CHAPTER-1

INTRODUCTION

1.0 INTRODUCTION

Police has been the first line of defence against the inroads of crime since times immemorial. 'The form of Police’ may have been different at different ages but then aim of maintaining social order has been ever same. 'The word Police’ was unknown to the middle-ages. It was not found in England before the Sixteenth Century. In fact it was imported into Scotland from France in 1714. The Police set up and its role in the administration of Criminal Justice in India has its origin in English system. The Anthashastia of Kautilya has given a detailed description of the organization of police in ancient India (Modak, 1971). Hence the origin of the Police in India can be traced to Vedic periods.

In India, the administration of criminal justice system follows the Anglo-Saxon-adversarial pattern. It has four vital units, namely, the police, prosecution, judiciary and correctional institutions. These components are supposed to work in a harmonious and cohesive manner with close co-ordination and cooperation in order to produce desired results more effectively, fairly and quickly. Moreover, the success or failure of the administration of criminal justice depends upon the efficacy of these allied units.

However, it is a common perception that administration of criminal justice in our country is deteriorating day by day and laymen are losing faith in the entire system due to obvious reasons. It is therefore, repeatedly felt that there is an urgent need to review the entire criminal justice system, especially investigation of crime by the police and the prosecuting machinery due to which conviction rates are declining at a very rapid pace. This has also been attributed to the lack of continuous and effective co-ordination amongst the law enforcement agencies, i.e. the police, magistracy; judiciary and correctional administration in general, and the police and prosecuting agencies in particular. The role of police is important for country and the World. It is very important organ of society. It is a mirror image of ideas of society. The work becomes more fruitful if changed as per the human mentality, behaviour and integrity.

Police-man is appointed from the society, so it develops an adaptive adjustment to the society. The police is guided continuously by court of Justice,
political leader, Higher Authority but still willingly or unwillingly they try to go away from the first/prior duty of police is to protect the assets and lives, to create peace the implementation of law without biasness, to send the victim to the jail, to maintain updated, to keep a watch eye, proper law against offence and related First Information Report, to use scientific methodology, to work speedily for finding the victim and provide justice. The police has wide range of power but due to the lack of responsibility towards the duty become a default face to the government.

Rape by the police on lower caste (i.e. ST/SC), issues are also highlighted (Mathurabai, Rape case). In some way, harassment on backward caste issue is also highlighted. In the issue of Bhagpat and Bhagalpur. The police torture was unbearable. The women who's husband was murdered, was forced to necked in the whole village. In another case acid was split on the under trial prison.

The Gujarat High court could sound death-knell for policemen involved in alleged fake encounters, as the court has observed that the state government is not expected to defend policemen who face charges of custodial violence.

On the other hand in cases of alleged fake encounter that are also dubbed as custodial death only, the state government has been acting desperately to defend encounter specialists.

Due to the misuse of power, poor people are harassed physically and mentally. Due to this type of behaviour, fear is produced and lead to hatred and unsatisfaction. Policemen should be of helping nature but the opposite behaviour is found among the police system. During the custody, intolerable behaviour is done. During group firing and arrestment of innocence person from a group is found.

Police custody is not free from fear and anxiety. Offenders always remain in constant fear of possible torture and abuses. The first offenders also face mental and emotional shock and damage to their reputation. Police officers, prisoners and exprisoners expressed the following views regarding difficulties of the accused during their investigation.

Corruption also plays a vital role for failure of policemen. It is found unlawful acceptance of gift in government offices but in police system it is at apex. To get money and personal benefit policemen use their power.

When something wrong is done, a person is asked for money for waiting F.I.R. It's not that acts are involved in this activity, but few or many are involved
which leads to downward fame of whole system.

It is a serious problem of human right when case is not filed. To show the goodness of state, wrong data is represented to so that state can be shown crime free.

The power of the police to arrest is very grossly abused. The National Police Commission, in its report, has adversely commented upon abuse of this power by the police as one of the prominent sources of corruption in the police. The Report pointed out that nearly 60 percent of the arrests were unnecessary and unjustified. The commission estimated that 43.25 percent expenditure in jails was over such prisoners, whose detention, in ultimate analysis, was unwarranted and uncalled for.

The Supreme Court in Joginder Kumar V/s. State of U.P., has put Clear restrictions on the powers of police to make arbitrary arrests. The court has laid down that the police need to contact one of the friends or relatives of an arrestee or one likely to take interest in his welfare and also to inform the arrested person of his right. An entry to this effect, it is required to be made in the station diary. Subsequently, the Apex Court in D.K. Basu Vs. State of W.B., further streamlined the procedure relating to arrests.

It is noticed that persons belonging to backward and disadvantaged groups are the principal victims of torture and violence. The National Police Commission in 1977 recommended that judicial inquiries in all cases of custodial deaths be made mandatory. Such a judicial inquiry, according to it, should be conducted by an Additional Sessions Judge to be nominated for the purpose and designated as the District Inquiry Authority. He should be assisted by an assessor who can be an Additional Superintendent of Police or Superintendent of Police nominated for the purpose in each district or a group of districts. This is, undoubtedly, a very pragmatic recommendation of the National Police Commission. But, unfortunately, it has not been implemented so far, High-ranking police officers should impress on their subordinates that, whatsoever may be the situational compulsions and impediments; there is no justification for them to resort to custodial violence. And that a case of death in police custody, obviously, causes irreparable damage to the image of the police force and severely erodes its credibility.

The Supreme Court in June 1985, in its pronouncement dealing with the custodial death of one Brij Lal, a farmer in UP, observed: "We would like to impress upon the Government the need to amend the law appropriately so that policemen who
commit atrocities on persons in their custody are not allowed to escape due to paucity or absence of evidence. The police officers alone and non others can give evidence as regards the circumstances in which a person in their custody comes to receive injuries. Bound by their ties of brotherhood, they often prefer to remain silent, and when they choose to speak they put their own gloss upon facts and upon the truth. The law on the burden of proof is such that it should be re-examined."

The Law Commission of India has recommended that a provision (Section 114-B) be inserted in the Indian Evidence Act, 1872, as a rebuttable presumption that injuries sustained by a person in police custody are presumed to have been caused by police officers. This would shift the burden of proof on the police officer. This kind of an amendment will have a restraining effect on the officers indulging in custodial violence and torture. In this connection, however, it is also to be stressed that there are other blatant anomalies that require immediate attention. An Act passed by the colonial regime with the primary aim of suppressing the people, unfortunately, continues to operate in independent India.

The National Police Commission in its concluding report not only strongly recommended that the Police Act of 1861 be replaced by a new one but also it prepared a draft of the proposed Act with a view to making the police 'Service-oriented, free from extraneous influences and yet accountable to the law and the people of India.'

Normally when a crime is committed, the police department of that jurisdiction in which crime has occurred is responsible for bringing the culprits to the notice of law. But at times there are situations in which crimes of very complex nature and ones which are related with larger public interest need to be investigated. In such situations, law suo-motto hands over such cases to the Special Investigating Agencies. Here comes into the picture, the function of such investigating agencies. The legal framework mandated for such agencies is like a stair case and if a step is not taken with utmost care, the legal setup is disturbed and its vibrations can be felt all over the criminal Justice System.

Constitution of India has been provided to govern the principles and procedures according to which the Law Implementing Machinery’ works. Wide range of powers has been given to the Special Investigating Agencies’ in order to combat crime. But it is only the proper use of such powers that lead to an effective working of
such agencies. Abuse of power will lead to dissatisfaction and lack of trust among the individuals of the society against such agencies. Role of such investigating agencies is very wide, far from the thinking of a layman. The Research study umbrella’s a wide range of burning problems associated with the formation, working, legislative disorders, incapable functionalities, political pragmatism etc. of the —Special Investigating Agencies. One of the burning problem of this research study is centered around the literal and interpreted meaning of Special Investigating Agencies. Why the word —Special is being used, when we can accommodate investigating agencies’ without it. What exactly is the difference between ordinary investigating agencies and Special Investigating Agencies when we already have an effective form of investigation process, then why do we need Special Investigating Agencies’ Law and order is a state subject and the basic jurisdiction to investigate Crime lies with the State Police. So does that mean that the State Police is incapable of handling those situations which the Special investigating agencies’ can easily handle Another question which the study answers is about the nature of the cases which are handed over to the Special Investigating agencies’.

What defines the reasons which say that so and so’ matters are to be handled by the Special Investigating Agencies’. Has the legislators provided us by specific provisions which set up certain working. Criteria's for the Special Investigating Agencies, thus setting the difference between ordinary investigating agencies and Special Investigating Agencies’. There is none in the society which is not touched with the disease of corruption. Contact with the contagious disease named Corruption’ can be have had directly or indirectly. Our society has been forced to believe that the ordinary investigating agencies (State Police) cannot efficiently, effectively and non biased handle a situation. The State Police cannot be blamed solely. There are various other factors which play a pivotal role in the formation of such view about the police. Politics and Law Enforcement Agencies’ share a certain nexus among themselves. Since Special Investigating Agencies’ are a part of Law Enforcement Agencies’ hence a directly proportional relation can be adduced between the Special Investigating Agencies and the Politics. Overall a nexus between Politics and Special Investigating Agencies is also tried to be adduced or inferred from this research study. How this nexus is effecting the role of such special Investigating Agencies in making an efficient criminal Justice System has also been looked into. Our Special Investigating Agencies’ are answerable to the executive for all their works. Does the Judiciary of
India has any role in guiding such agencies in maintaining a decorum. Can the Supreme Court interfere in between the working of executive and have a upper hand in setting guidelines for such agencies. Do the Special Investigating Agencies who have the primary role of investigating crimes and maintaining the decorum of society can be evil too. How far this statement can be true. Do our law provisions prescribe / sanction punishments for such officials. All such questions are tried to be answered in a comprehensive way in my study.

Also my research study has the agenda of inferring the reasons for the failure of Special Investigating Agencies in Certain Circumstances’ Last but not the least, a comparative study between the working system of our Special Investigating Agencies and that of United States of America’ has been done, in order to know where we lack and where does the ball lie in their court and vice versa.

The police is engaged in controlling law, to catch the criminal, to find the solution of crime, to arrest as per the law (Search Warrant to Prepared the file of post mutton (P.M.). To arrangement of P.M. for dead body. To give security to the V.I.P., fair, to control group during exhibition to help people during fire accepted, flood epidemic. To moved police for the security the government officer. To protect the institute, satisfaction from the antisocial activity of the people. In future the police will be beneficiary. But due to the limited staff their work does not become fruitful.

Problematic behaviour during Investigation.

1. Delaying to recording for F.I.R.
3. Non Registration of Cognizable offence and minimizing as NC offence.
4. Non cognizable offence recording as cognizable by excessive.
5. Crime form is shown at small level.
6. Proof is kept aside.
7. Fabricated evidence.
8. Poor and slow investigation and arrest.
9. Third degree treatment, physical and mental torture for confession.
11. Corruption and illegal activities.
12. Submission of unfair case.

Above cited points are hurdles for effective working.
At the time, when different types of harassment is done by police.

1. Fake encounter
2. Custodial death
3. Torture and harassment
4. Custodial rape.

Due to police fear and harassment people do not give support at that time police face problem.

1. Due to harassment on people do not give support during crime.
2. Due to lack of social duty, people and police find problem.
3. Due to the pressure of political leader, the police integrity deteriorates.

Day-by-day, the criminal activity are increasing. Death in police custody is the burning issue of today in society. To maintain balance between weakness and crime is becoming very difficult. Due to that some time a person die. Due to this sometime it become difficult for gathering proof against policeman. If any victim is there he remains silent, so due to this court need to change the objective and way of behaviour against harassment.

During police custody, harassment on victims becomes to violent which is considered as an attack, as per the observation by D.K. Basu. "When Human Pride is harmed our cultural goes one step back."

Any person who is a worker can effectively implement rules and regulation only when, If he has respect towards human rights. In true sense, human rights protection, human pride and human right must be followed. Their decision towards human rights and awareness about protect human and analytical level need to be seen.

Researchers argue efforts to promote human rights are more likely to be successful if ideas and practices are built upon customs and values that people use to make sense to their lives. People from different cultural and religious traditions arrive at human rights norms through different assumptions.

Researcher certainly hope, can contribute to the dialogue going on in India, but also potentially on a broader scale. If nothing else, it's important to think about a national responsibility to care for your own people and understand that really there should be some kind of right to assistance, and whether or not the standards in place are sufficient."
With the step rise in globalization and much hitech and sophisticated ways of committing crime, the need for Special Investigating Agencies was felt. Special Investigating Agencies is a nomenclature for the word Police and is a very part of the police. The given line of demarcation of boundaries set by the different countries have bursted especially for the criminals. Since crime has disregarded all frontiers today, hence the conquest of it must be equally barrier-free. With the change in the sociological, technological economic, political and psychological aspects, the value and ethics of police also under went a change in order it did not become out model, thus allowing the Special Investigating Agencies to step into the shoes of police. Special Investigating Agencies have a supplementary role in the administration of justice. The formation of them was the best possible way out from discharging the police from some very indispensable works like investigating crimes. Any activity prohibited by the society through its laws became a deviant behavior or crime’. Crime’ may be said to a willful violation of the codes of society. Since majority fell in line and deviance was an exception, hence crime was considered to be a curable mental aberration’. To control the deviant behavior the need arose for a law enforcement apparatus. To ensure that this power was not used capriciously, a Criminal Justice System came into being. The primary wing of criminal justice system which is responsible for the maintenance of peace and enforcement of law and order is the law enforcers. The ancient history of India reveals that there was a well organized Police Force during the reigns of ancient Hindu rulers. In India, Police Force has been in existence in one form or another from the very ancient times. To quote B.N. Mullick in — A Philosophy for the Police, the very power which a Government exercises in order to maintain its existence and to regulate the life of the people according to the Constitution is the Police Power. The present police system is developed on the basis of the Police Act 1861. Whenever a serious crime is committed, public expect prompt results. Prompt and speedy investigation can be done only by efficient and honest investigating officers who have the caliber to mess within the politically dominated organizations of Indian democracy. India is a union of states as per Indian constitution and crime’ is a state subject under the constitution. State is primarily responsible for tackling crime within its jurisdiction. Besides police, the federal government have set up other agencies responsible for investigating and prosecuting the criminals. The word investigating agencies can be used as a synonym for the word Police’ as it is the general duty of police to investigate any crime happening on the scene. Other agencies responsible for investigation and prosecution
can be termed as Special Investigating Agencies’, as they are someone whose authority is limited to the special undertaking they have been instructed to perform. The persons whose job is to investigate under such special circumstances are known as Special Agents or Special Investigating Officers’ as they are ones who act for a principle only for a particular purpose. In this case the special investigator's act for the Central Government’ for special circumstances.

1.2 AIM OF RESEARCH

The management of Police becomes effective and to find out weakness and solution of that – Effective law and order must be followed by the policeman is the prime motto of Researcher.

1.3 OBJECTIVE OF RESEARCH

1. To clear the idea of Criminal Justice System Administration.
2. To know about the ideas of role of police
3. To know about human right and the administration of justice
4. To know the legal administration of Criminal Justice System.
5. To know about the management of Police towards criminal justice System.

1.4 HYPOTHESIS OF RESEARCH

1. What is the Administration of Criminal Justice System?
2. What is the idea of Police?
3. What is the relation between Human Right and Criminal Justice System?
4. What is the police view about the legal administration of Criminal Justice System?
5. What is the Role of Police in Administration of Criminal Justice System?

1.5 SCOPE OF RESEARCH

In this research researcher tries to focus on the role of police in the criminal justice System. It is related to state of Gujarat. To know about management of Police in Criminal Justice System

1.6 METHOD OF RESEARCH

Two ways gathering,
1. Primary Information.
2. Secondary Information
1.6.1 PRIMARY INFORMATION:

In this research there are some primary data also for current information regarding research subject.

1.6.2 SECONDARY INFORMATION:

1. Present research is done by secondary information also, It means data is used.
2. Secondary data book of law, magazine, Law book, Journals, Report website, Case in law, News paper...etc are used.

1.7 IMPORTANCE OF RESEARCH

1.7.1 NATIONAL LEVEL

To find out the harassment done by police. Also fake encounter, torture custodial rape, custodial death etc need to be control and it will provide motivation to the whole country to give lesson the breach of human right.

1.7.2 STATE LEVEL

Present researcher wants to stop the harassment of police and to create importance of Administration of Criminal Justice System and to stop the deterioration of Human Rights.

This will also be helpful to the person who becomes victim and also to advocates, Expert of law faculties of law, students of law, Police Officers and to the society.

1.8 KNOWLEDGE OBTAINED THROUGH RESEARCH

The present researcher wanted to help to the Teachers, Students, and Police Officers, Justice etc… which will be helpful to them and will increase their knowledge.

1.9 SCHEME OF RESEARCH

Scheme of Research is as follows:

1. INTRODUCTION
2. HISTORICAL ASPECTS REGARDING POLICE SERVICES
3. IDEA AND FUNCTIONS OF POLICE
4. CRIME AND THEORIES OF PUNISHMENT
5. ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM
6. ROLE OF POLICE IN ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM
7. POLICE INVESTIGATION SPECIAL REFERENCE TO CRIMINAL JUSTICE SYSTEM
8. IMPORTANCE OF HUMAN RIGHTS IN PERFORMANCE OF POLICE DUTY
9. CONCLUSION & SUGGESTION