

## Indian Criminal Justice System and Expansion of Organised Crimes: A Critical Analysis

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### Abstract

Crime is the violation of the rules and regulations enforced by the society and for which law prescribes definite punishment. Crime has a several forms which is based on for power, ego and mainly for wealth. Crime is never going to stop, its nature, shape even its form changes. The aim of our criminal justice system is to protect the rights of the individuals against these criminals. The fair and effective administration of criminal justice system is the corner stone of a free society and essential component in creating public confidence in the institutions of the government. The criminal justice system is, at present, a complex of different agencies working at cross-purposes. The delivery of justice is delayed and at times, leads to miscarriage of the legal process. The criminal laws and procedures in India have not changed with changing times, to suit the needs and aspirations of a people. The Indian Penal Code, the Evidence Act, and the Police Act are glaring examples. Moreover, laws and procedures are such that the rich and the powerful, which commit heinous organised crimes and other crimes are able to evade the clutches of law, delay legal proceedings and finally escape conviction or get away with a nominal conviction. This article analyzes the expansion of Organised crime and demerits of Indian criminal justice system.

**Key words:** Organised Crime, Criminal, India, Administration of Justice, Police.

### 1.1 Introduction

The origin and growth of administration of justice is identical with the origin and growth of man. The social nature of man demands that he must live in society. While living so, man must have experienced a conflict of interests and that created the necessity for providing the administration of justice. Without it, injustice is unchecked and the life of the people is unsocial, poor, horrible and short.<sup>1</sup>

In primitive society, the law of private vengeance and violent self-help prevailed and the State merely regulated and prescribed rules for regulation. The State enforced the concept of: -

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<sup>1</sup>Shiv Kumar Dogra, *Criminal Justice Administration in India*, 4 (2009).

- “a tooth for a tooth”
- “an eye for eye”
- “a life for a life”

With the growth of the power of the State, the State began to act as a judge to assess liability and impose penalty. It was no longer a regulator of private vengeance. It substituted the public enquiry and punishment for private vengeance. The civil law and administration of civil justice helped the wronged and became a substitute for the violent self-help of the primitive days. The modern administration of justice is a natural corollary to the growth in power of political State.

## **1.2 Justice Delivery Administration**

Basically, the criminal justice system is comprised of three institutions i.e. the Police, Courts and Correctional machinery. Each contains varying divisions. The police are responsible for controlling crime and maintain law and order. The courts are prosecuting agency in criminal justice administration. Finally, the aim of the correction is institutionalizing the activities of the offender and rehabilitating him to full and useful participation in the society.

### **Police**

The role of police in the administration of criminal justice is clearly defined. The legislator enacts the law; the police enforce them and lawyers, magistrate and judges conduct the trial with the active participation of the public. The word police are derived from the Greek word ‘*politeia*’ or its Latin equivalent ‘*politia*’ that stands for State or administration.

But the word police today are generally used to indicate the body of civil servants whose duties are preservation of order, prevention and detention of crime and enforcement of laws. Ernest Fround defined police power as “*the power of promoting public welfare by restraining and regulating the use of property and liberty.*” In a broad sense, the term police connote the maintenance of public order and the protection of persons and property from the hazards of public accidents and the commission of unlawful acts.<sup>2</sup>

### **Judiciary**

The criminal court is the core of the criminal justice system. It has the duty to supervise the work of the police, prosecutor, and defense counsel, to preserve the ‘due process of law’

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<sup>2</sup>*Ibid.*

throughout the arrest, to release procedures in the criminal justice and to translate into living law the sanctions, which may be imposed upon offenders after fair trial.

In fact, the criminal has a dual role. It is both participant in the criminal justice process and the supervisor of its practices. As a participant, the court and its officers determine guilty or innocence and impose sanctions. In many jurisdictions the court also serves as a correctional agency by administering the probation system. The organization of judiciary equally affects sentencing. The law itself lays down maximum penalties, both in relation to offences and the powers of the particular courts. There are the limits within which the courts must work and they may at times fetter the court and prevent it in dealing with an offender as it wishes.<sup>3</sup>

### **Correctional Institutions**

Correction is the third and final phase of the criminal justice process. The basic purpose of the criminal justice system is to eliminate, or at least to reduce, crime and delinquency. It is to the benefit of the society as a whole to remove those conditions that spawn crime. The modern system of probation, parole and juvenile justice reformatories and open institutions have provided potentially helpful in elimination of isolationism from which preventive and corrections scheme have suffered for long. The workings of prison institutions have been remodeled to suit the modern corrective methods of treatment of offenders. The correctional process is charged with carrying out two fundamental responsibilities of government i.e. the protection of society and the rehabilitation of the convicted offenders. The correctional function is apportioned primarily among prison, probation, parole and juvenile justice system.

### **1.3 Nature and Definitions of Organised Crimes**

Organised crime has aggravated the nature of crimes as they are operated strategically and in an organized, well-thought manner. Organised crime is not a localized phenomena rather it is pervaded all over the globe. Information technology and globalization have given fillip to various existing crimes and have evolved new transnational ones like Cyber Crimes, Money laundering etc. The concept of organised crime has been defined by different authorities and countries, which reflect different interpretations of the attributes of organized crime. These are:

**United Nation's Convention** defines<sup>4</sup> "Organized criminal group shall mean a structural group of three or more persons existing for a period of time and acting in concert with the aim of

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<sup>3</sup> Vikas H. Gandhi, *Judicial Approach in Criminal Justice System: An Experience of India*, 1-2 (2010)

<sup>4</sup> Available at [www.unodc.org/en/organised\\_crime](http://www.unodc.org/en/organised_crime).

committing one or more serious crimes or offences...in order to obtain directly or indirectly, a financial or other material benefit”.

**Black Law Dictionary**<sup>5</sup> also defines organised crime is a widespread criminal activity that is controlled through a central syndicate. Persons involved in the criminal activities, a syndicate of criminals, rely on their unlawful activities for income. It usually evolves and involves a system or specially defined relationship with mutual obligations and privileges.

In India, the Maharashtra Government under the **Maharashtra Control of Organised Crime Act, 1999**<sup>6</sup> defined organised crimes as, “any continuing unlawful activity by an individuals, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency”.

Therefore, as we see, Organised Crime is an act, which is committed by two or more criminals as a joint venture in a systematically organised manner. It is an illegal act, which the members of an unlawful association commit with mutual co-operation and adventure.<sup>7</sup> The evolution and the forms of organised crime differ from one country to another, which may be the result of different social, economic, historical and legal factors.

#### 1.4 Organised Crimes Prevalent in India

There, in India, exists different kinds of criminal organizations carried their illegal activities. But organised crime has three major types: gang criminality, racketeering, and syndicated crime. The first has simple characteristics while the last one has a fully developed form because of which it is considered to be most dangerous to society. These can be categorized into the following heads:

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**Organised Predatory Crime/ gang criminality:** Predatory crimes are those crimes that are committed by two or more persons co-operatively for their own gain including the monetary one without any benefit to others. The robbery, theft, burglary, counterfeiting etc. are such offences. The criminals not only harm the members of the society by their acts but they also attempt to corrupt the administrative and judicial system.<sup>8</sup> Predatory crimes are committed with the desire to gain money, power or heroism.

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<sup>5</sup> Quoted in Tikaram Shrawan Bhal, *Organised Crime and its Impact on National Security*, 26(2009).

<sup>6</sup> Maharashtra Control of organized Crime Act, 1999.

<sup>7</sup> Dr. N.V. Parajape, *Criminology & Penology with Victimology*, 111 (2012).

<sup>8</sup> S.S. Srivastava, *Criminology and Criminal Administration*, 32(2002).

**Crime Syndicate:** The term 'crime syndicate' refers to a gang of criminals engaged in the business of providing some forbidden or illegal service to the customers who are desirous of having it and are willing to pay for that service. Crime syndicates operate because of the availability of market for certain illegal prohibited services. Thus gambling, bootlegging, prostitution, supply of narcotic drugs etc. are mostly carried on by the syndicate of criminals.

**Criminal Racket:** Extorting money from legitimate or illegitimate business amount is known as racketeering. This is achieved by intimidation or actual force. Those in illegal business like prostitution, gambling and drug trafficking are especially vulnerable to racketeering since they cannot approach the police and other authorities for protection.<sup>9</sup>

### **1.5 Criminal Justice System and Organised Crimes**

A criminal justice system is the system by which society first determines what will constitute a crime and then identifies the accused, tries him, and if found guilty convicts him and punishes him for violating the criminal law. There are many factors responsible for the increasing scale of organised crime in recent years. These are discussed as follows: -

- **Victim: A Neglected Party**

In our country to ensure that the innocents are not victimized by the criminal justice delivery system, the accused has been granted certain rights and privileges. The constitution as well as various statutory provisions safeguards these rights of the accused or the convict.

The victims who put the law in motion are usually the forgotten people in the criminal justice delivery system. His participation remains at the periphery of the criminal justice system as the initiator of the prosecution and as witnesses of the prosecution when desired. He is neither participant in the proceeding launched against the offender nor a guiding element in any stage of the prosecution.<sup>10</sup> There has been gross neglect of the victim's need and interest. In addition he is made to suffer not only in the hand of accused and their associates but also at the hand of prosecution agencies.

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<sup>9</sup> Ahmad Siddique, *Criminology & Penology*, 472, Ed. 6<sup>th</sup> (2011).

<sup>10</sup> V.N. Rajan, *Victimology in India*, 63 (1995).

- **Imbalanced Criminal Justice System**

The fundamentals of our criminal justice administration have heavily loaded in favor of the accused. There is presumption of innocence even when the accused appears to be clearly guilty. The investigation has to discharge the burden of proof the guilt of the accused beyond reasonable doubt. The accused has the remedy of delaying a trial. A delayed trial ensures evaporation of evidence. With its inadequate evidence, the prosecution stands handicapped and accused runs away scot-free with the benefit of doubt. The high acquittal rate leaves doubt in one's mind that crime today is high-profit, low-risk business.<sup>11</sup>

The criminal justice system at present depends on two rules of practice. The police arrests and charge sheets a person on suspicion. The judge discharges the accused on the benefit of doubt. The offenders are not afraid of punishment, as they know there is no certainty of punishment inflicted by any court.

- **Defective Police Administration System**

Police, as a functionary of the criminal justice system, has to play a crucial role in maintenance of peace and enforcement of law within its territorial jurisdiction. Its primary duty is to safeguard the lives and property of the people and protect them against violence, intimidation, oppression and disorder. But in this fast changing turbulent environment, the modus operandi of organized criminals and gangsters has made the role and responsibility of the police even more than mere troubleshooters.<sup>12</sup>

- **Malicious Nexus Between Politicians, Police And Criminals**

It is often observed that there exists a 'nexus' between the politicians, police and the criminals. As a result police seldom take any effective crime control measures to curb the activities of criminals.

#### Criminals – Police - Politicians

Throughout the country a pernicious police-politicians nexus exists. Mostly the police in their professional capacity are not a political and impartial in the application of laws. In most of the

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<sup>11</sup> ArunJaitley, "House for Jessica, Priyadarshini," 3, *Indian Express*, July 5, 2006.

<sup>12</sup> AparnaSrivastava, *Role of Police in a Changing Society*, 16 (1999).

big cities like Mumbai, Delhi, Kolkata, Bangalore, etc., criminal activities are on the increase. Organized crimes in the form of periodic extortion, kidnapping, supari-killings etc. have become the order of the day. Well-organized criminal gangs are on the prowl. It is widely believed that most of the gang leaders have close links with high-level officers. There are several instances of these dreaded criminals continuing their 'activities' even from their prison cells.<sup>13</sup>

- **Corruption In Indian Police**

The apathy of the criminal judicial system in the country is such that it would never bother to find out the reasons why the investigation of a criminal case was inordinately delayed or derailed because delay is the most common detriment of the prosecution case. Accordingly, there is often a practice.<sup>14</sup> There can be no tackling of grass roots level corruption in police as matters stand now. Individual police officers or staff and politicians and bureaucrats who are honest and of whom there are many, cannot be effective in improving the system as they get easily marginalized since the system as a whole is corrupt.<sup>15</sup>

## 1.6 Conclusion

Therefore, a situation arises that the entire Indian justice system is now under severe threat. Indian Judicial system has collapsed totally. Be it the justice delivery system existent in criminal side or civil side, there is no hope for justice for common man. Entire fabric has been exploited and doomed. The condition of Indian judicial system worsened so much that Attorney General of India, Mr. Soli Sorabjee remarked, "Criminal Justice system in India is on the verge of collapse owing to inordinate delay in getting judicial verdict and many a potential litigant seem to take recourse to a parallel mafia dominated system of 'justice' that has sprung up in metros like Mumbai, Delhi etc." <sup>16</sup>

The alarmingly rising crime rate coupled with the higher rates of acquittal clearly indicates that the system is not as effective as it is required to be. The recent huge increase in the organised

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<sup>13</sup>Joginder Singh, *Inside Indian Police*, 43, (1999).

<sup>14</sup>Subash C. Raina, "Indian Police and Public apathy; Causes and remedies" 15-22, *Social Defense*, Vol. XXIV, No-90 Ministry of Welfare, Govt. in India, (1987).

<sup>15</sup>*Ibid.*

<sup>16</sup>Available at <http://www.legalservicesindia.com/article/article/judicial-process-in-india-464-1.html>.

crime and white collar crimes particularly the discovery of hundreds of scams involving billions of rupees in the past years or so, have shaken the economy of the country. It is clearly show and prove the miserable increase in the crime rate. There is no denial of fact that the criminal law has ceased to have a deterrent effect for criminals on account of long delays in disposal of cases in which the accused are arrested on criminal charges.