CHAPTER VII

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A permanent theory is that crime is due to the lack of enforcement of laws and that the solution of problem of crime is pressure upon the Police and Courts to enforce the laws strictly. Strict enforcement of laws would strictly reduce the crime, but strict enforcement of laws is extremely difficult because the agency of justice has been kept weak by the same conditions which have produced high crime-rate. This in fact, illustrates the point that law and order problem is not one sided. It involves law, law-makers, Executive and Law Enforcement Agencies. If there is a general dis-respect for the law, law-makers and the Law Enforcement Agencies, perhaps it would be difficult to maintain law and order in the society. According to Louis D. Bramdies and our Government is the potent, the omni present teacher. For good or for ill, it teaches the whole by example. Crime is contiguous. If the Government becomes the law breaker, it supersedes contempt for law. It invites every man to become unto himself; it invites. The law makers are the politicians in power and those who implement these laws are the Executive (Civil servants specially Police) and judiciary. The role of these politicians and
Civil servants become of much significance in the maintenance of law and order. It is, therefore important that the agency concerned with the maintenance of law and order be discussed at some length. In India control over bureaucracy, inform and also in fury, has largely been modelled on the compresser Parliament system. Indeed the system has been specially designed to suit that the Indian political system looking to federal character and large size of the country. Hence a special motion may be made to the role of politicians involved in drama of maintenance of law and order. Besides the issues of political interest, political involvement and bureaucratic anomic have also been focussed.

In the Parliamentary system of democracy, the elected legislator exercise control over the bureaucracy through the ministers. It is the responsibility of the minister to have control administration. This also includes maintenance of law and order for the society. While discussing the role of the politicians, it is important to consider that should the politicians confine themselves to the Parliament or otherwise. His responsibility to the voters at village level, block level, district level and so forth, become the utmost importance to remain in the power. In fact, the legislators are responsible to their constituencies, the minister to his
department and it is the Prime Minister who is responsible for the whole nation. The role of the Prime Minister is very wide in administrators should take? The politicians interest for example, in construction of a culvert would not affect much to the community, whereas his taking interest in the maintenance of law and order would mean much to the community. There are two major questions: (i) whether politicians is actively interested in doing certain things, and (ii) he is actively involved for doing certain things. This kind of questions means much to the administrators and also to their administration. Active interest and active involvement do much good or ill to the administration.

Western model presents much important role to the politicians which is perhaps not present in our set-up. In western countries politicians have their offices in their constituencies. The important laws are answered by the politician himself. Indeed this system is not prevalent in our country. Once a politician is elected to the Parliament or state legislature, most of the time he confines to the activities of the Parliament or legislature and seldom he visits his constituency to which he belongs. It is not to say that politicians do not take interest in local administration at all. For the maintenance of law and order politicians must have to take serious interest in his constituency.
Civil servants are the back-bone of the administration and provide frame work for the same in the country like ours. The policy decisions are taken by the ministers to seek the advice of the civil servants or not but the final decision is that of the minister. Nevertheless, it is in the field of implementation of the decision whether role of administrators become of greater importance. The civil servants in fact provide the continuity in the administration. Since they are instruments in the running of the administration and do not get changed like political bosses and with the change in the political scene. Hence the role of the civil servants is to project efficient image and not get involved in party politics with the groups and individuals. However, in the recent past, the initial taken by the civil servants was independent approach and free discussions have become a dis-qualification for the civil servants. This has become a constant factor or erosion in the quality of services rendered by the civil servants because of the indifferent attitude of the political bosses. The tendency of the political bosses has not only affected at the centre but it has been much prevalent in the states. The interference by the political bosses has created bureaucratic anomic amongst the civil servants.
Power tends to corruption absolute power corrupts absolutely, is an age old proverb. To remain in power the politician as an individual and also by the political party in power serves a special section of the society. Besides in Western countries the political interest are maintained in different ways. Political machinery provides immunity for prostitution, Gambling and violation for Liquor Laws and others. It is important to mention that the political leaders involve in these hold important position in the local political machines or else are the heaviest proprietors to the party, treasury in return for their immunity. Politicians are also interested in financial gains for the services they render to the law violators by avoiding enactment of laws injurious to them. Protection of criminals for proper compensation has also been prevalent. To maintain the political interests, the organized crimes get protection. The political leaders give the statement in the public to control certain from of crimes. In fact, they do not desire it contrary to their promise. The law enforcement agencies know that they alone cannot fulfil the task and do not risk their careers. It is clear from the above that the individual interests of political leaders, the party interests as a whole marsh the efforts of the civil servants and the law enforcement agencies in combating the crime.
The other major problem which the police forces is the shake-up in the police organizations after there is change in the party of in power. The police Chief is appointed according to the wishes of the party in power.

The police officers who show independence are put on un-important duties where they come hardly and hardly show their intelligence, worth and capacity, while those who are prime to exhibit undue sub-servience and are to subdue and hypothicate their faculties to the wishes of the political bosses, got all the favours and the out of a police officer would not remain un-affected.

Another most important aspect which needs attention is interference by the politicians in registration, non-registration, withdrawal and cancellation of the cases. The message comes to the station officer that a person in police custody should immediately be released and no case should be registered against him. The politicians feel that this is going to affect his personal political interests. Thus apart a number of cases are ordered to be cancelled without any substantial reasons by the politicians. Consequently the individual policeman is not in a position to take any action against the offender. None the less even the officer heading the state or the Union Territory is not
in a position to do anything for the sole reason that he himself is under the control of same political bosses either directly or indirectly.

Since politician in power control appointments and promotions of police officers, their orders must be obeyed. In such situation the police becomes the agents of criminals to persuade the victims not to make complaints or if the complaint is made not to testify truthfully in the court. These results may be secured either by bringing or by political orders. Whenever the politicians observe that certain case should not be proceeded, the public prosecutor would be obliged not to prosecute the case or would withdraw at all. Hence the prosecution has become important in taking independent decisions on important decisions.

The judicial system in our country has independent status and are expected to dispense with justice to punish the guilty to protect the society and to maintain law and order. In recent years, the influence of politicians over the organization matters, such as appointments, transfers and promotions of the Judges of the Higher Courts have faced sharp criticism, from the public as well as from the Judges themselves. Since postings and promotions of the Judges are in the control of the politicians, the courts may be induced
not to convict the accused. This in fact, erodes the entire judicial system. Justice H.R. Khanna, former Judge of the Supreme Court has rightly observed that the increasing tendency among the leading politicians to run down judges in decisions against their liking and such tendency was grave the very image of the would be seriously impaired.

There are certain means by which we can remove the tense and maintain law and order. The first ingredient of dealing with the crisis is that there should be a man who can rise to be equally to the occasion. There are men who, when a dire straight occurs and break out completely though they may pose as strong men with court martial strength in normal times. But the true leaders seem to find a crisis or a challenge to which he responds readily. He performs better than he normally does. He thinks better. He seems to possess all the strength and courage that is required to convince men that he will be able to lead them out of the crisis. It almost seems as if his system finds danger accelerating.

The Head of such a leader in the clearly years of Independence in Jawahar Lal Nehru, Mahatma Gandhi, Sardar
Ballabh Bhai Patel and other leaders of the country and the reason was that they were able to control the riots because they had foresight and strength to face such situations effectively. At that time they were trying to turn communal hatred on both sides. They were prepared to face oppositions. At the time of assassination of Mahatma Gandhi within a few hours, the basic idea that the peace and safety of the public in general is fundamental to the attainment of progress and prosperity of the nation and is dependent on the full cooperation of individual interest and a State has been excepted almost by all the countries of the world. The state of peace and tranquillity of the public depend not only control of preventive measures of police and state, but also on the level and quality of social, moral, the education and surrounding environment and general economic conditions. That is why the interest of Supreme regard has always been given to maintain the public peace and tranquillity. Most of the developed countries like U.S.A., U.K. and U.S.S.R. have evolved separate statutes on public peace and tranquillity. It is high time for us in India to codify all scattered provisions relating to the laws of public peace and tranquillity in one simplified code applicable to all the parts of the country. The reasons and justifications of such actions have already been discussed
in the thesis.

I. My first attempt here has been to define and explain certain words and terms in their specific and general meanings. I have explained the different aspects of such offences affecting the public peace and tranquility; Law and public order, public safety.

II. In the next chapter my endeavour has been to explain the historical development of laws preventing and controlling the offences against public peace and tranquility in India. In order to have basic understanding of legal system that prevailed in ancient India, it is imperative to have a sound knowledge of social structure and political institutions which were in existence in the early time. No authentic account of political institution and civilisation of the period prior to the Aryans in India is available. A vivid account of this period is found in Vedas and other books. For the convenience the ancient Hindu period can be divided into the three parts; ancient period; medieval period and modern period.

The Rigveda throws a considerable light on the structure of the society and social and political institutions existing in that age. In this period law religion and
justice were closely interconnected as the life of early Aryans was mainly pastoral and they depended upon agriculture as main source of livelihood. The social structure was mainly rural and joint family system was common feature.

The law and judicial system in shruti and Smriti period is the golden era of Hindu law. The law was more systematic and comprehensive in nature and laid down certain set principles by the people and the King like marriage, inheritance succession partitient etc. In ancient India jurists focused great attention in evolving the law governing administration of justice. The provisions made on the topic gave the description of the highest court to be located court recognized as having the power to decide the cases. There was certain courts, Kula, Shreni, Gana, Aadhikrita and Nirpa.

Arthashastra of Kautilya is entirely different branch of law as it deals with the rights, duties and responsibilities of the King in the administration. In our present context the book bears matters on crimes of robbery, murder, sexual offences etc. After the book of Kautilya there is little evidence as to administration of justice. The aim of judicial administration was to be just honest and make available speedy remedy to the aggrieved person. By now the con-
ception of justice was the upholding principle of Dharma. A path of virtue to be followed by all alike. Any deviation from the virtuous path was made punishable by law.

The law in the muslim period was commandant of God and sovereigns in the Muslim states the Rulers were regarded as His servants on earth. They were responsible for seeing that his laws were duly obeyed. The administration of justice was considered by them as an essential act for the fulfilment of their responsibility. Muslim rulers rarely interefered with the day-to-day administration of justice but at times when they were convinced that the justice had been denied, to any person, they as keepers of God's order in the justice.

Modern historical background of Indian courts and its chronology since 1600 have also been studied in this thesis. By the Elezabethan Charter 1600 the East India Company was given certain rights by a treaty with Mugal Emperor Jahangir to decide disputes among English people at Surat factory. In 1668 the Iseland of Bombay taken over the company from Prince of England on an annual rent of £ 10.00 In the year 1686 to 1692 the company purchased
several villages in Bengal by which the company became the Jamindar of the area exercising the civil and criminal jurisdiction. By the Charter of 1753 Mayor's court was divested its jurisdiction unless the native wilfully submitted to it. The Regulating Act, 1772 abolished Mayor's court and provided for establishment of the Supreme Court in three presidency towns. In facts, Supreme Court of Calcutta was established in 1774. Madras in 1801 and Bombay in 1823. These Supreme Courts were likely king's bench Division consisting of England administering both law and equity. The Act of Settlement, 1781 recommended establishment of Diwani and Nizamat Adalat exercising civil and criminal jurisdiction independent of Supreme Court. Two adalats may be properly termed the Provincial Courts administering the personal laws of Hindu and Mohammadan and other native communities. Regulations were responsible for the formation of the judiciary in India as it is common today. Thus establishment of civil and criminal court in India developed throughout 17th and 18th centuries. The 19th century in India was the golden period for the development of laws. It may be termed the general movement for achieving the uniformity of Indian laws. The Charter Act 1833 appointed the Law Commission to bring about the uniformity in laws of India. Charter Act 1853 appointed II Law Commission. This Commi-
ssion has drafted Civil Procedure Code, Limitation Act, Indian Penal Code, and Criminal Procedure Code. Here I have enumerated certain concerned enacted laws into pre constitutional and post constitutional era.

III. In 3rd Chapter, Articles 19, 20, 21, 22, 23, 28 and 51 of the Constitution of India have been made the basis for the hypothesis. Article 19 gives certain fundamental freedom in the interest of general public. If the freedoms are enjoyed against the public order, decency, morality, contempt of court, security, sovereignty and integrity of India. In Indian Constitution before the First Amendment Act, 1951 the restrictions were not to be imposed in the interest of public order. Now the powers of state are more wider than before this. Now the state can impose the restrictions in the interest of the general public if law and order is disturbed in any area.

Article 20 relates to the protection against conviction, In its clause (1) deals with Expost Facto laws. All laws which are made in the country should be enforced from the date they were enacted. No person can be convicted of any act which is not an offence prior to the legislation. Clause (2) of the Article is concerned with law relating to double jeopardy. No person shall be convicted for the same
offence more than once. Article 20 clause (3) is the protection against self incrimination. No person shall be compelled to be witness against himself. Article 21 says that no person shall be deprived of his life and personal liberty save by authority of law. Certain laws like Preventive Detention Act, Maintenance of Internal Security Act, National Security Act and other allied laws have been passed by the Parliament for the maintenance of the law and order in the country. Article 22 provides protection of rights of the arrested person. Every arrested person shall be entitled to know the grounds of his arrest and he shall be produced before the nearest magistrate within 24 hours excluding the time of journey. He shall also be entitled to consult the lawyer of his own choice. Article 38 imposes the duty upon the state to secure social order for the protection of the welfare of the person. Article 51 is concerned to maintain the internal peace and security. Certain fundamental duties have also been imposed upon the state to secure national integrity.

IV. In this chapter, I have discussed the offence relating to public peace and tranquillity in India under substantive laws. Chapter VIII, X and XIV of the Indian Penal Code are very much concerned with the offences against public peace and
tranquillity in India. These offences hold a middle place between State offences on the one hand and crimes against person and property on the other. Many of the offence made punishable by other chapter of the Code involve in their commission a disturbance of the public peace. But the present chapter punishes especially unlawful assemblies of person who whether they assecuable tumultuously or otherwise have a common unlawful purpose in there mind, the execution of which will disturb public order and excite alarm. This chapter deals with assemblies as a menace to the public peace, in a simple or in an aggravated form, with persistence in such menace, and with actual disturbance of the peace by rioting in a simple form an aggravated form. It also deals with the responsibility of each member of an unlawful assembly for any offence committed by the members comprising it. The remaining sections deal with connected offences avel with offences comme with affrays. Object of this chapter offender who instigate, originate or hire the persons for unlawful assembly.

V. My endeavour in chapter has been to discussed the offences relating to public peace and tranquillity in India under the Criminal Procedure Code, 1973. Section 106 to 110 of the code deals with the offences relating to breach of the peace. Section 111 to 116 lay down the procedure to
take security from the persons in certain circumstances in order to ensure that they will keep the peace and good behaviour for the specified period. Security proceedings under Section 106 are different from those of the other sections. In Section 106 the security may only be demanded by the court convicting the persons of certain type of offences. Proceedings under Section 107, 108, 109 and 110 are independent proceedings initiated by the police or by private individuals. After quoting certain provisions of the 37th Report of the Law Commission I have narrated the importance of these above sections. Under Section 106 of the Code of 1973 security can be demanded from the persons who have committed any offence under chapter VIII of Indian Penal Code. Section 107 of the Code of Procedure empowers the magistrate to take security from the person who is going to commit the breach of peace. Sections 108, 109 and 110 of the Criminal Procedure Code, 1973 provide for taking security for good behaviour from persons committing seditious offences. Section 116 of this very Code lays down the procedure from the suspected persons who likely to commit the breach of peace. Section 133 of the Criminal Procedure Code empowers the magistrate to remove nuisance from the public place. If any dispute arises relating to use of land or water and any right upon a public place the magistrate will pass the conditional order to remove the nuisance. In after an place
enquiry it is found that the nuisance is related to public place the order shall be given to remove the nuisance. Section 144 of the Code of Procedure is very important section as it empowers the magistrate to pass any order in urgent cases of nuisance to prevent breach of peace. The magistrate is also empowered to take the help from the other forces apart from the police force. The next Section 145 is concerned to maintain the peace if the dispute is in regard to immovable property or possession thereof. If that magistrate is satisfied from the police report or otherwise that any person has been wrongfully dispossessed from the immovable property, his possession shall be restored after conducting the inquiry into the matter. Section 151 of the Criminal Procedure empowers the police officer to arrest any person without warrant of the magistrate who are expected to commit any cognizable offence by which the peace is likely to be disturbed. This section is of very wide scope under which the police can take any action.

VI. Here in this chapter judicial trends regarding the offences against public peace and tranquillity has been discussed. Judicial decisions of various High Courts and Supreme Court of India upon the prevention of the offences against public peace and tranquillity in India. Stephen in his treatise on criminal law of England observes that unlaw-
ful assembly riots, insurrections, rebellions, living of war are offences which run into each other and are not capable of being marked of by perfectly define boundaries. All of them have in common one feature namely that the normal tranquillity of civilized society is ill inea each of the cases mentioned disturbed by actual force or atleast by the show and threat of it. T

Though almost all offence which disturb the public tranquillity have been under the judicial considerations in various cases. The difference between law and order and public order has been made by Supreme Court in various cases, several legislations have been made by various states to maintain public peace but we can only collect the information by the judicial observations that what the real meaning of the words used in state legislation. As Indian judiciary the custodian of the laws it is the foremost duty of higher courts find the out the validity or invalidity of the challenged law and imperative. Illegality of the Act or any provision of the Act stops the applicability and enforcement of the Act or the provision of the Act as the case may be.

There is much to be said for the suggestions that the offences against public peace and tranquillity should be within the jurisdiction of specialised magistrate in administra- tration, Tribunals rather than the ordinary criminal courts.
The establishment of special magistrate court for the trial of such offences will not only enable the trying judges to develop a sense of perspective and expertise but will also have several additional advantages. The very establishment of such courts will highlight the social importance of such prosecutions. Courts should be manned by senior and experienced judicial officer of the rank of the Session Judge and speedy procedures should be provided for the trial of such offences. These special courts should be enabled to take cognizance of offences without committal. In other words, special courts should follow substantially the procedure for the trial of warrant case. The procedure should also permit the transfer of case from one special courts to another if such a course is necessary in the interest of justice. Accordingly, it is submitted that parliament should enact a comprehensive legislation setting up special courts to try the the offences against public peace and tranquillity and lay down special procedure for the effective and speedy trial offences against peace and tranquillity in the country.