

“New Crimes – A Big Challenge to Judiciary”

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INTRODUCTION:

“ It is the power of punishment alone, when exercised impartially in proportion to the guilt, and irrespective of whether the person punished is King’s son or an enemy, that protects this world and the next” ---Kautilya , Arthashastra Part VIII.(3.1.42)

It is a known fact that world history is cyclic in nature. An era of transformation witnesses from a society with high moral and ethical values to times of their unbelievable fall. The size of the crime wave, terrorism which is so huge as to baffle criminologists, is symptomatic of our ethical degradation. A commercial recession can be quickly transformed into a buoyant economy; but a moral recession cannot be shaken off for years. As said by the great NaniPhalkiwala¹,” Evil is more infectious than AIDS and, if unchecked, progresses with an inevitable momentum of its own. It is but one step from forsaking intellectual integrity to forsaking financial integrity.” This he wrote when he was mentioning about corruption among judges of Higher Judiciary. The crime by public officials grew to an alarming extent which is in turn the triggering factor for increasing in general crime rate.

HISTORICAL OVERVIEW – CONCEPT OF CRIME:

The concept of “Crime “is as old as the concept of civilization. In all societies and at all times the well practiced and naturally inherent method of living is by way of exploitation of other beings for self- survival. As the civilization grew, so the importance of rights and duties and it had paved the way for the orderly living, violation such rights and duties causing injuries to persons , property or reputation was called as “crime” and the violators were called as,” criminals” on punishment. During the periods of civilized living a crime was considered to be a “wrong”, the satisfaction of which was followed by payment of compensation. In some societies, such a wrong was treated by inflicting some or other punishment on the wrongdoer by

¹NaniPhalkiwala: We the People: Fourteenth Reprint 1999,Page.217.

the person in authority in public interest. The objective was to ensure that no other person or persons should not commit the wrongs at any time, in future.

A majority of the earlier thinkers of this subject considered "Crime" as an "anti-social", immoral or "sinful" behavior of crime doers. According to Tappan, crime means "Intentional act or omission in violation of criminal law committed without any defence or justification and penalized by the law as felony or misdemeanor".² From the point of view of the religion, a crime can be said to be a "sin". In the context of environment, crime is said to be "pollution". In the context of physiology crime is that which causes "bodily injury" or "killing a person". A psychologist may opine a crime to be a "means leading to depriving mental peace and happiness". Biological meaning of crime may be viewed as a phenomenon of, "disturbing the normal functioning of the various human organs and glands" on whom it is committed.

Crime and Offence: Although they are considered as synonyms in fact they are not. The term Crime denotes in the context where an offence is an act or omission which is punishable in a given penal law and is subject to proof. In short, the crime is an offence the proof has been established by evidence and whereas an offence is subject to fulfillment of the legal conditions and criteria specified by law. Therefore offences are limited but crimes are innumerable.

Classification of Crimes:

A. Crimes can be classified as

- a). General, as are committed by wrong doers; and
- b). Special, as one committed by wrong doers in specified area

B. Crimes based on territorial jurisdiction are classified as

- a. National- that are specified by national laws, as in India , they are specified under Indian Penal Code, Criminal Procedure Code, Information Technology Act,2000 and Environment (Protection) Act, 1986, Prevention of Corruption Act,1988 etc.,
- b. International Crimes are those which are punishable in all civilized countries irrespective of the territory where they are committed. As ascertained from various international instruments, the international crimes over inter alia, piracy on high seas, terrorism, smuggling, drug abuse, pollution etc.,

² www.corwin.com/upm-data/25522-chap02.pdf

- c. National and International: This category of crimes covers inter alia those which are covered by the above categories and which can be tried by any national under their national laws framed uniformly by individual nations based on international norms laid down in various Conventions, Treaties, Declarations, etc. of the United Nations.

C. Classification based on the Nature of Offences:

- a. Organised Crimes,
- b. White Collar Crimes,
- c. Cyber Crimes,
- d. Sexual Offences, Crimes,
- e. Terrorism etc.,

a) **ORGANISED CRIME :**

Any act committed by two or more persons jointly in a systematic pre-planned and organized manner. According to Walter Reckless, organized crime means an unlawful misadventure which is carried on by a boss, his lieutenants and operators who form a hierarchical structure for a specific period.³

Industrial Revolution, Research and Developments in the field of Science and Technology, globalisation and liberalization of economies and internationalization of trade and marketing are aimed at the progress and prosperity of human society. But the same have also become sources of organized crimes at national and international levels. Most of the times these crimes are committed by those who are in helm of affairs. Moreover, Information technology has opened new vistas for the commission of organized crimes throughout the world. It has paved the way for innovating new techniques and equipment for the commission of cyber crimes in various ways, by jumping out the purview of law, and territorial limits, but under the grab of law.⁴

Inadequate Legal Structure V Sophisticated Crime:

Perhaps, crime and its genesis is very ancient but mode of its commission is rapidly changing due to scientific and technological developments. Crime is old but manifestation of crime is new.

³ The Crime Problem, P.319

⁴ Law.jrank.org/pages/1607/modernization-crime.html

There are several difficulties in combating organised crime. First of all, India does not have a special law to control/ suppress organised crime. Being a continuing conspiracy, the incidents of organised crime are dealt under the general conspiracy law and relevant special Acts. The existing law is inadequate as it targets individuals and not the criminal groups or criminal enterprises. Conspiracies are hatched in darkness and proving them in a court of law is a herculean task. Being a member of the gang of dacoits or thieves is punishable under the Penal Code, but being a member of any other criminal gang is not. The prime purpose of organised crime is money through muscle power, comprising the officials operating the criminal justice system and the officials and politicians in power. It is, therefore, imperative that the criminal group and being its member or associate, is criminalised, as has been done in many countries. Similarly, there is need to deprive the criminal groups of their ill-gotten wealth.

India does not have a consolidated law on the subject. The procedural laws in India are grossly inadequate to deal with organised crime. Under section 167 of the Code of Criminal Procedure, the police are mandated to file the charge sheet within 90 days from the date of arrest, failing which the accused is liable to be freed on bail. Organised crime is complicated in nature and has inter-state and even international ramifications which makes it difficult to conduct a thorough investigation within the statutorily prescribed time frame. This often results in the charge-sheets being filed on the basis of half-baked investigations. Such cases often result in acquittals. Besides, the bail provisions are quite liberal (sections 437 to 439 CrPC). In the early 1970s, the Supreme Court laid down that ‘bail and not the jail’ is the rule⁵. This emboldened criminal syndicates and they took advantage of this judicial dispensation, frustrating efforts of the law-enforcers in curbing crime. Further, section 438⁶ of the Cr.P.C provides for anticipatory bail even in heinous offences. This has been misused by politically influential and rich people.

⁵Sanjay Chandra V Central Bureau of Investigation – (2011 SCC.497).and Suresh Kalmadi V C. B. I –(2012 Del . H. C)

⁶**Section 438 in The Code Of Criminal Procedure, 1973:**

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

Further, a confession made before a police officer is not admissible under section 25 of the Evidence Act⁷, but a confession made before a Customs Officer or a Income Tax Officer is admissible. As it is difficult to get the eye-witness evidence in cases of criminal conspiracy, it makes the task of the police really very difficult. Furthermore, the investigating agencies look for oral, documentary and circumstantial evidence during investigation.

With rapid advances in science and technology, forensic science has come to play an important role in criminal investigations. However, an accused or suspect is not legally bound to give his handwriting, finger prints, blood samples, photographs and intimate and non intimate body samples viz hair, saliva, semen, blood etc to the Investigating Officer, despite the order of the Court. Thus, valuable pieces of evidence are lost due to these legal lacunae. Difficulties in Obtaining Proof as organised criminal groups are structured in a hierarchical manner; the higher echelons of leadership are insulated from law enforcement. It may be possible to have the actual perpetrators of crime convicted, but it is difficult to go beyond them in the hierarchy because of rules of evidence, particularly, non-admissibility of confessions made by criminals before the police. The witnesses are not willing to depose

(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1).

⁷Sec. 25. Of Indian Evidence Act : “ Confession to police officer not to be proved.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.”

for fear of their lives and there is no law to provide protection to the witnesses against organised gangs. The informers are not willing to come forward as some kind of stigma is attached to being an 'informer'. In crimes of violence, there is hardly any documentary evidence. In some crimes like gambling and prostitution, the people in general are willing participants. Incidents of killing of witnesses or their being bribed or threatened do surface from time to time. Several judges and magistrates were killed in Punjab. These difficulties hamper the control efforts.

b). White Collar Crimes:

A white collar crime is a, "crime committed by persons of respectability and high social status in course of their occupation"⁸. White collar criminals are most of the time belong to upper classes or higher socio economic classes who violate criminal law in the course of conducting their professional activities. These crimes result in huge financial loss to the society. There are no suitable policies and good enforceable laws to prevent or punish white collar criminals. Most of the time as these belongs to influential classes of society; they are capable of resisting enforcement of laws against them.

White collar offences are universally present and India is no exception to the same. In our country there is a loss of 2.4% of country's revenue⁹ due to the white collar crimes. White collar is unfortunately part of every field and occupation as

White collar- legal profession

White collar- Doctors or medical practitioners

White collar education

White collar – corporate sector etc

The white collar crimes committed by these legal practitioners only confines in sorting out illegal methods of tax-evasion. There are very frequent instances of unscrupulous and unethical practices like that of fabricating false evidence, engaging professional witnesses, thereby violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts. The instances of white collar crimes committed in the Indian society by the lawyers, there lie the shameful illustrations of Magistrates and judges involved in

⁸ Sutherland : American Sociological Review, Vol. 1941

⁹ National Crime Research Bureau (NCRB) Report, August 19, 2015.

committing crimes. They in the name of interpreting the laws often act as the protective shield for the goons having or not-having any political colour and allow them to go free whereas they should have been subjected to deterrence. It is the most unfortunate situation at the same time devastating, because here the crimes are committed by those individuals who are being given by the State the responsibility to ensure justice.

White Collar –Medical:

In India, the white collar crimes are so wide spread that it does not confine to one field or area. Noble field of medical practice is also not an exception to these crimes.

Some of the notorious instances are like that of Nithari¹⁰ case, where the medical professionals put up before the society the optimum level of brutal character they can reach for the crave of making money. Misleading and fake advertisement claiming absolute cure is also one of the frequent malpractices being carried out in the medical profession. The problem lies in the fact that, they often escape punishment, since they cannot be said to have violated the letter of law, but, by violating the spirit of law, they commit crimes which are truly anti-social and creates enormous damage to the public health and safety at large.

White Collar-Engineering:

Speaking of the engineers' role in having their role to play in white collar crimes, we often find instances of underhand dealing with contractors, suppliers, passing of sub-standard works and maintenance of bogus reports of the labour works. They financially earn more for their low grade works from the contractors, than they can earn for the genuine work.

White Collar –Education:

The matter comes to the white collar crimes educational institutions do come in the league to operate with impunity. A nastier role is played by the private institutions that are least bothered in providing the education, but only concentrate of making business at the cost of the children's future. Even rackets operate in these institutions for procuring students to appear in the examinations on the basis of manipulated eligibility certificates, thereby damaging the standard of education in India.

¹⁰ IRJC International Journal of Social Science & Interdisciplinary Research Vol.1 Issue 9, September 2012, ISSN 2277 3630

White Collar – Corporate:

So far as the businessmen are concerned, their acts of white collar crimes go beyond count. They are termed as the corporate criminals who more often than not, are involved in illegal contracts, combination and conspiracies of trade restraints, unfair labour practices, selling of adulterated foods and drugs, bribing of public officials so on and so forth. They take advantage of the corporate veil and indulged in a number of crimes. The recent Satyam scam case is one of the worth-mentioning illustrations, where it was seen how an individual, hiding himself in the veil of incorporation, indulged in defrauding crores of money.

2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence Unit gives expected results. Fraud continues to be a big problem worldwide and more so in India. Of the companies surveyed, globally 75% reported experiencing fraud during the year. Though the figure has reduced in comparison to previous year's 88%, the situation is still dismal. In India, the situation is disastrous, with 84% organizations reporting that they suffered from fraud during the year. It is wake-up call for India, as it is ranked second worldwide after Africa and shares the position with China¹¹.

C) Cyber Crimes - A Menace :

Cybercrime includes any type of illegal scheme that uses one or more components of the Internet (chat rooms, email, message boards, websites, and auctions) to conduct fraudulent transactions or transmit the proceeds of fraud to financial institutions or to others connected with the scheme. Cyber crime also applies to generating spam emails, downloading viruses or spyware to computer, harassing another through the Internet, child pornography, and solicitation of prostitution online. Perhaps the most prominent form of cybercrime is identity theft, in which criminals use the Internet to steal personal information from other users¹².

¹¹ 2010-2011 Annual Global Fraud Survey report of Kroll conducted by Economist Intelligence Unit gives expected result;-www.indianresearchjournals.com.

¹² definitions.uslegal.com/c/cybercrimes/

The following analysis is based on the data from 2011 to 2013¹³.

Cyber Crimes in India are registered under two different acts, the IT Act and the Indian Penal Code (IPC). The cases registered under the IT Act include

- Tampering computer source documents (Section 65 IT Act)
- Loss /damage to computer resource/utility (Section 66 (1) IT Act)
- Hacking (Section 66 (2) IT Act)
- Obscene publication/transmission in electronic form (Section 67 IT Act)
- Failure of compliance/orders of Certifying Authority (Section 68 I T Act)
- Failure to assist in decrypting the information intercepted by Govt Agency (Section 69 IT Act)
- Un-authorised access/attempt to access to protected computer system (Section 70 IT Act)
- Obtaining licence or Digital Signature Certificate by misrepresentation / suppression of fact (Section 71 IT Act)
- Publishing false Digital Signature Certificate (Section 73 IT Act)
- Fraud Digital Signature Certificate (Section 74 IT Act)
- Breach of confidentiality/privacy (Section 72 IT Act)
- Others

On the other hand, cases are also registered under the IPC and those include

- Offences by/against Public Servant (Section 167, 172, 173, 175 IPC)
- False electronic evidence (Section 193 IPC)
- Destruction of electronic evidence (Section 204, 477 IPC)
- Forgery (Section 463, 465, 466, 468, 469, 471, 474, 476, 477A IPC)
- Criminal Breach of Trust (Section 405, 406, 408, 409 IPC)
- Counterfeiting Property Mark (Section 482, 183, 483, 484, 485 IPC)
- Tampering (Section 489 IPC)
- Counterfeiting Currency / Stamps (Section 489A to 489E IPC)¹⁴

The numbers of cases registered under the IT Act and IPC have been growing continuously. The cases registered under the IT act grew at more than 50% in 2012 & 2013. The cases registered under the IPC in 2013 more than doubled from 2012. Similar trend is observed in the number of persons arrested. The government also accepts that with the introduction of technologies, devices including smart phones and complex

¹³ www.assochem.org/newsdetails.php on Jan,2015

¹⁴ DubbudiRakesh :Faqtly: Cyber Crimes in India : On March 25 th , 2015.

applications, and rise in usage of cyber space for businesses, cyber crimes are on the rise in the country.

Though the growth in cyber crimes and Internet Subscriber base are not similar, they follow a similar trend. While cyber crimes have grown at more than 50% in both 2012 & 2013, the internet subscriber base has grown at 27% in 2012 and at 53% in 2013. It is evident that cyber crime is growing with increasing internet penetration where by electronic communication has become easier.¹⁵

CYBER CRIMES V CRIMINALITY

The most striking fact about crime today is who—or rather what—is committing it. It's not people that are committing the crime anymore. Crime has become software. It's crime ware. Examples include ransom ware (viruses that encrypt your data and make you pay to get it back) and botnets (zombie networks of thousands of infected machines that can be turned against banks, tech companies, and governments). The days when only master hackers were employee, or aspiring terrorist can purchase pre-programmed crime ware to help them hack your phone, your bank account, or even your car. The exponentially expanding threat means locking up individual criminals is no longer a realistic solution.

For instance if somebody has Ebola or measles, public health officials don't go out there and arrest them by which you cannot stop the problem. Tracing of hackers is proportional to their creation. Therefore the goal should be to create a self-healing immune system for the Internet, so that even if a disease or a virus gets created, it won't be passed to anyone.

Another approach is to crowd source law enforcement. Organized crime is already adept at crowd sourcing, using criminal networks to rob thousands of ATMs at once. Law-abiding citizens need to respond in kind, forming civil response squads modeled on the National Guard or Army Reserve. Its important to take people of technological skill, whether it be a 10-year-old kid in India or an 80-year-old woman in Seattle, and get these people involved, it's the only way that we're going to move forward and win this battle.

An instance happened with Miss Teen America, a young woman—16 years old. She was sitting in her bedroom looking at her laptop, and one day she got an email that contained pictures of her,

¹⁵ [http://factly.in/ Cyber Crimes –in- India](http://factly.in/Cyber-Crimes-in-India).

naked, in her own bedroom. ... Of course she was horrified. She slammed closed her laptop, and fortunately she told her parents, who called in the FBI. They did an investigation into it, and found that the hack was carried out by one of her classmates. And this kid was not a master hacker. He just bought some cheap software online, sent her an email, she clicked on the wrong thing, and now he had installed keystroke loggers to her computer and took over her camera.¹⁶

Most folks don't realize the extent to which the whole world is becoming a computer. All physical objects in our space are de-materializing and are being transformed into information technology. ... If you look at a 1965 Chevy, or a Mustang, those were mechanical cars, but the cars today—any car that's rolled off the assembly line in the past few years—has well over 200 microchips in it. They control the radio, the GPS, the airbags, the cruise control, the speedometer, it's all controlled by computer. Recently on 60 Minutes ... Leslie Stahl's car was hacked. Somebody was able to slam on the acceleration, slam on the brakes. ... A [modern car] is a computer that we ride in, an elevator is a computer that we ride in, an airplane is a Solaris box that we fly in. All of these devices are hackable.

It's worth asking the question: What should and should not be online? There is a movement among some companies to take certain things out of the electronic realm. So companies like Kentucky Fried Chicken and McDonald's, they have secret recipes for both Coke and their fried chicken. Those are not stored in any electronic systems. Those are written down on a piece of paper and kept in a safe. And after the Snowden revelations, the Kremlin, for their secret communications in Moscow, went back to typewriters—manual typewriters, not even electronic typewriters, but manual typewriters—to type things.

As regards hacking biometrics, a few years ago the German Minister of Justice—kind of like the Attorney General here in the United States—he was pushing very hard for Germans to have biometric data on their national ID cards, and he wanted all Germans to be fingerprinted. And the Germans pushed back, particularly privacy advocates and those in the Chaos Computer Club¹⁷. And so what they did is when the German Minister of Justice was out at a restaurant, they went ahead and after he left they got the glass that he had left behind, and they were able to lift his

¹⁶ www.businessinsider.com/cassidywolf/

¹⁷ www.wired.com/2013/12/flight-spies-says-chaoscomputer-club/

fingerprint off of the glass. They then took a photograph, brought it into Photoshop, cleaned it up, and then were able to replicate it on 3D printers, in latex. ... included it as a handout in their Chaos Computer Club magazine that went out to 5,000 people, and they encouraged their readers to leave the Justice Minister's fingerprints at crime scenes all over Germany, which they did.¹⁸

d) Sexual Offences:

Off late crime against women in general and rape in particular is on increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes.¹⁹

We must remember that the rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault, it is often destruction of the whole personality of the victim. A murderer destroys the physical body of the victims, a rapist degrades the very soul of the helpless female. The courts therefore shoulder the greater responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.²⁰

Imposition of grossly inadequate sentence and particularly against the mandate of legislature is not only is an injustice to the victim of the crime in particular and to society as a whole in general, this at times encourages the criminal to do more such crimes.²¹ The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of such crimes needs a reflection through court's verdict in the measure of punishment. The courts not only keep in view, the rights of the criminals but also the victims of the crimes and also society at large.

NCRB statistics show that the number of reported cases of rape as a proportion of the total population is by far the highest in Delhi as compared to other cities in the year 2014.²²

It is important to bring in serious legislative changes with regard to rapes and molestations.

Judiciary is helpless without any realistic change initiated by legislature. Criminality must be viewed not just in terms of age of the criminal but the intensity of intention.

¹⁸ venturebeat.com/.../chaos-computer-club-claim-it-can-reproduce-finger.

¹⁹ Lachmi V State of West Bengal – 2015 Cr.L.J. 2220 and in State of Punjab V Gurmit Singh (1996) 2SCC 384.

²⁰ Ibid.

²¹ A.P. V. BodemSundara Rao –AIR 1996 S.C. 530.

²² National Crime Research Bureau (NCRB)- Report – 2015, August 19th.

“We cannot interpret the law [the Juvenile Justice Act] to curtail his [the juvenile convict’s] freedom without legislative sanction. We share your concern, but we cannot go beyond the statute,” observed Justice U.U. Lalit, one of the judges on the Bench led by Justice A.K. Goel.²³ in Nirbhaya case²⁴.

e) Terrorism Vs E-Terrorism:

Horrific ISIS attacks in Paris are a clear example of shape of terrorism in the recent times. Terrorism is an evolving phenomenon, with terrorist organizations continuously changing their modus operandi, thereby adding to the complexity and challenges faced by criminal the capacity of national criminal justice systems to administer fair and effective justice for perpetrators of terrorist crimes. National action, coupled with international and regional cooperation are key elements in addressing terrorism effectively.

In the long-run, the only real solution is to strengthen the investigation machinery so that terrorist attacks being planned for the future can be effectively prevented. This means that intelligence as well as law-enforcement agencies at different levels must continuously share information among themselves and work together to unearth terrorist conspiracies and prevent the commission of violent attacks. The creation of the Federal Investigation Agency (FIA) by an Act of Parliament is a step in this direction. It is of course very important for our legal system to agree on appropriate solutions rather than choosing remedies which worsen the problem.

Effective Espionage: Is the Panacea:

The secret collection of information, or intelligence, that the source of such information wishes to protect from disclosure. Intelligence refers to evaluated and processed information needed to make decisions. The term can be used with reference to business, military, economic, or political decisions, but it most commonly relates to governmental foreign and defense policy.

²³ www.thehindu.com/new/national.

²⁴ The **2012 Delhi gang rape** case involved a rape and fatal assault that occurred on 16 December 2012 in Munirka, a neighbourhood in South Delhi. The incident took place when a 23-year-old female Physiotherapy intern, Jyoti Singh was beaten, gangraped, and tortured in a private bus in which she was travelling with her boyfriend, Awindra Pratap Pandey. There were six others in the bus, including the driver, all of whom raped the woman and beat her friend. Thirteen days after the assault, she was transferred to a hospital in Singapore for emergency treatment, but died from her injuries two days later. The incident generated widespread national and international coverage and was widely condemned, both in India and abroad.

Intelligence generally has a national security connotation and therefore exists in an aura of secrecy.

Effective Surveillance is espionage. Kautilya said Espionage includes, two branches.

- a. Surveillance over Treacherous Officials and
- b. Surveillance over Population²⁵

The agenda of intelligence reforms in India should have three or four main priorities. First, activities of all major intelligence agencies should be founded on a legal basis. There should be a law or separate laws to specify the existence, functions and jurisdiction of all such organisations. Though emerging initially from clandestine origins, this has been the pattern of evolution of all modern intelligence organisations functioning in democratic countries²⁶

Second, and most important, such legislation must provide a legal basis for different tiers of oversight and accountability of Intelligence agencies — executive, financial and legislative.

Third, recruitment to intelligence organisations must be made open to induct the best available talent, and also to cater to varied needs and different streams. Intelligence collection and operations are highly specialised functions, only some of which can be imparted through systematic professional training. Language skills, in-depth knowledge of strategic issues, cultural mores of target countries, computer know-how and other technological skills may all be needed at different stages of assessing any intelligence input. These capabilities cannot be developed overnight by everybody, or by personnel joining an intelligence agency as a temporary haven. It has to be a lifetime profession where skills should be progressively honed.

FIAT JUSTITIS RUVAT COLEUM: means “let heavens fall, justice has to be done”. Let circumstances or conditions, social, political, economic whatever around, justice must be seen to be done, which is the basic essence of judiciary, irrespective of the country or region. “Every legal system is oriented towards certain purposes which it seeks to implement. In this sense, every legal system is of necessity a purposeful enterprise”.²⁷

²⁵Kautilya's Arthashastra: 1.12.6: quoted in Kautilya: Arthashastra by L.N. Rangarajan: page 509. Penguin Publishers.

²⁶[www.thehindu.com/opinion/legalizing intelligence](http://www.thehindu.com/opinion/legalizing_intelligence)

²⁷W.Fried – Legal Theory Mann, P.21

In its widest sense justice is synonymous with morality. All cruel acts of men are not termed as injustice. For instance, crimes like theft, murder and rape though immoral, cruel and highly abominable are not accurate instances of injustice. “ Injustice is rather the charge leveled against men, acts or laws that treat one or more persons more harshly or more favourably than others in the same situation”.²⁸ Partial treatment by father, examiner and administrators showing preference to some and prejudice to him.

As far as the load on the criminal justice dispensation system is concerned it has an inseparable nexus with speedy trial. A grave criminal offence or serious economic offence of for that matter the offence that has potentiality to create a dent in the financial health of the institutions is to be quashed on the ground of delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter for that would amount to destroying the stem cells of law and order in many a real, and further strengthen the marrows of unscrupulous litigations.²⁹

CORRECTIVE JUSTICE Vs CRIMES:

Justice is of two kinds, one is ‘Distributive Justice’ and the other is ‘Corrective Justice’. Through Distributive Justice fair division of social benefits and burdens is made among all the members of the society. Aristotle defined Corrective Justice as, “Injustice arises when equals are treated unequally and also when unequals are treated equally”³⁰. The society secures a balance and equilibrium to all the members through distributive justice. The members of the society may disturb and upset the balance by their actions. A person may be prevented by another from voting. A person may steal the property of another or commit trespass or breach of contract or exploit others and amass the wealth. The “corrective justice” steps in and redresses the grievance and restores the balance and burdens in a society. This is achieved mainly through the operations of the police and courts. Due to increase in costs of litigation, it seems that corrective justice is not equally at the disposal of all people. A rich litigant can employ a better advocate and the poor party may not be able to employ any. Balance of interests must be struck not only between the interests of persons by treating them equally under law but with long term well being of the society. American writer Roscoe Pound regarded law as “ a species of social

²⁸ Salmond- Jurisprudence 12th ed.p.61.

²⁹State Representatives by Inspector of Police, Central Crime Branch V R. Vasanthi Stanley -2015 Cr.L.J. 4767.

³⁰ www.ep.utm.edu/aristotl/

engineering, whose function is to maximize the fulfilment of the interests of the community and its members and to promote the smooth running of the machinery of the society”.³¹

RECENT LAW COMMISSION PROPOSALS:

20th Law Commission of India headed by Justice (retd) A P Shah on 29 January 2015 submitted its 253rd report entitled **Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015** to Union Government.

In its report, the Law Commission sought to set up commercial courts in India to settle any dispute in a time-bound manner so that no dispute shall be dragged over years without conclusion of arguments. These commercial courts will ensure speedy disposal of high-value cases in which delays can discourage foreign investors. **Provisions of the Commercial Courts Bill, 2015**³²

- It suggested for creating specialized commercial courts across the country based on the London and Singapore commercial courts to reduce time spent in court for litigating companies.
- The Bill proposes to set a time limit of 90 days for delivery of judgment after conclusion of arguments besides powers to the courts to impose exemplary costs against defaulting parties for wilful failure to disclose all documents.
- It proposes to set up at least 60 commercial courts across the country or about two to three courts in each state.
- It suggested revamping the commercial dispute resolution mechanism system by separating it from other civil disputes. This will ensure speedy disposal of high-value commercial cases.
- It seeks to give courts the discretion to make a company involved in litigation pay court fees and other expenses based on court hours used by it.
- It suggested that appeals from the commercial courts will go to the commercial appellate division of two judges and appeals against interim orders shall be barred.
- Commercial courts will have judges with expertise and experience in commercial disputes and may get a fixed tenure of two years so that continuity is maintained.
- It also provides for training and continuous education of judges by the national and state judicial academies.

³¹ www.academia.edu/.../SOCIOLOGICAL_JURISPRU_ROSCOE

³² www.prsindia.org.

CONCLUSION:

Criminal Justice system in India is almost at the cross roads. Many times it so happens that very reliable , trustworthy and credible witnesses to the crime seldom come forward before the court, and even the hardened criminals get away from clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. Investigating agency as, therefore, to look for other ways, had means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundation that is solved in science as well as in law. Practices and principles that served in the past, now people think give way to innovative and creative methods if we want to save our criminal justice system.

Emerging new types of crimes and the level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those constant interaction of judges with scientists, engineers would promote and their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasising the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.

The great task is to find ways of reducing crime. The spate of new crimes of organized criminal and terrorist activities is exerting great pressure on the justice system. It has compelled a re-look at some of the fundamental conceptions of criminal justice system and a strong re-look at the conventional principles of criminal justice system, such as the presumption of innocence, the standard of proof beyond reasonable doubt, the right to silence and the authority of the state to detain without trial.

“Any matter in dispute shall be judged according to the four bases of Justice. These in order of increasing importance, are:

Dharma, which is based on truth;
Evidence, which is based on witnesses;
Custom, i.e., the tradition accepted by the people and
Royal Edicts, i.e., law as promulgated”

.....– *Kautilya, Arthasastra.*