

THE ADMINISTRATION OF LAW AND ORDER

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The Administration of Law and Order is a wide subject. Crime is increasingly being recognised as a problem of national and international dimensions with ramifications extending far beyond the national frontier, hampering the socio-economic and cultural development of the people and jeopardising the legitimate enjoyment of human rights and fundamental freedoms. It is not possible to establish general causal relations between development, criminality and law and order problems because these dynamic concepts for which there are no precise sets of universally accepted and standardized pointers.

DEVIANCE AND CRIMINALITY

It is increasingly realised the world over that changes in social and economic structure of life and cultural patterns resulting in economic growth and rapid social change do affect deviance and criminality. Its contributory factors are:

- (i) fractionalization of families;
- (ii) rapid and unplanned urbanization resulting in the suction of under-employed rural manpower into the cities and urbanised industrial complexes leading to the accretion of urban unemployed thereby providing a fertile reservoir manpower who go towards swelling slums which provide easy outlets of activity in criminality;
- (iii) differential sectoral growth rates in respect of education and employment, food production and shelter; and
- (iv) inequalities in income distribution, social mobility and breaking up of traditional home ties.

In the absence of productive, legitimate objectives, it is easy for unemployed and under-employed youth to choose unorthodox short-cuts to wreak their vengeance arising from frustration on society. When large numbers of people with different backgrounds and horizons in a culturally pluralistic society like ours come to live together in urban and industrial complexes, bereft of the benefit of real community life which is so much required for the release of tension and stress, members of such groups lacking in social cohesion and family support tend to seek diversion in deviant conduct. These important contributors providing easy material from whom to draw recruits for violent demonstrations. Then there are the socio-economic and white collar crime committed by the rich and influential segments of the community. It will be dealt with a little later in this paper. The resultant crime poses a real threat to social and economic progress, distorts national goals and impedes the optimised use of national resources. The consequent cost that the society has to pay is incalculable in terms of the totality of suffering, trauma and financial loss to the victims of crime and their next-of-kin, enormous expenditure on public security measures, a sense of fear and anxiety coupled with sacrifices of tangible values as personal security and freedom.

Criminal justice and the administration of law and order are too serious and complicated matters to be left exclusively to the kind mercies of the functionaries of the criminal justice system. The interdisciplinary measures of planning and action require crime prevention measures which derive from the interplay of economic, social and cultural factors which call for effort from the entire community. Unfortunately, in India, the perception of exclusive police responsibility in tackling criminality and law and order problems continues to hold sway. The inability of law courts and legal procedures to keep pace with the increasing demands that social changes demand in effect tends to make the criminal justice system virtually obsolete. This hiatus between the expectations of society on the one hand and law and criminal justice on the other can be bridged only by popular participation in crime prevention bringing the criminal justice system within the scope of our 5-year plans.

In India criminal justice is sought to be achieved and Law and Order maintained by departments of government known as 'non-plan' departments. This necessarily means that they have been a prime candidate for expenditure cuts and economy drives during the past 30 years and more. It is true that large amounts of money has been spent on the modernization of the police, including the provision of Forensic Science Laboratories but these have not had the desired effect since they have not been matched by corresponding updating of procedures and modernization and expansion of courts of law at the cutting edge level. Crime statistics and research, community crime preventions, study of causes of delay in respect of offenders being brought to justice methods to overcome such delays, absence of interaction in the criminal justice system itself, inter-sectoral planning in the system, victim-witness assistance programmes and victim support schemes—lack of attention to these have bedevilled the effective functioning of the Law and Order machinery in this country. These are some of the areas where the system has floundered.

Law and its Enforcement

Society in order to preserve itself and to ensure peaceful life to its members lays down certain rules of conduct and prescribes penalties for deviation from that standard. These are the product of several generations or experience and several layers of civilization. They are called 'laws'. The criminal justice system exists to enforce these laws which should ensure order. Side-by-side it also lays down methods of dealing with infringement of the laws. These form part of procedural laws. Society expects the law enforcement agencies to prevent transgression and to detect them by legal means. No democratic society can condone the employment by the enforcement agencies of any method which is outside the pale of the legal means. In other words, democracy looks askance at illegal ways of law enforcement. There should be no confusion between ends and means. Ends are not means. Means should be capable of legal scrutiny by public opinion and the legal machinery. Illegal means cannot be justified by lawful ends. Behaviour modification makes a bold effort

to ensure that there is no confusion in the minds of law enforcement agencies between ends and means and brings into focus the best ways to optimise results is law enforcement by human and humane actions which pre-empts accretion of the total quantum of criminality in society. This is one of the many purposes served by training institutions like the IIPA.

As far as the criminal justice system and the Law and Order machinery are concerned, the citizenry are the consumer. Yet this is a sphere in which consumerism has hardly made any impact. Caring for the citizens at the pre-delinquent stage and preventing the pre-delinquent from slipping into delinquency and criminality:

- ensuring fair-play in ones own dealing with the public;
- caring for the victims of offences, encouraging them to cooperate with the criminal justice agencies and the law and order machinery;
- reducing and minimizing the inconvenience of court attendance;
- finding ways and means of doing away with harassing cross-examination in court;
- mobilising voluntary agencies and citizens to help preserve values for which the system has come into existence; and
- imbibing oneself and inculcating in others the scientific temper in investigations.

Eschewing third degree methods—these are some aspects which enforcement agencies like the police and other functionaries of the criminal justice system will have to foster and encourage if the system is to survive its present tribulations.

Criminal justice policy has suffered by default in this country. The result is that as the years and decades passed by, the administration of criminal justice which is mostly connected with the maintenance of Law and Order remains the responsibility of the States constituting the Union of India. In consequence, progress has not been uniform and there are some States in North Eastern India where there are no Forensic Science Laboratories and there are hundreds of police stations in the country which do not have their own transport. Courts of law in many States have been left to

suffer for want of amenities like typewriters, copying machines and infrastructural essentialities like adequate accommodation for the judges and magistrates. Apart from enunciating the general principle of separating the judiciary from the executive and appointing public prosecutors and assistant public prosecutors for the conduct of prosecution, no reasonable methods have been devised to ensure that talented manpower gravitates to that branch of the legal profession.

One reason for the differential standards of law enforcement and crime control in different States in India is inherent in our federal policy. Constitutionally, the maintenance of law and order is a State subject. Though the State Governments have a major say in the enforcement of laws and ensuring order, the law itself is uniform throughout the country. But the way it is enforced differs in different States. There are certain organizations like the BSF, CRPF, ICFS and so on which have their own functions in uniformizing the set-up in the entire country. But the main brunt of the actual administration of Law and Order remains the responsibility of the States which squirm at anything smacking of interference with their autonomy by the Centre.

In any modern criminal justice policy making, there are three principal elements, namely, the politicians, the executives or professionals and the public. The politicians include leaders of the political parties, in power and opposition and groups like trade unions, student organizations and similar organised segments of the citizenry. The professionals can be categorised as judges and magistrates, police, prosecutors, defence lawyers, prison officials. The public include the media, voluntary organizations and rank and file citizens. An integrated approach to the problem of intending Law and Order demands the cooperation of all these elements if it is to achieve a modicum of success.

Public opinion in India holds the view that the Law and Order machinery is cracking and has to be beefed up.

INCREASE IN CRIME

Crime is on the increase. This is a world phenomenon. In India the increase is not uniform in all States. The pattern of

increase differs in different States. Offences involving violence against persons, like murder, kidnapping, robbery, rape, riots have gone up by leaps and bounds (Table 1). There is an upsurge of offences against the disadvantaged segments of society like harijans and tribals. The increase is highest in Bihar with 23 per cent followed by Gujarat with 18 per cent and Tamil Nadu with 10.7 per cent from 1979 to 1980. In spite of the Protection of Civil Rights Act, untouchability offences continue to be committed in many parts of the country. There is also the resurgence of extremist activity.

Bihar

It is not for nothing that Bihar has acquired notoriety for uncontrolled crime and unorthodox methods of tackling it. There is no other State in India where perhaps the type of racketeering that exists in the Bihar Coal belt finds a parallel. The police appear to be helpless. In the face of armies of musclemen maintained by the coal kings who thrive on criminality, the lifting of coal from mines with forged delivery orders is said to be a common practice in Dhanbad. One *modus operandi* is to print letterheads of non-existing firms and apply to Coal India and Bharat Coking for the release of huge quantities of hard coke from time to time and submit it with the recommendations of senior officers. After procuring delivery orders they are sold in the black market. There are also other kinds of thefts in that area. At least one million tonnes of coal are being stolen in Dhanbad and Jharia alone. Owners of coal depots of which there are about 4000 are said to be actively involved in this pilferage. This represents unconscionable theft of national wealth by persons who wear their conscience up their sleeves and a general indifference of the authorities whose business it should be to detect these goings on and seek the help of law enforcement agencies. In the wake of nationalisation about 5000 women labourers have been eased out and replaced by nominees who are not related to them. Most of them are undesirable and are hand in glove with mischief mongers in this area. Since April 1981, there were 14 serious cases of assault on senior mining officials. Even when the engineers are beaten up and humiliated by hoodlums, complaints are not made to police for fear of reprisal

TABLE 1 IPC OFFENCES IN INDIA DURING 1971-1979*

Heads of Crime	Year								
	1971	1972	1973	1974	1975	1976	1977	1978	1979†
1. Murder	16180	15475	17072	18649	17563	16673	18376	19133	19939
2. Culpable Homicide not amounting to murder	2357	2196	2408	2514	2502	2584	2615	7000	7300
3. Kidnapping	9647	9402	10223	10543	11139	11250	12240	12685	11839
4. Dacoity	11193	10411	10627	13697	12506	10910	12599	11749	12704
5. Robbery	18402	17054	18857	22286	21656	17974	22725	22000	21597
6. Burglary	165807	167062	181433	199878	192854	168655	193622	173204	158484
7. Rape	2487	2605	2919	2962	3376	3893	4058	4621	—
8. Thefts	335204	346382	379412	436918	421891	365138	432046	438499	411834
9. Riots	64114	56781	73388	80547	67241	63675	80449	82362	82878
10. Criminal Breach of Trust	20270	21004	21837	22274	23287	23656	22868	20475	18359
11. Cheating	11412	12646	14392	15380	17772	19588	19623	19095	16506
12. Counterfeiting	641	670	582	718	951	887	784	821	965
13. Other IPC Offences	299711	318886	349358	131387	373660	395491	451672	503513	538872

*SOURCE : *Crime in India* published by the Bureau of Police Research and Development.

†Figures are provisional.

A senior mining engineer has gone of record to say that gherao by mobs carrying bows and arrows is nothing new and hostile demonstrations are the order of the day but he was mortified by a contractor brandishing a loaded revolver at him in his own office and threatening him with dire consequences if he did not pass highly inflated bills. An attack on an engineer and his wife causing injuries to them is a recent occurrence in that area. Some of these gang leaders engage in this type of operation on the strength of political connections. Mafia kings of Dhanbad go about escorted by at least two cars full of armed bodyguards. They exploit the Adivasi miners who form the bulk of the labour force, engage toughs to run a number of employees unions of which miners are forced to become subscription-paying members. They rape women, run the illicit liquor stores and have such a field day that it would appear that the Indian Penal Code and the Code of Criminal Procedure have no application to the Chota Nagpur area.

Nalanda, once the cradle of the arts, is now a factory manufacturing illegal arms. Hundreds of concealed factories in the area use drilling machines and lathes. In 1980 the police seized 1900 unfinished guns, 25 lathes and 14 drilling machines from illicit factories in 55 villages and arrested 89 persons. Other districts in Bihar like Patna, Gaya, Bhagalpur, Aurangabad and Begu Sarai also specialise in this nefarious trade. Bihar's latest communal carnage in Nalanda district brought to the fore the enormous danger the existence of the clandestine fire arms poses to society. The daily production of illicit gun is said to be 800. During election times it crosses the 10,000 mark. The State administration appears to be alive to the danger of this as seen from the drive. They have launched after the Kaila Massacre of May 1977 and the Belchi outrage next month. In November, 1981, 170 bombs, 10 maunds of gun powder and 10 bottles of acid besides 76 country made guns were seized from Nalanda district. But it is not the end of the story. Even automatic rifle manufacturing plants were seized from Hapa village in 1981. No wonder that the people in Bihar have a general feeling that the police in the district cannot match the fire power of the criminals.

UP

The situation in UP is not much better. The dacoity problem is grim. The UP Police are reported to have shot down 1400 dacoits and arrested 10,000 in the recent past. Yet various gangs are still active. UP is the worst affected State as far as dacoities are concerned and its spill-over in Delhi is there for all to see. Railway travel in Northern India in general and UP and Bihar in particular has become a bug bear for the law-abiding citizens. Teasing of women passengers, lifting of luggage, robbery and other offences are the bale of railway travel in Northern India. But the victims prefer to keep silent in view of the ineffectiveness of the law enforcement agencies. The strength of Government Railway Police Force has not increased to the extent warranted by the increasing railway crime. Most State Police give a lower priority for railway crime, their hands are more than full with major problems of law and order and other crime.

Assam

A Divisional Commissioner of Assam was killed in his own office by the use of concealed explosives last year. This was the second attempt on the life of the official and the accused persons arrested by the CBI are said to be student leaders. The apathy of the local administration to the case is indicated by the fact that two of the arrested persons were released on medical grounds on the expiry of remand, on the basis of certificates given by private medical practitioners. The plea of the CBI to get these persons examined by a government doctor was unceremoniously rejected. The Chief Judicial Magistrate released two others on grounds of insufficient evidence. The remaining two persons were awarded imprisonment and were ordered by the magistrate to be treated as 'A' class prisoners. One of them is facing another murder charge. Section 437 and Criminal Procedure Code make it clear that the Chief Judicial Magistrate has no powers to grant bail to those accused of such heinous offences.

Bombay Port

An alarming feature of crime in another part of the

country is the plunder that goes on at Bombay port. Gangs of thieves backed by the powerful elements operating in India's biggest sea port, are examined to have been stealing goods worth Rs. 3 crores every year. The national exchequer loses the customs revenue running to several crores. The actual quantum of theft is not available from any police record. According to Bombay Port Trust sources, the loss in customs revenue from this was Rs. 4.05 lakhs per month in 1980 and in 1981, Rs. 12.15 lakhs per month. But the customs records do not give a complete account of actual loss since they are limited to the claims for refund. Shipping Agencies estimate the loss to range from Rs. 50 to 100 crores per year. If so, it represents the highest proportion of discharged cargo ever stolen anywhere in the world. The invasion of the Bombay docks by the organized crime highlights the spreading tentacles of criminality in the country.

Politics and Crime

At this stage, the nexus between politics and crime has to be pointed out. The government of UP admitted the existence of such a nexus in March, 1981 and directed its police to verify. It is said that such a nexus was unearthed by the UP Police in at least six cases. The result is an alarming increase in the number of political murders in the country of which there were 90 in 1981 in Kerala and 135 in West Bengal the same year. It would be interesting to examine how murderers are inducted in the political parties and what help dacoits and murderers provide to the political bosses. The answer is that they have become indispensable in rigging elections, capture polling booths, intimidating people belonging to specific castes, injecting an element of fear into the minds of polling agents and Returning Officers and imparting credibility to these threats. These are necessarily 'meaningful' services rendered by the dacoits.

Offences against Women

Then there are offences against women for which Delhi has become notorious. It is not possible in the course of such a short paper to go into the details but a special feature of this type of crime in India is its low percentage of reporting,

the reasons for which are the manner of police interrogation, unwillingness to go to court, fear of harassing, cross-examination, fear of revenge, the open public setting of hearing at the time of trial and attempts to cast aspersions on the character of the victim. The drive against eve-teasing, molestation and rape has to be necessarily a multi-pronged one in which the victim, the public, including voluntary organizations, the police, the judiciary, the mass media, the film censor and the legislator have to play vital parts. Court proceedings in cases in which women happen to be victims should be held in camera.

Dowry deaths are very much in the news. It is peculiar to the middle classes of certain communities inhabiting the Gangetic Plan. The working classes are not troubled by it and the upper classes do not seem to be bothered. The Government of India is said to be thinking in terms of providing more teeth to the anti-dowry laws already in existence. It remains to be seen how far this will bring about the necessary change in the attitude of the people. The vast majority of suicides of and other offences against young brides take place within 2 to 3 years of marriage. From this it would appear that there are some fundamental defects in the emotional equations between young husbands and wives in some communities. If so, it is a matter for psychological research.

Socio-economic and White Collar Crime

This account of problems on the Law and Order front will not be complete without at least a passing reference to socio-economic and white collar offences though this category of crime does not victimise citizens individually. Their effect is on the entire community or at least on large segments of the citizenry. Their salient features are avarice and rapacity. They are a *sine qua non* of an acquisitive society. Their causation remains in the twilight zone of criminological imponderables. Another point is that the relatively large degree of public tolerance towards these offences and offenders. Hoarding, black marketing, adulteration of food stuffs and medicines, under-invoicing, over-invoicing, smuggling, corruption and monopolistic and restrictive trade practices are some

of them. It is not proposed to deal with this category of offences in detail in this paper since their tackling is mostly the responsibility of specialized agencies like custom, vigilance organizations, directorate of enforcement, the drug inspectorate and so on and they do not come within the general pale of Law and Order agencies. Suffice it to say that in the absence of an organized consumer movement and the atavistic accent of secrecy imposed by the enforcement agencies, the ignorance of the citizen on the extent of his own victimization is profound.

POLICE PRIORITIES

To deal with such a vast and complex problem, what is the machinery? First of all, there are 7,75,000 constables in the whole country, controlled and directed by a few thousand officers of middle and higher levels. For a national population of 675 millions, it works out to an average of one police constable per 870 citizens. Averages are misleading since their numbers are not uniformly spread and many of them are not available for the citizens' needs. Police priorities have undergone a sea of change during the past three decades after independence. Their primary concern now is crisis management. Since every political party subsists on a diet of agitations, there is no want of crises on most days of the year. The attention of most officers in the 8,500 police stations and the Armed Police battalions in the State and at the Centre, their supervisory inspectors, sub-divisional officers and superintendents of police is taken up with these. Any untoward situation resulting in the use of force by the Police will not only have adverse publicity but will be counter-productive from the point of view of their advancement in career. The next priority is VIP security. It is not the purpose of this paper to pass any value judgement on this scheme of prioritization. It is just a statement of facts. So detection and prevention of crime which is what matters most to the ordinary citizen on the law and order front receive a low priority in the police scheme of things in modern India. Even in this category, offences involving violence receive slightly better attention than others.

Constables form more than 80 per cent of the total police force in the country. They form the cutting edge level as far as the people are concerned. Inservice training which is considered most vital in any modern administrative set-up has left the constabulary out in the wilderness. That means that all efforts towards modernization have not touched the vast majority of the functionaries who come into contact with the people.

Manpower Requirements

Contingency estimates of manpower requirement and monitoring and optimal utilization of manpower are vital in any system of policing. A study made in Madras a few years ago indicates that only 1 per cent of the total man hours spent by the police is utilised for the purpose of crime investigation. No similar study has been undertaken anywhere else in the country. But on the basis of practical experience, certain norms can be suggested. It is desirable to have one investigating officer and two subordinates to assist him for every 25 important cases. For unimportant crime, the rate may be one officer and two subordinates for every 100 offences. Prohibition and gambling cases will need at the rate of one officer per 500 cases. Districts should work out their manpower requirements on this basis and each State should review its requirement quinquennially.

A new police force is necessary for our society facing the complicated problems of criminality. There has been no substantial change in the organization of the police force ever since 1861. It is high time that a new Police Act is passed by Parliament.

BASIC ISSUES

Transfers and Postings

There are some basic issues and difficulties which affect the maintenance of Law and Order and which any policy maker should address himself to in respect of the police. The principal one among them is the tendency on the part of political executive to interfere with the delegated powers of the Head of the Department and his subordinates. In establishment

matters this takes the form of unbridled transfers and postings of subordinate officers. This is a typical instance of back seat driving, the exercise of power without responsibility. The havoc done to efficient administration by such interference is crystal clear. The pressure groups which clamour for transfers have no responsibility to ensure efficiency in administration. They are concerned only with their narrow parochial interests and the readiness or otherwise of any subordinate officer to play the part of their lackey. Honest and sincere officials whose ranks under such conditions become thinner and thinner have to suffer in silence by being thrown into confusion. There are hundreds of offences in which a particular Station House Officer registers a case, another investigates, a third charge sheets it and a fourth has to look after the trial progress. These are not the conditions under which the maintenance of Law and Order can be satisfactory.

Recruitment

Another problem is in respect of recruitment to the police. In the context of experience during the past few years, it is desirable to hand over all subordinate police recruitment to the public service commissions of the States.

Corruption

Corruption is the bane of the modern world. Agencies in-charge of the enforcement of Law and Order are no exception. Forms of corruption are almost infinite in areas in which the enforcement agencies have great discretion, like prohibition, gambling, traffic enforcement, investigations, etc. The work of anti-corruption agencies and vigilance departments is handicapped by the need to adhere to cumbersome procedure laid down to prove guilt and mete out punishments. Collusion between the bribe-giver and the bribe-taker makes evidence tardy. The Santhanam Committee strongly recommended simplifying departmental procedures against corrupt officers. But nothing has moved along those lines for more than 15 years. It is high time that the recommendations of that Committee were translated into action.

Training

The significance of inservice training as part of management in government is now universally accepted. It is recognized as part of the warp and woof of administrative dynamics. In a welfare state in which the well-known phenomena of rising expectations and mounting frustrations exist, the general tendency is to place more and more responsibility on the administration at various levels—district, state and centre. These remarks apply with redoubled force to the functioning of the criminal justice system at cutting edge levels. Induction training should be able to take care of the performance of any government servant during the first five to ten years of service. After 10 years there is the need in the majority of government officials to sit back for a while and assess one's own performance in the pursuit of societal goals. Inservice training is meant to provide that opportunity and to update their knowledge. It has to be the part of the career planning of all judges, magistrates, police officers. Yet it has gone by default as far as the vast majority of these functionaries are concerned.

Areas of Research

A complete reorientation as far as governmental functioning is concerned is necessary. Research and advisory councils at State and all-India levels are an essential adjunct of this type of modernization. Some of the areas of research which call for attention are :

- causation and seasonality of different types of crime including communal offences;
- white collar offences;
- socio-economic offences;
- causes of delay in investigation and trial and means of overcoming them;
- mode of coordination between the various agencies of the criminal justice system;
- utilization of the latest scientific techniques like neutron activation analysis;
- causes and ways of overcoming resistance to modernization;
- plugging loop-holes in process service;

impact of stress, ill treatment and poor domestic conditions
 of rank and file policemen on their behaviour towards the
 public;
 effect of unionisation on the work performance syndrome;
 and
 tolerance level of work load on individual policemen and
 so on.

One of the main handicaps in discussing Law and Order
 and dealing with the criminality studies is the absence of
 reliable statistics. In the western world crime victimi-
 zation surveys effectively supplement crime figures produced
 by the police. In our country, we have not made much of
 progress in such surveys. Two surveys conducted by the
 Institute of Criminology and Forensic Science are pilot pro-
 jects which reveal the tip of the iceberg and expose the need
 for many more such surveys, if one has to have reliable data
 about the quantum of crime incidence. We have not been
 able to keep our crime rate down. It is not as if there is no
 mechanism in place to deal with crime in India. It is merely
 that the existing ones are insufficient and anachronistic, unco-
 operative, mutually recriminatory, incapable of enlisting the
 citizens' cooperation and enthusiasm and managing somehow
 add to the sum total of human misery.

HIATUS BETWEEN FUNCTIONARIES OF THE CRIMINAL JUSTICE

Weakness of Prosecution

It is pertinent to ask why the system is creaking. It may
 be true that most murders are reported, but large numbers of
 other offences are not reported. Even when a suspect is
 apprehended the chances of his getting punished are minimal.
 In 1977, 17.3 lakh of persons are known to have been arrested.
 Of these 4.4 lakhs were convicted and sentenced. That means
 about 75 per cent of the total number of arrested persons go
 scot free and are let loose on society which has to suffer from
 their depredation. In the alternative, it can be argued that
 large numbers of persons are unnecessarily arrested and the
 sum total of rancour against law enforcement machinery and
 the criminal justice system is the worse to that extent. It is

difficult to pinpoint which component of the criminal justice system is responsible for the existing chaotic state of affairs. Judges and magistrates blame the police. The police blame the prosecutors and the judiciary and the magistracy. All of them together blame the correctional services. The correctional services hardly have any provision for correcting. Nearly 2 lakh cases were charge sheeted by the police in 1977. Of these a majority have been acquitted by courts of law. There is only one study ever conducted on the causes of acquittal. A research project undertaken in Kerala in 1974 indicates that there can be one or several of 72 different causes of acquittal. Even the functionaries of the criminal justice system will find this surprising. Logic and common sense demand that the police and the prosecutors who are concerned to work together should be able to establish a rapport in respect of charge sheets, production of witnesses and so on. But the fact of the matter is that ever since the prosecution became independent, the quality of prosecution work has been steadily deteriorating. The standard of prosecution that obtains today in second class and first class magistrates courts and even in the courts of session at district headquarters is far below what used to obtain till the early fifties of the present century. The reasons are not far to seek. With the emoluments now offered lawyers have no incentive to serve as Assistant Public Prosecutors. Besides, their selection in many cases is based on considerations other than professional merit. No empirical study of the damage done in this regard has been undertaken. It deserves to be.

Forensic Science and Investigator

Another factor is the ignorance of the latest methods in forensic science as far as prosecutors, investigators, magistrates and judges are concerned. No law college or academy has paid sufficient attention to the teaching of forensic chemistry, documentation, photography and biology in its curricula. Photogrammetry which has made giant strides in Europe and America is hardly known in India. A vast majority of the investigating officers fail to collect non-traditional material for analysis in forensic science laboratories. Most investigators aver that direct oral incidenc eferred

by courts as against scientific evidence which *ipso facto* is indirect is a disincentive in the efforts of investigating officers in enlisting science in the tackling of crime.

In order to encourage investigating officers to look for and rely on scientific clue materials, a system of incentive rewards will be appropriate, at least as a transitory measure. It could be introduced at district, state and national levels and a few of the best Investigating Officers could be rewarded on the basis of their performance in relation to the use of non-traditional scientific methods irrespective of the outcome of such cases in courts of law.

We cannot afford to wait for geological time for modernizing our medico-legal machinery. Much of the current investment on the collection of scientific evidence is going to waste in the absence of its proper utilisation, presentation and appreciation. For this purpose, the police, the magistracy, judiciary and prosecuting agencies should have their training updated. This can be achieved by streamlining curricula in law colleges and academies and expanding them to include basic principles in forensic science, systems analysis, operations research, computer programming, audio-visual aid, principles of electronics and photography. In developed countries, there are medico-legal societies which enable investigators, prosecutors, magistrates, judges and forensic scientists to come into informal contact with one another and get exposed to the modern trends in medico-legal thinking. Why should not we in India also have such methods of exposure?

OVER JUDICIALISATION

Several lakhs of cases are said to be pending trial. In one State, it is reported that the police have not been charge sheeting large number of cases for 5 to 6 years. Even judges admit that the administration of Law and Order is ante diluvian and has not shut itself off from its colonial background. An aspect of criminal legal proceedings vitiated by the over judicialisation of the judicial process is highlighted by Shri Justice V.R. Krishna Iyer, former Judge of the Supreme Court:

Judges are victims of probability-mania and show off

their police-phobia by a morbid scepticism of police statements. This has a chain reaction. For, the investigator meets the improbability menace by baking tasty bread. The court wants natural witnesses; they are ready-made. Judges want corroboration; they are custom-made. The exasperated policemen, convinced of the culpability, shape the evidence to pre-empt the failure of truth. The over-judicialization of the court process compels fabrication and makes the judges vicariously guilty of the false evidence made to judicial measure by the policeman who wants that truth be out and the culprit convicted.

Case Withdrawal

One of the worst abused provisions in our criminal law which have a major bearing on law and order is the termination of a criminal trial by the exercise of the power of executive to withdraw a case. In the context of agitations which are the order of the day, this power of withdrawal of cases has worked havoc on the enforcement of law and order.

Another aspect of agitational politics peculiar to our country is the wanton destruction of public property. Why should not the restitution of such property wantonly destroyed by vandals be made the responsibility of the organizational leaders of such agitations? It is a relevant matter for policy planners to ponder.

Delay

Another problem which should receive the attention of perceptive minds is the delay in the criminal justice system. Delay has various aspects—on the part of the police and other agencies connected with the investigation and finally in the courts. It is not possible to go through these three stages in detail in this paper. Suffice it to say that there is a strong case for entrusting of investigations to specially formed crime units of the police in every district and state. An alarming feature in this respect is steady deterioration in the quality of medico-legal advice made available to the courts of law. It is felt that it is absolutely necessary to bring about legislation amending the code of criminal procedure and empower the magistrates and judges to take judicial cognizance

of delay on the part of medical doctors in furnishing wound certificates and post-mortem certificates and make punishments for the defaulters exemplary and deterrent.

Then there is the problem of adjournments. Most courts of law are ready to grant adjournments much too easily. A recent study conducted by a sister institution in Delhi indicates that in the course of one year 1404 adjournments were granted in 95 cases.

The problem of criminal justice delay has been receiving attention in other countries also. The United States has sought to overcome the problem by the enactment of a Speedy Trials Act in 1974 and an amendment to that Act in 1979. It is not practicable to incorporate that type of legislation *in toto* in our own criminal law. But it is certainly desirable to legislate on the subject so that it becomes less difficult to reduce the incidence of crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial. Cutting down the number of appeals to one, laying down legal norms for cross-examination, strengthening the hands of the judiciary and the magistracy in such a way that they do not have to be squeamish about pulling up recalcitrant lawyers, making it impossible to suborn witnesses, giving legal backing to the suggestions made here—these are matters for fresh legislation to handle.

As early as 1902 the police commission stated that people are not generally active on the side of law and order unless they are sufferers from the offence; their attitude at best is one of silent neutrality. This is not something special to India. The reasons for this are more or less the same in every country.

Law is not an end in itself. It is a means to an end. Justice is the end and in a social welfare state social justice is a primary end. If the law is faulty, there can be no order. Article 38 of the Constitution of India enunciates that social, economic and political justice should be available to the citizen. It is under this fundamental framework that the police and the Criminal Justice System have to function together. The police and the courts of law cannot have a symbiotic existence unless supremacy of the Constitution is

accepted. Authentic Indian law as laid down in the Indian Evidence Act owes its shape to the brain of Sir James Fitz Stephen in the last century. It is untrue to our Constitution. So an investigating agency like the police finds itself between the devil and the deep sea. Our law, as it stands, cannot exist in symbiotic union with the police. If you go on suspecting the latter, their functioning becomes naturally suspicion-ridden. It follows that more respect than what obtains at present should be made available for the police under the law. In the absence of it, what may be seen is that the Criminal Justice System itself has been making "steady headway backwards".* In order to make a break in this desultory police-judiciary relationship, it is necessary to start with scrapping Sections 24,25,26 and 27 of the Indian Evidence Act.

SOCIO-ECONOMIC CRIME

A special feature of socio-economic crime is that it does not involve any personalised love or hate from any emotional hangover as between the victim and the offender. The victim is usually impersonal in the sense that it is the society as a whole or a segment of it which it is difficult to pin-point. The principal *modus operandi* is fraud and not force. The action is usually pre-planned and wilful committed by segments of the society which are by no means poor. They are more often than not rich and influential. It seems to be a *sine qua non* of an acquisitive society. Hoarding, profiteering and black-marketing of essential commodities, food adulteration, trade in spurious and harmful drugs, under-invoicing, over-invoicing, cornering and restrictive trade practices, corruption and smuggling—these are some of the offences. It is true that we have a Monopolistic and Restrictive Trade Practice Commission. It is said to have all-India jurisdiction but its writ does not run over Jammu and Kashmir. This anomaly should be rectified quickly. Besides, it has no enforcement machinery which can do field enquiry, organize monitoring and surveillance over important areas in which the commission passes orders, nor does it have the means to ensure compliance.

*Shri Justice V.R. Krishna Iyer,

There is extant legislation to counter several of these malpractices but owing to weak enforcement the citizen does not feel the advantage of their protection.

A study undertaken by a group under the chairmanship of Shri L.K. Jha some time ago came to the conclusion that the activities of Transnational Corporations in India deserve continuing scrutiny. There is nothing to indicate that such a scrutiny is conducted.

Over a million people are estimated to live directly or indirectly on smuggling in India. There are about a 100 gangs of large scale smugglers who have international links with the Mafia and West Asia syndicates. The main contraband goods smuggled into the country are diamonds, gold, electronic gadgets, watches, cameras, film rolls, textiles and cosmetics and mechanical and electrical toys. Bombay, Calcutta, Madras, Delhi, Trivandrum and towns along with Indo-Nepal border, the India-Pakistan border, the Indo-Bangla Desh borders and villages on the Konkan-Malabar Coast and South East Tamil Nadu are the entry points. In payment to the goods smuggled into India it is known that dollars, pound, sterling, silver, hashish, charas, cardamom, antiques, stolen statues of brass, bronze and stone, wood carvings, ancient miniature paintings and carpets go out of the country. India has become one of the biggest centres for refining opium and poppy seeds into cocaine and its surreptitious export. Smuggling corrodes the very moral fibre of our society. Seizures from time to time are no deterrent since they hardly form about 10 per cent of the total quantum of contraband that is successfully smuggled into India.

The importance of suppressing socio-economic crimes in any modern society is obvious. These cases do not fit neatly in the accepted categories of conventional crime but as far as the society is concerned, they represent harm of much greater magnitude than the traditional crime. Preventive strategies should include measures to prevent international criminals from escaping the clutches of the law by jumping bail and escaping into countries with which we have no treaties of extradition, modification and amendment of the existing provisions of law like the Foreign Exchange Control Act, Essential Commodities Act, Gold Control Act, Customs Act,

Income-tax Act, the Prevention of Food Adulteration Act and so on. Besides, orientation of strong public opinion against such criminals and their social boycott is also necessary. Preventive detention in selected cases has a notable role to play in these prevention strategies.

CRIME PREVENTION

Crime and punishment are not merely litigative exercises. Criminals are amongst us; they are part of us and proclivity to criminality may exist in many of us, sometimes even without our knowing it. A viable law and order policy should devise measures to reduce crimes against persons, crimes against property, crimes against groups, crimes against society, victimless crimes and crimes against weaker segments of society. It is beyond the scope of this paper to deal with all these comprehensively. So one has necessarily got to be selective. The existing provisions of law and agencies incharge of their enforcement have failed to stem the tide of rising criminality. First of all, a new orientation in this field has to start with community involvement in crime prevention whether it be in respect of communal riots, economic offences, murder, offences against women or simple thefts. It just means that instead of depending on the criminal justice system and its functionaries, the entire society at large should get involved in crime prevention. It may appear a novel concept. But it is not as new as all that. The village vigilance committees of the former composite state of Madras used to do yeoman service in this respect. The experiment deserves to be reactivated and made to work in all branches of the country. The experience in Coimbatore, in Tamil Nadu and Aurangabad in Maharashtra where the police officers have taken the initiative to enroll popular and magisterial cooperation is heart-warming.

Programmes to implement crime prevention should include rousing citizens' security consciousness, citizen patrolling, citizen control, citizen crime reporting programmes and victim-witness assistance.

It is possible to reduce crime quickly by extreme measures but it is necessary for us to address ourselves to the questions:

how much of freedom we are prepared to curb as a necessary price to be paid for crime control and prevention and how much crime we are prepared to tolerate for what measure of liberty and freedom.

Community crime prevention in order to be successful has to be dovetailed into a general scheme of community policing that includes three vital interdependent roles—social service, maintenance of order and the enforcement of law.

RECIDIVISM AND REHABILITATION

No discussion on law and order is complete without a reference to the role of recidivists vis-a-vis Corrections and Rehabilitation. That calls for a hard look at the present system in the country. An integrated policy necessarily has to take into consideration the various ramifications of sentencing, imprisonment, rectification, rehabilitation and deterrence as far as the criminal elements in society are concerned. Criminals are of various kinds and it is counter-productive from the point of view of society to put all of them in one compartment. First offenders and recidivist should be poles apart. An offender who violates the prohibition law should not be bracketed with the person who murders for gain in a calculated manner or another who adulterates articles of food with a view to profit himself. Likewise a woman who is driven by societal obscurantism and poverty to kill her new born baby born out of wedlock cannot be put in the same category as a motivated naxalite who axes to pieces a person against whom he has an ideological grouse. It is in this context that classification of prisoners assumes special importance.

Sentencing options have received a lot of attention in countries which can afford the luxury of finding out whether there is sufficient space in jails before sentencing criminals to jail terms. In India, we have no such clearcut options. Decriminalization of various offences which are not of serious nature is perhaps one option. Restitution is another.

Officials in charge of penitentiaries in India throw convicts, recidivists, under trials, detenus and juveniles all under the same roof because of reasons of insufficient space. As far

as law and order is concerned, there is nothing worse than compelling juveniles to share accommodation with confirmed recidivists. There should be separate institution for young offenders, adult offenders, habitual criminals and dangerous offenders and women offenders, old, sick and infirm offenders and special institutions for those suffering from communicable diseases. Classification of prisoners and their educational programmes have to receive high priority. Even in developed countries resource allocation for social defence is done by fits and starts. In our country, the financial constraints are more. The methods discussed above should receive priority in plan allocations.

ROLE OF CRIMINAL JUSTICE RESEARCH

Any forward looking dynamic policy to deal with law and order should have criminological research as one of its planks. As far as India is concerned, such research is the cinderella of the administration. Employment agencies, like the UPSC, the State Public Service Commissions, the High Courts and Heads of Police organizations should treat a qualification in criminology as a plus point when they judge candidates for recruitment to the higher, middle and lower ranks of the criminal justice system. Interaction between academicians and researchers on the one hand and policy makers and field executives on the other is woefully inadequate in our country, so much so that in place of nexus what we see is a hiatus between criminological research and appreciation of field problems. Advanced, prosperous countries have the advantage of universities, voluntary organizations and private agencies supplementing the efforts of governmental agencies in undertaking research and producing research material. There is a feeling in those countries that large numbers of research reports do not have much relevance to policy formulation. The luxury of funding research which may not have an enforcement bias is unjustifiable in the context of our exiguous finances in India. Institutes like the IIPA fill in the gap and make sure that as many studies as possible and necessary will be undertaken so that governments at the Centre and in the States may utilise the results of those studies optimally. □