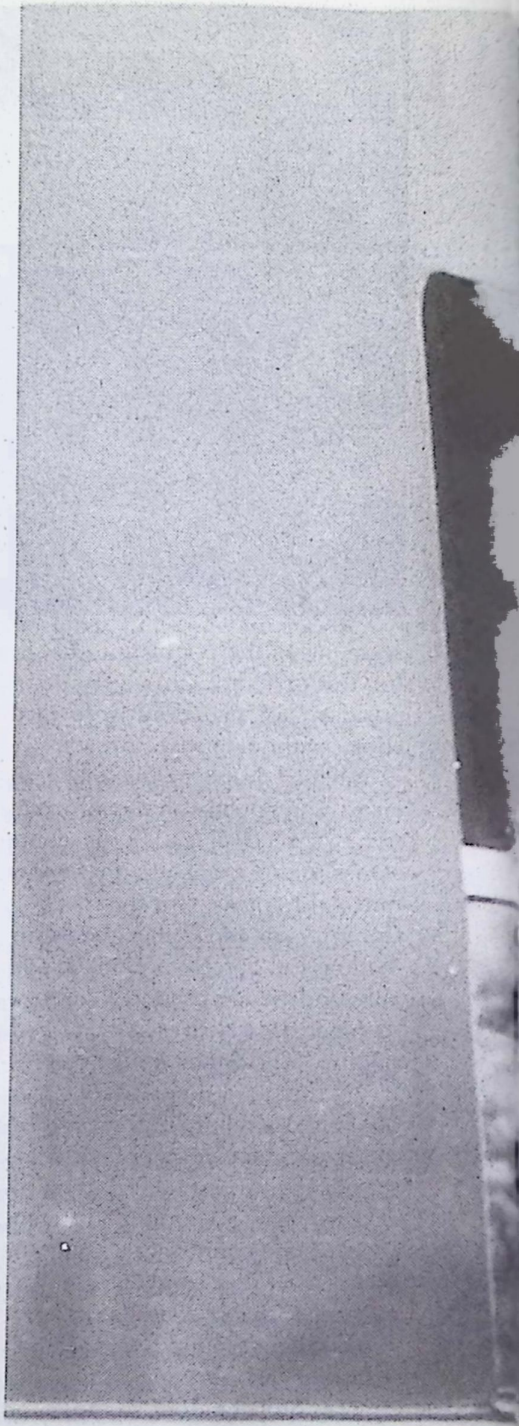
Crime and Punishment

MEGASTHENES traces the history of war crimes and bringing their perpetrators to justice



LUCIUS Calpurnius Piso Caesoninus was a statesman of ancient Rome. In the historical context, he is not as pre-eminent as his illustrious son-in law Julius Caesar. A proverb or apothegm, the authorship of which is generally ascribed to him, has come down across centuries and is the motto of many courts and judges in different countries even today. *Fiat justitia ruat coelum* or "Let justice be done, though the Heavens fall."

Administration or dispensation of justice is essentially -- but not exclusively -- the province of the judiciary; the executive or the government also has an important, if secondary, role to play. In criminal cases it is the executive which investigates and prosecutes; it has the discretion to commute sentences, and may even grant pardons. Piso's maxim should be appropriate for the judiciary rather than the executive; as no responsible government can equably ignore the consequences of the Heavens falling on an unwary populace.

War is an abomination, and war crimes are acts that are so unconscionable, so excessive and gross, as to be unacceptable even in war. Simply put, they are violations of the laws and customs of war. Such customs have existed since ancient times. In the epic poem of old, the Mahabharata, on the eve of the climactic battle of Kurukshetra, leaders of both sides met to draw up the rules of engagement.

The laws of war have evolved over centuries, particularly since the middle ages. They serve to mitigate the horrors and rigours of armed conflict. The Hague and Geneva Conventions of the late 19th and early 20th centuries were the first formal statements of the laws of war and war crimes in international law. These clarified the customary laws of war, but essentially focused on the relationship between belligerent nations and military forces, without addressing the impact of war on the civilian population. There were no war crimes trials after World War I. Huge war reparations, though, were exacted from Germany.

During World War II, and in the years leading to it, there was widespread and vicious abuse of human rights. These were not merely incidental to the purposes of war, but, in many instances, a deliberate policy and tactic. The Allied Powers agreed in the Moscow Declaration of October 1943 that members of the German armed forces responsible for atrocities would be brought back to the scene of their crimes and judged on the spot by the people they had outraged. It was also stipulated that major war criminals whose offences had no particular geographical location would be