major duty of any administration of criminal justice is the maintenance of law and order. Since crime and disorder disrupt stability in the society, we have vested the criminal justice administration with the authority to act as the means by which the existing order is maintained.

1 Spoken by Pandit Jawahar Lal Nehru our First Prime Minister when he addressed the Constituent Assembly in New Delhi on the eve of Independence on 14th August, 1947.
In addition, to these major roles and duties, there are a number of important functions of criminal justice administration. The prevention of crime, the suppression of criminal conduct by apprehending offenders for whom prevention is ineffective, to review the legality of our preventive and suppressive measures, the judicial determination of guilt or innocence of those apprehended, the proper disposition of those who have been legally found guilty and the correction by socially approved means of the behaviour of those who violate the criminal law are some of them.\(^2\)

Modern society is reached at its highest point (culmination) of centuries of social interaction, attempts to understand individual and collective behaviour, and efforts to find adequate means of social control. This social control began with the family and kinship ties, ethical systems and religious controls and eventually the criminal law and criminal justice administration of the modern state. In present context the crime is defined by legislative action or governmental decree, law enforcement agencies identify suspected offenders, the courts convict those legally found guilty, and correctional systems attempt to rehabilitate offender.\(^3\) The nature and extent of crime in society provides some index as to where the social problems lie in that society and the number of people involved.

The concept of crime therefore, involves the idea of a public as opposed to a private wrong, with the consequent intervention

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between the criminal and the injured party by an agency representing the community or public as a whole. In this view, the crime is intentional commission of an act or omission deemed socially harmful or dangerous and specifically defined, prohibited and punishable under the criminal law, which shall be in force for the time being. Difficulty arises from this definition because of the practical problems often involved in determining whether or to what degree an act is intentional, because some offences known as 'strict liability offences' are punished as crimes even though they may be unintentional. Legislatures are sometimes influenced by powerful vocal minorities to enact legislation which benefits only a certain group or which reflects only its view of what is right and wrong. Such law may be contrary to general good and opposed to the moral convictions of the general public.4

In modern civilized societies only violations of rules promulgated and enforced by agencies of the government technically are crimes. Although crime is sometimes viewed in a very broad way as the violation of any important group standard of as the equivalent of antisocial, immoral and sinful behaviour, much immoral behaviour is not covered by the criminal law and violation of some laws included in the criminal code are not regarded as immoral or even antisocial, or are so regarded only by a small portion of the population. Labour unions, professional organisations and many other groups within a society establish rules for their members and provide penalties for infractions but

such rules are not part of criminal law. No matter how immoral, disgusting or harmful an act may be, it is not legally a crime unless it is covered by a law which prohibits it and prescribes punishment for it.\textsuperscript{5}

The concept of justice was developed in ancient \textbf{Greece} along with the concept of democracy in the fifth century B.C. It had its origin in the ideas of vengeance of primitive and ancient man and is of Old Testament. The concept was to protect the weak from the strong, to keep the strong from using a wrong as license to over react in return. Justice involves the infusion of morality into law. \textbf{Plato} held that justice was a rational principle at the root of moral distinctions that converge in each individual to make a rational society. A rational society was one in which the principle of justice had power as well as manifest authority.\textsuperscript{6}

Justice is basically the protection of the weak from the strong and the mitigation of strength with wisdom. While law is generally aimed at the preservation of the status-quo, whether the ancient feudal system, the Church, the State, the monarchy, or an economic system, it changes slowly in the direction of morality, wisdom and the protection of the weak from the strong, justice was originally based on the need of the individual for protection.

The criminal justice administration exists because society has deemed it appropriate to enforce the standards of human conduct so necessary to protecting individuals and the community.

\textsuperscript{5} Ibid.
\textsuperscript{6} See, supra note 3, p. 16.
It seeks to fulfill the goal of protection through enforcement by reducing the risk of crime and apprehending, prosecuting, convicting and sentencing those individuals who violate the rules and laws promulgated by society. The offender finds that the criminal justice administration shall punish him for his violation by removing him from society and simultaneously will try to dissuade him from repeating a social act through rehabilitation.\(^7\)

Basically, the criminal justice administration is comprised of police, courts and correctional machinery. Each contains varying divisions. The police is responsible for controlling crime and maintaining law and order. The courts are prosecuting agency in criminal justice administration. Finally, the aim of the correction is institutionalizing the activities of the offender and rehabilitating him to full and useful participation in the society.

The role of police in the administration of criminal justice is clearly defined. The legislators enact the law; the police enforce them and lawyers, magistrate and judges conduct the trial with the active participation of the public. The penologists and their associates in the field of extra institutional correction have the responsibility of the treatment and the ultimate disposition of convicted offenders. All the legislators, the police, the prosecutors, the judiciary, the public and the penologists are the part of a team. The attitude and posture of any single member of this team has a direct effect on every other member.\(^8\)

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The word police is derived from the Greek word ‘politeia’ or its Latin equivalent ‘politia’. The Latin word ‘politia’ stands for State or administration.

But the word police today is generally used to indicate the body of civil servants whose duties are preservation of order, prevention and detection of crime and enforcement of laws. Ernst Fround defined police power as “the power of promoting public welfare by restraining and regulating the use of property and liberty.” In a broad sense, the term police connotes the maintenance of public order and the protection of persons and property from the hazards of public accidents and the commission of unlawful acts.

All societies need some methods and rules to maintain order. Even in the smallest societies, informal sanctions discourage deviation. In the simplest forms of State organisation, informal sanctions are supplemented by agents of the ruler who enforce his decisions. Although the police function is universal in society, it is only the large and more complex States that full-time officials are appointed with special police responsibilities regulated by politics, tradition and law. Most police in such societies are enrolled in State, provincial, traffic regulation and preventive patrol.

The function of policing is to control the behaviour of individuals or groups acting against the safety of persons and property. By custom and religion, certain acts are labeled as

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wrongs against society. These acts are also considered anti-social in nature, classes of crimes, or offences against the State have emerged from the codification of law and regulations.

In police administration, John P. Kenny states, "It is a folk system for policing which relies on control methods established by the family, the community or a tribal leaders or councils. The prevailing customs prescribe the system." Thus, the formally and officially, the duties of a police officer are prescribed by legislative or administrative mandate are the protection of life and property, preservation of the peace, prevention of crime, detection and arrest of violators of law, enforcement of laws and ordinances, and safeguarding the rights of individuals.

Police is a service dedicated to the protection of life, liberties and property of citizens and the battle arm of the society to deal with criminals and lawless elements. Powers given to them under the law alone will not enable them to perform these duties to the satisfaction of people. They need the full cooperation and support of the public. The police have a significant role to play in the political development of a society by keeping under check the forces of disintegration and disorder. Indian police had stood a bulwark against all threats to national integrity and acted as island of sanity during communal and caste frenzy.

The concept of police as law and order maintenance agency in one or another form had been developed as accordingly as the society developed. In ancient India the *Rigveda* and *Authurveda* mention certain crimes and punishments in Vedic India. The kings maintained a body of secret advisors and emissaries and personally patrolled the streets in the nights, in disguise to study and receive first hand information to restore peace and tranquility.\(^{14}\)

The Mughal rulers also had a well organised police force for maintaining law and order in society. This system was, however, different from the *vedic* age. The police official called as 'Fauzdar' was in-charge of the entire police force with a number of subordinate officials called 'Darogas' or 'Kotwals' working under him. The policeman called the 'Sipahi' was the official of lowest rank in the police constabulary of the Mughals. The detective branch of the police was called 'Khuphia' who assisted the police in criminal investigations. The chief police administrator of the province was called 'Subedar' or 'Nizam'.

The modern police force in India, however was created during the British rule in the last quarter of the 19th century and was built up slowly. The British inherited several indigenous police systems from Mughal and their other contemporary predecessors. They re-organised it and developed it on a more or less uniform pattern throughout India. They tried different experiments in

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different provinces to have a police system suited for their purpose.  

The police organization in Indian States is primarily governed by the Police Act of 1861, which was based on the recommendations of the Police Commission of 1860. Section 4 of the Act lays down the principles, on which organization of the State force rests till today.

Police is a State subject along with public orders, administration of justice, prisons, reformation and brothel institutions. The Constitution of India clearly amplifies that the legislature of any State had exclusive power to make laws for such State. They Union government is allows Indirectly involved in the Police Administration of the country.

In United Kingdom, a police officer is considered an officer of the law and not a servant of any executive or public authority. In Lord Denning’s words, the Commissioner of Police is “answerable to the law and to the law alone”. In India the police has to first carry out the directions of the political executive and the bureaucracy and then only enforce, to the extent possible, the law of the land. The interests of the people to whom according to the National Police Commission, the police should have been primarily responsible, take the backseat. This aberration is a direct consequence of the wrong priorities assigned in the Police Act of 1861, which has become a milestone around the neck of the police department.

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The Police Act, 1861 still continues in statute books without any substantial changes. Does it mean that the police role does not require any redefinition and that what was designed to serve the British imperial interests is fit to be perpetuated even when we are a secular democratic Republic.

The police structure in the States is crumbling. It has become a tool in the hands of unscrupulous, self-seeking politicians. At the central level also, it has started showing cracks. How else can we explain the paralysis of forces, both of the State and the Centre, during the demolition at Ayodhya and riots in Gujrat. How else do we understand the criminal justice system dragging its feet for ten years to punish the guilty men of 1984 riots. It is high time that the basic questions were examined in depth and remedial measures taken before the hollow men... the stuffed men' plunge the country into chaos.

The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds thereof. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.\(^\text{16}\)

Hence the police, being an integral organ of the society, has been developed primarily for the preservation of the social order and the protection of the State authority.\(^\text{17}\)

Thus, the police represents a mere segment of the administrative sub-system of the wide political universe, but in all political system it has been and remains the central agency of the criminal justice system. Mr. William Seagle on the American Criminal system emphasised that: ¹⁸

The whole machinery of criminal justice is designed to facilitate the escape of the person accused of a crime. But the blame for this situation has inescapably with the system itself, rather than with the man who administers it.

The main function of administration of criminal justice is performed by the criminal law courts comprising of Magistracy and the Court of Session. The Supreme Court and the High Courts have only appellate jurisdiction in criminal cases. These courts are generally engaged in dispensing abstract and even handed justice in terms of principles set forth in an absolute law. It, therefore, follows that the court must impart justice within the limits of the law so as to maintain uniformity and impartiality in the determination of guilt and punishment of the accused. Generally, all criminal courts possess in inherent power. All such powers as are necessary to do right and to undo wrong in the course of administration of justice on the principle of common law embodied in the maxim: ¹⁹

"Quando Lex Aliquid Alicue Concedit
Concedere Videtur Id Sine Quo"

¹⁸ Ibid.
**Res-ipsa Esse Non Protest.**

When law gives a person anything it gives him that without which it cannot exist. Whenever anything is required to be done by law and it is found impossible to do that things unless something not authorized in express terms, be also done than that something else will be supplied by necessary intendment.

No legislative enactment dealing with procedure can provide for all the cases that may possibly arise and it is an established principle that courts possess inherent powers apart form the express provisions of the law, which are necessary to their existence and the proper discharge of duties imposed by law. According to Blaise Pascal, "Justice without power is inefficient, power without justice tyranny. Justice without power is opposed because there are always wicked men. Power without justice is soon questioned. Justice and power must, therefore, be brought together, so that whatever is just may be powerful and whatever is powerful may be just."

There are basically two systems that society may take in dealing with one who is accused of a crime. Firstly, by presuming his innocence until it has effectively succeeded in proving him guilty under due process of law, or secondly, by presuming his guilt unless he successful disprove that assumption under similar process. These two systems, known as the accusatorial system and inquisitorial system which is followed in different parts of the

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world in administration of criminal justice. In the accusatorial system followed in common law countries, the burden of proving that an accused person violated some law is on the prosecution while in the inquisitorial system which is followed in some European countries, it is for the accused person to prove that he is not guilty of the crime allegedly committed by him. In India where the accusatorial system is followed, there is a presumption in favour of the accused person that the offence has not been committed by him and presumption continues to be operative until the prosecution is able to prove its case according to the rules of procedure and evidence prescribed by law.\textsuperscript{21} The same principle has been incorporated in the Evidence Act:

> Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.\textsuperscript{22}

The doctrine of legal guilt requires more than mere factual guilt. Rather, an accused is guilty if and only if the State can prove, under various procedural restraints dealing with admissibility of evidence, the burden of proof, and the requirement that guilt can be proved beyond a reasonable doubt, that he did in fact commit the crime.\textsuperscript{23} As \textbf{Packer} observes, "none of these requirements has anything to do with the factual question of whether the person did or did not engage in the conduct that

\textsuperscript{22} See, Law of Evidence Act, 1872, Sec. 101.
is charged as the offence against him; yet favourable answers to any of them will mean that he is legally innocent.”

Criminal justice system operates in accordance with specific criminal statutes. The penal statutes prescribe the acts of commission or omission and make them punishable. The implicit purpose is to define a crime and its constituent elements, so that a prosecution can be based on it and the violator may be brought under these statutes. Legislatures in democratic societies all over the world have a tendency to over react to crime. But their over enthusiasm to stricter enforcement of criminal law is frequently counter productive. Strict punishment against aggressive or anti-social offences is what people will normally welcome but offences designed to produce social conformity or to legislate morality will always create problems in the realms of criminal law making and criminal law enforcement. The non-enforceability of these laws ultimately poses a serious threat to the integrity of the entire criminal justice system.24

The criminal justice administration is devoted to reduction in imprisonment rates by increasing reliance on fines and community based programme as alternatives. The correctional institution concentrates on those convicted offenders who are imprisoned and calls for fundamental changes in the organizational features and supporting ideology of the correctional institutions.25

Society has a real interest in the release of prisoners, since these individuals have been committed for definite terms by the court and release on parole. Individuals in the general public are frequently skeptical of probation and parole. These persons sometimes assert that both parole and probation are based on compassion for the offender. They point out that in the real world punishment is the fact of life.

Under our criminal justice system, fear of punishment alone prevents the bulk of people from violating the law. Probation and parole seems to be somewhat at variance with these ideas. It should be remembered, though that rehabilitation is as important to society as to the criminals.

In modern times it is popularly assumed that the criminal law need not to be applied as a retributive measure nor be applied to procure absolutely deterrent effect, nor to achieve restitutive values, but these laws ought to be applied to correct the offenders with a view to improving the conduct of offenders who are capable to recovery with the intention of law and have a mind capable of receiving guidance for good behaviour. The criminal laws should aim to seek, is not just a change in behaviour but a change of hearts that may lead to the change in behaviour. Rehabilitation is a complex process. It starts from proclamation of offenders by courts, it works through acclamation of offenders in custody and ends with reclamation of offenders in society. As soon as an

offender is proclaimed as an offender on conviction, the process of rehabilitation starts.\textsuperscript{28}

With the development of the several human behavioural and social sciences the faith in the rehabilitation has been further consolidated in the present century. But the views that the rehabilitative processes should strive to reform, re-socialise, modify or re-make the criminal so that they will refrain from further law-breaking.\textsuperscript{29} The sociologists and criminologists have often been in the forefront of the rehabilitation movement, agitating for more professional treatment workers, expansion of correctional services, and improvement in the treatment theory on which correctional ventures are based.

All the criminologists and sociologists through various theories of reformation tried to establish that as the ultimate object of administration of criminal justice is to reduce or prevent crime and as there is no other better way controlling offender than by incarceration, so as to prevent recidivism one should evolve principles and process for reformation of prisoners.

The wars, urbanization, industrialization and the migration of masses form the villages to the urban slums settling have served the magnitude and kinds of problems relating to juvenile. These factors have not only resulted in creation of juvenile delinquents but has also resulted in the problems of poverty, destitution, prostitution and various forms of social and economic exploitation.

\textsuperscript{28} Ibid.
directly affecting the children in our society. The children needs to be provided with care, protection, maintenance, education, training, etc., all with the aim of their rehabilitation in the society. The children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by the society.

All criminal justice system in the world has three separately organised parts - the police, the courts and the prison or correction. Each agency has its distinct task to perform. However, these tasks are by no means independent of each other. What each one does and how it does, materially affect the quality of work done by other agencies in the criminal justice system. The courts can deal only with those whom the police arrests. The job of correction can be done only with those who are delivered to the agency by the orders of the courts. Moreover, the method by which the criminal justice system deals with individual cases represents a continuum. These are not random action but proceed with an orderly progress of events, some of which like arrest and trial may be visible, but some others of even greater importance may occur outside the public view.

Thus, the present study is divided into six chapters. Each chapter is inevitable part of the central theme.

Chapter -I is introductory of the concept of administration of criminal justice to give an insight of the subject or topic.

In Chapter-II an endeavour has been made to trace out the origin and development of criminal justice administration from ancient period to independent India. Historical development of criminal justice administration is further divided into three major sub-heads – Ancient period, Medieval period and Modern period. Modern period is further divided into pre and post independence of India. An effort has been made to give stepwise development of criminal justice system in India.

In Chapter III, an attempt is made to discuss in detail the present criminal system in India. The researcher has attempted to define the concept of crime and criminal justice system. A part of this chapter deals with the comparative study of criminal justice system in United Kingdom and United States of America. This chapter is further divided into three major components i.e. police, courts and corrections. In these three components researcher highlighted the working system and provisions of present criminal justice system in India. Lastly, in this chapter an earnest attempt has been made to put forward the drawbacks in present criminal justice system in India.

In Chapter IV, a sincere attempt has been made to throw light on the role played by Indian judiciary to strengthen the criminal justice system in India. Few important decisions of Supreme Court and High Courts have been discussed which have had far reaching effect on the present criminal justice system.
Cases in which directions or guidelines have been made by the Apex Court particularly in case of investigation, First Information Report, police custody, charge, bail, parole and probation have been discussed and presented at respective places. In nutshell, a close scrutiny of the role played by Indian judiciary has critically been analysed and properly quoted.

Chapter V is devoted to the police and criminal justice system in India. In this chapter a detailed study of police system and police powers have been made by discussing the origin of police system and development of police from ancient to modern period. A part of this chapter deals with the organisational structure, role and performance of police in State of Himachal Pradesh. This chapter is further interpreted with the help of tables and relevant data.

Finally Chapter VI is devoted to the conclusion and suggestions drawn during the course of study.