

Policing in India: Need of Effective Preventive Actions to Tackle Crime and Criminality

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ABSTRACT

When the criminal justice system is seen on the face, it may appear that actions are initiated only after the commission of a crime. Accordingly, criminal law can prescribe punishments for already committed criminal acts. However, a detailed and proper analysis of criminal justice clarifies that its main objective is the prevention of crime and criminality. Prevention of crime is taking action at the incipient stage means before the commission of a crime. The criminal justice system always provides crucial spaces for preventive actions. Proper and efficient police actions ensure effective tackling of crime and criminality, particularly police actions at the incipient stage. In India, in the 21st-century, crime and criminality are creating a serious challenge where the nature of crime is becoming more serious, and the crime rate is increasing. In such a situation, analysis of the Indian criminal law is vital to find out whether it sufficiently empowers Indian police for preventive actions to tackle crime and criminality. Analysis of Indian Criminal Law shows that provisions for directing and enabling policing are already provided. Despite that, training is necessary for the police officers to use the modern know-how for resorting to preventive actions.

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1. Introduction

Police is crucial instrumentality established and police officers are appointed by state for protection of society from crime criminals and criminality. Society is constituted to tackle problem of crime and criminality, thereby to provide peaceful, developing and secure life to members of society. Society has undertaken responsibility for protection of members of society against crime commission. For bearing the responsibility society has established formal and informal agencies; state and law are formal agencies established by society in aforesaid regard. Usually police is alleged for misuse of powers entrusted to it for tackling crime problem, and thereby, alleged for creation of criminogenic

conducive environment. During colonial period police powers were misused against citizenry particularly against freedom fighters and economically weaker persons; such impression of police is still remaining in memories of common mass. But at the same it is reality that tackling of crime problem completely depends on effective policing with humanitarian and community considerations. Analysis of criminal justice system in India may clearly depict that Indian policing is focused on crime prevention.

Society expresses its reaction against and disapproval for criminality and criminal behaviours. Further, punishment infliction reinforces social solidarity, thereby cohesive forces in society becomes stronger. Punishment is distinctive feature of criminal law and it is inflicted in all criminal cases. Generally it is believed that punishment is inflicted for past criminal act; it is considered on this basis that criminal justice system including criminal law, investigative agency, prosecution body and adjudicatory authority, functions for criminal act committed in the past. But when properly analysed, it may be clear that punishments are certainly inflicted for past behaviour but objective of such infliction of punishment is to prevent crime commission in future, to prevent a person from developing criminal mentality in future, to prevent injuries infliction to victims in future and ultimately to protect members of society from crime and criminality in future. Criminal justice considers crime prevention is best measure for tackling serious crime challenge. Crime is serious challenge before the civilized society; effective tackling of crime is necessary for happy and prosperous human existence; after crime commission, impacts, harms and injuries caused by criminal acts cannot be repaired and situation cannot be restored back. Hereby, it may not be appropriate measure to wait for commission of crime and then after to take steps for penalizing the criminal elements; most desired strategy to cope the problem of crime may be to use police measures focused on prevention of commission of crime.

Primary responsibility to tackle crime problem is imposed on police officer; after receiving information about crime commission police officer has to collect evidences in the case, detect criminal, apprehend the criminal and produce him before the criminal court for trial in the case. Commonly, it is considered that role and function of police initiate after receiving information about crime commission from some person or on his own knowledge. Thereby, generally it is thought that police is concerned with past criminal act committed by criminal elements but proper analysis of criminal justice may clearly depict the role and functions of police is always more concerned with prevention of crime. Law and order is becoming a challenge in societies with various kinds of diversities. Police acts, reacts and functions for protection of society and members of society from crime, criminals and criminality in future. Police actions has ultimate goal to ensure continued peaceful existence of society; police role and functions are wholly focused on prevention of crime. Preventive actions used by police officers are called as policing. Maintenance of law and order is one important aspect of policing.. Policing is wider term not only limited to police actions but also inclusive for police strategies and utilizing of police resources for prevention of crime.

In era of globalization particularly in 21st century crime situation in one country affects trade and commerce, and developmental activities not only of country concerned but also of other countries particularly of neighbouring countries. Law and order and public tranquility in Indian society is not only crucial for prosperity and development of India itself but also of whole Asia and ultimately of whole world. India is larger country with social diversity, thereby, policing in India is always a crucial matter in criminal justice

system. In 21st century with scientific and technological development specially in area of information technology, social media, and transportation new challenges are created before the police; to deal with which need is to make changes in system of policing. In this paper Indian criminal law is analysed to find out whether law properly enables police for policing to take effective preventive actions to tackle crime and criminality.

2. Method

In writing this paper doctrinal methodology is used, accordingly criminal laws in India are critically analysed to find out whether sufficient and proper legal provisions are provided in reference to policing for taking preventive actions. Judiciary interprets the provisions and applies them; thereby, judicial directions are always an important aspect of law. Thereby, in this paper statutory laws of India and judicial directions given by Supreme Court of India shall be analysed.

3. Results And Discussions

3.1. Policing In Ancient India

Police term is derived from Greek word 'polis' which means city or state, and in Latin it is related to word 'politeia' which means condition and rights of citizens particularly referring to maintenance of law and order. In its territorial area state has responsibility to maintain law and order, for which state establishes organisation called as police. Police has heavier responsibility to function for protection of society from crime, criminals and criminality. Police officer is required to use his all abilities and take all measures to make his honest efforts for prevention of criminal elements from accomplishment of commission of crime.

In ancient India major emphasis was given for prevention of commission of crime and in this regard directions are given in ancient Indian scriptures. Many officers were appointed in ancient India conferred with police powers. Ancient Indian policing was emphasizing on preventive actions to tackle crime, criminal and criminality. *Manu* ordains that state has responsibility to maintain the peace and protect the individuals by use of effective punishments (Bhatt, 2015, VII. 14, 18). For detection and prevention of crime state was responsible and for it state personnel were appointed. (Vidyarnava, 1918, II) Community policing is taken as effective policing measure in which community and police cooperate in tackling crime problem and it was emphasised in ancient India. Community policing was properly developed; in ancient India village community had important role in policing. During *Mauryan Empire* Village was the smallest unit for policing under the charge of village-headman *Gramika* and similar arrangements were for city too. *Kautilya* directs that a person who was found doing some suspicious activities had to be dealt properly, like who was not sick but pretending to be sick, he was secretly possessing confidential documents, poison and arms etc (Kavathkar, 1910, XXI. 13). *Manu Smriti* directs for appointment of headman in every village, and then for appointment of officers for ten, twenty and thousand villages. In case of crime commission headman had to find out solution or to inform headman of ten villages who in his turn has to inform headman of twenty village and so on (Bhatt, 2015, VII. 114, 115, 116, 117). Ancient law sufficiently provides information about existence of police system in which policing was based on community policing. Primarily responsibility to deal

with crime problem was given to local community head with the help of local community. Ancient Indian law gives directed state for taking preventive actions besides the punitive actions. Further, in ancient India moralizing, value inculcation, sin considerations and religious teachings were other major preventive measures used with objective to make common mass law abiding and to tackle crime problem.

In ancient India crime prevention was emphasised and in this regard officers were appointed and conferred with powers to take preventive actions. Ancient scriptures play a crucial role in settling the tradition, culture and value system of society concern and on aforesaid foundation justice system of modern society develops. Ancient criminal justice system was much developed system which is evident by ancient scriptures. Directions given in ancient scriptures are present in value system of Indian society and because of it Indian common mass is always cooperative to police.

3.2. Policing in India for Preventive Actions:

Any nation can progress and citizenry may be happy when crime problem is properly dealt with and anti-criminogenic environment has been created. Law enforcement agencies have greater responsibilities to take effective and proper steps for tackling problem of crime which poses serious challenges for societal wellbeing, peace, and development. Fate of crime tackling depends on effective policing. Policing is use of police strategies and resources for prevention of crime and maintenance of law and order. Crime causes serious impacts which cannot be restored back and remedied. It is better that preventive actions have to be taken to avoid crime commission and to tackle criminal and criminality. Policing varies with time, locality, and nature of crime problem. In modern societies cooperation from community, training of police officer, use of modern gadgets, use of police science (criminalistics), and stronger police information system play crucial role in effective policing.

In India criminal law emphasizes on policing with preventive actions and in this regard sufficiently legal provisions are provided to enable police officers and to protect them for taking actions in good faith. Generally, common citizenry considers that the police officers are concerned with penal actions only; after commission of crime police officers have to collect evidences and arrest the suspected persons for prosecution. But proper analysis of law clearly establishes that criminal law in India focuses more on prevention of crime rather than to wait and take action after commission of crime. Indian criminal law enables police for preventive actions to tackle crime problem. Criminal Procedure Code 1973 and Police Act 1861 are main enactments empowering police officers in reference to preventive actions. Under Police Act 1861 Police Regulations are prepared which provides detailed procedures for police actions. Besides aforesaid laws some special preventive detention Acts are also enacted for empowering police in reference to prevention of socio-economic crimes and some other serious offences. Criminal Procedure Code confers power to arrest on police which has to be used for preventive and penal actions, both. Arrest interferes with personal liberty; police has to take utmost care in exercising this power particularly as a preventive action. Police officer in reference to preventive actions uses measures of preventive arrests, stop/question/frisk strategy use, beats, patrol, *gust*, *nakabandi*, ambush, preparation of history-sheet, and keeping surveillance over history-sheeter and crime prone areas.

Law empowers and also imposes duties on police and executive Magistracy to prevent crimes, breach of peace and public order. Further, powers and duties for preventive

arrests, security proceedings, removal of public nuisances, prohibitory order issuance, and directions in dispute threatening public peace are conferred on police officers and executive magistrates. Police officers and executive Magistrate have to act together and take concerted actions for prevention of crime. Executive Magistrate control, supervise, guide, direct police officer in pursuit of prevention of crime. Police collects information on the basis of which decisions regarding preventive actions are taken and orders are passed by executive Magistrate. Actually executive magistrate exercises police powers; decisions are taken by executive magistrate and implemented by police officer.

3.2.1. Dispersal of Unlawful Assembly

Unlawful assembly is dangerous gathering of people which has potential for causing grave danger for public peace, public tranquility, public law and order, and person and property of societal members. In unlawful assembly mob mentality dominates over individual sobriety, and destructive energy controls the constructive energy and thought process of individuals. There is need to take prior and immediate actions to prevent unlawful assembly and whenever any unlawful assembly is collected, to take immediate and effective action for its complete dispersal. Assembly of five or more persons actuated with the objectives of use of criminal force to interfere in legal process is unlawful assembly (Indian Penal Code 1860, sec. 141). Initially an assembly may be permissible and it may not be unlawful but as soon as assembly consisting at least of five persons is actuated with objectives mentioned in Section 141 Indian Penal Code 1860, it becomes unlawful assembly (Indian Penal Code 1860, Explanation to Section 141). Police officer has responsibility to collect intelligence regarding destructive and criminal activities which may endanger the public peace (The Police Act 1861, Sec. 23). Whenever information about probable destructive activities is available police officer has to communicate it to Magistrate. (The Police Act 1861, Sec. 24) When information about collection of unlawful assembly and its ensuing dangers are already known and such problem is probable, then in emergency situation to prevent disturbance of peace and public tranquility and injuries to life and property of members of society, executive magistrate may issue prohibitory directions under Section 144 Criminal Procedure Code 1973. Non-observance of directions amounts to punishable criminal acts.

Assembly itself is not prohibited; a person has statutory and fundamental right to be member of assembly¹ and procession. In democratic society citizenry should have right to express its opinions, celebrate religious and cultural events but prohibition may be imposed and it is declared as criminal act when assembly becomes unlawful assembly. Section 30 of Police Act empowers police officer and magistrate to regulate assembly and procession. Superintendent of police may determine for conduct of and place for assembly or procession, and further, at which time and through which route procession may pass. When in opinion of Magistrate of the District or Sub-division the assembly or procession may become uncontrolled, thereby, it may be likely to cause breach of peace, the police officer may require from organizers of assembly or procession to take license. License is issued to specified licensees with specified conditions. On violation of

¹. Article 19 (1) (b) Constitution of India confers on citizen Fundamental Right to assemble peaceably and without arms and this fundamental right is very crucial for democratic society. Article 19 (3) permits State to put reasonable restriction on this Fundamental Right in interest of sovereignty and integrity of India or public order.

conditions of licence Magistrate and police officers may stop the procession or direct assembly to disperse (The Police Act 1861, Sec. 30A).

When unlawful assembly is collected and it creates emergency situation of endangering peace and public tranquility, posing serious fear for life and property of individuals and public property, there is need for immediate action for dispersal of such assembly. Normally decision regarding dispersal of unlawful assembly and appropriate measures in such regards is decided by executive magistrate and in exigency situation it may be decided by police officer. In Section 129 Criminal Procedure Code Executive Magistrate or Police Officer in Charge of police station or in their absence any police officer not below rank of sub-inspector is empowered to take action against unlawful assembly. Generally, police officer executes the decision regarding preventive actions taken by executive magistrate; police officer takes decision in absence of executive magistrate. Police officer has responsibility to collect information and communicate it to executive magistrate. When any measure is decided or order is passed by executive Magistrate then to execute the said measures and orders. In absence of executive magistrate, police officer exercises powers under Section 129 Criminal Procedure Code which empowers officer in charge of police station or police officer not below rank of sub-inspector to command any unlawful assembly to disperse. When command is not observed police officer may use force, and further, he may also for this purpose effect arrest. Measures provided from Section 129 to 132 are applicable for dealing with problems created by unlawful assembly. In Section 132 Criminal Procedure Code special protection is provided to police officer for action taken by him in good faith for dispersal of unlawful assembly. Unlawful assembly is most dangerous and destructive for societal safety, security, peace and tranquility. Unlawful assembly is needed to be dispersed immediately by using any means and in this regard wider powers are conferred on police officer and executive Magistrate.

3.2.2. Prevention of Cognizable Offences

Cognizable offences are of serious nature committed against society or considered as committed against society; impacts and injuries caused by commission of cognizable offence cannot be restored back. Cognizable offence commission challenges societal existence itself, affects wellbeing of citizenry and undermines the societal responsibility towards the citizenry. Cognizable offence commission injures basic sentiment of society for togetherness, weakens social solidarity and creates fear of victimization in public at large. Therefore, if prior information about preparation of commission of cognizable offence is available, it is better to take action for prevention of commission such crime. Specific responsibility is imposed on every police officer to make his best efforts for prevention of commission of cognizable offence (Criminal Procedure Code 1973, Sec 149). To tackle cognizable offences more appropriate measure is to collect information about suspected persons and keep surveillance over them. Further, information has to be collected about persons making preparations for commission of crime. Taking preventive actions are proper policing method to tackle cognizable offence problem. In Section 149 Criminal Procedure Code responsibility is imposed on police officer for making effort for prevention of cognizable offence and same responsibility is mentioned in Section 23 Police Act 1861 also. Duty imposed on police officer under Section 23 Police Act is mandatory as non-observance of duty is declared as an offence under Section 29 of Police Act punishable with a penalty up to three months pay or imprisonment up to

three months or with both (The Police Act 1861, Sec. 30A; Criminal Procedure Code 1973, Sec 149).

In Section 39 and 40 Criminal Procedure Code provisions are given imposing mandatory duty on every person and local officers to inform about frequenting or residing of dangerous criminals in area, and intention, preparation and commission of crime in the area; aforesaid duty to inform the police officer is mandatory duty as non-observance is offence under Section 118, 119, 120, 123, 176, 177, 202, 203 and 211 Indian Penal Code. Further, police officer maintains his own chain of informers as he is under statutory duty under Section 23 Police Act 1861 to collect the intelligence regarding crime and criminals. Section 150 Criminal Procedure Code requires that police officer shall communicate to superior police officer and Section 24 Police Act requires that police officer shall communicate the magistrate. When a person is taking precautions to conceal his presence with a view to commit cognizable offence, police officer may inform executive magistrate who may conduct security proceeding and ask for furnishing of security bond for good behaviour (Criminal Procedure Code 1973, Sec 109). Habitual offenders, history-sheeter, bad characters, dangerous and desperate persons are feared for commission of crime. Such persons have criminal mentality and matured in criminal culture, therefore as and when opportunity for crime commission may be available, they are generally prone for crime commission. When they are frequenting any area police officer may inform executive Magistrate for security proceeding and executing of bond for good behaviour (Criminal Procedure Code 1973, Sec 110). When by these measures commission of cognizable offence cannot be prevented and/or commission of cognizable offence is imminent, police officer in Section 151 Criminal Procedure Code is empowered to arrest without warrant. This arrest is called preventive arrest. Police officer is empowered to arrest without warrant only for prevention of commission of crime and it has to be used as last resort. Power to arrest for prevention of commission of crime is provided to police officer but yet crime has not been committed, thereby, situation of crime commission is still at the stage of preparation which in itself not a crime. Further, evidences may not be sufficiently available to clearly indicate about preparedness for commission of crime. Arrest is not simple measure but it interferes with personal liberty and causes branding and stigmatization of arrested person. Therefore, power is given to police officer for preventive arrest only as last resort and at the same time various restrictions are imposed that police officer knows design of crime commission and situation is so imminent that police officer cannot prevent commission of cognizable offence other than by arrest of the person without warrant.

Preventive arrest and detention are crucial preventive actions; many special preventive detentions laws are made under which police is permitted to make preventive arrest and keep the person under preventive detention. Such preventive detention is made with a view to prevent immediately commission of crime and during detention to collect evidences against the the detained suspected person. In case of socio-economic crimes, there is much need of use of preventive detention as these crimes affect society as whole and impacts of such crimes are devastating which hamper the wellbeing of whole society and in some cases even of whole world. Socio-economic crimes are committed due to greed; it is always probable that whenever socio-economic criminal will have opportunity to commit crime, he will commit. In such situation most appropriate measure to deal with problem of socio-economic crime is to take preventive actions. In reference to socio-economic crimes special preventive detention Acts are enacted. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974

(COFEPOSA) is preventive detention Act which is applicable for preventive detention for purpose of conservation and augmentation of foreign exchange and prevention of smuggling activities. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 (PITNDPS) is preventive detention law enacted to deal with drugs and other psychotropic substances peddling. Besides preventive detention one very potent measure for prevention of crime is expelling a habitual offender from the area where he is prone to commit crime and directing him to not enter in certain delimited area for specified period. In Uttar Pradesh Control of Gundas Act 1970 under Section 3 when after giving notice and providing opportunity of hearing it appears to District Magistrate that the person is *Gunda*², such magistrate may direct the *Gunda* to go outside District or part of District for period extending up to six months. Section 5 of Act empowers Magistrate to extend period from time to time of ousting the *Gunda* up to 2 years in the public interest. *Gunda* may enter the area only for reason, time, place, duration and conditions specified by Magistrate in the order. Non-observance of directions and conditions are declared as offence under Section 10 of Act punishable with rigorous imprisonment minimum six months which may extend up to three years and also with fine. Magistrate takes action under *Gunda* Act on information given by Police or his own knowledge.

3.2.3. Seizure of Offensive and Seditious Materials

State is crucial formal instrumentality developed by society to satisfy responsibilities of society towards citizenry. Thereby, protection of existence of state is important requisite for wellbeing of society and societal members. Sedition (Indian Penal Code 1860, Sec. 124A) and waging of war against Government (Indian Penal Code 1860, Sec. 121) are serious and graver offences affecting security of state. These offences are needed to be tackled in very incipient stage itself. In Criminal Procedure Code under Section 39 on every person responsibilities are imposed that if information is available regarding intention or commission of offences punishable under Sections from 121 to 126 and 130 of Indian Penal Code, forthwith give such information to nearest magistrate or police officer. Police officer has to take preventive actions without any delay to save the society and country. Protection of religious and social harmony is also requisite for peaceful and developing society particularly when society is consisting religious, linguistic and cultural diversity. Presently our country is facing serious challenges from terrorist groups and Maoists, they create propaganda, and further, try to indoctrinate the youth and attempt to do the brain wash with their distorted opinions and thoughts. For prevention of serious injuries to nation it is needed to search and seize the offensive and seditious material collected for its distribution and spreading of hatred in the society. Section 95 Criminal procedure Code empowers police officer to seize materials particularly print materials, electronic materials containing seditious and other hatred spreading materials. When State Government finds that any material is containing any matter the publication of which is punishable under Section 124 A or 153 A or 153 B or

² . *Gunda* is defined in Section 2 of Uttar Pradesh Control of Gundas Act 1970 according to it *Gunda* is person who himself or as member or leader of gang habitually commits offences, he is dangerous and desperate person on the basis of his general reputation or house-grabber or tout in corruption related activities or habitually tease the female or convicted at least three times for excise related offence or gambling or arms related offence. House-grabber is person who illegally takes possession of house, land or garden belonging to some other person.

292 or 293 or 295 A of Indian Penal Code, the State Government may by notification declare that such material to be forfeited to Government and on such declaration police officer may search and seize such materials wherever found. Magistrate under Section 95 Criminal Procedure Code may issue search warrant to authorise any police officer not below the rank of Sub-Inspector to enter in any premises and to make search there. Further, in situation requiring immediate search police officer under Sections 165 and 166 Criminal Procedure Code may enter in any premises and make search there without warrant.

3.2.4. Informing Executive Magistrate for Initiation of Preventive Actions

Section 106 Criminal Procedure Code empowers Court of Session and Judicial Magistrate First class for passing direction with sentence order requiring convict to execute bond for keeping peace for any period not exceeding three years. Court of Session and Judicial Magistrate first class are judicial officer court or magistrate which makes trial of criminal case for punishment imposition. When on trial, court is satisfied that crime was committed by accused, and further, court is satisfied that after serving the sentence there is probability of disturbance of peace and public tranquility; court besides infliction of sentence directs for furnishing of bond for keeping peace. Furnished bond comes in force after completion of punishment term and it is for prevention of further crime commission. Generally in cases under Section 106 Criminal Procedure Code police officer submits memo after passing of conviction order but before sentence order requesting court to direct for execution of bond in addition to sentence order.

In India dispute relating to immovable property particularly for possession of immovable property is major cause for most serious crime commission. To check the civil dispute which may ultimately result into criminal dispute producing serious consequences, one major measure is to compel the parties to get dispute settled by civil court. In Section 145 Criminal Procedure Code wider powers are conferred on executive magistrate. Executive magistrate by passing order protects immediate possession, thereby, compel the aggrieved party to take recourse of civil court for final settlement of claim and interests. Police officer play major role in giving the information relating to dispute of immovable property possession to magistrate for initiation of inquiry in this regard, and further, police is main instrumentality for enforcement of order passed by magistrate.

Section 107 Criminal Procedure Code is frequently used provision by police officer to prevent disturbance of public tranquility particularly in cases where all ready some scuffle has taken place between parties in connection with religious ceremony, festivals, election, property dispute, which was initially personal petty matter but with passing time it is becoming issue relating to honour of person and family etc. which may ultimately produce graver consequences. Police officer has evidences and information which are given to executive magistrate and he after giving notice starts security proceeding and on proving of probable security risk may take action under Section 117 Criminal Procedure Code by directing the person to execute the bond with or without sureties for keeping peace or maintaining good behaviour. Section 133 Criminal Procedure Code empowers executive magistrate to take effective measure for removal of public nuisances. Information about commission of public nuisance is mainly given by police officer. Police collects information through beat, patrol, village-watchman (choukidar), informers, and without loss of time such information is given to executive magistrate for effective actions. Public nuisance is serious problem before the society and

with passing time it is becoming graver problem. Usually public nuisance give rise to various kinds of criminality; it encourages lawlessness in the society, needed to be tackled immediately. Police officer may regulate assembly and procession on public road by permitting, prescribing time and place, compel to obtain license for such assembly and procession in which term and condition may be fixed for such assembly and procession (The Police Act 1861, Sec. 30(1), 30(2)). Police officer may regulate the extent to which music may be used in street on the occasion of festivals and ceremonies (The Police Act 1861, Sec. 30(4)). Police officer is empowered to take any person in custody without warrant whoever is throwing dirt into street or neglect to fence or duly protect well, tank or dangerous place or structure (The Police Act 1861, Sec. 34). To deal with public nuisance and maintenance of public order police officer is provided with heavier responsibilities and to satisfy conferred with wider powers also.

3.3. Community Policing for Preventive Actions

Crime hampers and deteriorates societal conducive environment necessary for peace, prosperity, development, and wellbeing of society. Disorderly society is destined to be problematic for proper life comfort, happiness and success of member of society. Any country can only excel and its citizenry can continue to have faith in government when governmental machineries indulged in law and order maintenance, crime tackling and anti-criminogenic environment creation are effectively and properly making efforts to satisfy the responsibilities. Police organisation is established specially for dealing with crime problem and maintenance of law and order but it does not mean that only police officer has responsibilities in this regard. Every member of society has not only moral and social responsibility but also he has legal responsibility to play his role and participate in efforts of order maintenance, crime tackling and anti-criminogenic environment creation. Crime affects the whole society and societal solidarity becomes weaker; in such a situation every member of society has responsibility to help the criminal justice system in tackling of crime problem. Police officer for his actions for crime tackling is in need of information about criminal, his intentions, preparation and crime commission. Police officer for investigation in case is in need of statements of persons acquainted with fact and circumstances. Further, police officer is in need of witnesses who may be produced before the court for testimony, thereby, proving of case against criminal. Without cooperation of public at large tackle of crime problem is impossible pursuit. Public reaction against crime is essential requisite to tackle crime, criminal and criminality. For effective tackling of crime problem, community policing is essential requirement of criminal justice system. Community policing is effectual cooperation between police and public for coping the crime, criminal and criminality. It is necessary for effective policing that police has to take steps for confidence, faith and trust building in public for police and police actions.

Police officer can take action in criminal cases particularly preventive actions, only when he receives information about crime and criminal without any delay. Every person having information about crime has compulsory legal duty to inform the police (Criminal Procedure Code 1973, Sec. 39). Village officers have special responsibility to inform police officer about residing or frequenting of village by thug, robbers, proclaimed offenders, notorious and habitual criminals; sudden death and disappearances of any person from village; and matter likely to affect maintenance of order, prevention of crime, safety of property or person (Criminal Procedure Code 1973, Sec. 40). Section 72 and 73 Criminal Procedure Code enables magistrate to issue warrant

of arrest to any person and direct to arrest person specified in such warrant. In Section 43 of Code private person is empowered to arrest the criminal in specified circumstances. Section 37 of Code provides that the magistrate or police officer may demand cooperation from any person in making arrest, in prevention or suppression of breach of peace, or in prevention of injury to public property. Section 38 of Code enables private person who is directed to execute the warrant of arrest to require aid of any person in execution of warrant. In Section 47 of Code responsibility is imposed on person having possession of premises to provide facilities for search of premises for arrest of criminal and Section 100 read with Section 47 of Code requires from such person to assist in search of his premises for recovering and seizure of incriminatory materials. Section 51, 100, 165 and 166 of Code provides that police officer may ask any person to be witness of search and seizure. In Criminal Procedure Code provisions are provided requiring cooperation between citizenry and law enforcement agency for taking preventive action with objective to tackle the crime.

Police alone cannot achieve its goal to tackle problem of crime unless public at large will not cooperate them. Regulation 61 UP Police Regulation prepared under The Police Act 1861³ expresses clearly that police is servant of public, thereby, police has to be considerate and thoughtful towards them. Beat, Patrol (*gust*), *nakabandi* (ambush) are major measures to gather information, create fear in bad elements and take immediate actions against miscreants. If police officer would use these measure, up to greater extent various problem may be coped with like distance between police and community may be bridge up and community policing may come into existence, there may be confidence development between police and people, police may get requisite information and other cooperation from the members of society, with encouragement of police members of society may react against crime with more strength, and on identifying law enforcement agencies in actions criminal elements may be filled with fear and common citizenry may become fearless. Beat duty is one major measure for prevention of commission of crime through ensuring police – public cooperation. Beat is segment of police station area which consists of village or part of city area. Beat is also measure to establish good relations with local residents thereby proceeding towards developing community policing, maintaining surveillance over bad elements. On every beat police constables are posted, they have to keep vigil over persons under surveillance, proclaimed offenders and other criminal elements. Police constables on beat duty have to give information to officer in charge of police station (UP Police Regulation, 63).

In prevention of crime police patrol duty plays a major role; statutory law directs for sending of police party on patrol duty in police station area particularly in night. Now in almost states in India, specialized unit of police patrol party with modern vehicles, communication system and armaments are organized. Patrol party keeps watch over

³. Police is state subject mentioned in Seventh Scheduled provided in reference to Article 245 of Constitution of India. Police Act is central legislation but it is dealing with state subject of legislation and its enforcement. State for proper implementation of Police Act prepares Police Regulation and in this reference State of Uttar Pradesh has prepared regulation called UP Police Regulation. In 2006 Central Government prepared modern draft for model Police Act and States are encouraged to enact state Police Act accordingly. Hereby, if any state enacts its Police Act and obtain consent of President then it will be applicable for state concern for control and regulation of police in such state.

road and various areas within the territorial area for security of passengers and public at large. (UP Police Regulation, 190) Any person in emergency situation may intimate over modern communication means like mobile phone, panic call button use, whats app etc and police party reaches the spot for preventing the crime commission and otherwise helping the victim of crime. *Nakabandi* is used a major preventive measure, it is used in addition to or instead of night patrol, by it police party makes *nakabandi* in night over road and area where suspected persons frequent or reside (UP Police Regulation, 195).

Police record is crucial in crime prevention as it forms broad data-base on the basis of which police may have information about demographic situation of area that what are influential community in particular village or part of city (*Mohalla*), who are influential person and impartial person, person who may be helpful for police, dangerous and desperate person, history-sheeter. On the basis of police record, police officer to decide about measures to be taken against crime and criminals. Regulation 223 of UP Police Regulation directs to officer in charge for maintaining of Village Crime Diary. Village Crime Diary is classified in five parts; part - 3 and part -5 of this diary are very crucial. In part third of diary name of previous convicts of village and their address are mentioned; in case of change of address, it is also given.

Previous convict whose history-sheet is not opened, his name is removed from this part of diary on expiry of twenty years from his conviction and when previous convict is history-sheeter, his name is removed only after his death. Part - 5 of Village Crime Diary is history-sheet and it is personal record of all the criminals who are under surveillance (UP Police Regulation, 228). History-sheet is prepared of habitual offenders and abettors or persons who are suspected to be habitual offenders or abettors. History-sheet is opened - (1) On conviction or acquittal, even in case of acquittal history-sheet may be opened, when police has sufficient ground for suspicion that such person may have committed crime, he is acquitted due to insufficiency of evidences or benefit of doubt; (2) person is suspected for commission of crime; even FIR is not lodged or there is no trial but on the basis of information that he is dangerous person, history-sheet may be opened. History-sheet is opened on permission of Superintendent of Police (UP Police Regulation, 240).

Habitual offenders have criminal mentality and matured criminal culture, thereby, always it is probable that on getting opportunity for commission of crime, they will repeat same or similar kind of offence, for purpose of prevention of crime, it is needed that proper surveillance has to be kept over such criminal elements. History-sheet has two parts; first parts consists lesser hardened criminals who are found indulged in property crimes and such are called Class - A History-sheeter; second part consists professional criminals, *gunda*, dangerous persons and abettors and such are called Class - B History-sheeter. History-sheet is very useful to know that how much criminal element is dangerous for society and what kind of surveillance has to keep over him. Surveillance is crucial measure for crime prevention. Nature of surveillance varies according to circumstances and person under surveillance. Generally surveillance is kept over activities particularly movements and change of residence of History Sheeters; when such persons moves, in police record it should be noted and appropriate actions should be taken. Further when such person move to other police station area, officer in charge of police station hands over History Sheet and Bad Character roll to officer in charge of that area. When Bad character person conceals his presence and his whereabouts are not known for time being, officer in charge of the area informs to all

concerned officers and officer in charge of police stations where the person may go. Under Section 356 (5) Criminal Procedure Code State Government is empowered to make rule regarding surveillance over previous convicts. Regulation 231 provides that in case of Class -A History-sheeter surveillance is kept for two years and if during this period he is not suspected for crime commission or not absent in suspected circumstances, his surveillance is closed. In some cases Class -A History-sheeter is taken as more dangerous, it is needed that his history-sheet be classified and his surveillance is extended for two more years. Regulation 232 provides that surveillance of Class - B history-sheeter closes on his death. History-sheet is never closed; it is record of police station, only surveillance is closed (UP Police Regulation, 233). History-sheet is confidential document; it is prepared on the basis of criminal cases lodged and decisions of courts. Further, opinions of common public of village concern and neighbouring village regarding habit and general reputation of person are also considered.

Police and public cooperation to tackle problem of crime is necessary requirement; enactments in India ensure such cooperation, and thereby, criminal justice system in India ensures effective prevention of crime and protection of society against crime, criminals and criminality. Community policing is major measure of criminal justice system specially for taking preventive actions. Police can gather information about crime and enforce the law only with help of public at large. Sometimes in situation of emergency when riot or other kind of disturbance of peace has taken place or reasonably apprehended and sufficient number of police officers are not available Section 17 Police Act 1861 enables police officer not below the Inspector may request to magistrate to appoint residents of the area in such numbers as requested by such Inspector to act as Special Police Officer for specified time and specified area. Appointment of Special Police Officer strengthens the cooperation ties between police and public, and further, it ensures availability of sufficient number of police officers. Section 21 of Police Act provides for appointment of Village Police Officer (Village watchman or *Chaukidar*) who act like vigilant eyes of police station over village area.

In India concept of community policing through which police and community cooperation is ensured for tackling problem of crime, criminal and criminality is not new but it has always been present and practiced. Presently, provisions of criminal law expressly provides for public-police participation for effective dealing with crime problem.

3.4. Judicial Directions Regarding Policing

Indian Police is organized, and it functions under British colonial period Police Act enacted in year 1861 AD and regulation prepared under aforesaid Act. The whole crime problem existing in year 1861 AD has completely changed in 21st century. Now criminals are professional criminals and they commit crime in organized and planned manner by use of modern technology. Now need is to modernize the law, techniques of policing emphasizing on preventive actions; to develop the infra-structure for scientific investigation; to train the police officer with know-how of modern and scientific policing; and to make police organisation a professional crime tackling organisation. In *Prakash Singh v. Union of India* (*Prakash Singh v. Union of India*. (2006), (8) SCJ 577) Supreme Court of India observed:

"The commitment, devotion and accountability of the police has to be only to the Rule of Law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures.

Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the Rule of Law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay."

Prakash Singh, the petitioner in this case, is retired and respected police officer, he was Director General of Police of Uttar Pradesh, Assam, and further, he was Director General of Border Security Force. *Prakash Singh* filed writ petition for direction by Supreme Court for police reform. Supreme Court directed for separation of investigation wing of police and law and order maintaining wing of police. Further, Supreme Court directed for establishment of Police Complaints Authority at two levels, District and State. Complaints committee has responsibility to look into complaints against police officer. District Complaints Committee has to consider complaints against police officers up to rank of Deputy Superintendent of Police and State Complaints Committee has to consider complaints against Superintendent of Police and above. Police officers are alleged for misuse and abuse of police powers, public at large does not have faith in police and their actions. Such situation affects criminal justice system in dealing with crime problem. Establishment of complaint committee may provide measure for redressal of public grievances against misuse of police power and thereby, winning of public confidence.

Investigation of case is crucial in criminal cases as whole criminal proceeding depends on results of investigation. Investigation is time consuming which requires expertise, training and experience on part of police officers. Same police officer having responsibility to investigate the criminal case has also duty to maintain law and order, traffic regulation; thereby, police officer may not be able to develop concentration, expertise and experience for investigation. In 21st century criminals are using modern know-how for commission of crime; such crime can be investigated by use of scientific investigation techniques. In case of preventive actions investigative function is more challenging as yet crime has not been committed. One of the main reasons for abuse of police powers is handicaps of police officer in reference to his investigative qualifications. For proper criminal justice enforcement, in *Prakash Singh v. Union of India* Supreme Court directed for separation of investigation wing and law and order maintaining wing. In *Sube Singh v. State of Haryana (Singh, 2006)* Supreme Court observed that misuse of powers by police officers are due to lack of training in scientific investigation methods, lack of modern equipments, lack of adequate personnel, lack of mind set respecting human rights, public expectation and pressure for result of investigation in too short period. Effective criminal justice system is always considerate for problems relating to police functions, thereby, difficulties in criminal investigation should be recognized, public should support the police officer, Government should strengthen and equip them and men in power should not interfere in police function.

Policing and success of police officer to tackle problem of crime depend on attitude and efficiency of police officer. When police officer behave properly, give due respect to common person, and act in transparent manner, public reposes faith in police. In (Basu , 1997 art 1 SCC 416) Supreme Court Observed:

How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values.

Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to constitutional ethos...

In *D K Basu case* Supreme Court further observed that the efforts have to be made to change the mindset of police officers for taking humane consideration in handling criminal cases. Police officer should not use third degree in solving the criminal cases. In *D K Basu* Court direct to not use force for solving of case but in case of hardcore criminals like terrorists, drug peddlers, smugglers etc permitted to act sternly. Court observed:

...We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others increasing number of underworld and armed gangs and criminals. Many hardcore criminals like extremists, terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crime committed by such categories of hardened criminals by soft peddling interrogation...The concern is genuine and problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself.

4. Conclusions

Primarily criminal justice system is focused on penal action for tackling the crime problem but now need is to shift the focus on preventive action. In 21st century criminals are using modern technologically developed gadgets, modern know how, and they commit crime in organized and planned manner; such crime commissions cause serious impacts not only over individuals but also over the whole nation and ultimately the whole world. Proper exercise of powers and satisfaction of duties by police may effectively tackle problem of crime, criminal and criminality. Law and order, peace and public tranquility depend on bearing of responsibilities by police officers. Passivity on part of police or misuse of police powers create completely different situation in which wellbeing of society is affected.

Modern policing has to develop for effective effort for prevention of crime and criminality. Only crime prevention should not be focused but ultimate goal should be prevention of criminality; social environment should be anti-criminogenic conducive environment. Success of criminal justice system in coping crime problem depends on public reaction against crime and cooperation with police. Better measure to deal with crime problem is to modify the whole system of policing; policing has to be focused on preventive actions rather than taking police actions after commission of crime. Now need is to develop community policing; police and public should have mutual respect and faith. When public and police cooperate and react against crime, criminal and criminality, only then society may succeed in effective tackling of crime problem, and thereby, goals of criminal justice system may be achieved to make peaceful society in which members of society may reside without fear of victimization. In India sufficient legal provisions are provided to empower police for preventive actions. Only legal provisions in statute books enabling for policing for preventive actions are not sufficient

but those have to be properly enforced. Police officers should be trained to use scientific manner of policing to deal with crime, scientific manner of investigation, scientific manner of prevention of crime, scientific manner of information gathering, scientific manner of maintenance of law and order. Police officers are needed to be carefully taught regarding actual working of criminal justice. Police has wrong notions regarding observance of directions of criminal law. Police officers consider that people obey law because they fear the police. Thereby, police officers consider themselves above the law. It is needed to be rectified that people obey the law because they respect the law. Preventive actions are very sensitive and serious acts which require analytical mind, scientific tools, scientific labs, proper and effective training.

References

- Bhatt, P. R. (2015). *The Vrajajivan Pracyabharati Granthamala - Manusmriti* (Sarala Hindi Commentary (ed.)). Chaukhamba Sanskrit Pratishthan.
- Chaturvedi, J C. (2006). *Police Administration and Investigation of Crime*. Gyan Books.
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974
- Constitution of India
- Criminal Procedure Code 1973
- Basu, D. K v. State of West Bengal* (1997) 1 SCC 416
- Indian Penal Code 1860
- Kavathkar, V. (1910). *Arthashastra*. Damodar Sawalaram ani Mandali.
- Kumar, K. (2003). Good Governance and Police Administration: Need for Reforms. *Indian Police Journal*, LX(1).
- Mishra, O P. (2015). Behaviour and Response: Critical Issue in Policing. *Indian Police Journal*, LXXII(2).
- Prakash Singh v. Union of India*. (2006), (8) SCJ 577
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988
- Singh, P K. (2020). Bail in Socio-economic Crimes and Criminal Justice in India. *Athens Journal of Law*, 6(3).
- Singh, P K. (2021), Tackling of Corruption in India by Recently Enacted Penal Laws, *Athens Journal of Law*, 7(3).
- Sube Singh v. State of Haryana* (2006) 3 SCC 178
- The Police Act 1861
- Tripurari. (2009). Policing without Using Force: The Jalapaiguri Experiment, *Indian Police Journal*, LVI(3).
- UP Police Regulation
- Uttar Pradesh Control of Gundas Act 1970
- Verma, A. & Subramanian, K S. (2009). *Understanding the Police in India*. Lexis-Nexis.

Vidyarnava, R. B. S. C. (1918). The Sacred Books of The Hindus - Translated. In
Yajnavalkya Smriti - Mitaksara and Balambhatta - Book 1 Achara Adhyaya (8th ed.).
The Panini Office.