6. Conclusion and Suggestions

Every State has a mechanism known as Criminal Justice Administration which involves mainly three organs, the police, the judiciary and the prison. The police is primary and frontier agency of the Criminal Justice Administration. The most important aspect which is of grat concern for every society, in the present times, is human rights viz-a-viz police and criminal justice system. It is the protection of these rights which becomes a sole objective of any Criminal Justice System but it is the irony of the situation that this very system, many a times indulges into the violation of the rights. This defeats the basic purposes of Criminal Justice. It not only breaches the trust of the people into the system but it also proves to be a setback to a democratic set up of our country. The police has done a great job as far as the protection of rights and maintaining law and order and containing the crime is concerned particularly in Punjab the Police has rendered a commendable service by successfully containing the insurgency. But all the good work done by police is obliterated because of its dismal record as far as the violation of these rights is concerned. It maligns the image of the police, which further demoralize the force and ultimately leads to inefficiency. Therefore, there is an urgent need to overcome all the problems and discrepancies in the functioning of this system so that the image of the police in particular and the Criminal Justice System in general and the faith of people in democracy can be retained. For this, the present study went into analyzing the organizational set up and the working of the present Criminal Justice System and Police and the causes of the human rights violations. The present study also conducted a field survey among the judicial magistrates, police officers and the jail officials in which their suggestions for reforming the Criminal Justice System and police were sought. Apart from this, the study also went into analyzing various constitutional provisions, statutes, reports, court verdicts and directives regarding police setup and its reforms.

The need of reform in the Criminal Justice System and the police in India and fundamentally the police laws, has long been recognized. There has been almost 30 years of debate and discussions by the government-created committees and commissions on the
way forward for police reforms, but India remains saddled with an outdated and old fashioned system, while report after report, gathered dust on governmental book-shelf without implementations. Before independence also, various National Police Commission Reports came up, to develop an effective police system. The first one was in 1860 and last one in 1902. After independence, the same colonial Model of Policing was adopted and no serious consideration was given to change it to make it relevant for an independent and democratic India. It was the gross misuse of the police power during emergency and the police agitation of 1979, which raised the question of reforming the police system in particular and the Criminal Justice System in general. On the basis of the report of Shah Commission, which analysed the human rights violations and the abuse of power during emergency, on the basis of which, the Janta Government instituted National Police Commission under the chairmanship of Mr. Dharam Veera. The Commission began its sittings in 1979 and produced eight reports including a Model Police Act, between 1979 and 1981. In 1996, two former police officers filed a public interest case with the Supreme Court asking the court to direct the government to implement the recommendations of the National Police Commission. The apex court directed the government to set up a committee to review the recommendations of the Commission. The committee under leadership of Mr. J.F. Ribeiro was formed which submitted its two reports in 1998 and 1999. In 2000, the Government set up a third committee on police reforms under the stewardship of former Union Home Secretary, Mr. Padmanabhaiah. This committee released its report in the same year. In 2005, the Government put together a group to draft a New Police Act which could act as a Model Act for the States. This group was headed by a senior advocate of Supreme Court, Mr. Soli Sorabjee. This Police Act drafting committee submitting a Model Police Act to the Union government in late 2006. Apart from these efforts, the Supreme Court issued further directions in the long running public interest litigation on police reforms. The court directed the government of India to implement the police reforms and provided them with a framework within which to begin the reform process.

From 2001 to 2004 two government committees were also formed which made recommendations regarding Criminal Justice System as a whole. These were, Malimath Committee on Reforms of Criminal Justice System (2001-03) and a review committee on
the recommendations of NPC and other commissions/committees (2004-05). Apart from these National level efforts, various commissions and committees regarding police reforms were also formed in different States which made significant recommendations regarding the police reforms. The main amongst these are:

• Kerala Police Re-organisation Commission, 1959
• Bengal Police Commission, 1960-61
• Punjab Police Commission, 1961-62
• Delhi Police Commission, 1968
• Tamilnadu Police Commission, 1971

Other committees, which are worth-mentioning here are – M.S Gore Committee on Police Training, A M. Mullah Committee on Jail Reforms, Vohra Committee Report on Nexus between Criminals, Politicians and Bureaucrats, and a report on National expert committee on Women Prisoners. In 2006, in the famous Parkash Singh Vs Union of India case, the Supreme court laid down the directives to accomplish the task of police reforms. The court ruled that given the "gravity of the problem" and "total uncertainty as to when police reforms would be introduced" it would issue "appropriate directions for immediate compliance". These directions are binding upon Central and State governments. The governments were initially required to report to the court on the steps taken to comply with these directions at the end of 2006. But the majority of the States filed applications seeking more time. Some of these applications also sought review of the judgment. The court refused to review its directions and ruled that the governments were required to comply with its direction by the end of March 2007.

In Dec, 1999, National Human Rights Commission also laid down certain guidelines for reforming the working of the police system. The Ministry of Home Affairs in 1997 wrote a letter (No.11018/5/96-PMA, 3 April 1997) to Chief Ministers of the States to bring out urgently needed reforms of police system on the basis of the recommendations of NPC. Many States expressed their inability to introduce reforms in such a short period, while other States had made commendable efforts regarding this. In Punjab the efforts and deliberations were already under way regarding the Police Reforms, in this context Punjab Police Commission was also submitted its report in 1961. Punjab has also enacted the new Police Act 2007 on the basis of framework provided by
all the aforesaid commissions and committees. This Act was enforced in 2008. In
pursuance of this Act Punjab Police Rules, 2011 are prepared to replace Punjab Police
Rules of 1934, though these rules are still to be implemented.

It is generally said that either the system does not exist at all or it is not functional.
As far as the police is concerned, one can say that the police system in India not only
exists with a comprehensive and well laid legal framework, but it has also been seasoned
under different conditions in course of its evolution in about last two centuries. It has
faced different situations, from normal conditions to the extraordinary conditions, ridden
by the menace of terrorism. It has worked under different political systems of the colonial
era, as well as that of a democratic system of independent India. Though, the system
exists but the gross violations of human rights and the inefficiency of the present
Criminal Justice System in delivering the good has not met the expectations of the
citizens of free India. It shows that the system of Criminal Justice and the sub-system of
police is not functional. The present study after analyzing the aforesaid reports of the
commissions and the committees, the legal provisions regarding criminal justice system,
both national and international, and after making a field survey regarding the human
rights in criminal justice administration in Punjab, has come up with certain suggestions
for reforming and improving the functioning of the police system in particular and
criminal justice system in general. The recommendations suggest reforms regarding the
external and internal factors of the police system. Just enacting new Police Acts or Rules
will not be enough, but the existing system should be made functional and for this,
quantitative changes only will not serve the purpose but the focus should be on
qualitative changes. Former President of India, Dr. A P J Abdul Kalam, while addressing
a function regarding 150th years celebration of Chennai Metropolitan Police, has also
called for bringing professionalism and operational efficiency in the police force.¹

For making qualitative changes in the police system, there is a dire need to change
the approach for the way the policing is viewed by the society as well as the police
personnel themselves. There is a universal need in this nation for a system of equitable,
effective and sensitive civil policing. We have been involved officially in numerous
investigations of police-community related problems throughout the nation. This is an

¹ *The Times of India*, January 5, 2007
important point, for it demonstrates geographically that persons from all walks of life, representing a variety of social and political views, recognized the necessity of policing.

Present Indian Model of policing is facing an organizational crisis which is the manifestation of an approach adopted during the colonial period. This crisis stems from its historical antecedents in the Irish colonial police structure on which the police is modeled. The Irish colonial police was a paramilitary agency accountable only to the government. Its chief officer was called Inspector General who was supposed to be reporting to the Chief Secretary. The 'political organizational' characteristics of inherited Indian Police structure includes, strict subordination to the civilian administration, unaccountability to the public, cohesive strength and disposition and frequent use of State violence, institutionalization of an armed police within the civilian wing, an 'eyes and ears' functions on behalf of the government, pervasive secrecy and close identification with the propertied interests. These characteristics are not sustainable in a democratic, republican India and must be got rid off. Within these parameters, the requirements of maintaining public order and collection of internal political intelligence, have become the basic thrust of Indian police. Whereas, in a civilized society, the police is seen as an agency for providing human security, protection and service to the people, in addition to maintaining order.

In Independent India also, as the term of reference of Police Act Drafting Committee (PADC) under Mr. Soli Sorabjee shows, the priority is on maintaining law and order in view of growth and spread of insurgency and organized crime, while the social justice concern is the last in the list. The need is to make the police a 'service' in real sense, to meet the expectations of a democratic India. Hence, the police should be made 'service oriented'. In a democratic polity, like in India, the 'service oriented' and 'public oriented' police can better serve the people and for this the 'proactive' and 'community policing' should be adopted as an appropriate means. The 'democratic policing' in which the participation of the public in policing and police-public-interaction is encouraged, can even help the police to win over the people and face the menace of terrorism and insurgency with their help. Some scholars even suggested 'developmental approach' to police administration, in which the police becomes a part of the infrastructure for development administration, as it helps in maintaining law and order,
which in turn provides stability for developmental activities. The sustainable
development of the society again helps the police by checking the mushrooming of crime.
This is high time to decide, whether police should be a tool of governance or an
instrument of law. Just treating it as an instrument of law will restrict its role whereas, in
the futuristic perspectives, the police should be treated as an important organ which can
contribute a lot in good governance and also in a constructive social change. By adopting
this philosophical model with the above mentioned parameters, we can bring drastic
qualitative changes both in the behaviour and organizational functioning of the police and
in turn the approach of the people towards it.

In view of the above mentioned service oriented policing, one thing is being
stressed again and again by many commissions and committees i.e. to make the police
more professional and accountable. For bringing professionalism in policing, there is a
need to render professional autonomy. But professional autonomy and the accountability
both many a times generate a paradoxical situation. As per the original Police Act, the
police is accountable to the State through local civil administration headed by the district
collector or district magistrate. The National Police Commission emphasized over the
significance of the supervision of District Magistrate for effective use of police to achieve
the overall objective of public order and peace but the Model Police Act shifted the
emphasis a little bit by proclaiming the role of District Magistrate as a coordinator to
achieve the policing objectives.

Though, the police is an instrument of State and government in a democratic
setup, it is under the representatives of the people or in other words, under the
government which is run by the political parties. Hence, the political consideration and
the priorities of the government are bound to direct the police also. As far as the
ideological priorities are concerned, the police as an administrative unit, should remain
neutral and should follow the directives of the government. But as mentioned in various
reports of NPC, the problem starts when the parties and the leaders start interfering into
the routine working of the police to cater to their vested interests.

The police, under the present situation of increasing workload and expectations,
needs administrative autonomy and as a professional unit, it is even more capable to take
its own decisions. No doubt, the police is not an isolated agency and it has to work in
alliance with other organs of the government and administration, specially the sub system of Criminal Justice System which includes the courts and prisons, only then it can achieve its goals. The present research, after going through the structural and functional aspects of police in Punjab and its impact on human right situation, forwards following recommendations:

RECOMMENDATIONS

• Agenda of Police Reforms should be vigorously followed. Police being a state subject, the main responsibility for implementing the reforms lies with the states. The Government of India can undertake several steps by way of pushing forward the agenda of reforms. The directions of the Supreme Court on police reform require immediate implementation by all State Governments. The Model Police Act should be followed to make the desired police reforms. In this regard the Central Government should take the lead. This will give the Centre the moral authority to ask the state governments to follow suit. It will be able to convince the state governments about its genuineness and commitment to reform.

• The effective working of the Police force is influenced by internal as well as external factors. The internal factors which influence the just working of the Indian Police can be considered to be the administrative factors and the legal parameters dealing with the routine functioning. These can be overcome by incorporating a robust system of Police Accountability through introduction of a mechanism, solely responsible for insuring the compliance of rules and requisite functioning.

• The external factors which adversely influence the working of Indian Police system arise out of a complex politico-legal environment and socio-economic milieu. In order to circumvent these factors, police should be made more people oriented and socially accountable. Orientation of the police towards the welfare of people can be achieved by undertaking extensive training sessions and in view to minimize the political interference, there should be high level of transparency in the police system in India. There is a very significant need in order to improve the image of police among civil society. In view to ensure that the image of police is re-engineered, police should be subjected to skill enhancement training where
they should be trained to tackle victims, witnesses, etc. in a specified and sensitive manner.

- Invest more time and effort into Community Policing. International practice suggests that community policing is an effective tool for intelligence gathering and it forges a healthier bond with the public.
- Involve the Community and Public at large in the Reform Process. Doing so will improve the police public interface.
- Campaign and Educate on the Need for Police Reforms. Given the level of dysfunctional policing in India, it is critical that civil society organizations inform the average Indian of their rights and the sort of policing they should expect from law enforcement agencies. Raising public awareness on these issues will inevitably make the police more cautious and law abiding.
- Conduct Social Audits of Police Stations. A social audit is a way of measuring, understanding, reporting and ultimately improving police performance. It can help narrow the gap between a vision and reality.
- Adopt the Vision of Democratic Policing. This can be achieved by enacting new Police Act that is designed to ensure that the police at all times act in accordance with the law and transform itself from a force that enforces the law to a service that upholds the law.
- While enacting the new Police Act, police at all levels should be invited to make suggestions about the type of police service and police law they would like to be the part of.
- Ensure that New Police Act proactively solicits the input from civil society on drafting police legislation for the State. This can be done in the following ways:
  i. Have civil society involved at the drafting stage. This will ensure that the Bill which emerges from the committee sufficiently addresses the concerns of the public.
  ii. Hold public forums and meetings to get the public’s feedback on potential new legislation.
  iii. In accordance with Section 4(1)(c) of the Right to Information Act, 2005 (proactive disclosure), ensure that when draft legislation goes before the
State Assembly it is also put in the public domain and made available for comment.

- Hold focus groups with police at all levels, particularly at the Deputy Superintendent of Police rank and below.

- Criminal proceedings have to be an organized, systematic search for truth. Procedures should not be practiced or interpreted in such a way as to interfere with the search for truth. Criminal courts at all levels should have inherent powers to give such orders for securing the ends of justice as are available to High Courts under Section 482 of the Criminal Procedure Code.

- Without diluting the constitutional rights of every person accused of crime, the law should place positive obligations on accused persons to assist the court in the discovery of truth. Every citizen including those suspected of having committed crime have an obligation to assist administration of justice. This can be done by more liberal use of rebuttable presumptions and shifting the burden of proof in appropriate cases.

- Despite constitutional difficulties, it has become necessary for the Union to be now more actively involved in the fight against crimes, such as terrorism, communal violence and organized crime, which impinge on security of state. This calls for a joint sector organization of Central and State Governments to deal with select crimes threatening the security of the nation or having inter-state ramifications, which require ability to deploy all the resources needed. The National Policy should identify all such crimes affecting the unity and integrity of the country and create a united national agency to undertake prevention, investigation and prosecution of such crimes with the support and co-operation of the State machinery concerned. A federal police agency has already been proposed to be setup in this regard.

- The burden of proof should be passed on to various parties (presiding officer, accused, prosecutor, etc.) in order to complement the existing audience and proof system.

- It shall be the policy of criminal justice to focus on the victim of crime as much as the accused, thus restoring a balance in criminal procedure between the offender,
victim and society. Apart from recognizing the right of the victims to implead themselves in criminal judicial proceedings, a speedy and effective scheme of compensation to victims of at least serious crimes to begin with, should be implemented, irrespective of the outcome of such proceedings. For this, a Victim Compensation Fund has to be instituted, to be administered through the Legal Services Authorities.

- Prosecution continues to be the weakest link of the Criminal Justice System. Selection, training, service conditions and supervision of the prosecutors demand urgent attention to enhance the quality of prosecution and to achieve the synergy between investigation and prosecution essential for effective Criminal Justice Administration. An independent Directorate of Prosecution accountable to the Courts need to be set up, under the control of the proposed Board of Criminal Justice, with a well-trained, well-paid cadre of prosecutors for delivery of quality justice.

- Crimes need to be classified and organized into five distinct and comprehensive categories, on the basis of gravity of the injury and the appropriateness of the response needed to deal effectively with the same. This five category scheme should include:
  a) Firstly, SOCIAL WELFARE OFFENCES CATEGORY for the offences which are civil in nature and where the object should be more of reparation and restitution rather than punishment and retribution. Naturally, arrest and detention are unnecessary in such cases (except when violence is involved) and compensation and community service can better meet the ends of justice rather than incarceration of the offenders. Minor marriage offences, prohibition offences, vagrancy, minor indiscipline in campuses and work places etc. can well be brought under this Category. It is also possible to entrust enforcement of these laws to agencies other than the police. The method of settlement can be more conciliator than adversarial and a lot of public participation is possible for better management of these offences in a cost-efficient and human rights-friendly manner.
b) A second category of offences — more serious than the social welfare offences and which may need police intervention — may be brought under another category, to be called the CORRECTIONAL OFFENCES CATEGORY. This would include offences punishable upto three years of imprisonment and/or fine. They are usually not accompanied by violence and are, in most cases, liable to fine, probation and short-term imprisonment only. Arrest and detention may be allowed in such cases, ordinarily only with a warrant and all of them could be open to settlement through Lok Adalats, Plea Bargaining and other alternative ways, avoiding prolonged trials. For cases under 1st and 2nd Category, it is possible to allow modifications in evidentiary procedures through rebuttable presumptions, shifting of burden and less rigorous standards of proof. They can be treated as summons cases with provision for summary trials.

c) The third set of offences, to be included in the PENAL CATEGORY, are graver offences punishable with imprisonment beyond three years and, in rarest of rare cases, even with death. These are cases which deserve careful and quick processing under expert supervision, ensuring all the human rights protections guaranteed by the Constitution and the laws, and where the maximum energy, time and resources of the state are to be spent keeping in mind the need for speed, fairness and inexpensiveness. There has to be greater accountability from enforcement agencies in these cases as they create public alarm and insecurity.

d) Thereafter, a fourth category, CYBER CRIME CATEGORY will encompass all the information technology related offences. Officers equipped with sound technical knowledge will lead this category and they will further be able to judge the seriousness of the crime.

e) Finally, an ECONOMIC OFFENCES CATEGORY needs to be created for select offences from the Indian Penal Code and other relevant economic laws including offences which pose a potential threat to the economic security and health of the country. They might require multi-disciplinary, inter-state and transnational investigation and demand
evidentiary modifications to bring the guilty to book.

The five category scheme of re-organizing criminal law and procedure as above is a desirable policy goal for better management of the crime scenario in future. It will be prudent to incorporate in each of these codes, the respective rules of procedure, the nature of trial and evidence, the types of punishment etc. The idea is to have a self-contained code of law and procedure for each of the five distinct set of offences, based on the gravity of the offences involved and the degree of flexibility the system can afford under the constitutional scheme.

• Criminal Justice System needs greater professionalism and accountability from its stakeholders. The effective use of information technology is the need of the hour in view to ensure robust Criminal Justice Administration system.

• Criminal Courts have the obligation to render speedy justice. For this, they have to speed up the processes through more effective management of dockets and proceedings. Day to day trial has also to be restored. Government should provide better resources and infrastructure to criminal courts to help them speed up trial procedures. Use of technology should be able to achieve the objects less expensively.

• A modern Criminal Court Complex with single window services has to come up initially in at least the district headquarters. It will have a police station and interrogation room on the ground floor; police lock-ups/sub-jail, and magistrate's courts on the first floor; prosecutors' offices, legal aid services, witnesses rooms etc. on the second floor; sessions court in the third floor and the administrative office on the fourth floor.

• Special schemes should be drawn up for protection of witnesses/victims in appropriate cases.

• Criminal legal aid has to be modernized with multiple services needed for the victim as well as the accused. Legal Aid is not to be limited to merely providing a lawyer to indigent accused. The State has to organize psychiatric, medical and rehabilitative services under Legal Aid. Appropriate compensation to the Victim should also be the responsibility of the Legal Services Authority.

• The victim should be provided proper information about the proceedings of
his/her case and its record with the police and courts, free of cost, from time to
time. This information should also be made available on the internet.

- Training and continuing education of all criminal justice personnel including
  judges is the key to improving quality, fairness and efficiency of the system. Each
  segment of criminal justice should progressively upgrade its training capabilities
  and allot up to 2% of its total budget towards training on modern lines. Inter-
  sectoral training is also necessary at middle and higher levels to achieve co-
  ordination. A transparent, objective system of performance evaluation should be
  put in place and career progression linked to it.

- In the Punjab Police Board, there should be provision for including one member
  from judiciary, equivalent to the status of a justice of high court, atleast three
  prominent members of civil society and leader of the opposition in the assembly.
  This will make the board more balanced and free from undesirable political
  influence.

- Proper provisions should be made to establish State Security Commission as per
  the parameters of Model Police Act. This commission is to lay down the broad
  policy guidelines for the state police; give directions for the performance of the
  preventive tasks and service oriented functions of the police; and evaluate the
  performance of the police. It should be of recommendatory nature.

- Undertrial prisoners should be kept in separate institutions. Prisons should not be
  overcrowded. By liberal use of bail and probation and avoiding short-term
  imprisonment, the prison population can be kept to reasonable limits.

- The living and service conditions of prison staff should be improved and strict
  measures, taken to stop corruption in custodial institutions.

- Women and children accompanying them should have special facilities in prisons.
  The policy on custodial justice for women recommended by the Expert
  Committee as early as 1979 should be implemented fully.

- A fair, transparent system of grievance redressal should be in place in all prisons
  and other custodial centres.

- Remission of sentence and granting of parole should be rationalized according to
  standard norms and procedures and administered under judicial supervision.
• Custodial violence should be looked upon with utmost severity and quick, transparent remedies should be available for victims of such violence.

• Statements made to the police should be audio/video recorded and made admissible in evidence provided the accused has had the benefit of consulting his lawyer.

• The Modernization of the Police Force Scheme. The MPF scheme focuses on the construction of police buildings, purchase of vehicles, purchase of arms and ammunition, purchase of equipment, enhancement of infrastructure facilities for police training, computerization, purchasing forensic science equipment and developing infrastructural facilities for forensic science laboratories.

• Recruitment must be made more transparent and Merit-Based. The Transparent Recruitment Process (TRP) policy introduced by the Centre should be scrupulously followed. At the same time, sanctioned posts that remain vacant need to be filled at the earliest.

• Improve Training Facilities. Governments need to realize that the training given to the police today does not make them fit for the purpose. Training methodologies need to shift the stress from the physical, to imparting soft skills and greater sensitization towards the law and constitutional values. Provisions need to be made for periodic in-service refresher training.

• Establish an effective Internal Mechanism that permits the public to make complaints against the police. The success of internal accountability mechanisms depends on the effectiveness of police leadership. Unfortunately, the authority of police leadership has gradually been eroded over a period of time. This has led to loss of discipline in the force and has promoted a tendency at different levels in the police to seek outside patronage for rewards and to be shielded against punishment. Police leadership in the states need to ensure that internal mechanisms are revived to regain the lost faith of the public. This can be achieved by the following:
  i. Specify a prompt and transparent process of inquiry into complaints against a police officer with complainants informed at every stage of the process and outcomes.
ii. Place a complaint/suggestion box outside every police station.

iii. Set up complaint cells in each district, range and state headquarters.

- There is a need to improve the status, working and living conditions of the constabulary and treat them as skilled workers and give them responsibility as mentioned by in the NPC, the Ribeiro Committee and the Padmanabhaih Committee.

It is the firm view of the present researcher that with the implementation of above recommendations, the police in particular and the Criminal Justice Administration in general, will undergo a positive change. These recommendations will help, on the one hand in making the police more professional and on the other hand these will help it in adopting more 'people friendly' approach. One can hope that this change in approach will also improve its image to be a more 'humane' and 'service oriented' force from that of colonial image of a 'baton wielding' force. This transformation will fulfill the democratic aspirations of the people as well as administrative needs of the Criminal Justice System and ensure an environment in which the human rights and dignity of every citizen is protected, preserved and promoted.

* * *