

CRIMINAL JUSTICE SYSTEM

- Justice S.B. Sinha*

India has inherited and borrowed from colonial powers its system of criminal law and procedures, as well as rules of evidence. It is partly because of this that Courts, police, and correctional systems fail to fill the societal needs of today. It is unfortunate that our national programs seldom incorporate the changing needs of society in the criminal justice system or formulate them into a national plan.

We will examine how far the system of criminal justice has failed to achieve its two primary goals; the control of crime and the protection of individual rights. Crime control implies an orderly and efficient method for arresting, prosecuting, convicting and punishing the guilty and for deterring crime by others while the protection of individual rights is necessary to safeguard the accused against the arbitrary exercise of power by the State.

Prevention and detection of crime is the primary objective of the police. Increasing criticism that the police has failed to discharge the traditional or modern duties of being accountable to people is not without truth. The police suffers from declining credibility and is dubbed as the protector of the rich and those who can afford. Has the police acquitted itself on expected lines? The rising crime rate and the high rate of recidivism clearly indicates that the police system is not an effective. Today, cases of murder, rape, theft, assault, robbery disorderly conduct, and bride burning occur much more than in the past. The open violation of laws, allegations of bribery of law enforcing agencies, police, presence of professional criminals, and intimidation of victims and witnesses are experienced in day to day life. Those who are not directly victimized often live in a constant state of fear and victimization. Violent crimes during 1986-96 has increased by 33.7%, homicides by 38.1%, rape by 86.7%. In 1998 alone, there were more than 40,000 reported murder cases in a total of four lakh crimes registered in India. This certainly does not augur well for the efficiency

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of the police. In actual practice, the problem of crime is much more serious than the official figures show, as it has been estimated that from one third to one half of all serious crimes are not reported due to a variety of reasons, including intimidation and harassment of the victims.

At least three National Police Commissions have gone into the problem after the inauguration of Constitution of India. The police are said to be insensitive to constitutional violations and the importance assigned to the rights of an individual citizen by the Constitution of India. The problems faced by the police with regard to human resources, scientific methods of investigation, political corruption, political control are no doubt well recognized problems. To take stock of these is as important to the criminal justice delivery system as Court delays.

Although due process (the rule that persons may not be deprived of life, liberty or property except by the established process of law) is an integral part of the Indian criminal Justice system, the system itself discriminates according to the social status of the accused, the ability to avoid arrest and obtain bail, and to hire a good defence lawyer which is largely a consequence of one's income and social status. The police, prosecutors and courts prosecute principally lower class criminals, organized crimes, white-collar crimes, and consumer frauds. The poor, the powerless, and the undereducated are much more likely to be caught, prosecuted, punished or even held in jail for months before they are tried, and sometimes get harsher punishment if found guilty than their counterparts committing the same offence.

How do we judge our system? Reforms in the criminal justice system offer the possibility of greater justice to all. Some years back in Japan the conviction rate fell from nearly 99% to roughly 96%. A commission of inquiry was set up to find out whether the system is responsible for prosecuting innocent persons. In India, the Penal Code dates back from 1860 and the Police Act from 1861, and revisions have been few, whereas our values, norms, social orders and behaviour patterns have changed rapidly in the past few decades, which require a complete overhauling of our traditional criminal justice system. Today,

