Chapter XVI

THE POLICE SYSTEM

Police as a functionery of criminal justice system, has to play a crucial role in maintenance of peace and enforcement of law and order within its territorial jurisdiction. Its primary duty is to safeguard the lives and property of the people and protect them against violence, intimidation, oppression and disorder. Crime prevention certainly involves the services of certain law-enforcement agencies to detect and investigate crimes and apprehend criminals for prosecution in law courts. Usually the transgressions of law are brought to the attention of the police which prepares the grounds for future criminal investigation. Therefore, the charges against accused having been framed, his trial begins in the appropriate criminal court. The Court records the evidence and decides whether the charges against the accused are proved or not. In case the guilt is proved, the accused is convicted by the Court and sent to prison or some correctional institution to undergo a term of sentence. Thus a number of functional agencies, notably, the police, the courts and the prisons or after-care institutions, are involved in the administration of criminal justice. To these may be added the institutions of probation and parole which seek to bring about reformation of offenders, particularly, the young and juvenile delinquents. Before entering into a detailed discussion about the functioning of each of these law-enforcing agencies, it must be stated that all criminal trials do not necessarily involve the services of all of these agencies. In several cases the offender is discharged by the police after preliminary investigation while in others, prosecution against the accused is dropped by the court at some stage or he is finally acquitted of the charge. Again, even after conviction many offenders are released on probation and are not required to be sent to prison or a correctional institution. Those who are sent to prison may also be granted parole. Thus it would be seen that from the point of view of sentence, the role of police comes first in the administration of criminal justice while those of courts and prisons is followed subsequently.

Origin of Police

The police is primarily concerned with the maintenance of law and order and security of person and property of individuals. It, therefore, plays a vital role in criminal justice system. Of late, police duties have increased enormously and are becoming more and more diversified. The modern police must protect the public against physical dangers, rescue lives, regulate traffic and preserve law and order in the streets and public places. It also has a definite duty with regard to the prevention of juvenile delinquency and atrocities against women and children.

Any discussion on 'police' will be incomplete without a word about the origin and evolution of this institution. Originally, the word 'police' was used

in a wider sense to connote the management of internal economy and the enforcement of governmental regulations in a particular country. With the passage of time, the term 'police' began to be used in a much narrower sense to connote an agency of the State to maintain law and order and enforce the regulations of the Code of Criminal Procedure.

The word 'police' is derived from the Greek word *Politeia* or its latin equivalent *Politia*. The term *Politia* stands for the 'State' or 'administration'. In the present context, the term 'police' connotes a body of civil servants whose primary duties are preservation of order, prevention and detection of crimes and enforcement of law. As pointed out by *Ernest Fround*, police functions generally relate to promoting public welfare by restraining and regulating the use of property and liberty of persons.[1]

Police force has always been an indispensible appendage of State organisation in almost all the civil societies of the world. Only the persons of proven ability and those having thorough knowledge of local region and its people were recruited in the police force so that they could tackle the problem of law enforcement efficiently. However, with the progress of civilization and development of knowledge, the dimensions of police functions have extended beyond limits. Now it has assumed the role of a social service organisation in the modern welfare states and has no longer remained a mere watch-dog agency.

Development of Police Organisation :

The beginning of civil protection against crime and disorder in England came with the promulgation of the Edict West Minster in 1285 by King Edward I. Under the system, local groups of property owners numbering about a hundred each were responsible for maintenance of peace in their district. This system prevailed in Great Britain for centuries.

By the advent of eighteenth century United Kingdom witnessed a considerable increase in crimes of violence. Therefore a police force of 126 constables was set up by the Middlsex Justice Act, to arrest the growing incidence of crime and disorder.

A regular system of constabulary was, however, established in England by the Act of the British Parliament passed in 1787 for the maintenance of peace and tranquillity in Ireland. These constables were responsible for enforcement of law and order in boroughs and towns. As the civilization progressed, the complexities of life multiplied due to the impact of industrialisation and urbanization. Consequently, the existing strength of the constabulary proved inadequate for the maintenance of law and order. Therefore, *Sir Robert Peel*, the then Home Secretary of England pleaded for a change in the existing system of constabulary. This led to the passing of Metropolitan Police Act, 1829, which provided for a separate police force for Metropolitan city of London. Similar police force was introduced throughout the United Kingdom in subsequent years. The constables working in the police were popularly called "Peelers" after the name of *Sir Robert Peel* who pioneered this scheme. Later on they came to be known as 'Bobbies'.

The first two Commissioners of Robert Peel's London Metropolitan Police through unremitting efforts and ceaseless vigilance, were able to raise

1. Ernest Fround : The Police, Policy And Constitutional Rights, p. 6.

a police force which was unarmed and committed to eschew violence as far as possible. The success was commendable as it generated among the British people a sense of orderliness and respect for law.

One of the important developments in British Police system is the rural police force. The rural police system in Britain is an outcome of historical development. The rural beat consists of eight villages or hamlets with a population of about 2000 persons. Rural police is mostly to deal with rural agricultural and live-stock matters. In order to perform its duties efficiently, it has to maintain liaison with the various government departments and also agricultural and veterinary officials. Though a policeman is supposed to be on duty day and night, he has to perform eight hours beat patrol, which may be continuous or with an interval in between two-periods. He also does night patrolling for the purpose of prevention of crime.

On the whole, it can be said that in United Kingdom the police enjoys public support and respect and there are very few occasions of lethal use of force by the policemen. The police personnal are well trained and equipped with latest gadgets and weapons to tackle the problem of crime and criminals efficiently. They command high respect in English Society.

America.

Before United States came under the influence of the Britain, the civilians performed the function of night-watchman by rotation with a view to protecting the society from crimes and criminals. This watch and ward arrangement proved effective to control growing incidence of crime and disorder in rapidly expanding cities. Consequently, a regular police force was established in New York in 1844. A regular police force was, however, set up in America by the Dougan Charter of 1886. The adoption of regular police in American cities did not prove very useful because of extremely low wages offered to policemen. An inclination towards violence was the main requirement for entry into the police force. The new police, therefore, became pawns in the spoils system and shared in general corruption prevailing in the local politics.

The modern police in U.S.A. is vested with the authority of using legitimate and justified force against the citizens. The mandate of police to use force and violence to curb violence raises a key issue that the police themselves should not indulge in unnecessary violence or excessive use of force. However, it is generally believed that American police cannot allow a challenge to go unmet as they consider 'backing down' as cowardly.[1] The major police problem in U.S.A. is distrust and suspicion of police which separates cops from the community.

Police Force in India.

Police force has been in existence in India in one form or another from the very ancient times. There are references to the existence of police system in epics, namely, *Mahabharata* and *Ramayana*. Manu, the great ancient law-giver also emphasised the need of police force for maintenance of law and order. According to him, police functions could be entrusted to only those who were well acquainted with the local people and were dedicated to the

1. Shankar Sen : Police Today, p. 26.

cause of protection of society against law-violators. He also refers to the secret intelligence practised in his times for the prevention and detection of crimes.

The ancient history of India further reveals that there was a well organised police force during the reigns of ancient Hindu rulers.[1] The Gupta dynasty in ancient India was particularly known for its excellent law and order situation through a well-organised system of police. The chief of the police force was called "*Mahadandadhikari*". He had a number of subordinate officers called '*Dandadhikaris*' to assist him. Later on, during the reign of Harshavardhan, these functions were discharged by the officials called '*Sandik*' *Chowrodharnik* and *Dandapashik* who were responsible for maintenance of law and order in districts, towns and villages.[2] The judicial officer was called *Mimansaka* whose main task was to decide upon the guilt or innocence of the offender and award appropriate punishment if the charge was proved against the accused. Deterrent penal provisions kept the law and order situation well under control. There was a separate branch of detectives working under the police establishment called the *Guptachars*.

The indigenous system of police in India was organised on the basis of collective responsibility of the village community. The law and order in the village was maintained through the village headman who was assisted by one or more village watchmen. Besides keeping watch in the village, these watchmen had to report to the headman the arrival and departure of all strangers and suspicious persons. If a theft was committed in the village, the headman had to detect the thieves and recover stolen property, and in case he failed to do so, he had to make up the loss as far as his means permitted and the balance was recovered from the villagers. At times, payments were made to the leaders of the plundering tribes to prevent depredations by them.[3]

The Mughal rulers in India also had a well organised police force for maintaining law and order in society. This system was, however, different from the earlier one. The police official called the '*Fauzdar*' was incharge of the entire police force with a number of subordinate officials called '*Darogas*' or '*Kotwals*' working under him. The policeman called the '*Sipahi*' was the official of the lowest rank in the police constabulary of the Mughals. The detective branch of the police was called *Khuphia* who assisted the police in criminal investigations. The chief police administrator of the province was called '*Subedar*' or Nizam.

During the last days of Mughal empire, the military exploits of the emperors put the police administration into oblivion, and the rulers had to pay heavily for this neglect.[4] The police system during the Mughal period was undoubtedly suited to the needs of a simple and homogenous agricultural community, but it could not withstand the strains of political disorder and, therefore, with the decline of Mughal Empire, the system of police administration also collapsed. Consequently, extortion and oppression became the rule of the day and the zamindars, the headman and watchmen

1. It is rather unforunate that *Fahien* and *Hieuen Tsang* made no mention of police in their travelogues.
2. Ratibandhu Nahar (Dr.) : Prachin Bharat Ka Itihas Chapter on Harshavardhan.
3. Vardachariar S. : Hindu Judicial System (1946) p. 94.
4. Sarkar J.N. : Mughal Administration (3rd ed.) p. 92.

of the villages committed crimes and gave shelter to criminals with a view to sharing booty. The rule to restore the stolen property or to make good the loss was no longer observed. Even the highest officials indulged in corrupt practices and the tyrannical rule resulted in repression of the people during the last days of Moghul Empire in India.

The British Government in India retained the system of policing prevailing in each Province with modifications. According to the Regulations of 1816, village headmen were made *ex officio* heads of police also. They apprehended offenders and forwarded them to District authorities. In petty cases, however, they themselves dealt with the criminals. The Police Commission of 1860 recommended continuance of the prevailing system of rural policing with minor changes. The other recommendations of the Commission were as follows :

1. Police functions were to be entrusted to civil constabulary separating them completely from the military police ;
2. The civil police administration was to be headed by an Inspector General of Police for each Province ;
3. The Inspector General would be responsible to the Provincial Government whereas the Superintendent of Police would be responsible to the Collector of the district.
4. The village police were to be under the supervisory control of the Superintendent of Police.

The Indian Police Act, 1861, an aftermath of the war of Independence of 1857, was enacted to "reorganise the police and to make it more effective instrument for the prevention and detection of crime" as laid down in the preamable of the Act. Certain provisions to contain public nuisance such as controlling of traffic, prevention of cruelty to animals and health hazards, drunkenness etc., were incorporated in the Act.[1]

The Government of Lord Curzon appointed another Commission called the Police Commission of 1902 to suggest measures for reform in police working. Surprisingly, the Commission instead of suggesting any measures for reform in the existing rural police highly commended the prevailing set-up. According to the Commission, "it was impossible to carry on the police administration only by regular police and it was essential to secure the aid of village community through the agency of *Chaukidars*. Any other alternative of employing regular policemen at villages could be too expensive.

The Police Act, 1861 was fairly comprehensive and almost half of it dealt with matters such as police powers with regard to public assemblies, punishment for certain kinds of offences on road, and the definitions of important legal terms used in the Act. However, the Act did not conceive the police force as a service organisation and no structural changes were introduced in the police administration under the Act. The Act was applicable only to the British India and it did not extend to independent princely States where the age-old police organisation still continued to function.

Consequent to the Indian Independence in 1947, the colonial police set up was hardly suited to the radical changes in the Indian society, but

1. Secs. 23, 34 and 30 of the Police Act, 1861.

ironically, the same set up with little modifications here and there, still continues despite more than half a century after the end of the colonial rule in this county. As rightly observed by *D.H. Bailey*,[1] the Indian police system which is developed on the basis of the Police Act, 1861, has three basic characteristics :—

(i) the police force is organised, maintained and directed by several States of Indian Union ;

(ii) the Indian police system is horizontally stratified like military forces organised into different cadres ; and

(iii) the police in each State are divided vertically into armed and unarmed branches.

Despite the new democratic, secular, socialistic, welfare and humanitarian values vouched for in the Constitution, the Indian police, by and large, follows the philosophy of para-militarism associated with the mechanism of awe, threat and coercion. In other words, the democratic philosophy of the Constitution hardly gets reflected in the organisation of Indian police. The police and society have drifted apart from each other thus weakening the sound foundations on which alone can be built an efficient and competent police system.[2]

The Constitution of India provides that 'Police' is a 'State subject'.[3] It is, therefore, for the States to maintain their own police force for maintaining peace and security within their respective territorial jurisdictions. There are, however, certain situations which authorise the Centre to intervene in the law and order problems of the State because the Centre is under a duty to protect the States from internal disturbances.[4] Besides the State Police Force, there are certain special police establishments such as the Border Security Force, the Railway Security Force, the Central Reserve Police Force, etc., which assist the general police in performing their functions.[5] There is yet another category of police wing called the 'traffic police' whose duty is to control the road and vehicular traffic and deal with the cases of 'traffic-law' violations. A new central force called the Central Industrial Security Force has been set up from March 10, 1969. It was initially started in Durgapur Steel Plant and has now been inducted in several major public sector industries in India.

Modern police is primarily concerned with detection and investigation of crime and apprehending criminals by making arrests. They are thus concerned with the protection of society against crimes and safeguarding the person and property of the people. The police also deal with juvenile delinquents and enforcement of a variety of Acts[6] and regulations such as

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1. D.H. Bailey : The Police And Political Developments in India, p. 36.
2. The Indian Police Journal Vol. XXVIII, No 3 March, 1982.
3. The Constitution of India : Distribution of Legislative Powers between the Centre and the State, List 2 Entry 2.
4. Article 355 of the Constitution of India.
5. The Home Guards and S.A.F. also constitute a part of the police establishment.
6. The Acts are the Opium Act, the Excise Act, the Prohibition Act, the Customs Act, the Gambling Act, the Immoral Traffic Prevention Act, the Prevention of Corruption Act. Motor Vehicles Act, Arms Act, the Explosive Substance Act, POTA etc. POTA has now been replaced by the Unlawful Activities Prevention (Amendment) Act, 2004.

licencing, sanitation, civil defence, etc. With a view to performing their duties efficiently the police has to associate themselves with public and seek latter's co-operation in prosecuting the offenders.

The transformation of India from a police State into a welfare State after the Indian independence has brought about a radical change in the activities of the police. Today, India is passing through an age of political, economic and social modernization since the police has to spend a good deal of its time and effort in working with the people, the society's expectations from this organisation has been steadily rising. As a result of this, the police has to assume a new role in the changed scenario.

The police which was identified as a law and order maintaining machinery of the State in earlier times, is now viewed as a conscience keeper of the society. In modern time when the State has undertaken the task of providing for the welfare of the community, the role of police in preserving and protecting the very basic needs of human survival and social intercourse becomes vital.

Despite a radical change in the role and functions of police during the last five decades of Indian independence, it is rather unfortunate that it still reflects in its edifice the British colonial philosophy and this historical background has always deprived the police from getting a high status as its counterparts possess in the western countries, where police is a 'friend' and without a sympathetic police officer, no other agency can ensure criminal justice to the law abiding citizens against the law-breakers.

In the backdrop of a comprehensive sociological, technological, economic, political and psychological change now underway in India, the values and ethics of police must also change, so that it does not become an out-model because of the rapidity of social change. Accordingly, the police personnel have to play the role of initiators and agents of social change.

The Police set-up

The hierarchy of police officials working in the police force includes the Inspector-General of Police, Deputy Inspector General of Police, Superintendent of Police, Circle Inspectors, Sub-Inspectors, Assistant Sub-Inspector, Head Constables and Recruit Constables, etc. For the sake of administrative convenience, there may be one or more additional Superintendents of Police and Deputy Superintendents of Police. The Superintendent of Police is incharge of the entire police force in the district and is responsible to the District Magistrate so far law and order problem is concerned. However, in metropolitan cities of Bombay, Calcutta, Madras, Hyderabad etc., the powers of Superintendent of Police and those of District Magistrate are combined in one single official called the Police Commissioner.

The Constitution confers exclusive power on the States to control and regulate the functioning of the police as the maintenance of public order and police, including the railway and village police, are State subjects. The Central Government is concerned only with the administration of Central Police Reserve Force, the Border Security Force and the Central Industrial Security Force as also the Central Bureau of Intelligence & Investigation.

Though the Constitution of India enumerates police as a State subject

in the List, it includes a long list of allied and quasi-police subjects in the Union List. For example preventive detention, arms, ammunition, explosives, extradition, pass-port etc. are the sole responsibility of the Central Government. It also determines the selection and service conditions of all India Police Services. The selection and conditions of service of lower ranks is within the power of the State Government.

Police Commissioners

In 1981 the National Police Commission comprising eminent thinkers and administrators of the country as its members after ascertaining the views of the State study groups and other popular forums recommended that in large cities with population of ten lakhs and above and even in places where there may be special reasons like speedy organization, industrialization etc, the system of Police Commissioners as it existed in Bombay, Calcutta, Delhi, Madras, Nagpur, Pune, Hyderabad, Ahmedabad, and Banglore should be introduced. Thereupon, a number of States[1] have introduced the Police Commissioner system for better and effective maintenance of law and order, prevention and detection of crimes and regulation of traffic. The working of Police Commissioner system in Madras, Bombay, Calcutta and Delhi for the past several decades has shown that functional autonomy leads to prompt and coordinated police action whereas the earlier duality of control by District Magistrate and Superintendent of Police adversely affected the general law and order condition of the States. In large urban areas, several problems arising out of social tensions, greater opportunities for occurence of crime and frequent spontaneous explosion of law and order situations call for an extremely quick response from the police at the operational level and prompt directions from the superior levels. This can be achieved only when the police are organised in a unitary chain of command which embraces the two basic functions of decision making and implementation.

In the Police Commissioner system, a senior experienced and a mature police officer is directly incharge of policing and is not simply a supervisor. He has complete authority over his force and is functionally autonomous. He is directly accountable to the Government. Under the system, the public has not to run to two different authorities *i.e.* District Magistrate and Superintendent of Police, to process their application for licences, permits etc. This avoids delay and inconvenience to public.

The major hurdle in appointment of Police Commissioners is perhaps the opposition from the so called IAS lobby which apprehends that such appointments would result into deprivation of their magistrial power which would be a great blow to their prestige and authority. But this apprehension seems to be rather misconceived as it will enable the police administration to take on-the-spot decisions without having to wait for the orders from the District Magistrate who may or may not be readily available at the time when the situation is tense and warrants prompt action. The conferment of

1. The States of Maharashtra and Bihar have adopted the system. It also operates at Surat, Rajkot, Vadodara, Amravati, Mysore, Madurai Vishakhapatnam etc. Though the State of Madhya Pradesh has given approval for the appointment of Police Commissioner for the cities of Indore and Bhopal in May 2001, but still remains to be implemented.

some magisterial powers on Police Commissioner brings in efficiency in prevention and detection of crime and maintenance of law and order in major cities.

The Women Police

After the Indian Independence, women police have also been recruited in the police establishment from the year 1947. They mainly deal with the offences relating to juveniles and women delinquents. It must be stated that women police were introduced in United Kingdom for the first time in 1917, when a women was recruited as a civil police official in the C.I.D. department. The Indian women police perform the functions of escorting women offenders from one place to another or arrest and apprehend them. They also conduct search and seizures in case of women delinquents and juvenile offenders. It is also a part of their duty to maintain order and discipline in the fairs, functions and gatherings exclusively meant for women folk. The services of women police are frequently utilised for helping the *pardanashin* ladies in obtaining passports, etc. The emanicipation of women and their involvement in outdoor activities for the sake of employment, education or social work has necessitated the strengthening of this wing of police to tackle women and juvenile problems. More recently, the dowry deaths and bride-burning incidents in India have necessitated women police to gear up its investigative machinery to suppress these crimes. The women police mostly deal with cases of domestic squables, wife beating, eye-teasing and dowry harrassment. Several States in India have set-up women companies in their Police Force to cope up with the crime problems relating to women and children.

It is significant to note that India has the credit of setting up the first women police station in the world. It was set up at Calicut in the State of Kerala on October 27, 1973. Thereafter, the Mahila police stations (*Thanas*) were established in Madhya Pradesh in 1987 and the States of Rajasthan and Jammu and Kashmir have set up women police station in 1990. The Government of Madhya Pradesh has set-up five women police stations[1] which are exclusively manned by the women police so that incidents of atrocities against women could be reduced and women get ample opportunities to register their complaints to the women police officials posted at these stations without fear and hesitation.

With the opening of Mahila police stations, people especially women, feel their complaint will be dealt with faster and that they will get prompt relief. However, non-functioning of the Mahila police stations during night hours is a cause of inconvenience for the genuine complainants as they have to take their complaints to man-manned police station or have to wait till next day morning.

The Central Reserve Police Force is also raising women's battalion in an endeavour to create a force of female police to be deployed in specific situations.

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1. The Women Police Station at Bhopal was started on Oct. 10 1987 at Gwalior on Oct. 19, at Indore on Dec. 4 and at Raipur and Bilaspur in 1988. Presently there are in all nine Women Police Thanas functioning in the State of Madhya Pradesh (vide report of police conference held at Bhopal in May 2001).

Home Guard Police

The post-independence era in India witnessed a radical change in the socio-political conditions of the country. As a result of these changes, an auxiliary police establishment was needed to help the regular police in times of need. Therefore, a new police wing called the Home Guard Police was established to assist the police in times of flood, famine or other calamities. The services of Home Guards are utilized in times of emergency for helping the police to restore law and order. Both men and women between the age group of 16 to 40 years can be recruited as Home Guards. They are imparted basic training in physical exercises, drill and gun-firing. Besides, they are also trained in civil defence, first-aid and fire-fighting devices. A few selected Home Guards are also trained in map-reading, field craft and wireless transmission. There are separate training programmes for the Home Guards of rural and urban areas at district level. After completion of their training the Home Guard recruits are supposed to live in groups in specially arranged camps where they take practical training in different jobs such as protection of public utility services, relief work in famine, flood or disease affected areas etc.

It must, however, be noted that the Home Guard establishment is essentially a voluntary service organisation. There is a Chief Commandant General of Home Guards in each State. The entire organisation is divided into divisions, companies and platoons. They have a prescribed uniform and badges.

Preparatory Police Training Programme

Crime investigation being the primary and major responsibility of police organisation, it has to collect facts, evidences, witnesses and other cognate materials which influence the process of truth searching in the establishment of guilt or crime complicity therein. The police being the first to arrive on the scene of crime, it has to play a crucial role in the area of criminal justice administration. It is, therefore, imperative to provide an exhaustive preparatory education to all the prospective entrants to police service. Truly speaking, modern police must be a law enforcer and a lawyer, a scientist in a whole range of physical sciences, a psycologists a social worker well versed in human relations, an expert marriage counsellor, a youth adviser, an athletic and also a public servant. These are but a few of many skills a policeman must personally possess and many of them do possess them to a degree of excellence.[1]

In order to achieve this objective it has been suggested that a pre-entry professional education for policemen and policewomen be organised by the Department of Public Administration. It should be at two levels, namely :—

1. A two years certificate course after 10 plus 2 or equivalent examination.
2. A Degree course in police administration. The certificate course should cover, *inter alia*, elementary knowledge about Indian Constitution, concept of rule of law, general administration, police administration, problems of law and order, security, causes, prevention and detection of crime, basic penal laws, first

1. The Indian Police Journal Vol. XXX. No. 2. October-November 1985, p. 2.

aid, N.C.C., fire fighting devices, motor driving, cycling, swimming etc. The degree course should comprise detailed knowledge about the above plus an intensive study of criminology, victimology, juvenile delinquency, forensic science and modern techniques of crime prevention and detection.

Police all over the world today is increasingly making use of the scientific and technological developments in the field of investigation. Improvements in communication, electronics, forensic science and medicine have come as a great aid to the professional police in tackling crime. It hardly needs to be emphasised that modern crime and methods of criminals are getting highly sophisticated and better organised, and hence for tackling these, the police force should constantly up-date their training programmes, equipments and methodology. Adequate training in forensic science to police personnel can be greatly helpful in speedy investigation of crime and criminals.

It would be pertinent to mention here that more recently the Central Detective Training School at Calcutta has introduced the science of hypnosis as a new subject in the curriculum for the probationer Police and Army officers. It is a science (and not magic) by which subconscious mind is activated whereby it can be known as to what is going on in another man's mind. Thus it is a scientific method of interrogating suspects during investigation. This new technique is useful in exacting from the witness a factual description of the offence and thus it provides important clues for detection of crime. However, the information so collected cannot be used as a piece of evidence.

The Problems of Police

The spurt of socio-economic activities in India after Independence has brought about revolutionary changes in the pattern of Indian society. In the modern age of economic activities and political awakening, the police have to perform arduous task of law enforcement and preservation of peace with utmost care and caution. Its main purpose is to protect the innocent from the depredation of criminals. This involves two main tasks *viz.*, to act as the watch and ward to prevent crime and to chase out criminals who have committed crime and bring them before a court of law for trial and punishment. The criminals always try to outsmart the police and the police makes efforts to find out the culprit by using scientific means. In this process the police are confronted with a number of problems.

The problems faced by police during investigation render their job difficult, particularly because of lack of public cooperation and support. People are generally not willing to testify against the offender due to risk of threats and violence and tiresome criminal law procedure.

Secondly, people are most unwilling to help police in crime detection and apprehending the offender due to fear of possible harassment at the instance of police officials. In India, Police has a very low profile in the eyes of public and there is a general distrust for them.

Thirdly, the lack of sense of social responsibility among people is also one of the reasons for their apathy and callousness in not coming forward to help the police. Even in serious accident cases the victim is not immediately

removed to hospital till the arrival of police on the spot.

Fourthly, the recent criminalisation of politicians provides undesirable protection to professional offenders and all sorts of pulls and pressures are exerted on the police to be lenient with the offender and sometimes they are even compelled to drop the proceedings against the criminal. This has a demoralising effect on police force which goes to the advantage of offenders.

Fifthly, There is a general tendency on the part of courts to look with suspicion the evidence put forth by police. The provision contained in Section 25 of the Evidence Act which provides that a confession made to a police officer is not admissible as evidence in a court of law, at times creates hardships to the police in the investigation work and establishing the guilt of the accused.

The Police organisation in India is functioning under the Indian Police Act, 1861, as modified in 1912 which has become outdated and outmoded. The police in India, as it exists today, cannot tackle the problems of developing society effectively with their multifarious activities. The mounting problems of law and order and increasing incidence of violence have badly shattered the efficiency of the police administration. It is for this reason that the National Police Commission in its report submitted in May, 1981 has suggested for a new draft Police Act to cope with the new challenges but unfortunately nothing seems to have been done in this regard so far.

With a view to revitalising the police administration, a number of States appointed Commissions to suggest reforms in police working. But nothing substantial could be achieved because of a general feeling that police is an unproductive and unrewarding necessity. However, the appointment of the National Police Commission by the Government of India on November 15, 1977 was a welcome step which demonstrates beyond doubt that the Government are seized of the problem on a national level. The Commission in its Eighth Report has suggested valuable reforms in Police working.

Principles of Policing

The Police has a very important role to play in a democratic set up of government. They must win the confidence of the people. The principles underlying policing in a free, permissive and participatory democracy, may be summarised as follows :—

1. to contribute towards liberty, equality and fraternity in human affairs;
2. to help and reconcile freedom with security, and to uphold the rule of law;
3. to uphold and protect human rights;
4. to contribute towards winning faith of the people;
5. to strengthen the security of persons and property;
6. to investigate, detect and activate the prosecution of offences;
7. to facilitate movements on highways and curb public disorder;
8. to deal with major and minor crises and help those who are in distress.

The Role of Police

Robert Reiner rightly remarked that policing is an inherently conflict ridden enterprise. Therefore, the police has a professional responsibility demanding from them the highest standards of conduct, particularly those of honesty, impartiality and integrity. It is rather unfortunate that the police in modern Indian society is looked with fear, suspicion and distrust by the people. This public apathy towards the police demoralises them to such an extent that policemen lose self-confidence and are hesitant in taking firm step to prevent violations of law because of the apprehension of public criticism.

Yet another potential cause which shatters public confidence in police is the increasing interference of politicians in the working of the police. Once the politics enters this department, it paralyses the police arm for the enforcement of the law, thus putting merit to near incompetency and dishonesty to the front.[1] The political pressure and compromises by the police officials are bound to make them corrupt, dishonest and inefficient. At the same time, it shall make the fearless administration of law and justice an impossibility. Thus the impediments on the police due to political pressure or other like influences make it difficult for the policemen to perform their duties honestly. It is no exaggeration that the present deterioration in law and order situation in India is primarily due to these forces which have demoralised the Indian police. Instances are not wanting when serious violations of law have occurred right under the nose of the police and the latter have preferred a role of silent spectator rather than initiating action because of the fear of public criticism.[2] In a zeal of criticising the police, people generally overlook the gravity of situation and seriousness of the offender's crime and blame the police squarely for inaction or atrocities. The police, therefore, feels hesitant in initiating stern action against the law-breakers.

The development of modern techniques has thrown new challenges before the police force. Modern scientific devices have made the law-breakers more successful and difficult to catch. The police should, therefore, be thoroughly conversant with the new techniques of crime-control. The use of computer system and augmentation of the existing communication system would serve a useful purpose for boosting up the police efficiency.

Public apathy towards police is also due to the fact that quite a large number of cases prosecuted by the police result into acquittal of the accused due to some or the other procedural or technical flaws, defect or omission on the part of the police officials in dealing with the suspect or offender. This is evident from the large number of damage-suits pending against the police in law courts. That apart, certain provisions of the Code of Criminal Procedure, 1973 make it difficult for the police to prosecute the offender. Thus Section 100 (4) of the Code requires that the police should enter the premises for the purpose of search and seizure accompanied by atleast two respectable

1. Ghosh S.K. : Law-breakers and Keepers of Peace (2nd Ed. 1969) p. 15.
2. To cite an example, the police station (*thana*) was set to fire at Balaghat in Madhya Pradesh on 20th February, 1975 by the furious mob in which one Sub-Inspector and two police constables were burnt alive and the *thana* was reduced to ashes. The Superintendent of Police was man-handled by the rowdy mob.

inhabitants of the locality. More often than not, it is difficult for the police to procure such witnesses who are willing to co-operate in this work. This obviously adversely affects the process of seizure or search.[1]

Unfortunately, the relationship between the police and Magistracy in India lacks mutual trust and confidence. In quite a large number of cases police evidence is not considered sufficient and honesty of the police is doubted by the judicial officers. Needless to say that there is a need for these two agencies of criminal justice to work in close harmony and trust for each other. The Magistracy should take notice of the fact that police generally have a better knowledge of the accused, his mode of living, habits, character and antecedents which enables them to reach proper conclusions relating to his guilt, which are not always susceptible of being reduced to absolute legal proof. This is possible when the Magistrate begins the trial of the case with the assumption that the police have done their job honestly and have used legitimate method in investigating the case.

Police cases mostly fail because of the lack of public co-operation. People in general are reluctant to come forward as witness and assist the police in apprehending criminals. This indirectly helps the offenders to escape detection or conviction. The members of society do not realise that it is their social as well as moral obligation to help the police in suppression of crimes. There is no point in blaming the police without extending them adequate help and support for enforcing the law and protecting the life and property of the people.

In brief, the present day Indian police system confronts a hostile people, angry legislators, questioning judges and hysterical victims. It is, however, submitted that mere hostility or ruthless criticism of police cannot improve police efficiency.[2] The major problem for the modern police in India, therefore, is to inspire the public to appreciate the police values. The general impression that the policemen are inefficient, brutal, corrupt and lawless[3] should be brushed aside and they should be encouraged to discharge their duties honestly, sincerely and faithfully so as to promote welfare of the community.

Expressing his views on the functioning of the police in India the noted jurist Nani Palkhiwala observed, "a professional and honourable police force is valuable in every society but it is invaluable in a society like ours which is marked by three characteristics of divisiveness, indiscipline and non-co-operation."[4]

It may be stated that despite the cherished socio-economic and political human values of liberalism and civil liberties enshrined in the Preamble to the Constitution of India, the police functioning and its work-procedure has remained more or less unchanged. The police system has failed to develop any independent ideology of its own to participate in an effective manner to achieve the cherished goals of legal and social justice. The preservation of

1. *See* also Section 162 Cr. P.C. which bans the use of any statement made by a person to a police officer in the course of investigation at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.
2. Sharma P.D. : Police and Criminal Justice Administration in India (1985) p. 80.
3. Donald Taft : Criminology (4th Ed.) p. 318.
4. Nani Palkhiwala's observations in MISCELLANY dated 8th September, 1985.

fundamental freedom and the basic human values demand an effective role of the police in the Indian polity so that it becomes an effective instrument of social change as well as the foundation of justice and fair play.

Legal Functions of Police

Dr. Jerome Hall has rightly pointed out that according to the legal and political theory, the rights and duties of the police to inflict punishment are sharply limited. But since their job is to pick up criminals from society for prosecution, they play a vital role in bringing the offenders to justice. It is generally believed that police are obliged by the nature of their duties to use violence as a measure to control and apprehend criminals in the presence of counter violence.[1] Thus, the police is perfectly justified in using force while tackling a fighting drunkard who is damaging the property or assailing his fellowmen and who looks upon policemen as a malicious intruder or an armed criminal who has shown a scant regard for human life and a general hatred towards the police force. Such occasions offer a legal jurisdiction for the police to use violent methods in course of their prescribed duties. They have to be rough and tough while making arrests and protecting themselves and also the community from the criminals. However, at times, the policemen surpass the legal-limits of the use of violence and adopt brutal methods to inflict pain on the arrested person with a view to extracting confession from him.

The efficiency of police functioning is generally measured either on the basis of number of arrests or the rate of conviction for cases brought by the police to the courts. But none of these tests are capable of measuring the real performance of police to determine its efficiency. The 'arrest test' fails because the decision to arrest a person may not always be on the *bona fide* belief of suspicion and many arrest may be made simply for shielding the inefficiency. The conviction, may give a more realistic picture of police efficiency but again, it is not based solely upon the merit of the prosecution since appreciation of evidence by the presiding Judge is based on other factors[2] such as changing of statements by witness or witness turning hostile and so on.

The major functions which the police is lawfully required to perform are as follows :—

(1) Patrolling and Surveillance

Patrolling is the visible police function for the purpose of general watch and ward. Excepting the traffic control police, static parties-pickets are in vogue. There is a good amount of divergence in the patrol patterns in the urban and rural areas. In rural sectors patrolling work is done by the village choukidars. In areas having panchayat system, able bodied young men in the age-group of 18 to 24 are also utilised on honorary basis. But in insurgency prone areas, armed police units go about in a roving commission, generally in an unplanned manner. In all the rural police stations, the S.H.O. is held responsible for maintenance of law and order and deployment

1. An article entitled 'Police Authority and Practices' by Richard C. Donnelly published in 'Readings in Criminology and Penology,' edited by David Dressler (second print. 1966), p. 388.
2. Ahmad Siddique : Criminology (3rd Ed. 1993) p. 294.

of policemen for patrolling. In urban areas mobile patrols with wireless telecommunication are arranged. Generally there is no separate patrolling division in the police forces located in cities and bigger townships. Experience has, however, shown that patrolling by local civilians should not be encouraged as it always results in lowering the image of the police in the eyes of the police. It shows police inefficiency and incapacity to provide protection.

Surveillance is yet another important function of the police which is based on anti-crime work. Presently this work depends entirely on dossiers and watch-charts, kept in at the Police Station. Each police station generally has a list of criminals and anti-social elements which require special watch. The information about these criminals is kept on cards arranged alphabetically in *modus operandi* boxes and their photographs are exhibited in the police station. In the modern age of computers, it is advisable that all necessary information regarding notorious criminals and anti-socials should be fed into the computer pool which may be referred to readily by the investigator at the police station, or the sub-divisional police officer or even the C.I.D. branch.

(2) Preventive Functions

The foremost task assigned to the police is to make arrest of law-breakers and suspected criminals and take them into custody in order to prevent crime. The preventive powers of the police are contained in the Code of Criminal Procedure.[1] Sections 71 and 73 of the Code, further afford adequate protection to the police officials against legal action for wrongful restraint of an innocent person who was apprehended and kept in police custody under a *bona fide* belief that he was an offender or a law-violater. The legal limits of arrest and detention of suspects are clearly defined in the Criminal Procedure Code.[2] The National Police Commission has suggested that a new Section 50-A be added to Chapter V of the Code, requiring the police to give intimation about the arrest to anyone who may reasonably be named by the arrested person for sending such information, so that necessary arrangements for release on bail etc. may be made by the interested person or persons.

Whenever the police feels that the investigation cannot be completed within the period of 24 hours fixed by Section 57, Cr. P.C. and there are grounds for believing that the accusation or information is well-founded, the police officers making the investigation may seek an order for remand from the nearest Judicial Magistrate.[3] The law casts a heavy duty on the Magistrate and requires judicial discretion to be exercised with utmost caution. Thus an order of remand is conditioned upon satisfaction of the Magistrate,[4] the period of such remand shall, however, not exceed fifteen days.

The Constitution of India also provides safeguards against the

1. Sections 149 to 158 of the Criminal Procedure Code, 1973.
2. Sections 57, 167, 169 and 170(2) of Cr. P.C., 1973.
3. Section 167, Cr. P.C.
4. *Rajni Kanta* v. *State of Orissa*, 1975 Cr LJ 83.

arbitrary use of preventive powers by the executive.[1] The arrested person must be taken promptly before a Magistrate without any loss of time. The reasons for arrest must be communicated to the person arrested and he should be given opportunity to engage the Counsel of his choice for defending his case.

The Police may arrest a person on a warrant issued by a competent court. An arrest made on a warrant is in fact a case of arrest made by the Court through police. But at times, the circumstances may require the police to make an arrest without warrant. The police may arrest without warrant when they observe the commission of a crime or when they have reason to believe that crime has been committed by the suspected person.

The police can arrest and take into custody vagabonds, habitual rogues, persons with doubtful antecedents,[2] or those who are conditionally released from jail or prison for the sake of maintenance of law and order within their territorial jurisdiction.

As regards police power to handcuff the undertrial for escorting and preventing his escape, the Supreme Court in *Prem Shankar Shukla v. Delhi Administration*,[3] *inter alia*, observed, "handcuffing is *prima facie* inhuman and therefore unreasonable and at the first blush arbitrary." The Court further held that even in cases where in extreme circumstances, handcuffs have to be put on the prisoner the escorting officer must record reasons for doing so and get the approval of the Presiding Judge. And once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty.

(3) Conditional Release of Accused on Bond etc.

The police also has the power to release an accused on a bond with or without sureties in case there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate.[4] The provisions contained in Section 437 of the Code of Criminal Procedure relating to grant of anticipatory bail to the accused are intended to ensure rule of law although it hinders police work in the following ways :

(i) Anticipatory bail may enable the accused to tamper with evidence against him.

(ii) The police cannot get remand under Section 167, Cr. P.C., if the offence is related to property.

(iii) It has a demoralising effect on the victim who feels unsafe and insecure with the free movements of the accused.

(iv) It obstructs impartial investigation by the police.

The arrested person can apply for bail even in non-bailable offences. The officer incharge of a police station and the Magistrate have power to grant bail in all such cases except those punishable with death or

1. Article 22(1) to (7) of the Constitution of India.
2. Section 42(i), (ii) and (iii) of the Code of Criminal Procedure, 1973.
3. AIR 1980 SC 1535.
4. Section 170, Cr. P.C.

imprisonment for life. The Magistrate at his discretion, has the power to grant bail even in those cases where the accused is a minor below 16 years of age, a woman or a sick or infirm person.

(4) Investigation by Police

The purpose of investigation is to collect evidence and apprehend the culprit. It is the duty of everyone concerned to assist the police in their work. The police can question any person supposed to be acquainted with the facts and circumstances of the case, and any such person shall be bound to answer truly all questions relating to such case. A witness may, however, avoid to give those answers which will expose him to any criminal charge.[1] The police may write down the answer orally given by the witness. The witness has neither to give answers in writing nor sign those recorded by the police.[2] In investigation, a police officer can call in writing a person to be a witness who appears to have some knowledge of the crime being investigated and who is within the jurisdiction of such police officer or in an adjoining police station.[3] The witness so called has to appear before the police officer, but a woman or a child below 15 years of age cannot be required by the police officer for such investigation to go to any place other than their own residence. A witness appearing in police investigation may take help of a lawyer in answering written question put to him/her.[4]

Political interference at the stage of investigation has become a routine affair. The National Police Commission has expressed concern about the political parties irrespective of their views, using their power and authority regarding promotions and transfers to compel the force to serve their interest. This liaison between the police and the politician is vitiating the impartiality and objectivity of the police investigation. This invariably happens at the stage of submission of charge-sheet under Section 173 of Cr.P.C. Though it is the sole discretion of the investigating officer to submit or not to submit the charge-sheet and even the Magistrate cannot order him to do so contrary to the former's own honest assessment of evidence[5] in the case, the politicians more often than not enter into an unholy alliance with the investigating officers to get things done in their favour.

In order to eradicate this evil, the Law Commission in its 14th Report (1958) had suggested that investigating staff should be separated from the law and order staff to enable the investigating officer to devote undivided attention to investigation work. It will bring investigating police under the protection of judiciary which will greatly reduce the possibility of political or other types of interference with police investigation by invoking law of contempt, if necessary. The separation will also increase the expertise of the investigating police, as in the case of CID by relieving them from other duties and would result in more successful detection and prosecution. That apart, separation of 'investigating police' from 'law police' will also result in speedier investigation and overall quick disposal of investigation cases.[6]

1. Sec. 161.
2. *Ibid.*
3. Sec. 160.
4. Section 160 *proviso*.
5. *State of Bihar* v. *J.A.C. Saldhana*, 1980 Cri. L.J. 98 (SC).
6. R. Deb : Police Investigation : A Review 39 J.I.L.I. (1997) p. 266.

The statistical figures relating to IPC cases investigated and charge-sheeted by the police during the last four decades indicate the quantum of heavy work load on police in dealing with crime and criminals. Though the percentage of cases investigated has decreased from 84.2 per cent during 1961 to 79.5 per cent during 2002, the percentage of cases charge-sheeted has shown appreciable increase from 53.6 per cent to 80.0 per cent during the same period.

Out of total cases for investigation, the police could charge-sheet in only 59.5 per cent cases. The percentage of 'Final Report Submitted', allegations found false or there was mistake fact etc. and 'investigation refused' accounted to 14.9, 5.2 and 0.2 per cent respectively. As many as 191 cases were withdrawn by the Government at the investigation stage.

The Table given below gives an overall picture of cases investigated and charge-sheeted by police during the period of 1961-2002.

Table showing IPC cases investigated & Charge-sheeted by Police (1961-2002)*

Year	Total No. of Cases for Investigation (including pending cases)	No. of Cases Investigated				Percentage of Cases	
		Found F/NC/MF#	Charge-Sheeted	Total True Cases@	Total** (Col. 4 +6)	Investigated (Col. 6/ Col. 2** 100)	Charge-Sheeted (Col.4** 100/ Col. 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1961	696155	54128	285059	532151	586279	84.2	53.6
1971	1138588	83663	428382	810691	894354	78.5	52.8
1981	1692060	127655	740881	1208339	1335994	79.0	61.3
1991	2075718	118626	1091579	1530861	1649487	79.5	71.3
2001	2238379	105019	1303397	1658258	1763277	78.8	78.6
2002	2246845	116913	1335792	1670339	1787252	79.5	80.0

* Source Crime in India 2002 Published by NCRB, New Delhi.

\# F/NC/MF—False/Non-Cognizable/Mistake of Fact.

@ Excluding cases where investigation was refused.

** Cases charge sheeted + Final report submitted.

(5) Interrogation of Offenders & Suspects

Another important function that devolves on police is to "frisk" and interrogate the criminals or suspects. Frisking implies searching the pockets and clothings of the suspect as a measure of safety and security while enforcing law against him. It differs from a 'search' which is a legal process meant for collecting evidence against the offender.[1] The police power to frisk the suspects are contained in Section 52 of the Code of Criminal Procedure, 1973.

The police also have the power to interrogate and question the person

1. Pande, D.C. : The Limits of Police Coercion (in USA & India), p. 38.

suspected of having committed a non-cognizable offence. But the police power to interrogate the suspect is subject to certain limitations contained in Section 156 of the Code. The police must observe certain civilities while interrogating a suspect. The questioning must not be 'coercive' or too intimidating. They should not extract admission or confession by coercive or "third degree" methods.[1] It is significant to note that the suspect is under no obligation to speak or answer questions, and anything done or said by the police officials to make him feel that he is under an obligation, will be transgression of the legal limits of the power to interrogate by the police.

The restriction as to inadmissibility of confession made to a police officer is intended to protect the accused person against third degree methods by the police. Though a confession made to a police official is not admissible in trial, it can however, be used in evidence of anything recovered as a result of the confession made to a police officer by the accused.[2] Thus, if a weapon used in a murder case is recovered by the police as a result of confession made by an accused person, the recovery is a relevent piece of evidence.[3]

(6) Search & Seizure

The police also conducts search and seizure.[4] The search and seizure should not be unreasonable. They may be conducted by police with or without a warrant. In case a search is conducted on a warrant[5] issued by a Magistrate, it must invariably contain the following details :—

(i) The information as to the statement of facts showing probable cause that a crime has been committed.

(ii) A specification of a place or places to be searched.

(iii) A reasonable time-limit within which it must be conducted.

The police can also conduct a search without warrant when it is incidental to a lawful arrest or where the object of search is a mobile vehicle which can quickly be removed out of the police jurisdiction or when the accused has consented to it. The burden of proving the 'consent', however, lies upon the prosecution. Absence of coercion or duress is sufficient to establish that the suspect freely consented to the search.

In case the search involves interference with the privacy of person concerned, the police must obtain a search-warrant from a competent court. Ordinarily, search must be made in day-time in presence of two independent witnesses of the locality who are not connected with the police. An illegal search may lead to two serious consequences, namely, it may either lead to a civil or a criminal action against the police or it may result into acquittal of the accused. The legal provisions relating to search and seizure are so framed as to maintain a balance between the security of persons on the one hand and the protection to police in discharging its duty properly on the other.

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1. A confession made by the accused before police is an inadmissible piece of evidence under the Code, *see* Section 25 of the Evidence Act.
2. Section 27, Evidence Act.
3. *State of U.P.* v. *Deoman Upadhyaya*, AIR 1960 SC 1125.
4. Sections 94 to 104 of Cr. P.C., 1973.
5. Sections 93 and 94 of the Code of Criminal Procedure, 1973.

Thus, during the course of investigation, the police is empowered to make search, order production of documents, seize any suspicious property, call witnesses, require them to attend court and arrest persons suspected or having committed crime without warrant. After the investigation, a police report is prepared upon which proceedings are instituted before a Magistrate. The law requires that every investigation should be completed without undue delay. Nevertheless, delays do occur in the process of investigation for one reason or the other.

(7) Maintain Inquest Register

The police is to record information in the Inquest-Register in case a person dies under unnatural or suspicious circumstances. The law relating to Inquest-investigation is contained in Section 174 of the Code of Criminal Procedure and only the Magistrates are empowered to hold Inquest in order to find out whether death was *homicidal, suicidal* or accidental. In other words, inquest signifies judicial inquiry to determine the cause of death. As soon as intimation regarding death in 'unnatural' or 'suspicious' circumstances is received at the police station, it has to be recorded and forwarded to a competent Magistrate as in the case of cognizable offence. The Magistrate would hold the inquiry himself or in addition to police-investigation[1] Inquest-investigation is thus a preliminary on-the-spot enquiry by a police officer into cases of unnatural or suspicious death with a view to recording a finding as to the apparent cause of death. The presence of respectable local inhabitants lends an air of formality and solemnity to the purpose. After investigation, Inquest-report is prepared which is duly signed by the Investigator and attesting witnesses and forwarded to the District or Sub-Divisional Magistrate forthwith. However, the police has a discretion not to send the dead body for post-mortem examination only when there can be no doubt about the cause of death. But this discretion has to be exercised honestly and prudently.[2]

(8) To Assist the Prosecutor

Besides making arrests, the police must also actively assist the prosecutor to conduct prosecution of cases in law courts. The success in prosecution largely depends on the promptness and ability with which the investigation is conducted by the police. It is, therefore; necessary that the police and the prosecutor should have a thorough knowledge of substantive and procedural law of crime. The prosecution must come forward with all material evidence complete in all respects to prove the charge against the accused. The witnesses should be appraised of the points on which the prosecutor desires to examine them before they are actually brought in the witness-box. An informal or preliminary interview with witnesses would not only save the prosecutor from embarrassment before the court but also save the witnesses from putting a blank face or giving unfavourable answers in the witness-box owing to an honest lapse of memory. As far as possible, unwilling witnesses should be avoided unless it is absolutely necessary, so also multiplicity of witness should be avoided. This will save valuable

1. Section 176, Cr. P.C.
2. *Kodali Puranchandra Rao* v. *Police Prosecutor, Andhra Pradesh*, AIR 1975 SC 1925.

evidence being lost to the prosecution. Greater care should be exercised by the prosecutor while examining an accomplice[1] or an approver[2] in case of confession by the accused.

Another important step in the conduct of a criminal trial is "framing of a charge." Although it is for the Court to frame a correct charge, but the prosecutor should be vigilant to assist the Court in framing the charge correctly. It is preferable to frame a few more charges so as to minimise chances of offender's escape on the plea that a proper charge has not been framed.

(9) Identification etc.

In addition to the usual functions of protecting life and liberty of persons and apprehending criminals, the police also have to deal with special activities such as identification and laboratory technical research. There are special divisions of police for finger printing, photography and otherwise identifying criminals, and for filing records.[3] More recently, tremendous increase in vehicular traffic in urban areas has burdened the police with relatively new responsibility of regulating traffic flow in the interest of public safety.

(10) Control of Juvenile Delinquency

Since child care is a developmental function of the welfare State, the police has an important role to play in controlling juvenile delinquency. The Police is involved with the administration of child-delinquency in all the three important stages, namely, preventive stage, trial stage and the rehabilitation stage. Although other agencies such as the voluntary organisation, juvenile courts and social welfare Homes etc., help and assist the police with their specialised services, it is only the police organisation which is duty-bound to prevent and control ever-increasing quantum of juvenile crime in India. The National Police Commission has recommended setting up of special police squads for tackling juvenile delinquents. A Police Juvenile Bureau in each State Police Headquarter may also be established for this purpose.[4]

(11) General Welfare Functions

As a part of welfare measure, the police is entrusted with yet more important function of helping public in tracing out the missing persons. Special Missing Persons Squads have been set up in metropolitan areas and other important cities as a part of police personnel who are exclusively to

1. The term "accomplice" has not been defined in the Evidence Act. In its ordinary meaning, it signifies a person who had something to do with the commission of the crime by way of assisting it or whose conduct tends to such inference. Though accomplice evidence is legally sufficient to sustain a conviction, such conviction is hardly acted upon unless corroborated by material circumstances.
2. An approver is an accomplice who stands as a witness against an accused person. He is guilty associate in a crime. An approver shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an approver.
3. Donald Taft : Criminology (4th Edn.) p. 325.
4. Such Bureaus are already functioning into Metropolitan cities of Bombay, Calcutta Madras, Delhi etc.

deal with missing persons and owe a responsibility to restore them to their families. This is indeed a laudable scheme of social welfare entrusted to police force.

From the foregoing discussion it is evident the efficiency of the police reflects upon the law and order situation of a country which in turn leaves an impression about the general progress of the community. It is encouraging to note that the Government of India have been striving to improve the quality of Indian police through a phased strategy of intensive training and research in modern techniques of crime detection. The Home Guard Voluntary Organisation was started after the Indian Independence to cope up with the additional work of the police. These volunteers can be utilised to assist the regular police force in maintaining law and order in times of emergency. They also help in protecting people from flood, fire, famine or disease etc. Attempts have also been made to popularise this scheme in rural areas through intensive propaganda.

Rural Policing in India

There are more than 7.5 lakhs of villages in India. The launching of the integrated rural development programme and the green revolution have ushered a significant change for the better in the political and economic set up of rural India. The vast changes undergone by the villages in India during preceding four and a half decades have necessitated an efficient police organisation for the effective prevention and control of the ever-increasing wave of crime in the rural areas.[1]

The regular police force is too pre-occupied with the tackling of urban crime problems and too inadequate to deal with the new wave of crime and criminals. The Police today not only has to deal with traditional crimes but it has also to play the role of a welfare service organisation. Most of the welfare legislations are meant for the benefit of the rural masses which are to be implemented in villages. The malfunctioning of panchayats and co-operatives and bunglings in various developmental schemes have necessitated restructuring the rural police to combat these crimes.

The types of crime that commonly occur in Indian villages may include dacoity or robbery with violence, agricultural feuds generally over disputes about irrigation, cattle or possession of land, village vandettas over sex intrigues, murders, poisoning for the sake of inheritance, election rivalries misappropriation of funds, cheating in relation of advances of Bank loans, trafficking in contraband goods, untouchability offences, insurgency etc. Therefore, it may be suggested that in order to tackle the problem of village crimes, there should be a separate rural-wing of police with similar service conditions as those of regular police. The rural police should be provided adequate training in welfare activities. Unfortunately, the village policeman is still the same illiterate, ill-paid and ill-equipped person despite drastic changes in villages due to multifaced developments.

The introduction of Police Welfare Centres have provided sufficient mental and psychological background to boost up police morale and tone up their efficiency. However, studies have revealed that despite best intentions,

1. "TRANSACTIONS" Vol. 38 (1983) published by National Police Academy ; Hyderabad, p. 175.

that State Governments have failed to revamp the rural policing system. The distressing feature of the Indian rural police in the last decade has been a determined effort by the privileged groups to put down the unprivileged by resorting to extreme violence and cruelty against backward classes, who seek to free themselves from age old social injustice and exploitation.[1] Attempts made by the landless poor to organise themselves for safeguarding their rights have met with ruthless counter-attacks from land-owning classes.

With the revamping of the Panchayats in recent years, it is necessary that the village headman, chowkidar and members of Gram-Sabha should be given proper training to help the police in maintenance of law and order in rural area. Special village defence parties should also be formed for the purpose of rural policing.

The National Police Commission

On the national front, with a view to revitalising police force and suggest measures of reforms in the working of police, the Government of India appointed a National Police Commission on 15th November, 1977 under the Chairmanship of Mr. Dharmavir. It consisted of members, namely, Messers N. K. Reddy, K. F. Rustumji, N. S. Saksena, M. S. Gore and C. V. Narsimhan as member-Secretary. The Commission submitted eight Reports in all, the last being in May, 1981. The terms of referencce of the Commission were :

1. To redefine the role of police and review its powers and responsibilities in the changed context as a machinery for maintaining public order and prevention of crime.
2. To review the working of the police and suggest concrete measures for reform.
3. To suggest remedial measures for eliminating delays in investigation and prosecution of cases.
4. To examine the existing methods and sources of preparing crime statistics and suggest ways and means for working out a uniform pattern of crime indices.
5. To review the system of policing in non-rural areas.
6. To examine the scope of utilization of scientific devices in police work.
7. To pay special attention towards the responsibility of police in bringing about welfare of weaker sections of the people and expeditious disposal of their grievances.
8. To suggest adequate training and development programmes for police personnel.
9. To explore the areas of greater police-public participation.
10. Any other matter related to police set-up or police work.

The National Police Commission, in one of its report has recommended the setting up of a Central Police Committee and Security Commission in

1. Papers presented in the All India Police Science Congress held at Itanagar in Arunachal Pradesh in Dec., 1988.

States and replacement of the outdated Police Act of 1861 by the New Police Act the Draft of which is prepared by the Commission.

The Eighth report of the Police Commission was tabled in the Lok Sabha on 1st April, 1983 by the Home Ministry.

The Central Police Committee would advise the Government and the State Security Commissions on matters relating to police organisation and police reforms of a general nature.

The Committee would also advise them on matters relating to Central grants and budgetary allotments to the State police forces. It would make a general evaluation of the State of policing in the country and provide expertise to the State Security Commission for their assistance.

The National Police Commission has recommended setting up of an all-India Police Institute on the pattern of similar bodies of professionals such as Engineers and Chartered Accountants. The institute should be kept under the Central Police Committee.

The functions of the State Security Commissions shall include :

1. Laying down broad policy guidelines and directions for the performance of preventive tasks and service oriented functions by the police.
2. Evaluation of the performance of the State police every year and presenting a report to the State legislature.
3. Functioning as a forum of appeal for disposing of representations from any police-officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties.
4. Disposal of appeals and representations regarding promotion to the rank of Superintendent of Police and above.

The National Police Commission, has in its Report of 1980 recorded its observations regarding the limits of police powers of arrest and search and held that false cases are sometimes enquired merely for the sake of making arrests to humiliate and embarrass some specified enemies of the complainant in league with police for corrupt reasons.[1] Section 41 of the Code of Criminal Procedure lays down various categories of persons whom any police officer may arrest without warrant or an order from Magistrate. This power should not be misused by the police.

In *State of U.P.* v. *Niyamat*[2] the Supreme Court of India acknowledged the right of private defence of the accused against illegal police arrest and observed, "indiscriminate arrests by police not only sustain its anti-people image but also cause unnecessary drain on Exchequer for such detention."

Police Custodial Torture

Custodial torture has become a common phenomenon and a routine police practice of interrogation these days. It causes momentary public uproar but once the incident fades away from the public everything is

1. Cr. L.J. March 1990, Vol. 96 p. 28.
2. AIR 1987 SC 1652.

forgotten.[1] The magnitude of police custodial torture in India is evinced by the Report of Amnesty International (1992) which says that 415 persons died in the custody of police and security forces due to torture during 1985-91. The Government itself admitted in Rajya Sabha that 46 persons died in police custody due to torture within three months *i.e.* January to March 1993 in Delhi alone. These figures point at the alarming dimensions of the problem. As per the crime statistics of the year 2002 published by NCRB, 84 custodial deaths were reported, 34 cases were registered, 32 policeman were charge-sheeted but none was convicted during that year.

Expressing concern about the agony of arrested person in custodial investigation, the Supreme Court in *Sheela Barse* v. *State of Maharashtra*,[2] *inter alia*, observed :

> "Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be known to the arrested person that he is entitled to apply for bail.....whenever a person is arrested by the police and taken to the lock-up, the police will immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistant to the arrested person at State level cost provided he is willing to accept such legal assistance".

The Court further held that the nearest relative or friend of the arrested person should also be immediately informed about such arrest.

The Supreme Court in *Raghubir Singh* v. *State of Haryana*,[3] emphasised the need to organise special strategies "to prevent and punish brutality of police methodology, otherwise the credibility of the Rule of Law would deteriorate". The Court suggested that in order to improve the police image any officer found guilty of concoction, fabrication and third-degree methodology of investigation should apart from court conviction, be dismissed as a matter of course to rid the police force of such undesirable elements.

The term 'torture' with reference to police custody implies infliction of severe pain or suffering, whether physical or mental, intentionally for the purpose of extracting from the person who is in police custody, or a third person, information or confession or coercing or intimidating him or a third person to divulge the truth. It does not, however, include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Indeed, nothing has tarnished the image of the police more than brutality directed against persons in police custody. Third degree methods of torture and custodial deaths have become an intrinsic part of police investigation. In fact Section 23 of the Indian Police Act, 1861 envisages the duties of a police officer which should be carried out and enforced with

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1. 'Custodial Torture In Law & Practice With Reference to India' by R. S. Saini JILI Vol. 36 No. 2 (1994) April-June, 1994.
2. 1983 Cr. L.J. 642 (SC).
3. 1980 Cr. L.J. 801 (SC).

purity, activity, vigilance and discretion.[1]

The police officials justify custodial torture as a 'necessary evil' to keep growing crime-rate under control. They justify and support use of violence and third degree methods against apprehended criminals on the following grounds :—

1. Professional and hardened criminals understand the language of violence only. They would not tell the truth unless sternly dealt with.
2. when these offenders have no respect and regard for the rights of innocent persons *i.e.* victims, why should the police respect their rights.
3. If police deals with offenders politely and gently, no one would ever be prosecuted for his crime. Thus, from the practical point of view, rough and tough treatment with the criminals is inevitable.
4. Lack of public co-operation frustrates the cause of police investigation and people are unwilling to give witness against the criminals. Therefore, police has to resort to self-help for eliciting information about the crime from the offender by using third degree methods if the arrested person is stubborn and adamant in not divulging out the truth.
5. Very often public also expects the police to give a sound thrashing to anti-social elements and bad characters. The most glaring example of custodial torture with the local public support behind it, is the infamous Bhagalpur blinding episode[2] of 1980 when suspects in police custody were blinded by puncturing their eye-balls.

Whatever may be the justification for the institutionalisation of custodial torture, the developing human rights jurisprudence demands that this dangerous practice should be eleminated completely. Reacting sharply against the tendency of custodial torture and use of third degree methods by the police, the Supreme Court in *Gouri Shankar Sharma* v. *State of U.P.*[3] observed :

> "It is generally difficult in cases of death in police custody to secure evidence against policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manupulate. It is only in few cases that some direct evidence is available."

The Apex Court, in the instant case held that the evidence on record conclusively proved that the death of the arrested person occured because of the third degree methods used by the police.

In *Yusuf Ali* v. *State of Maharashtra*,[4] the Supreme Court reiterated that if the accused is beaten or starved or tortured in any way during the

1. S.K. Ghosh : Police Informant (1981) p. 27.
2. AIR 1981 SC 928. *See* also *Mathura Bai's* case i.e. *Tukaram* v. *State of Maharashtra*, AIR 1979 SC 185 wherein a girl was gang-raped in police custody.
3. AIR 1990 SC 709.
4. AIR 1968 SC 150.

course of investigation by the police, it will be taken as a case of custodial torture. Elaborating the point further, the Apex Court in *Nandini Satpati* v. *P. L. Dhani*[1] laid down certain guidelines to provide protection to an accused person in police custody. The Court held that if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the police in obtaining information from the accused, it becomes a case of custodial torture which is violative of right against self-incrimination. The Court, however, clarified that though the accused is not bound to answer self-incriminatory questions, he can be asked non-incriminatory questions which he is bound to answer.

In *Niranjan Singh* v. *Prabhakar Rajaram*,[2] while dealing with the cases of custodial torture in police stations, the Supreme Court observed, "the police instead of being protector of law, have become the engineer of terror and panic putting people into fear". Again, in *Kishore Singh* v. *State of Rajasthan*,[3] the Supreme Court expressed its concern for gruesome act of police torture and observed :

> "Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights."

Once again the Supreme Court took a serious view of police custodial death in *Dalip Singh* v. *State of Haryana*.[4] In this case two constables along with a Sub-Inspector of Kurukshetra district were found guilty of causing death of the accused by beating and convicted them under Section 304 (II) IPC, *i.e.*, for causing death by negligence. Yet in another case[5] of custodial death, the Supreme Court not only directed Home Secretary of Punjab to suspend the guilty Sub-Inspector but also ordered CBI to conduct an inquiry into the case. In this case, an innocent person, Sarbjeet, was picked up by the police, detained for several days and finally gunned down near the Indo-Pak border. It was later on found that the deceased had nothing to do with terrorist activities and was completely innocent.

Since police custodial torture or death is a blatent violation of fundamental right to life as guaranteed by Art. 21 of the Indian Constitution, compensation has been considered as an appropriate relief in such cases. The case of *Nilabati Behra* v. *State of Orissa*[6] may be cited to illustrate the point. In this case the Supreme Court treated the letter of one Nilabati Behra as a writ petition under Art. 32 of the Constitution, wherein petitioner had claimed compensation for death of her son Suman Behra aged 22 years in police custody in District Sundergarh in Orissa. The State Government on behalf of police contended that the deceased had escaped from custody and was run over by a train while being chased by the police party. Therefore it was not a case of custodial death. The Government also

1. AIR 1978 SC 1075 per Krishna Iyer. J.
2. AIR 1980 SC 785.
3. AIR 1981 SC 625.
4. AIR 1993 SC 2302.
5. The Hindustan Times (Delhi) dated 6 Nov., 1993.
6. AIR 1993 SC 1960 ; other cases are *Ravi Kant* v. *State*, (1991) 2 SCC 373 ; *Bhim Singh* v. *State of J. & K.*, AIR 1985 SC 677 ; *Jwala Devi* v. *Bhoop Singh*, AIR 1989 SC 1441.

raised the plea of sovereign immunity. The Supreme Court, rejected both the contentions of the respondents and held that defence of sovereign immunity is not available in case of constitutional remedy and there was no evidence that the death of the deceased was accidental. The Court awarded Rs. 1,50,000 as compensation to the deceased's mother.

In *SAHELI* v. *Commissioner of Police*,[1] a writ petition was filed by the Women Civil Rights Organisation, called 'SAHELI' under Art. 32 on behalf of the deceased's mother for recovery of compensation consequent to the death of her nine years old child caused in custody of Anand Prabhat Police Station in Delhi. The Court awarded compensation or Rs 75,000/- to the mother.

The humiliation caused to suspects or accused persons due to being paraded in handcuffs while being taken to the court or jail has been held repugnant to Art. 21 in the light of personal liberty as held by the Supreme Court in *Prem Shankar Shukla* v. *Delhi Administration*.[2] The Court *inter alia*, observed :

> "Handcuffing is *prima facie* inhuman and, therefore, unreasonable, it is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict 'irons' is to resort to zoological strategies repugnant to Art. 21."

It must be stated that custodial torture is an offence under the Indian Penal Code,[3] the Code of Criminal Procedure and the code of conduct of the police. Besides, it is also violative of the right guaranteed under Arts. 20 and 21 of the Constitution.

Some other forms of brutalities and atrocities committed by police include sexual harassment of women to the extent of rape, beating with rifle-butt, inserting live electric wire into body crevices, burning with lighted cigarettes or candle flame etc.

The Law Commission of India in its Report of 1995 observed that "the alarming rise in custodial crimes has pricked the conscience of society and has evoked public outcry against the law enforcing agencies." The annual reports of the National Human Rights Commission indicate that the protracted practice of custodial torture, in spite of being controlled, is showing an alarming increase every year. Although India has signed the International Convention Against Torture & Other Cruel Inhuman or Degrading Punishment, (1984) on October 4, 1997, but despite this the widespread practice of torture still continues unabated.

Supreme Court's Directives for avoidance of Custodial Crimes

The Supreme Court has expressed its concern for custodial commission of crimes during investigation and interrogation and laid down certain principles to be followed by concerned police officers in its historic decision in *D. K. Basu* v. *State of West Bengal*.[4] The basic "requirements" to be

1. (1990) 1 SCC 422.
2. AIR 1980 SC 1535.
3. Secs. 330, 331 and 339 of the IPC ; Sec. 176 (1) of the Cr PC & also the Police Act, 1861.
4. AIR 1997 SC 3017 (decided on 18th Dec., 1996).

followed in all cases of arrest or detention till legal provisions are made in that behalf to prevent custodial violence are as follows :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and contain time and date of arrest.

(3) A person who has been arrested or detained and being held in custody in a police station or interrogation or lock-up, shall be entitled to inform his friend/relative or a person having interest in his welfare, as soon as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself such friend/relative.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police.

(5) The person arrested must be made aware of his right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention giving all details, about the friend/relative or person informed.

(7) The arrestee should, where he so requests, be also examined at the time of arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' should be signed both by the arrestee and the police officer effecting arrest.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody.

(9) Copies of all documents including memo of arrest, should be sent to the Illaqua Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and this should be displayed on a conspicuous notice board at the police control room.

The Apex Court opined that failure to comply with the above requirements will render the officer concerned liable to be punished for contempt of court besides the usual departmental action against him.

The Court in this case condemned the tortuous methods adopted by the

police and observed :

> "Torture has not been defined in the Constitution or any other penal laws. Torture of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word 'torture' today has become synonymous with the darker side of human civilization and custodial violence including torture and death in the lock-up strikes a blow at the rule of law."

The Court hoped that these directives would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial violence.

Following the directives of the Supreme Court given in *D.K. Basu*,[1] the High Court of Calcutta laid down stipulations to be followed by the State Government of West Bengal in order to prevent, check and monitor custodial violence.

Since custodial violence and torture involves serious breach of human rights, the Government of India finally came out with the protection of Human Rights Act, 1993 with a view to preventing human rights violations and combating torture cases. The Commission has issued instructions and held meetings of District Magistrates and Police Superintendents from time to time to initiate adequate measures to prevent custodial torture and protect the innocent people from the violation of their basic rights.

Police Public Co-operation

It is well known that crime detection is the first stage of criminal adjudication. Although crime detection and investigation are primarily the functions of police but it is rather difficult for the policemen to perform these duties efficiently without public co-operation. Therefore, the desirability for public participation in crime detection hardly needs to be emphasised. Public participation is possible in either of the following ways—

1. Certain provisions of the Code of Criminal Procedure empower a private individual to arrest a person who in his presence commits a non-bailable and cognizable offence, and to hand over such arrested person to police without unnecessary delay.[2]
2. The law enjoins a duty upon every person to assist a Magistrate or police officer in preventing the escape of a person whom they want to arrest or to help in preventing breach of peace.[3]
3. People are required to inform the nearest Magistrate or police officer about the commission of an offence or about intention of a person to commit certain offence.[4]
4. Every officer employed in connection with the affairs of a village or residing in a village is under a duty to report certain offences or matters relating to maintenance of peace and order and safety of person or property.[5]

1. AIR 1997 SC 3017.
2. Section 43(1) Code of Criminal Procedure, 1973.
3. Section 37.
4. Section 39.
5. Section 40.

The lack of public co-operation in police work makes it difficult for the policemen to discharge their functions efficiently. It is common experience that law-abiding citizens have greater fear for police than actual offenders. The reason being that the offenders take it as a routine way of life to come into contact with police and deal with them expediently. Knowing it well that the police are equally harassed and fed up with them, the criminals even do not hesitate to use threats violence, trickery or undue influence to secure their escape from police custody. The normal citizens, on the other hand, avoid contact with police and prefer to keep away from law-courts even at the cost of slight suffering or loss of legitimate claims rather than reporting the matter to the police for action. The real problem, therefore, is to develop a closer liaison between the police and the public by inspiring people to think that police is not their enemy but a friend to help them in distress. It is gratifying to note that this aspect of police-public relationship is being emphasised through intensive propaganda and open discussions between the members of the police and the public. The co-operation of public in crime prevention is also possible by organising radio talks, lectures and giving intensive publicity to this campaign through the medium of press and platform.

The National Police Commission has recently pointed out that the internal discipline and morale of police is considerably weakened because of the political interference. The 'Police' as a governmental organisation has to serve two masters—one political head and the other departmental head. Politicians often consider police as their tool to meet their selfish ends and therefore oblige police personnel by rewarding them in various ways. The subordinates on their part sense the game and adopt an equally ambivalent strategy. The superior—subordinate relationship in police organisation is guided by the principle, "lick the above and kick the below". Such mentality is the characteristic of authoritarian superiors and their dominance over subordinates. Prior to Indian Independence the police was entitled to use coercive power against anti-social elements and the political activists. However, after independence, the political leaders in power became the bosses who expect the police administrator to consider even their political opponents as the target groups for vengeance. The police officers who are trained to obey the orders, have a dilemma; whether to obey wrong orders, and whom to consider their real boss, because those who are in power quite often change their place. The relationship of the policemen with the politician in the present political set up which has resulted into criminalisation of politics has indeed become more complicated and delicate and this is a major set back to the development of healthy public-police relationship.

In a democratic set up the role of police is to protect individual liberties and civil rights. They are to be charged with the preservation of public order and tranquility including crime prevention and detection, and promotion of public health, safety and morals. But unfortunately the public image of police is not very high. Writing about unpopularity of police *Leon Ameline* has observed that there is no human institution which inspires so much mistrust and enmity as the police. Their unpopularity makes people shun them.

Police Advisory Committees

More recently Advisory Committees at the Police Commissioner's level and at the State level have been constituted in different parts of India. Such Advisory Committees are functioning successfully in the cities of Delhi, Madras, Ahmedabad, Poona and Bombay. These committees consist of members belonging to all political parties and others who have no declared affiliation. The members are free to express their views. The police also is equally responsive to public comments. Thus these committees serve as an effective media to improve police-public relationship. The members bring to the notice of the administration the important law and order problems of their areas. The police officials also can explain their difficulties in handling crime problems.

Judiciary's Attitude Towards Police

Like public image of police, the judiciary also does not hold police in high esteem. The judiciary has quite often made adverse comments about the working of the Indian Police and blamed it for corruption, dishonesty, inefficiency and its oppressive methods of investigation. Justice A.N. Mulla of the Allahabad High Court who later became a member of Parliament characterised police force as the 'largest single lawless group' and held that crimes in India could be reduced to half if the police was disbanded! Mr. Justice O. Chinnappa Reddy ; former Judge of the Supreme Court attributed poor image and people's indifference towards police to a variety of factors, the more important among them being its occasional high handed behaviour, acts of perjury and misuse of power and authority.[1] Earlier, the Police Commission of 1902 also commented adversely against the Police and observed that the police is far from efficient, it is defective in training and organisation, it is inadequately supervised and generally regarded as corrupt and oppressive hence utterly failed to win the confidence and co-operation of the people. Instances of brutality, violence and even rape committed by police with persons under their custody are frequently reported by the media which sensitive public and people begin to think police as a foe rather than a friend. It is, therefore, necessary that the police should try to improve its image in public so that it commands respect and sympathy of the people. In the background of custodial torture cases coming before the courts, the judiciary has made the following suggestions for improvement of police image :—

1. Policemen should be made to understand that they are basically to help the public and not harrass them.
2. The use of force should be minimised to the barest necessity so that public voluntarily extends a helping hand to the police.
3. In order to win public co-operation and support, the police must demonstrate absolute impartiality in its work without being influenced by the pressure from political high ups.
4. Proper training should be imparted to policemen of all ranks and they should be apprised of the latest techniques of crime detection and investigation.

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1. Developing Society And Police, Osmania University Publication p. 2.

5. The police force should be adequately staffed and equipped with latest weapons to meet new challenges.
6. The Police Act of 1861 needs to be amended as recommended by the National Police Commission in its Fifth Report.
7. The police machinery should be insulated from political interference as recommended by Dharm Vira Commission Report.
8. Surprise visits to police stations and similar units of senior officers should be intensified, this would help in early detection of persons held up in unauthorised custody and subjected to ill-treatment.
9. Above all, torture victims should be dealt with sympathetically and should be adequately compensated[1] and also provided necessary medical treatment and rehabilitation.

Citizen's Voluntary Force

For the past few years, the Delhi police is experimenting with a new agency called the Citizens Volunteers Force with a view to mustering public-police co-operation in dealing with crime and criminals. Under the scheme, certain volunteers from amongst the public are issued identity cards. These volunteers have the power of crime detection. This organisation is intended to help the police in their task of crime detection and investigation. Greater importance is being attached to this Force in the wake of recent terrorist activities in Delhi.

As rightly pointed out by the National Police Commission in their report of April 1983, there is need to re-structuring the police force and redefine its functions. While there is no reason to ban the police unions, their activities should not be prejudical to the interests of the community. In the modern welfare State the police should play the role of a friend and a guide to the common man, and members of the community on their part should also realise that policemen are after all a part of the society and, therefore, they are to be trusted and taken into confidence. Then only the police can perform its functions efficiently.

The reasons usually cited for growing crime and violence are population explosion, unemployment, erosion of traditional values, political patronage of anti-social elements, terrorism[2] and so on. This is indeed true, but a distinct improvement in the law and order situation is still possible if policemen act with greater vigour, efficiency and honesty. And this calls for a firm and unambiguous direction from the highest administrative and political authorities.

Modernisation of Police

The setting up of a Central Finger Print Bureau at Calcutta in 1956 and the Crime Record Bureau in the Central Bureau of Investigation in

1. See *Bhim Singh* v. *State of J. & K.*, A.I.R. 1986 SC 494; *Saheli* v. *Commissioner of Police*, AIR 1990 SC 513; *State of Maharashtra* v. *Ravikanth*, (1991) 2 SCC 373 etc.
2. The State of Punjab has long been in the grip of terrorists and Akali extremists who passionately believe that they are waging war of liberation and the criminals are trying to cash it on the chaos and disorder for their personal gains.

1964 for maintaining up-to-date data of crimes and criminals at national and international level was indeed a significant step in the process of modernisation of police functioning in India.

Under the Police Modernisation Scheme proposed by the Sixth Finance Commission, computer system was introduced in the police establishments of eleven State.[1] Besides, a joint computer centre was set up at Chandigarh to cater to the needs of four adjoining States, namely, Punjab, Haryana, Himachal Pradesh and Jammu & Kashmir. In 1976, a Directorate of Coordination Police Computers (DCPC) was established in Delhi which has been assigned the function of ensuring adequate financial assistance to the State for setting up computer centre and provide training facilities for preparing data bank of crime record etc. A National Crime Record Bureau has been set up in 1985 which maintains complete record of crime statistics throughout the country. In its annual publication 'Crime In India', all important statistical information relating to crime and criminals juveniles, police, courts, prisons etc. is furnished for the guidance of the concerned departments.

The Bureau of Police Research and Development head-quartered in Delhi is actively involved in scientific research and development of new technologies in police investigating methods. There are at present 195 forensic laboratories functioning in India[2] including seven central laboratories and 131 mobile units which function under different State Governments. However, the forensic scientists feel that it is necessary to upgrade these laboratories in view of the growing crime in this country and the adoption of sophisticated, methods by criminals. There is dire need to ensure uniform standards in all the State laboratories, particularly DNA test facilities which is one of the most reliable forms of investigation[3] developed so far and can save time and manpower by the probing agencies. Inquiries, however, reveal that forensic laboratories are not functioning properly as they fail to cope with the work-load. Thousands of cases referred to these laboratories are not cleared for several months and if the reports are not given within three months, forensic test becomes meaningless. Therefore, there is need to revitalise the functioning of these forensic laboratories.

In a pluralistic and fragmented society like ours, with its ethnic and regional disparities as well as cultural diversities, the question of socio-economic justice makes a serious impact on the law and order situation. This has thrown new challenges before the police force. There is no doubt that the police, like any other organ of the administration has to be sensitized to the needs and reactions of the people and simultaneous efforts should also be made to ensure that the police develops as an efficient purposive and self-respecting force immune to both, political abuse and politically motivated criticism.

The changes in the nature of crime as well as criminals over the years has necessitated modernization of the police force to cope up with the new

1. These States were Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Bihar, West Bengal and Uttar Pradesh.
2. The first forensic laboratory was established in Calcutta in 1952.
3. The antecedents of Dhanu, the assassin of former Prime Minister, Rajiv Gandhi was established in DNA test.

challenges. The ever-increasing political interference of political leaders has complicated the task of police further. Political agitations have tended to subvert the priorities for the police because instead of concentrating on prevention and control of crime they are pre-occupied with maintenance of public order for which responsibility is diffused and accountability is difficult to determine. Under these conditions there is dire need for raising the efficiency of police force by greater professionalism and scientific-training. The effectiveness of the police as agents of social control should not be allowed to be blunted by political interference in their functioning.

Malimath Committee Report on Police Functioning

Recently, the Government had appointed Malimath Committee to report on Police and Criminal Justice System in India under Dr. V.S. Malimath, former Chief Justice of Karnataka & Kerala High Courts. The Committee made a detailed analysis of criminal justice system and gave recommendations on fundamental principle, of justice, investigation, prosecution and functioning of judiciary. This included subjects like crime, punishment, reclassification of offences, offences against women, organised crime and arrears in courts. The recommendations of Malimath Committee were analysed by the police administration in a national level seminar on Police and Criminal Justice System at the Punjab Police Academy Phillaur.[1]

The Police Sniffer Dogs

Now-a-days 'sniffer dogs' are too often pressed into service by the Police for spotting out the criminals and detection of crime. Certain species of dogs such as Alsatian and Labrador are regularly trained in the Dog School and then they join the regular services of Police. The sniffer dog must be brought to the scene of crime within forty-eight hours of the incident.

In view of the increased terrorist activities around Delhi, the Delhi Police is training two sniffer dogs who are presently being trained at Dog School BSF Takanpur (Madhya Pradesh). These canines have joined the regular services of Delhi Police in April, 1988. At present Delhi Police has two sniffer dogs on loan from National Security Guards to smell out explosives at vulnerable sites and from suspected baggages. Owing to increasing pressure on Delhi Police there is a proposal to increase the strength of sniffer Dogs from 20 to 36.

INTERPOL

Criminality has become a global phenomenon in the modern computer age. The tremendous growth in the means of transport and inter-communications has brought in its wake new problems of criminality. Now-a-days escape by air or sea is a common feature resorted to by criminals who operate on an international plane. The dangers of international crime have to be faced squarely by all the nations. Therefore, every individual country has its own international agency to tackle the problems of international crime. This agency is familiarly known as 'INTERPOL' (International Criminal Police Organisation) which concerns itself mainly with the establishment of direct contact with the police forces

1. Times News Network, Sunday Sept. 12, 2004.

outside the ordinary channels of diplomacy. The affected country makes a triple request to INTERPOL to seek, hold and deliver the criminals.

INTERPOL has assumed great importance in recent years due to rising incidence of trafficking in drugs, gold, precious stones, forgeries of traveller's cheque, documents, passports and counterfeiting of currency notes. The assistance of INTERPOL is invariably sought in making arrest of criminals involved in hijacking of aeroplanes.

The activities of INTERPOL also include searching and chasing of international criminals; circulation of information regarding international crimes and criminal gangs received from member police forces, assisting in arrest of international criminals and making arrangements for keeping them under surveillance, pending their extradition.

The purpose of INTERPOL (International Criminal Police Organisation) is (1) "to ensure and promote the widest possible assistance between all criminal police authorities within the limits of the laws existing in different countries and in the spirit of the Universal Declaration of Human Rights"; and (2) "to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary crimes."

In short, the INTERPOL enables the police forces in different countries to co-ordinate their work effectvely in the areas of law enforcement and crime prevention. It refrains from indulging in any activity relating to cases which have a political, military, religious or racial character.

International Perspective of the Police

The Police problems and functioning have occasionally been discussed in International forums from time to time. The second United Nations Congress on the Prevention of Crime And Treatment of Offenders, London, 1960 discussed in great detail special Police Services for prevention of delinquency.

A variety of programmes have been developed in Anglo-American countries for training police for the prevention of juvenile delinquency. The International Criminal Police Organisation, the International Federation of Senior Police Officers and the International Association of Chiefs of Police have often made important suggestions bearing on police training.

An International conference on "Urban Police" was held at Rome in September, 1985 to tackle the problem of urban crimes and suggest measures for prevention of urban delinquency. The problem of rural policing is also engaging the attention of even affluent countries like Germany, USA, UK and France.

In this context, it must be stated that India being a party to the International Covenant on Civil And Political Rights, it has ratified as many as thirteen international instruments on human rights, but it has not yet ratified convention against custodial torture contained in the Second Optional Protocol to the International Covenant on Civil & Political Rights. The human rights jurisprudence having now assumed global importance, India should not remain content by merely setting up a National Human

Rights Commission,[1] but should take steps to ratify the human rights instruments, particularly, the convention against torture, which should be made a non-derogable right. Obviously, this would require drastic changes in the existing Police Act, 1861 which has now become outdated. Similar changes are also called for in the Jail Manual which represents the legacy of the British colonial rule in India and is no longer in tune with the concept of modern democratic welfare States.

It is, however, heartening to note that introduction of the electronic video linkage in recent years has eased the burden on the police to a considerable extent. The NHRC has appreciated this measure as the police will no longer be required to accompany the undertrials to the Magistrate's Court every fifteen days for extending their remand period. In otherwords, remand prisoners would not be required to be physically produced before the Magistrate, instead, Magistrate would extend the remand period through video-conferencing. Indeed, e-mail connectivity to all police stations will provide for speedy correspondence as in most of the States Video-conferencing facility has been provided to DGP, Zonal I.G.'s, Range DIGs and SPs at the district level.

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1. The National Human Rights Commission (NHRC) headed by Justice Ranga Nath Misra, former Chief Justice of India and four other members was set up in 1993.

Chapter XVII

THE CRIMINAL LAW COURTS

The Indian Judicial system has a long and glorious history of functional accomplishments and admirable social purpose. It has acquired a solid respectable structural frame with established laws and recognised court practices of trial and justice through the institutions of bar and the bench. It is well known that an independent judiciary, free from interference of the executive or legislative organs of the Government is an essential prerequisite of a democracy which is wedded to rule of law and public welfare. Independence, however, does not allow the Judges to act in an arbitrary manner, but they are to interpret laws in accordance with the settled principles of law and the dictates of their own conscience.

A variety of courts function under the judicial system of a country. The main among them are the civil courts, the courts for criminal trials and the revenue courts. The task of administering criminal justice is performed by the criminal law courts comprising the Magistracy and the Court of Session. The High Court and the Supreme Court have only appellate jurisdiction in criminal cases. These courts are generally engaged in dispensing abstract and even-handed justice in terms of principles set forth in an absolute law.[1] It, therefore, follows that the courts must impart justice within the limits of the law so as to maintain uniformity and impartiality in the determination of guilt and punishment of the accused. It cannot, however, be denied that despite these legal limits prescribed by the law, certain degree of personal discretion of the judicial authorities does play a significant part in influencing their decision as to the guilt of the accused and the sentence awarded to him. Thus, the sentence passed for a particular offence may vary, of course, within the prescribed legal limits, from Judge to Judge depending on his personal perceptions, belief, faith, temperament, attitude of mind, likes and dislikes and own life experiences. One Judge might take a serious view of the offence and award the maximum sentence prescribed for that offence while the other might take a lenient view of the matter and award the minimum sentence prescribed for that offence.[2] What actually happens is that the presiding Judge forms a definite opinion about the guilt or innocence of the accused during the course of trial and finally delivers his judgment which is nothing but a statement of his personal opinion expressed within the framework of legal provisions. That apart, the public opinion and socio-cultural considerations also influence the legal thinking to a certain extent which eventually find expression through judicial pronouncements.[3]

1. Sharma P. D. : Police and Criminal Justice Administration in India (1985) p. 116.
2. *See* judgment of Mr. Justice Krishna Iyer and Mr. Justice A. P. Sen in *Rajendra Prasad's* case, AIR 1979 SC 916.
3. The recent decisions of the Supreme Court on death penalty bear testimony to this fact. The new trend of 'public interest litigation' also supports this contention.

The administration of criminal justice is composed of various components such as the police, prosecution, defence, courts and corrections. In India, unlike many countries, a person is innocent until proven guilty. This is called an adversarial system as opposed to an inquisitorial system. The adversary system presumes that the best way to get the truth is to have a 'contest' between the two sides, namely, the State or the prosecution and the defence. In contrast, in an inquisitorial system, the accused is presumed guilty and is supposed to prove his/her innocence. Historically, this method involved ascertaining the guilt by ordeal or through trial by battle. The criminal law and procedure in India is based on the English law of crime which is no longer suited to the changing needs of the Indian society and its traditions. Although a number of amendments have been made in the Indian laws of crimes and procedure to make them responsive to the recent socio-economic changes but the complexion of the Indian society is changing at a quicker pace than the new forms of social control.

It is significant to note that while many of the offences in the Penal Code have lost their import, several new offences have emerged in the flux of change. Organised crimes and white collar criminality are relatively a new phenomenon of modern societies which are multiplying at an alarming pace. These crimes have become dominant feature of a powerful section of modern Indian society which either aids or abets the criminal activity or engages in it directly. Today, a big smuggler, tax-evader, black marketeer through clever advocacy and tell-tab medical certificate, gets away with his crime with no imprisonment, while a poor man rots in a prison cell because he has no tongue to explain his innocence. Thus, it would appear that administration of criminal justice is cumbersome, expensive and cumulatively disastrous. The poor can never reach the temple of justice because of heavy cost of its access. The hierarchy of courts, with appeals after appeals puts legal justice beyond reach of the poor.

The foregoing account of the criminal justice system makes it clear that the role of court as an agency of justice and criminal law administration is far more vital and significant than that of the police or the prison. The prime function of the court is to impart fair and impartial justice. The Judges have to discharge this arduous task with utmost care and caution so that public confidence in judicial process is not shattered. The presiding Judge must be aware that his verdict in the case is going to make a lasting impression upon the accused about justice or injustice depending on his rightful or wrongful acquittal or conviction. His future reformation or continuance of a life of crime depends to a large extent upon his court experiences.

Most countries today have a regular hierarchy of courts for dispensation of criminal justice. A brief account of the criminal law courts operating in U.K., United States of America and India for imparting justice in criminal cases would serve a useful purpose in appreciating the role of courts as an agency of justice.

The British Criminal Law Courts

The Anglo-Saxon concept of justice has its roots in the legacies of Roman law and Roman Jurisprudence which laid great emphasis on *jus*

naturale and jus genitum. The principles of equity got embedded in British judicial system in course of time. The King was regarded as a fountain of justice. The renaissance stressed upon the secular nature of justice and the sovereign character of secular State was regarded indispensible for imparting even-handed justice. However, with the growing power of the King's Bench in subsequent years, the power of the cannonical courts declined and a variety of new courts were set up for the administration of criminal justice. The chief among these courts which still continue to this day are :—

1. *The House of Lords*.—House of Lords is the highest Court in the hierarchy of British Courts for the administration of criminal justice. It exercises both, original and appellate jurisdiction. Prior to 1907, only those cases could be referred to House of Lords in appeal which involved intricate questions of law. But with the passing of Criminal Appellate Courts Act, 1907 the appeals from criminal cases are referred to the Court of Criminal Appeal whereas the cases which are of public interest and are certified by the Attorney-General, are referred to House of Lords. The Administration of Criminal Justice Act, 1961 has further modified the appellate powers of House of Lords and now any appeal from Criminal Appeal Court or Divisional Court of Queen's Bench can be taken to House of Lords. As regards the original jurisdiction of House of Lords, it has the power to try any person who is impeached by the House of Commons. It may be noted that prior to the Criminal Justice Act, 1948 the original jurisdiction of House of Lords extended only to the cases of peers who were charged with treason or felony.

Earlier, the House of Lords was bound by its former decisions on questions of law. However, on July 26, 1966 Lord Chancellor made a policy statement to the effect that the House of Lords, while treating their former decisions as normally binding, will depart from them when it may appear right to do so. Accordingly, the House of Lords departed from its earlier judgment given in *Duncan* v. *Carumell Laird and Co.*[1] while deciding the case of *Conwey* v. *Rinomer*[2] in 1968 in which it was decided that the courts have a right to question the finality of Minister's certificate as regards non-production of a document on the ground of Crown's privilege. Thus, the House of Lords is now no longer bound by its earlier decision.

2. *The Court of Criminal Appeal*.—The Court of Criminal Appeal ranks next to the House of Lords in the hierarchy of British Criminal Courts. This court is exclusively meant for deciding appeals preferred by the accused person against his conviction by the subordinate court in case a substantial question of law is involved. The Court of Criminal Appeal must either allow the appeal and quash the conviction or dismiss the appeal, but has no power to order re-trial of the case. From the decision of this court either parties may move in appeal to the House of Lords provided leave to appeal is granted by the Court of Appeal itself or by the House of Lords.

3. *Queen's Bench Division of the High Court*.—Next in the descending order of the criminal courts is the Queen's Bench Division of the High Court.

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1. (1942) AC 624 : (1942) 1 All ER 587 (HL).
2. (1968) AC 910 : (1968) 1 All ER 270 (HL) ; *See* also *Milliangos* v. *George Frank Textiles Ltd.*, (1976) AC 443.

The Court exercises both, original as well as appellate jurisdiction. From the decisions of Quarter Session both parties may appeal to the High Court on a point of law and the case is heard by the Judges of the Queen's Bench Division. Both the sides may appeal directly from the Magistrate's Court to the High Court bypassing the Quarter Sessions, where a point of law is involved in the case.

4. *Assize Court.*—Serious indictable offences are tried by the Assize Court. These are mobile courts holding Quarter Sessions in counties. Assize Court consists of a Commissioner, usually a High Court Judge appointed by Letters Patent. The county is divided into circuits, Assizes being held in each county and in some large towns on the circuit. Ordinary offences are triable at Quarter Sessions which are held in each county. The County Quarter Session is usually presided by a chairman who is qualified in legal practice, usually a practising barrister who performs this public duty part-time. However, there exist permanent Sessions in London, Liverpool and Manchester where the Judges are whole-time officials. These courts are not empowered to decide cases of treason, murder, conspiracy, bribery, blasphemy, forgery, perjury or libel, which are punishable with imprisonment for life.

5. *The Central Criminal Court of London.*—The Central Criminal Court functions as a permanent Assize Court and decides criminal cases within the territorial jurisdiction of metropolitan city of London and its suburbs.

6. *The Magistrate's Court.*—Lowest in the hierarchy of criminal courts are the court of petty Magistrates who usually try petty summary offences not punishable with more than six months' imprisonment. The majority of the offences can only be dealt with summarily in a Magistrate's court. In case of summary offences punishable with three months' imprisonment or more, the accused may be tried by jury if he so desires. Quite a large number of cases are tried in the Magistrate's courts. These courts consist of non-lawyers appointed for each county and large towns by the Lord Chancellor on the recommendation of local committees. The proceedings in the Magistrate's Court are quick and informal. The parties usually appear in person. The prosecutor usually a police officer, conducts the prosecution case and the defendant has his own advocate. Both the sides can, however, be represented by counsel or solicitor. The formalities of wigs and gowns are considered unnecessary in these courts.

Trial by Jury

The system of trial by jury occupies a unique place in the history of English judiciary.[1] *Dr. Fitzgerald* rightly comments that no English institution has been so extolled as the criminal jury and no right is more valued by the Englishman than his right to be tried by jury.[2] All offences punishable with three months' imprisonment or more are triable by jury. The jury consists of twelve persons drawn from the ranks of property owners or house-holders of either sex between the age of twenty-one and sixty. The low

1. The system of jury first originated in France in ninth century and was firmly established in England by the 13th century.
2. Fitzgerald, P. J. : Criminal Law And Punishment (1962), p. 160.

property qualifications for juries and exemption of clergymen or professional men from the jury service make it less representative of the community. The clerk of the Court selects and calls out the name of each juror one by one. As each juror comes forward, the accused has a right to raise objection to the appointment of that juror on the jury.[1]

The function of the jury is to decide questions of fact. Their verdict should be unanimous though not necessrily supported by reasons. They are free to return their verdict without threat and restraint and the Judge must accept it. A verdict of acquittal by jury contrary to the weight of evidence must sustain but a verdict of conviction, if perverse, can be quashed on appeal.

The presiding Judge has to appraise the jury about the evidence and the points of law involved in the case. In case there is absence of sufficient evidence to support conviction, the Judge can discharge the accused without the help of jury service.

A dispassionate analysis of the system of jury would reveal that the defects of the system far outweigh its merits. To count only a few of its shortcomings, the system involves crucial waste of time and money. The juries, by and large, are laymen without any expert knowledge of law and procedure of the court. They are open to prejudices and often fall a prey to undue influences. On the positive side of the jury, it may be argued that the system serves as an instrument to extend necessary protection to the defendant against arbitrary decision of the Judge and the government. The verdict of jury is in fact an expression of common man's viewpoint about the guilt or innocence of the accused keeping in view the circumstances of the case and realities of life rather than lamenting within the rigid confines of legal provisions. This enables the Presiding Judge to know the opinion of public men in cases which come before him for trial and thus the system ensures actual participation of public representatives in judicial functions of the courts.

The American Criminal Law Courts

The judicial arrangement for the administration of criminal justice in United States is well known for its compactness and high standards of efficiency. In fact, the American judicial system ranks as one of the best judicial systems of the world. According to *Donald Taft,* the American court system is the product of American influences.[2] The development of trade and commerce created need for new and complex laws and also a professional class of lawyers. Moreover, the Americans lacked confidence in the theory of judicial precedent and, therefore, preferred that juries who are the representatives of the people should control the judicial process rather than the Justices. The power of judicial review has contributed a good deal in development of a sound judicial system in America.

1. This is known as the "challenge to the polls." The person who is being tried can object in seven cases without giving reasons, that is to say, he has seven premptory challenges. Thereafter, he must support his objections giving reasons and his objection may be overruled. The prosecution too can challenge a juror but has no premptory challenge.
2. Donald Taft : Criminology (4th Ed.) p. 352.

During the period between 1781 and the Civil War, Judges used to preside over the American Courts and the Appellate Courts started functioning later on. The period marks the beginning of the present system of courts in United States. The recent American trend is to accept the influence of Judges and to permit jury trials to be waived by the accused. The modern American judicial system consists of the following categories of courts for the administration of criminal justice :—

1. *The Supreme Court of United States.*—The Supreme Court of United States is the highest judicial institution in the hierarchy of American Courts. This Court exercises appellate jurisdiction over the cases from State Courts which involve violation of *due process clause* or any special problem of national interest or where gross injustice is caused to a certain minority community.
2. *Supreme Court of the States.*—In each of the American State, there is a Supreme Court. The functions of this Court are analogous to that of the High Courts in India. The decision of this Court is final in criminal cases and an appeal from the decision of this court lies to the Supreme Court of United States in special circumstances. The Court has both, original and appellate jurisdiction.
3. *Superior District or Circuit Courts.*—These courts try felonies and indictable misdemeanours and hear appeals from subordinate courts.
4. *The Lower Trial Courts.*—These courts include the county and municipal courts trying misdemeanours.
5. *The inferior Courts of local Magistrates.*—They rank as the lowest courts in the hierarchy of American courts. They also include Justices of the Peace trying summary offences. The Justices of Peace often lack legal training.

Like United Kingdom, the system of trial by jury is a popular feature of the American judicial system. In fact, the system of trial by jury is an expression of democratic element in the administration of criminal justice. Some jurists, notably *Jerome Frank* have criticized the jury system and characterised it as an agent of the lawyers[1] to win the case in their favour rather than decide question of fact. The jury can disregard rules of evidence and instructions of the Presiding Judge and need not record the reasons for its decision. There is thus no guarantee of real justice from juries.

The Prosecutor or the Prosecuting Attorney

Any discussion on American criminal justice system shall be incomplete without the mention of the role of 'Prosecutor,' who is an important official of the Court. The main duties of Prosecutor are to organise and present evidence before the Court and determine whether a particular case should be prosecuted or compromised. The Prosecutor also proposes to the Judge or the jury the appropriate penalty which may be awarded to the offender in a particular case. The Prosecutor or the 'Prosecuting Attorney' has four main functions to perform, namely, to investigate the crime ; determine as to who

1. Donald Taft : Criminology (4th Ed.) p. 352.

shall be prosecuted ; prepare cases for trial ; and act as an advocate while the case is being tried. Thus, he plays a quadruple role of an investigator, magistrate, solicitor and the advocate at one and the same time.

The office of the Prosecutor being political in nature, no specific qualifications are prescribed for this position. Generally, such official must be old enough to vote, resident of the area of jurisdiction and a member of the bar. This position is usually sought as a stepping stone to higher political office.[1] The Prosecutor being an elective official, often has to oblige his supporters and friends who helped him in getting elected to this post. That apart, he cannot afford to overlook the interests of those politicians who are in power as they may be useful to secure him further chances for political advancement. The political nature of this office does more harm than good to the community and, therefore, it is difficult to agree that it is a forward step in the American judicial system. Prosecutor's discretionary powers as to when to comprise a case or when to change the nature of the charge or when to secure a plea of guilty to a lesser offence than that committed, necessarily leaves much room for corruption and miscarriage of justice. The personal attitude and likes and dislikes of the Prosecutor also influence the discretion of the prosecuting attorney to a considerable extent. The recent American trend, however, is to restrict the discretionary powers of the Prosecutor and to divest him of his civil duties so that he can concentrate on his judicial functions. *Donald Taft* suggests that extension of the power of the State Attorney-General over both, police and prosecution, is a possible solution to restrict the discretionary powers of the Prosecutor.

Video-Conferencing in American Courts

More recently, video-conferencing is being used in U.S.A. in a number of court proceedings including various pre-trials, civil and criminal proceedings, sentencing, appearances of witnesses and prisoners in trials, arraigments, bankruptcy hearings and appellate court arguments, particularly where compelling geographic and logistical conditions exist. For this purpose, the Federal Rules of Criminal Procedure were amended in September 2001 which permitted the undertrials/defendant's initial appearances to be conducted by video-conferencing instead of requiring their physical presence in the court. These amended rules came into force on December 1, 2002.

The use of video-conferencing techniques in court proceedings was found to be extremely useful for saving in personal time and travel costs which outweighed the cost of purchase and operation of video-conferencing systems. The video-conferencing technology save, the prison time in transporting prisoners to court and it also eliminates security risks. The system has become quite popular in the most courts of Illinois, Taxas etc. According to Judge *Michael. M. Mihm* (C.D. III) "video-conferencing means people don't have to take a whole day to travel, and for prisoners, we don't have security and transportation concerns."

This evolving technology has also been adopted in some of the Australian Courts as the 'e-Court strategy' from December, 2003.

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1. *Ibid.* at p. 358.

Criminal Law Courts in India

The present set up of Courts for the administration of criminal justice in India is essentially a legacy of the British rule. This however, does not mean that India had no courts of its own prior to the British rule. It is on records in the annals of Indian legal history that a well organised system of courts operated in India[1] even before the advent of British in this country. The Hindu period in India witnessed an era when the administration of criminal justice was personally supervised by the King. Some Hindu rulers, however, preferred to appoint special judicial officers called *Mahadandadhikari* or *Nayayamimansak* or *Dandadhish* for imparting justice in criminal cases. An Appeal in such cases lay with the King who was the final judge to alter the sentence or order acquittal of the offender or grant him royal pardon.

According to ancient law-givers, punishing the criminals and resisting perpetration of crime was a solemn duty of the King, because he took from his subjects the price of giving them protection in the shape of rent, taxes and duties. The King and his officers were supposed to hunt out the criminals whether or not any complaint was made, so that law-abiding subjects could lead a secured and peaceful life.

In Vedic age, society was composed of patriarchal families and the *Grahapati i.e.*, the head of the family, decided all matters of disputes relating to household. *Manusmriti* empowered a Grahapati to correct his wife, son, servant, pupil and a younger brother with rope or a small shoot of a cane on the back part of the body but not on a noble part by any means.[2] Vedic literature nowhere mentions the King as a judge either in civil or criminal cases.

The *Dharamsutras* and the *Arthashastra*, however, presented a more or less full-fledged and well developed system of criminal adjudication. The *Nitishastra* mentions King as the fountain of justice and it was his sacred duty to punish the wrong-doers and if he flinched from discharging this duty, he was bound to go to hell.[3] Manu, the law-giver also mentions about the art of secret intelligence practiced in his times for the prevention and detection of crimes. The King had his own net-work of secret intelligence to keep himself informed about the nature and incidence of crimes, and awarded adequate punishment to the criminals.

The Kautilya's *Arthashastra*, written around 310 B.C. is a monumental work which provides systematic information about crime investigation and punishment of offenders as also crime-control devices. Throughout this period, the administration of criminal justice was the sole responsibility of the ruler who sought assistance from his deputies to apprehend and punish the offenders. The regular hierarchy of criminal courts was yet to evolve in the indigenous Hindu Kingdoms.

During the reign of Moghuls, the *Nawab* or *Nazim* was incharge of the criminal law administration and was to decide cases punishable with capital punishment. Offences relating to property were generally decided by a subordinate judicial authority called *Darogah-Adalat-al-alia*. Besides the

1. Sen P. K. : Penology Old & New 1943, pp. 110-11.
2. Manusmriti XI, 324.
3. Vardachariar's : Hindu Judicial System (1946) p. 93.

Darogah, there was another judicial officer called *Fauzdar* who was to try all criminal cases excepting those punishable with capital sentence. The court of *Fauzdar* was known as *Faujdari Adalat*. The *Mohtassib* was the petty police official who looked after the cases of drunkenness, narcotics, etc. There were *Kotwals* who were to ensure maintenance of law and order throughout the territory. The Qazi administered sacred law for Muslims. He decided disputes concerning family law and marriage, divorce, inheritance and also criminal cases relating to Muslims.

The Mohammedan criminal law was mainly expounded by *Hidaya* and *Fatwa*. Hidaya contained the general principles of Muslim criminal law whereas *Fatwa-Alamgiri* was a collection of case law for the guidance of criminal law courts. The system continued till the end of eighteenth century.[1]

With the advent of British rule in India, the administration of criminal justice passed on to the British administrators. They carefully watched the working of the then existing Moghul system of courts and gradually substituted it by their own judicial plans modelled on English pattern. Their sole object was to remove the irrationalities of the Moghul criminal law courts and infuse confidence among the natives by offering them an opportunity for a fair and impartial trial. The criminal justice system introduced by the British rulers in India was a queer mixture of Anglo-Saxon judicial principles and the available traditions and practices of the indigenous people. Undoubtedly, the system of criminal law courts innovated by the British rulers in India worked satisfactorily for over a century and it proved so successful that even after the Indian Independence almost the same judicial arrangement has been retained with minor changes here and there.

The modern judicial system operating in India for the administration of criminal justice comprises the following categories of courts :

1. *The Supreme Court of India.*—It is the highest court in the country's judicial system. So far criminal cases are concerned, the Supreme Court has only appellate powers[2] that too in rare cases. It may, however, be stated that there is a recent move to enlarge the appellate jurisdiction of the Supreme Court in criminal cases. There is also a demand that the Supreme Court of India should exercise appellate jurisdiction over the cases where the accused has been sentenced to a term of imprisonment for ten years or more. The Supreme Court also has writ jurisdiction for the enforcement of fundamental rights.[3]

   More recently, the Supreme Court has started awarding monetary compensation to the victims of abuse of criminal law

1. Dr. Paranjape N. V. : Indian Legal And Constitutional History (5th Ed. 1998) p. 168.
2. Article 134 of the Constitution of India.
3. Article 32.

process, particularly in cases of custodial torture[1] or illegal detention[2] or abuse of power by the criminal law administrators violating the provisions of Article 21 of the Constitution relating to right to life and liberty of the victims. This is indeed a welcome step in the area of criminal justice system.

2. *The High Courts.*—There is a High Court for each State or one or more States.[3] It is the highest judicial institution within the State. The conditions and qualifications for appointment of Judges of a High Court are contained in Articles 217-222 of the Constitution of India. Each High Court has original as well as appellate jurisdiction.[4] The High Court has the power to issue certain writs to any person, authority or even the Government within its territorial jurisdiction for the enforcement of any the rights conferred by Part III of the Constitution of India.[5] The Court also has the power of superintendence over all subordinate courts and Tribunals situated within its territorial jurisdiction.[6]

3. *The Court of Session.*—There is a Court of Session in each District which is presided over by a Sessions Judge and one or more Additional Sessions Judges. In certain cases Assistant Sessions Judges are also appointed to work in the Sessions Court. The Sessions Judge or the Additional Sessions Judge is empowered to pass any sentence authorised by law but any sentence of death awarded by him must be confirmed by the High Court to which he is subordinate.[7] The Assistant Sessions Judges, however, are not competent to award a sentence of death, imprisonment for life or imprisonment for a term exceeding ten years.[8] The Sessions Court exercises both original and appellate jurisdiction. The appointments of the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges are made by the High Court of the concerning State with a view to maintaining the independence of the judiciary.

4. *The Courts of Judicial Magistrate.*—There are a number of courts of Judicial Magistrates functioning throughout the District. These courts are set up by the State Government in consultation with the High Court. The Judicial Magistrates are appointed by the High Court and by the State Government.[9] The High Court

1. *SAHELI* v. *Commr. of Delhi*, AIR 1990 SC 516 ; *Nilabati Behera* v. *State of Bihar*, AIR 1993 SC 1134.
2. *Rudal Shah* v. *State of Bihar*, AIR 1983 SC 1986 ; *Sebastain M. Hongray* v. *Union of India*, AIR 1984 SC 1026 ; *Bhim Singh* v. *State of J. & K.*, AIR 1985 SC 677.
3. Article 214.
4. Article 225 as also Sections 194, 374, 375 and 377 of the Code of Criminal Procedure, 1973.
5. Article 226.
6. Article 227.
7. Section 28(2) of Cr. P.C., 1973.
8. Section 28(3).
9. Section 11 (1) and (2).

may, whenever it deems necessary or expedient, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State functioning as a Judge in a civil court.[1]

In each District not being a Metropolitan area, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.[2] The High Court may also appoint any Judicial Magistrate of the first class as an Additional Chief Judicial Magistrate in a District.[3] The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-Divisional Judicial Magistrate. There are a number of Judicial Magistrates of the second class as Special Judicial Magistrates functioning under the Chief Judicial Magistrate[4] for the administration of criminal justice in the Division.

It must be stated that in the Code of Criminal Procedure, 1973, the provisions of the old Code relating to the Presidency Magistrates in the Presidency Towns of Bombay, Calcutta and Madras have been retained but in a different form. The Code provides for the establishment of Courts of Metropolitan Magistrates in Metropolitan areas instead of Presidency Magistrates.[5] Metropolitan Area, for the purpose of the Code of Criminal Procedure means any area in the State comprising a city or town whose population exceeds one million and is so declared by notification of the State Government.[6] It, therefore, follows that a city or town having its population over one million does not automatically become a 'Metropolitan Area' unless it is so declared and notified by the State Government.

The High Court shall appoint a Chief Metropolitan Magistrate in each Metropolitan area. It may also appoint an Additional Chief Metropolitan Magistrate. The powers and functions of the Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate are analogous to those of Chief Judicial Magistrate and Additional Chief Judicial Magistrates of the Districts.[7] Similarly, one or more Special Metropolitan Magistrate may be appointed in the Metropolitan area who have the same powers as special Judicial Magistrates of the second class in the district.[8]

The sentencing powers of the aforesaid categories of Magistrates are contained in Sections 28 to 35 of the Code of Criminal Procedure, 1973. They are as follows :—

1. Section 11 (3).
2. Section 12 (1), The function of the Chief Judicial Magistrate is to guide, supervise and control other Judicial Magistrates in the District and to decide important cases himself. He also hears appeals against convictions by Magistrates of the second class.
3. Section 12 (2).
4. Section 13.
5. Sections 16 to 19.
6. From the commencement of the Criminal Procedure Code, 1973 the Presidency towns of Bombay, Calcutta, Madras and the city of Ahmedabad shall be deemed to be a Metropolitan Area—Sec. 8(2), Cr. P.C., 1973.
7. Section 17 (1) and (2), Cr. P.C., 1973.
8. Section 18.

Class of Magistrates	Sentencing power
(a) Court of Chief Judicial Magistrate and Chief Metropolitan Magistrate.	Imprisonment upto seven years, fine without limit.
(b) Court of Magistrate of the First Class and Metropolitan Magistrates.	Imprisonment upto three years, fine upto Rs. 5,000.
(c) Court of Magistrate of the Second Class.	Imprisonment upto one year, fine upto Rs. 1,000.

Besides the criminal courts mentioned above, the President of India and the Governors of the State have also been conferred certain judicial powers of sentencing the convicted persons. They have power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence in certain cases.[1]

In addition to the Judicial Magistrates, Executive Magistrates are also appointed by the State Government in each district. One of the Executive Magistrates is appointed as the District Magistrate and all the Executive Magistrates except Additional District Magistrate are subordinate to him. These Magistrates belong to the executive branch of the Government and, therefore, their appointment is not controlled by the High Court. The functions assigned to these Magistrates include trial of offences involving preventive action, disputes concerning immovable property and offences relating to public nuisance and breach of peace.

The Nyaya Panchayats

Though the age-old concept of *Panch Parmeshwar* which was prevalent in ancient India collapsed completely during the British rule but the institution of Panchayat as an organ of local self-government still survived. After the Indian Independence, the framers of the Constitution of India incorporated a provision relating to Panchayati-Raj in Article 40 of Part IV of the Constitution. In pursuance of this directive, many States in India enacted laws investing limited judicial powers to *Nyaya Panchayats* to decide petty civil and criminal cases.

Theoretically, the involvement of *Panchas* in the criminal justice administration may appear to be a sound principle as a matter of policy but it does not seem expedient to entrust judicial functions to the laymen who are completely ignorant about the technicalities and intricacies of law and its procedure. Commenting on this point Mr. Justice Somasunderam of the High Court of Madras in *Venkatachala* v. *The Panchayat Board, Ethanu*[2] observed, that Panchayat Courts ought not to be invested with criminal jurisdiction because they seem to be carried away by the local politics and communal feelings that they happen to entertain against persons.

1. The President of India has been conferred these powers by Art. 72 of the Constitution of India while Governors of the States have similar powers under Art. 161.
2. AIR 1958 Mad. 388.

Lok Adalats

Any discussion on criminal justice system in India will remain incomplete without a reference to the institution of Lok Adalat. The phraseology 'Lok Adalat' comprises two words, namely, 'Lok' and 'Adalat' the former expressing the concept of public opinion while the latter denoting the accurate and thorough deliberation aspect of decision making. Both, these aspects have been blended judiciously in the institution of Lok Adalat as envisaged by Sections 19(1) and 20(4) of the Legal Services Authorities Act, 1987. Judicial officers are integral part forming the composition of Lok Adalat and the principles of justice, equity and fair play are the guiding factors for decision based on compromises to be arrived at before such Adalats.

The Lok Adalat is mainly concerned with two-fold functions. Firstly, it provides people a quick, easy, accessible, non-technical sympathetic and homely forum for resolution of their disputes and, secondly, it tackles the menace of what is known as 'docket explosion' *i.e.*, piling number of pending cases which become unmanageable for the regular courts to handle effectively.

The credit of originating this system for speedy justice to common man goes to Mr. Justice P. N. Bhagwati, the former Chief Justice of the Supreme Court of India who started Lok Adalats in the State of Gujarat during early seventies. This was followed by the States of Maharashtra, Kerala, Andhra Pradesh, Madhya Pradesh, Union Territory of Delhi, etc. which introduced Lok Adalats for urban and rural areas. These Adalats decide criminal, civil and revenue cases pending before the law courts by mutual consent of the parties. Without going into the procedural details of the working of Lok Adalat, suffice it to say that it has made substantial contribution in taking justice to doors of common man and providing him speedy justice. On the criminal side, the offences compoundable under Section 320 (1) and (2) of the Code of Criminal Procedure 1973[1] are disposed of by the Lok Adalat through a compromise between the parties.

Section 20(1) of the Legal Services Authorities Act, 1987 lays down that a Court of law where a case is pending may transfer the case to Lok Adalat for settlement when the parties to the case have made a joint application indicating their intention to compromise the matter. Thus the section requires parties to apply before District Authority and not Lok Adalat. The parties to such a case shall be under no obligation to attend the court concerned during the period intervening between the filing of the joint application and disposal of the case by the Lok Adalat.

In Madhya Pradesh, the first Lok Adalat was held at Bilaspur on April 13, 1986 and out of total 797 cases disposed of by this Adalat as many as 226 were criminal cases. In all about ninety-seven Lok Adalats have been organised in the State upto January 2001 each disposing of nearly 250 criminal cases on an average. It is thus evident that the institution of Lok Adalat is expected to play a crucial role in the administration of criminal justice in time to come. More recently, Lok Adalats are being arranged inside

1. Section 320 Clause (1) contains offences which are compoundable by parties while clause (2) contains offences which are compoundable with the permission of the Court.

the prison institutions for providing undertrial prisoners access to speedy justice. It is suggested that other prisoners should also be brought within the purview of Lok Adalat.

Lok Adalats are now having a statutory foundation. The Supreme Court has reiterated time and again that speedy justice specially in criminal matters, is the essential component of the fundamental right to life and liberty enshrined in Art. 21 of the Constitution of India. The procedure of Lok Adalat inherently embodies the concept of speedy trial and it can be seen as one of the most efficacious legal instruments of upholding speedy justice. Widening the criminal jurisdiction of Lok Adalats would, therefore, be a significant step in the direction of fulfilment of the constitutional mandate contained in Article 21.

The Legal Services Authorities Act, 1987

The Parliament enacted a comprehensive law called the Legal Services Authorities Act, 1987, (Act No. 39 of 1987) to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society in order to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities. The Act further requires that Lok Adalats should be organised to ensure that the operation of the legal system promotes justice on the basis of equal opportunity. The main objectives of the Act are :—

(1) to secure free and competent legal services to weaker sections ;

(2) to organise Lok Adalats for speedy disposal of case ;

(3) to ensure that operation of legal system promotes justice on the basis of equal opportunity. The Act is undoubtedly a progressive step towards the fulfilment of the directive principle relating to legal aid to poor as contemplated by Art. 39-A of the Constitution.

SC/ST (Prevention of Atrocities) Act, 1989

There is yet another Act, called the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which provides that the State Government shall with the concurrence of Chief Justice of the concerned High Court, by notification in the official Gazette specify for each district a Court of Session to be a special court[1] to try offences of atrocities committed by the members of other communities against the persons belonging to Scheduled Castes and Scheduled Tribes. The provisions of Section 438 of the Code of Criminal Procedure, 1973 shall not apply for persons committing an offence under the Act. But the High Court may in exercise of its inherent power pass such orders as may be deemed necessaary to give effect to prevent abuse of the process of the Special Court or otherwise to secure ends of justice.[2] Thus, the Act, obviously seeks to protect the members of SC/ST from atrocities by high castes by providing them easy access to criminal justice system.

1. Sec 14 of the SC & ST (Prevention of Atrocities) Act, 1989.
2. Section 18.

Law Relating to Bail

The law of bail is an integral component of the criminal law procedure and the right to bail is subject to statutory stipulation. The Code of Criminal Procedure, 1973 seeks to liberalise the bail provisions. The bailable and not bailable offences are precisely classified. Although bail can be granted in both categories of offences, the grant of bail in non-bailable offences is by way of concession to the accused which could be awarded by the court at its discretion in order to protect the "Interests of Justice".

Section 440(1) of the Code provides that the amount of bond for release of an accused person on bail shall be fixed with due regard to the circumstances of the case and shall not be excessive. Sub-Section (2) further empowers the High Court or the Court of Sessions to direct that the bail required by police officer or magistrate be reduced. Anticipatory bail may also be granted under such conditions as provided for in Section 438. Section 440(1) read with Section 441 further empowers the trying magistrates to have the discretion whether the amount of bond or bail could be on the personal bond of the accused himself or with sureties.

The process of granting or refusing bail entails a meticulous judicial exercise so as to serve the twin object of social defence and individual freedom. The judicial discretion in granting or refusing bail should, therefore, be exercised with caution within the parameter of law and not caprice. The scope of judicial discretion is, however, limited when a person is accused of a bailable offence. But when a person is accused of a non-bailable offence, his release on bail leaves wider scope for exercise of judicial discretion keeping in view the gravity of offence, the nature of evidence on which the prosecution case rests, and reasonable possibility of presence of accused or suspect during trial.

The mechanical approach of judges in the exercise of their discretion in bail proceedings has been vehemently criticised by the Supreme Court in *Hussainara Khatoon* v. *State of Bihar*[1] wherein the Court, *inter-alia*, observed :

> "...The system of bail operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail".

While the Code of Criminal Procedure recognises the right of an accused person to be released on bail or the facility to the accused to remain on bail during trial, it casts a duty on the accused to attend the court regularly for speedy trial and not to tamper with prosecution witnesses.[2] Judicial discretion in granting bail under Section 439(1) should be guided by two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution evidence. It is for this reason that Section 439(2) empowers the High Court or the Court of Session to direct any person, who had been admitted to bail by the Magistrate's Court, to be committed to custody if it thinks it appropriate to do so.

Sometimes, the prosecution agencies unnecessarily oppose the anticipatory bail application of the accused on the ground that his presence

1. AIR 1978 SC 1675 (1681).
2. *Gurcharan Singh* v. *Delhi Administration*, AIR 1978 SC 179.

in custody is necessary for making a search and recovery of documents in his/her presence. The Supreme Court in *Harsh Sawhney* v. *Union Territory, Chandigarh*,[1] rejected the plea of the prosecution on this ground and directed that appellant shall appear for interrogation by the police whenever reasonably required, subject to his/her right under Art. 20(3) of the Constitution.

The bail system as administered by courts of law in recent years however, reveals that the "non-poor" accused even in sensational criminal cases are able to take advantage of bail much beyond what they deserve.[2]

Looking at the long pendency of cases and the number of under-trial prisoners multiplying each day, it is advisable to liberalise the law relating to bail. Some useful suggestions[3] in this regard may be as follows :—

(1) Where the Court is satisfied after taking into account the information placed before it, that the accused has root in the community and is not likely to abscond, it need not insist on monetary bond and may safely release the accused on a personal bond.

(2) The offences punishable for ten years imprisonment or below, be made bailable by the Court with stringent conditions. It will not only reduce the number of bail applications but also reduce the number of undertrial prisoners.

(3) The default clause provided under section 167 of Cr.P.C. making it mandatory to grant bail after the expiry of 60/90 days from the production of arrestee before the Magistrate, should be deleted and instead the provisions of Section 173(1) of Cr.P.C. which requires completion of the investigation expeditiously, should be scrupulously followed. This will eliminate the possibility of charge-sheet not being deliberately filed till 60/90 days in order to make the accused entitled to be released on bail.

(4) Bail should not be refused in cases where there is on record such material which shows that the accused himself received injuries and has a valid case for right of private defence.

(5) Bail should normally be granted in case where the arrestee had not used a weapon or participated actively in the case.

Recently, the Supreme Court which had twice sent back murder accused Pappu Yadav, (Now RJD's Member Parliament from Madhepura Lok Sabha seat, Bihar) to jail, on 24th September 2004, asked him why the fresh bail given to him by the Patna High Court *Judge R.S. Garg* should not be

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1. AIR 1978 SC 1016.
2. In the infamous 'Tandoor case', Sushil Sharma, the ex-Delhi Youth Congress President and prime suspect in the gruesome murder of Naina Sahni was granted anticipatory bail by Session Court, Madras on 7th July 1995 despite Delhi Police desperately trying to apprehend him.
   North India's notorious poacher and animal-skin smuggler Sansar Chand who was involved in several cases relating to wild-life offences was arrested by Delhi police on July 17, 1995 but was released on bail the very next day by the Metropolitan Magistrate despite his offences related to over 30,000 skins of wild animals.
3. M.B. Sardar : 'Procedural Reforms'—Criminal Law All India Seminar Papers on Judicial Reforms (1998) p. 169.

cancelled. The Bench of *Justices N. Santosh Hegde, Justice, S.B. Sinha* and *Justice A.K. Mathur*, had ordered lodging Pappu Yadav in the prison instead of Patna Medical College Hospital while taking serious note of the misuse of facilities by the accused on the pretext of ill-health.

Agitated over the release of an accused in a heinous crime of brutal murder which is punishable with life-term or death sentence, the Bench had taken note of 'gravity of offence' and also allegations of tampering with the witnesses by Pappu Yadav during the period he was in jail, the Court reiterating the law on grant or refusal of bail, cautioned the High Court of Patna to exercise its discretion in a judicious manner and not as a matter of course.

The Apex Court noted that though an accused has a right to make successive applications for grant of bail, the Court concerned has a duty to consider the reasons and grounds on which earlier bail applications were rejected.[1]

Role of Investigating Agencies

Proper administration of criminal justice is not only in the hands of judiciary alone. The investigating agencies play an important role in the criminal justice delivery system. Delay in examining the witnesses and deciding cases results in miscarriage of justice. This delay may be due to ineffective investigation by the police and lack of motivation among Public Prosecutors who are burdened with large number of cases. In some cases the investigating officer is reported to have submitted the charge-sheet even before completing the investigation. This weakens the case which ultimately results in acquittal of the accused. Therefore, there is need to revamp the investigating mechanism.

The statutory power of police to investigate cognizable offences should not be interfered with by the courts, the courts are not justified in obliterating the track of investigation and it cannot direct the police as to how investigation in a particular case is to be conducted.[2]

The Court of Criminal Trial

Offences may either be cognizable or non-cognizable depending on their gravity. Cognizable offences are more serious than non-cognizable offences and police may arrest without warrant in such cases and also initiate investigation on their own without obtaining an order from the competent Magistrate. In case of non-cognizable offences, the police cannot make arrest or initiate investigation without an order of a Magistrate having power to try case or commit the case for trial.[3]

As regards search and seizure by the police officer, the Code of Criminal Procedure provides that it can be done after search warrant is issued by the competent Magistrate. In certain cases the police officer may, however, conduct search or seizure even without a search warrant from a Magistrate.[4]

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1. Times News Network, Friday, September 24, 2004.
2. *State of Haryana* v. *Bhajan Lal*, 1992 Supp. (1) SCC 335.
3. Sections 155, and 156, Cr. PC.
4. Section 165.

A criminal case may come before a Magistrate for trial[1] either on a private complaint or on a police report. The Magistrate may take cognizance of an offence on a private complaint if in his opinion there is sufficient ground for proceedings. If the case appears to be a summons case, he shall issue summons for the attendance of the accused and if the case is a warrant case, he may issue a warrant causing the accused to be brought or to appear before him, or if he has no jurisdiction himself, then before competent Magistrate having the jurisdiction.[2] This is called "Issuance of Process" by the Magistrate. No summons or warrant shall be issued against the accused unless a list of prosecution witnesses has been filed by the complainant. The summons or warrant so issued shall be accompanied by a copy of such complaint.[3] The Magistrate may dispense with the personal attendance of the accused and may permit him to appear by his pleader.[4] Petty offences may be disposed of summarily by the Magistrate under Section 260 of the Code of Criminal Procedure provided the fine for the offence complained of is punishable upto rupees one hundred.[5]

In case the proceedings have been instituted on a police report, the Magistrate shall, without delay, furnish to the accused free of cost a copy of police report, F.I.R., the statements recorded of all the persons whom the prosecution proposes to examine, confessions and statements recorded under section 164 of the Code and any other document or relevant extracts thereof forwarded to the Magistrate by the police officer.

Trial Proceedings

The trial proceedings in a Magistrate's court are usually speedy. The prosecutor conducts the prosecution case and the accused usually has his own defence counsel. At the commencement of the trial the accused is brought or directed to appear before the Court. After ensuring the attendance of the accused the copies of the papers of the case are furnished to him.[6] Thereafter, the Magistrate frames the charge after hearing the parties.[7] The charge is then read over to the accused. If the accused pleads guilty, the magistrate shall record the plea and may in his own discretion convict the accused[8] or remand him to custody in order to make further inquiries or may commit the accused to Court of Session.[9]

If, however, the accused does not plead or refuses to plead or claims to be tried, then in that case a date usually not earlier than a period of two weeks from the date of the commencement of the trial[10] is fixed for prosecution evidence. On the date so fixed, the prosecution proves its case.

1. The detailed procedure for trial of warrant case by Magistrate is contained in sections 238 to 250 of the Criminal Procedure Code, 1973 and for summons cases in sections 251 to 260. The procedure for summary trial is laid down in sections 260 to 265 of the Code.
2. Sections 204.
3. Section 204(3).
4. Section 205.
5. Section 206 (1).
6. Section 173.
7. Section 228.
8. Section 229.
9. Section 209.
10. Section 230.

The witnesses are sworn, examined by the prosecution, cross-examined by the accused or his defence counsel and re-examined by the prosecution.

After the prosecution evidence, the Magistrate examines the accused generally on the points which are forthcoming against him on the basis of evidence and the accused is given an opportunity to defend himself.

When the examination of the accused is over, he is asked to enter into defence. The arguments of both the parties are heard by the Magistrate and the case is either reserved for judgment or the judgment is pronounced the same day. In case the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360,[1] hear the accused on the question of sentence,[2] and then pass the sentence on him according to law.

The object of Section 235(2) is to extend an opportunity to the convicted person to bring to the notice of the Court such circumstances as may help the Judge in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case.[3] Thus, hearing on the question of sentence is mandatory at the sentencing stage so that the humanist principle of individualising punishment to suit the person and his circumstances is best served by hearing the accused on the quantum of punishment proposed to be imposed on him.[4]

In *Santa Singh* v. *State of Punjab*,[5] the Supreme Court held that the hearing contemplated by Section 235(2) of the Code of Criminal Procedure, 1973, is not confined merely to hearing oral submissions but is intended to give an opportunity to the prosecution and the accused to place before the Court facts and material relating to various factors which have bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. However, the Court should see that this provision relating to hearing of parties on the question of sentence is not misused and turned into an instrument of delaying the proceedings.

The two main considerations which deserve a special mention in context of the conduct of criminal trial in India are :

1. There is no room for jury service in the trial of the accused under the Code of Criminal Procedure, 1973. Although the earlier Code contained provisions relating to trial by jury, they were in fact never invoked. The absence of trial by jury in our criminal proceedings speaks of people's unshaken faith in judicial institutions and respect for 'Law' and its procedure.

2. Another significant feature of criminal trials in India is the declining role of police as a prosecutor. Till late, the prosecuting officer, invariably used to be a police officer but the recent trend appears to be against this practice. Now the services of public prosecutors are utilised for conducting the prosecution rather than assigning this task

1. Section 360 Cr PC contains provision relating to release on probation of good conduct or after admonition.
2. Section 235(2).
3. *Tarlok Singh* v. *State of Punjab*, 1977 Cri LJ 1139 (SC).
4. *Shiv Mohan Singh* v. *State*, AIR 1977 SC 949.
5. AIR 1976 SC 2386.

to a police officer. The obvious reason for this change is that police being one of the interested parties in such cases, may be *biased* and prejudiced against the accused and, therefore, may be inclined to secure his conviction. Under these circumstances, the accused may not get a fair trial. On the other hand, if the prosecution is conducted by the public prosecutor, he being an uninterested party, may have no personal interest in the case. Therefore, he is bound to be impartial in course of trial and this affords better opportunity of fair trial to the accused. It is for this reason that prosecution branch has been separated from the Police Department to function as an indepedent prosecuting agency.

The object of Criminal Trials

The procedure laid down in the Code of Criminal Procedure, 1973, for the conduct of trial in criminal proceedings primarily centres round three main objectives—

(i) securing the accused person a fair trial in accordance with the accepted principles of natural justice ;

(ii) eliminating delay in investigation and trial ;

(iii) making the procedure less complicated and within the reach of a common man.

The Code of Criminal Procedure, 1973

The old Criminal Procedure Code of 1898 had become out-dated and many anomalies and ambiguities had crept in it due to conflicting decisions of the High Courts on procedural aspects of criminal law. Since the law of criminal procedure deals with the process of application of penal law to the facts and circumstances of particular case, it must be adopted to the changing needs of the society. Considered from this standpoint, the Code of 1973, which came into force on Ist April, 1974 is indeed a commendable piece of legislation inasmuch as it supplies a machinery for punishment of offences against the law of the land and provides a guideline to the prosecuting agencies to conduct prosecution and to the magistracy to apply certain principles and process while disposing of criminal trials.[1] It shall be pertinant to mention some of the most important changes introduced by the new Code of Criminal Procedure, 1973. They are as follows :—

1. The committal proceedings are abolished with a view to eliminating delay involved in preliminary inquiry before the commencement of the trial of offences.
2. The offences punishable with imprisonment not exceeding two years instead of six months as under the old Code are now triable summarily.[2]
3. The provision for compulsory stoppage of proceedings by a subordinate court on the mere intimation from a party of his intention to move a higher court for transfer of the case has been omitted and the Code of Criminal Procedure, 1973 now provides

1. The Code has been amended by the Code of Criminal Procedure (Amendment) Act, 1978 to make it more effective.
2. Section 260(1) of Cr. P.C., 1973.

that the court hearing the transfer application shall not stay proceedings unless it is necessary to do so in the interest of justice.

4. The Code of 1973 provides that the summons can now be served by registered post also.[1] In petty cases, the accused can plead guilty by post and remit the fine specified in the summons.
5. The facility of part-heard cases being continued by successors-in-office which was available only in respect of Courts of Magistrates under the old Code has now also been extended to the Court of Sessions[2] in the Code of 1973.
6. Provision has been made for legal aid to the indigent accused[3] in the cases triable by a Court of Sessions.
7. The scope for payment of compensation[4] by the accused to the victim of his crime has been considerably widened under Code of Criminal Procedure, 1973.
8. The accused shall be heard on the question of sentence under Section 235(2) of the Code of Criminal Procedure, 1973. The prosecution shall also be given an opportunity to make representation against insufficiency of punishment awarded to the convicted person under this section.
9. A new provision relating to anticipatory bail under Section 437, has been inserted in the Code of 1973.

Functions of Criminal Law Court

An analysis of the working of the modern criminal law courts would reveal that these courts perform four-fold functions, namely :

1. Redressal of the complainant who is wronged by the criminal act of the offender ;

2. Punishment of offender ;

3. Fair and impartial trial of the accused with a view to ensuring justice in his case. The major task of criminal courts is to make sure that innocent persons are not unnecessarily punished while those guilty of some offence do not go unpunished. In order to achieve this purpose, the courts are inclined to point out the deficiencies and lacuna in prosecution and defence version and both of them gradually try to remove those shortcomings.

4. Maintenance of law and order in society by eliminating offenders through punishment.

Shortcomings :

It must be stated that the scheme of courts adopted for the administration of criminal justice in India is, by and large, satisfactory. It ranks as one of the most efficient judicial systems of the world. As stated earlier, the changes introduced by the Code of Criminal Procedure, 1973,

1. Section 69(1) and (2).
2. Section 9(5).
3. Section 304.
4. Section 357.

have certainly improved the efficiency of criminal courts and provided adequate relief to parties from the rigours of procedural law of crimes. There are, however, certain pitfalls in the system which adversely affect the cause of justice. These can be briefly summarised thus :—

1. 'Justice delayed is justice denied' is one of the common slogan often used in the realm of administration of justice. Delay in disposal of cases hampers the cause of justice. There is greater need to eliminate delay in the trial of criminal cases. The gravity of the offence is often lost with the passage of time. Therefore, criminal justice system must provide for speedy and effective trial. Unless justice meted out is speedy, society will be threatened with dangers of violence and lawlessness.

Delay in disposal of criminal proceeding may be attributed to the mal-functioning of police, prosecution agency, legal profession, trial courts, appellate courts, etc.

The former *CJI P.N. Bhagwati* in his speech on the Law Day on November 26, 1986 observed :

> "Our judicial system is creaking under the weight of arrears. Arrears cause delay and delay means negating the accessibility of justice in true terms to the common man."

Similar views were expressed by *Nani A. Palkhivala* in 1987. He attributed laws' delay to legal profession who seek adjournments on most flimsy grounds. If the Judge does not readily grant adjournments, he becomes highly unpopular.

The statistics of disposal of IPC cases as shown in the CRIME IN INDIA published by National Crimes Record Bureau in 2002 indicates that disposal was low *i.e.*, 22.2% on an average. The conviction rate also showed continued decline from 64.8% during 1961 to 40.6% during 2002. The Table indicating the disposal of IPC crime cases by Courts for the past five decades is given below :—

Disposal of IPC Crime Cases by Courts (1961-2002)*

Sr. No.	Year	Total No. of Cases for Trial) (the pending cases)	Tried	Convicted	Percentage of trial completed	Percentage of convicted
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	1961	8,00,784	2,42,592	1,57,318	30.3	64
2.	1971	9,43,394	3,01,869	1,87,072	32.0	62
3.	1981	21,11,791	5,05,412	2,65,531	23.9	52
4.	1991	39,64,610	6,67,340	3,19,157	16.8	47
5.	2001	62,21,034	9,31,892	3,80,504	15.0	40
6.	2002	64,64,748	9,81,393	3,98,830	15.2	40

* Excluding withdrawn/compounded cases.

Thus, it would appear that at the end of the year 2002 nearly 82.2% IPC cases remained pending for trial in various criminal courts of India. This needs urgent attention to reduce the pendency of cases.

Expressing his concern for delays in disposal of criminal cases, the Chief Justice of India, *Dr. A.S. Anand as he then was* in his address at All India Seminar on Judicial Reforms,[1] *inter-alia*, observed :

> "Failure of judiciary to deliver justice within a time-frame has brought about a sense of frustration amongst the litigants....Human hope has its limits and waiting for too long in the current lifestyle is not possible. Some feel that judicial system has shown appearance of cracks and fatigue but I am an optimist and do not share the view that judicial system has collapsed or is fast collapsing."

2. There has been steady deterioration in the quality of the investigation and also in promptness in concluding the investigation. The interval between the date of lodging the FIR and the submission of the charge-sheet ranges from 4 to 6 months and in some cases even beyond this period. Defective investigation because of innocent person being booked along with the guilty or manipulated case diary not only delays the trial but brings disrepute to police and results in consequential acquittal. The failure of the police witness, especially the investigating police officer, to appear before the courts on the dates fixed leads to postponement of trial for several days.

Yet another reason for delay in the trial is the failure of police to furnish the accused with copy of police papers as required under Section 173(4).

3. Frequent adjournments sought by the prosecutors for one reason or the other, also causes inordinate delay in trial of the case. The prosecutor takes adjournment from one court on the plea of his being busy elsewhere, and the trial court has to adjourn the case in the interest of justice and fair play. This is highly objectionable but widely prevalent practice in the Indian Courts. No personal ground except personal illness of the lawyer should be entertained for the adjournment of the case. The lawyer's absence without an alternative arrangement should be treated as misconduct. A Bench of the Supreme Court comprising Justice K.T. Thomas, R.P. Sethi and S.N. Phukhan, JJ. in recent case (May 4, 2001) said that a lawyer would be guilty of committing professional misconduct if he seeks repeatedly adjournments in the examination of witness present for hearing. Such dereliction, if repeated, would amount to misconduct of the advocate concerned. The Apex court observed that "legal profession must be purified from such abuses of court procedures. Tactics of filibuster, if adopted by an advocate is also professional misconduct." The Court expected the trial courts to be courteous towards witnesses. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. In this case adjournment was sought on the ground that the advocate was not well, only to later find that he was arguing in another court.[2]

4. It is well known that lawyers and counsel for prosecution and defence are more interested in winning the case on their side rather than bringing out the truth before the Judge. In the wordy-battle that ensues

1. The Seminar was organised by Supreme Court Advocates on Record Association on 4-6 December 1998 in New Delhi.
2. Supreme Court Pulls Advocates For Adjournments—India Today; dated May 4, 2001.

between the contesting lawyers, the truth is completely lost sight of. This may result into acquittal of a guilty person or conviction of an innocent man. Late American Judge *Jerome Frank* likened the role of counsels in a criminal trial to a "cat, and mouse game" or a battle of wits rather than a search for truth. Therefore, the need of the day demands that lawyers must accept their obligation to make law serve the society.[1] Chief Justice *A.T. Vanderbilt* of the New Jersey once observed that the function of lawyers should be to search the truth and not to indulge in mere battle of wits.

Commenting on the role of legal profession and lawyers in the judicial system, *Mr. Justice H.R. Khanna*, former Judge of the Supreme Court of India observed, "the legal profession is designed to be a profession of service.....Service to the community. The important duty of the profession is to act as an interpreter, guide and faithful servant of the community".[2] The lawyers have an important role today in preserving confidence of the people in the independence of judiciary thereby ensuring rule of law. *Justice Khanna* opined that there are three pre-requisites for the prevalence of the rule of law. They are, a strong Bar, an independent judiciary and an enlightened public opinion.

The miseries of clients and high cost of litigation must attract attention of lawyers in a developing society like India where litigants are generally poor and illiterate.

5. The present laws of crime and evidence have become out-dated and need to be drastically changed in order to meet the new challenges of modern Indian society. Many provisions of these outdated laws[3] have become obsolete and need to be suitably amended. In fact, the whole of the penal code needs to be restated. The law of crime must be overhauled and redrafted keeping in view the needs of the present day society. Though the Law Commission of India has done commendable work in this field, the matter needs to be tackled by the Government on priority basis.

6. Miserable plight of clients at the hands of lawyers on the one hand and poorly paid ministerial staff of the court on the other, has shaken the confidence of common man in the institution of court which is an instrument of justice. The corrupt practices and exploiting tactics of these professionals make it difficult for a common man to get evenhanded justice in a law court.

7. Because of tremendous increase in crime-rate there has been enormous rise in the number of criminal cases. The large number of cases pending in criminal law courts over-burden the work of magistracy to such an extent that the Judges hardly find sufficient time to be devoted for each case. This has repurcussions on the quality of judgment delivered by the courts. Needless to say, this is averse to the cause of justice. Therefore, as an alternative, it may be suggested that the system of 'Plea-bargaining' as prevalent in United States, be introduced in India. In this system it is open to an accused person to plead that he is guilty of a lesser charge and it is upto the Judge to accept the plea or reject it. Thus under 'Plea-bargaining' system robbery may be reduced to theft, murder may be reduced culpable

1. Dressler David : Readings in Criminology and Penology (Second print 1966) p. 432.
2. Justice H.R. Khanna : Indian Judicial System ; AIR 1988 SC 65.
3. The Indian Penal Code was enacted in 1860 and the Evidence Act in 1872. Thus they are more than a century old.

homicide, attempt to murder may be reduced to grievous hurt, rape may be reduced to indecent assault and so on. This would reduce the burden on criminal courts considerably and criminal law can be enforced more efficiently and speedily to ensure fair justice.[1]

8. Multiplicity of appeals and revisions cause more harm to the cause of justice than to further it. In an anxiety to ensure that no party may be deprived of a right of justice, there are multiple provisions for appeals which hamper the cause of justice. The provisions of multiple appeals/revisions must be done away with. There should be only one appeal on the merits of the case and one revision only on the question of jurisdiction regarding the subject-matter of the case. After all, every judge/magistrate is expected to decide correctly and honestly.

The increase in the pendency of appeals in High Courts is one of the potential causes of delay in disposal of criminal cases. Delay at this stage may be attributed, to the delay in the preparation of the paper book and also due to liberal grant of adjournments at the request of counsel for both sides.

Another well-known reason for undue prolongation of criminal trial is the filing of transfer petitions for purely tactical purpose of granting time and the filing of criminal revisions, on interlocutory matters and obtaining stay from the High Court. Therefore, it is desired that the High Courts should maintain strict vigilance and sternly discourage any attempt by the interested parties to use this power of the High Court merely for tactical purpose of delaying the proceedings in lower courts.

In order to bring effectiveness in the system of criminal justice, a simplification of procedure is needed. It is utmost necessary to separate the police investigation from law and order and place the former under the control of judiciary. Similarly, the Directorate of Forensic Science Laboratory should be separated from the control of Police Department and be made an independent autonomous body so that it may serve the cause of justice.

Control over Criminal Law Courts

Despite best efforts on the part of judicial officers, the possibility of erroneous decisions cannot be ruled out due to human element playing dominant role in judicial pronouncements. This is evident from the reversal of decisions in appeal resulting in acquittal or conviction of the accused person. It is, therefore, necessary that some kind of control over courts is necessary to eliminate the possibility of miscarriage of justice. The Courts can be kept under effective control through a rationalised sentencing policy which embodies the following principles[2] :—

1. Mandatory penalty should be obligatory in all circumstances.

2. An escape clause should be provided for those offenders who are suffering from some mental disorder or have no record of previous conviction or committed crime due to provocation.

3. Sentencing be prohibited in certain cases of trivial offences.

4. Appeals against the sentence is yet another form of control over courts. This not only enables timely correction of errors of individual

1. 1982 Cr LJ Jour 3 (2) VIII.
2. Nigel Walker : Sentencing in A Rational Society, 1968 p. 194.

judgment but also offers an additional opportunity of reconsidering justice in doubtful cases.

5. Each sentence must be accompanied by reasoned justification.

It is encouraging to note that court trials in India have the requisite elaborateness, sophistication and meticulousness which are necessary for a fair criminal trial. The provisions relating to bail, anticipatory bail and bonds avoid unnecessary prison term for the suspects and undertrials. The hearings in courts are, however, often protracted and adjournments cause inordinate delay in disposal of cases. The philosophy of impartial justice is envisaged in appeals at three different levels, namely, the district, the State and the federal level, with the result convictions are prolonged to years or even decades to bring the guilty to the prison cell or to the gallows for their criminal acts. To cite an illustration, people's confidence in the efficacy of the country's judicial system is bound to weaken when they see that it took four long years to send the two assassins of India's most powerful Prime Minister Mrs. Indira Gandhi to gallows after a long legal battle. Even after the Supreme Court having described the killing as "most foul and senseless act" in its judgment, another six months were lost in an intense legal battle and disposal of mercy petition by the President. While protracted legal proceedings brought both name and fame for the lawyers who advocated on behalf of the accused, an uncalled for glorification was provided to assassins[1] Satwant and Kehar Singh by media. The inordinate delay more than four years in concluding of Late Rajiv Gandhi murder case by Jain Commission, has again undermined the faith of people in the criminal justice system. When killers of persons no less than the Prime Minister takes such a long time what can be expected of the murder of a common man !

Some of the reasons for apathy and distrust of the people towards the functioning of courts of law in general and criminal courts in particular, are high cost of litigation, laws' delays, inconvenience due to distant location of courts and cumbersome court procedure of trial. Exploitative tendency of the Bar towards the litigants is also a contributing factor for public apathy for the criminal justice system.

It is common knowledge that very few members of the public who are present at the scene of occurrence are willing to come forward to depose in courts because of long waiting for evidence to be recorded, adjournments on flimsy grounds, brow beating of genuine witnesses by over zealous defence lawyers and inadequate compensation for the loss of day's earnings. These are the biggest hurdles in getting public witnesses, which are so essential for getting the accused person convicted in criminal cases.

These shortcomings can be remedied by streamlining the judicial system where at present the Judge acts as an "umpire" and not inquisition trying to arrive at truth. An All-India judicial Service for recruitment of Judges, prescribing maximum time-limit for disposal of cases listed by courts, evading innovative trial-procedure, curtailing the number of appeals and entrusting the task of diposal of petty cases to Nyaya Panchayats are some of the useful measures which may improve the working of courts and

1. The two assassins of Late Indira Gandhi murder case, Satwant Singh and Kehar Singh were finally hanged till death on January 6, 1989 after more than four years protracted legal proceedings.

ensure speedy disposal of criminal cases.

It must, however, be reiterated that the Judges in imparting justice are no doubt guided by the settled principles of law but the public opinion exerts considerable influence on judicial proceedings. As *Donald Taft* rightly remarked, "the public opinion about a particular case finds expression through the judgment of the judicial authority dealing the case duly supported by the relevant legal provisions".[1] The social, economic, and cultural changes in the society are inevitably reflected in the judicial pronouncements.[2] Court's activism through their judicial verdicts helps in shaping law to meet the needs of changing society. The Supreme Court's decision in *Shah Bano Begum's* case,[3] involving Muslim divorcee claiming maintenance under Section 125 of the Code of Criminal Procedure, 1973 and in *Pratibha Rani* v. *Suraj Kumar*,[4] legitimising a Hindu wife to proceed against her husband or in-laws under Section 406 I.P.C., if she is denied possession of her dowry (*now called Stridhan*) on demand or if it is misappropriated, may be cited in support of this contention. Again, in *V. M. Arbat* v. *K. R. Sawant*,[5] the Supreme Court ruled that it is daughter's duty to maintain parents in their old age. Motivated by the desire of judicial activism, the Supreme Court of India while deciding a rape case came to the rescue of rape victims and observed that there is no reason to insist on the corroboration except from the medical evidence, where having regard to the circumstances of the case the evidence of the victim does not suffer from any basic infirmity and the probabilities factor does not render it unworthy of credence.[6] Supreme Court's judicial activism is further discernible in compensatory relief granted to victims in criminal cases.[7]

With a view to providing protection to dowry victims against harassment by the husband or his relatives, the Criminal Law (Second Amendment) Act, 1983 has added a new Section 498-A to the Indian Penal Code making 'cruelty' to wife by a husband or any relative of husband punishable with imprisonment upto three years and fine. The meaning of 'cruelty' is not only limited to 'physical abuse' but extends to 'harassment' of wife and may even include 'unlawful demand for dowry or property or valuable security'. The amendment thus seeks to provide adequate relief to dowry victims against their greedy husband or in-laws.[8]

Summing up the role of courts in the administration of justice, suffice it to say that "India today is passing through an age of social questioning. There is need for legal institution and courts to earn reverence through the test of truth". The high incidence of acquittals and the increasing failure of the system to bring major culprits to book is one of the major reason which

1. Taft Donald ; Criminology (4th Ed.) 350.
2. The decision in *Kesavananda Bharti* v. *State of Kerala*, AIR 1973 SC 1467 fully supports this contention.
3. AIR 1985 SC 945.
4. AIR 1985 SC 628.
5. AIR 1987 SC 379.
6. *Bharwada Bheginbhai Hirjhibhai* v. *State of Gujarat*, 1983 Cri LJ 1096.
7. *Supra*; *SAHELI* (1990) ; *Rudal Shah* (1983) ; *Bhim Singh* (1985) etc.
8. *State of West Bengal* v. *Orilal Jaiswal*, (1994) 1 SCC 73 ; *Venka Radhamanohari* v. *Venka Venkata Reddy*, (1993) 1 SCC 4 ; *Sarojakhan Nayar* v. *State of Maharashtra*, 1995 Cr LJ 340.

is shaking the confidence of the people in the criminal justice system. At present the high percentage of acquittals is due to decline in the quality of police investigation and its consequent inability to procure and produce credible evidence which may establish the guilt of the accused. Perhaps the reason which makes the task of the police difficult is the fact that most of its time is consumed in making arrangements for V.I.P.'s, handling bandhs, strikes, hartals, agitations and other disturbances which have increasingly become a part of public life today. Therefore, every effort should be made by the magistracy to preserve the image of judiciary which is the 'highest armoury' imparting justice. The Bar should equally be vigilent against any attack on the independence of judiciary so that people do not lose confidence in this august institution.

It hardly needs to be pointed out that independent judiciary is surely a sign of good health in a democracy. The Judges of the Supreme Court have always acted keeping in view the largest interest of the country and its democratic values. Their performace as the conscience-keepers of the Constitution and the guardians of fundamental rights has been laudable. Their role in revamping the criminal justice system by interpreting 'procedure established by law' as "due process of law" in Article 21 of the Constitution[1] has been commendable insofar as it has provided great relief to common men against the complex technicalities of criminal law procedure.

It must be stated that of late, the higher judiciary in India has acquired a dominant profile. The politicalisation of the police and the criminalisation of politics may carry this process of dominance by judiciary further. As rightly pointed out by an eminent writer, "to some extent, the judiciary is born great, some greatness has been acquired by it on the strength of the performance of some of its illustrious Judges, but some of it has also been thrust on it by the failure of the Executive and the legislative organs of the State to do their duty properly". There have been occasions when the Judges have not hesitated from directing the various executive functionaries to have certain laws enacted for speedy and impartial administration of criminal justice. More recently, the Supreme Court has directed the government to introduce accountability alongwith necessary checks and balances in the key investigation agencies such as CBI and the Enforcement Directorate through appropriate legislation. The Court also ruled that all the recommendations of the IRC (Independent Review Committee needed to be implemented immediately).

The setting up of *Fast Track Courts* in certain States to ease the work-load of Sessions Court is indeed a welcome step in the right direction. As the Sessions Court has to do original work under more than two dozen different Acts, it never has the time to cope up with all that. It has to conduct trials under NDPS Act, Prevention of Corruption Act, Essential Commodities Act, Unlawful Activities Prevention Act and so on. The appointment of Special Judge remains in abeyance for years and the very purpose for which they were required to be appointed gets frustrated. Therefore, the setting up Fast Track Courts will certainly help in expeditious disposal of criminal cases which are long pending in Courts.

More recently, some quarters have suggested to evolve a system of

1. *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 928 and *S.R. Bommai's* case.

Judicial Ombudsman on the Sweedish model with independence of judiciary. Since the High Courts in India are over-burdened with work, they can hardly exercise any effective control over the subordinate courts. That apart, in order to ensure accountability of the judicial system to the people of India as contemplated by the Preamble to the Constitution, some authority outside the judicial system such as Judicial Ombudsman is deemed necessary. The Judicial Ombudsman may be assigned the functions of monitoring administration of justice including the work of Judicial Officers, Prosecutors, Police, Jailors, without however, interfering with the independence of judiciary. It may also probe into the conduct of Judges and staff affecting administration of justice stimulating red-tapism. It may reprimand the Judges for misconduct or misbehaviour. The Judicial Ombudsman[1] may make recommendations on its findings in their annual report to the Parliament or the Legislature.

The Judicial Ombudsman can play a crucial role in eradication of procedural maladministration in Court proceedings. As an organ of the Government, judiciary is no less accountable to people as the legislature and the executive are. It is, therefore, necessary that judiciary conducts itself fairly, speedily and efficiently. Ombudsman should be competent to receive complaints, investigate, and make recommendations regarding administrative conduct of judges and local courts. These investigations being recommendatory, do not diminish the independence of the judiciary in any way nor do they interfere in the functioning of the judicial institutions.[2]

Before concluding, a word must be said about the desirability of having an International Criminal Court to deal with International crimes. With the development of science, means of communication, information technology, internet *etc.* there has been enormous increase in international crimes such as piracy, hijacking, genocides, espionage and various other descriptions of related crimes. The persons who commit crimes against international law should be tried and punished by an International Criminal Court so that the trial and punishment of these offences may be harmonised and there is uniformity in procedure for handling such crimes. The International Criminal Court may be vested with jurisdiction for prosecution and conviction of offenders irrespective of their nationality. The setting up of an International Criminal Tribunal in 2001 having support of 139 counties is a welcome step in this direction.[3]

It hardly needs to be stressed that with the advances made by the information technology the world over and development of computer science, the Indian Court system should take advantage of these technological opportunities to achieve the benefits for both *i.e.*, the Courts as also the users. There is dire need to expand the video-conferencing system in Indian Courts on American pattern. It will improve and enhance access to justice and reduce inconvenience and the cost of litigating parties, particularly

1. Similar institution exists in Spain, Finland, Canada, U.S.A., U.K, Mexico with different names. In Canada it is known as 'Canadian Judicial Council' and in U.K. it is called Legal Services Ombudsman.
2. Kamleshwar Nath : 'Deficiencies in Court Procedures—Remedies 1999 AIR Journal Section p. 9.
3. Times of India (Lucknow Ed.) dated 12th March, 2001.

those in outlying regional and country areas. The use of e-search will enable the public and the litigants to search for requisite information such as participants, list of witnesses and documents filed, next hearing date and outcome of hearings etc. The development of electronically flexible court rooms would be able to cater to the needs of integrated electronic trials, examination of witnesses or under-trial prisoners by video-conferencing thus saving time in their transportation and eliminating security risks to a great extent and easing the work of police guards. The video-conferencing facility would be increasingly helpful in ensuring participation from rural and remote localities in matters before the Court.

Though the process of criminal trials through video-conferencing has commenced in some selected courts in India, the system needs to be expanded to the Courts and prison-houses of all the major cities and towns through video-networking.[1] Needless to say that computerization of the Supreme Court way back in late nineties has improved its working in many ways. Making available the computerised cause-list on-line has yielded rich dividends. Information technology holds a great potential to solve the problem of judicial arrears by allowing most criminal matters listed for hearing to be considered and resolved without the prisoners or under-trials being physically produced before the Court. This will not only ensure speedy criminal justice but act as an effective restraint on the hardened and professional criminals who take the advantage of slow moving criminal justice system and find crime to be highly profitable and rewarding.

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1. The video conferencing network has already commenced in the Central Jail, Bhopal in September, 2004.

Chapter XVIII

THE PRISON ADMINISTRATION

Prisonisation symbolises a system of punishment and also a sort of institutional placement of undertrials and suspects during the period of trial.[1] Since there cannot be a society without crime and criminals, the institution of prison is indispensable for every country.

The history of prisons in India and elsewhere clearly reflects the changes in society's reaction to crime from time to time. The system of imprisonment represents a curious combination of different objectives of punishment. Thus prison may serve to deter the offender or it may be used as a method of retribution or vengeance by making the life of the offender miserable and difficult. The isolated life in prison and incapacity of inmates to repeat crime while in the prison, fulfils the preventive purpose of punishment. It also helps in keeping crime under control by elimination of criminals from the society. That apart, prison may also serve as an institution for the reformation and rehabilitation of offenders. It, therefore, follows that whatever be the object of punishment, the prison serves to keep offenders under custody and control.

The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence, the condition inside them shall be punitive in nature inflicting greater pain and suffering and imposing severe restrictions on inmates. On the other hand, if the prison is used as an institution to treat the criminal as a deviant, there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social disease and favours treatment of offenders through non-penal methods such as probation, parole, open jail etc. Whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration.

It is significant to note that the prison inmates are to be dealt with different punishments because uniform punishment for all of them would hardly serve the ends of justice. It, therefore, necessitates classification of prisoners into different categories depending on the gravity of their offence and the term of punishment awarded to them. Proper classification of offenders for the purpose of treatment is a pre-condition for an ideal penal programme. The introduction of modern 'classification methods' in prisons is essentially directed to meet this end.

The origin of prison is inter-linked with the system of imprisonment which originated in the first quarter of nineteenth century. Initially, prisons were used as detention houses for under-trials. Persons who were guilty of

1. Sharma P. D. : Police and Criminal Justice Administration in India, (1985) p. 145.

some political offence or war crime or who failed to pay their debts or fines were lodged in prison cells with a view to extracting confession from them or securing the payment of debts or fines. Subsequently, with the march of time and advancement of knowledge and civilisation, the conditions of prisons also improved considerably. Since the present day penology centres round imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life. The modern techniques of punishment lay greater emphasis on reformation, correction and rehabilitation of criminals.

The modern prison system in India is essentially based on the British Prison model which in itself is an outcome of prison developments in America during the late eighteenth century. It will, therefore, be in the fitness of things to trace the evolution of prison system in America, Britain, Russia etc. before dealing with the prison developments in India.

The American Prison System

The medieval period in history of American colonies witnessed an era of barbarism and deterrent punishment for criminals. The offenders were mercilessly tortured and brutally treated. Even for minor offences they were subjected to severe punishment such as death, public humiliation, branding, whipping and so on. Those who were to be tried for political offences, war-crimes or blasphemy, were kept in prison as undertrials. Thus imprisonment was used only in rare cases. The life inside the prison was hard, unbearable and painful. With the march of time, public opinion mobilised against these barbarous methods of treating the prisoners which eventually led to the passing of famous Penn's Charter of 1862. The object of this Charter was to put an end to brutal methods of punishment on humanitarian grounds and bring out reforms in prison administration.[1] The Charter *inter alia* contained that :—

1. The practice of releasing prisoners on bail should be introduced.
2. Compensation should be allowed to persons who were wrongfully imprisoned and this amount should be double the amount actually suffered by the victim of the offender's act.
3. Prisoners should be allowed the choice of their food and lodging to a certain extent.
4. The system of 'Pillory' i.e. punishing the offender in public places should be abolished.

The period that followed brought a better future for prisoners. With the advance of civilization, greater emphasis was laid on prisoner's reformation. The Quaker's Movement[2] in 1775 led to remodelling of Philadelphian prison on a new pattern. The prisoners were classified into two main categories, namely,—

(i) incorrigible or hardened criminals ; and

(ii) corrigible or ordinary criminals who were capable of reformation.

Incorrigible prisoners were subjected to solitary confinement in cells

1. Vold, G. B. ; Theoretical Criminology (1958 Ed.) p. 89.
2. Quaker's were a religious sect who condemned inhumane treatment of offenders on theological grounds.

without any labour whereas the corrigibles were lodged together in rooms and were put to work in shops during day time. Women delinquents and vagrants were kept in separate well-fenced quarters. Thus the prison was modelled on two major principles, namely, work during day and humanitarian treatment of offenders. The condition of Philadelphian prison, however, deteriorated towards the end of eighteenth century due to overcrowding, laxity in discipline and abuse of power by Governors. This necessitated establishment of a new Model Prison elsewhere. Eventually, two model prisons were set up, one at Pennsylvania and the other at Auburn. Broadly speaking, the study of American prisons comprises these two systems which were started simultaneously in Pennsylvania and Auburn.

The Pennsylvania System

The Pennsylvania system was first introduced in the Walnut Street Prison in Philadelphia in 1790. The prisoners were kept in complete isolation in separate cells during day and night. Even the food was served to the prisoners in their cells. Solitary confinement of prisoners in isolated cells was designed to bring about quick reformation in them because of its extreme deterrent effect. But complete segregation of prisoners in isolated cells without any work brought them untold miseries and a large number of inmates died due to unbearable monotony of prison life. Those who survived their term of solitary confinement, either returned mad or irresponsible. To avoid these horrible results, the system of labour and work was introduced for prisoners but it was to be done in isolated cells and not in congregate shops. The arrangement of cells in this prison resembled the spokes of a wheel with a guardroom in the centre. While carrying prisoners from one place to another their faces were covered by *hoods* so that they could not see each other. Only certain designated persons such as wardens, chaplain and representatives of social welfare organisations were allowed to visit this prison and establish contact with inmates but the friends, relatives and other inmates could not have access to the prisoner during his prison term. The inmates were subjected to prayers and appropriate discourses so that they behaved themselves with greatest propriety and decorum.[1] The major setback of this system was lack of productive labour for prisoners, over-crowding and cruelty. Consequently, this prison fell into disuse by the later half of the nineteenth century and was finally abandoned in favour of *Auburn system.*

The Auburn System

A new prison modelled on Pennsylvania pattern was built at Auburn in New York State in 1818-19. The distinguishing feature of this system was that prisoners were to work in shops under a strict rule of silence. In the initial stage, only hardened criminals were brought to this prison to undergo solitary confinement without work. But experience with this prison showed that severity of solitary confinement had fatal consequences on physical and mental health of inmates and most of them suffered mental disorder or committed suicide. Consequently, a large number of prisoners were pardoned and released in 1823. The system which was adopted in this prison after

1. Negley K. Teeters : The Cradles of the Penitentiary (Pennsylvania) Prison Society, p. 99.

1823 came to be known as the *Auburn system.*

The essence of Auburn system lay in forced silence and separation at night but congregate work in shops during day time. Commenting on the working of Auburn System, *J.L. Gillin* observed that most serious and hardened criminals were kept in solitary confinement in complete isolation so that they could spend their days in penance and repentance for their crime. The prisoners who were deemed corrigibles were made to work in shops during day but were housed in isolated cells during night-time. The striking feature of the system was that the prisoners were not allowed to talk or communicate with each other while at work or during lunch or supper. Those who tried to break silence, were flogged and punished. Thus hard labour in shops during day time was considered essential from the point of view of physical and mental fitness of inmates while enforcement of silence in association served as a measure of punitive reaction to crime. Even visits by the members of the prisoner's family were forbidden. It is for this reason that *Gillin* characterised the Auburn system as "a system of discipline by repression and labour under fear." Although the system yielded useful results and silence while at work or during leisure prevented contamination of prisoners, but it was undoubtedly a brutal method of treating the offenders and it hardly had any reformative impact on them. The system as a whole provided no exercise, play or sociability. The warden himself had no conversation with the prisoners until just before their release when the inmate was given three dollers and advice.[1]

From the foregoing analysis, it is evident that both the systems lay greater emphasis on non-communication between the prisoners and extracting work from them during day time and keeping them in complete isolation during night. The only difference between the two was that in Pennsylvanian system the prisoners were to live and work in isolated cells and, therefore they could not even know each other while the Auburn system provided congregate work in shops during day where the prisoners could see and know each other but could not, however, communicate. It is primarily, for this reason that *Donald Taft* characterised the Pennsylvanian system as the *separate system* and the Auburn system as the *silent system.*[2]

The Elmira Reformatory

Isolation of Prisoners in solitary cells, "work during day and reformation through religious sermons remained the basic feature of the Auburn as well as the Pennsylvanian prison system till 1870. The succeeding years, however, witnessed an era of revolutionary changes in the history of American prisons. During the next thirty years these systems were superseded by the Elmira Reformatory in New York which provided for indeterminate sentence, parole and probation. The inmates were categorised as hardened criminals and incorrigibles for the purpose of treatment in prison. With new developments in penology during the early decades of twentieth century, the prisons no longer remained the dump-houses for convicts but were used as places of industry to train inmates for skilled work. This obivously served a dual purpose. Firstly, it helped in the

1. Taft and England : Criminology (4th Ed.) p. 408.
2. *Ibid* p. 405.

rehabilitation of prisoners and secondly, work in prisons kept inmates engaged during their stay in prison with the result they were mentally and physically fit to return as a useful member of society after their release. It was around 1930 that individualisation of prisoners became the object of punishment and hence the criminals were graded not according to their age, sex or dangerousness but according to their individual needs and chances of rehabilitation.

The opening of Reception Centre at Illionis in 1933 marked the beginning of reformative era in the American prison system. The cells in this prison were airy, well ventilated and equipped with adequate arrangement of lights. The conditions of health and sanitation were considerably improved and inmates were provided facilities for reading, writing and schooling. Adequate arrangements were also made for physical exercise and recreation of inmates. The prisoners were to dine together in a common mess and they could meet their relatives and friends on certain fixed days. The sentence of solitary confinement was completely abolished and general tendency was to narrow down the gap between the outside free-life and the life inside the prison to the maximum possible extent.[1]

Despite a series of prison reforms, the condition of American prisons still remains deplorable. A recent study on American prisons reveals that they are overcrowded beyond belief. *Mr. Ramsey Clark*, a former Attorney General of the United States under President Johnson was sunk in deep and dogmatic gloom claiming that more than half of those sent to prisons returned there sooner or later after their release.[2] The general level of American prisons has been appallingly low. They have been allowed to stagnate due to ever-increasing criminality and the criminal being pushed to jail indiscreetly. Beating up, extortion, blackmail and sexual assaults are common occurrences in prison institutions. As *Sir Leon Radzinowicz* rightly pointed out, "the loosening of rigid control, the gap between the goal and its fulfilment, the feeling that much could be seized with a bit of more self-assertion, has provoked violence in many kinds of situations leading to rebellion inside the prisons".

Earlier, even the courts had little regard for the rights of prisoners as they believed that as a result of his conviction the prisoner has "forfeited his liberty and personal rights except those which the law in its humanity accords to him". However, this attitude of indifference has now changed due to human rights consciousness of the American Judges and the constitutional rights of prisoners in USA are now well safeguarded.

The British Prison System

Like United States, in England also, the prisoners were treated brutally and punishments were barbarous in nature. *John Howard* in his famous work entitled, 'The State of Prisons' has described the aweful condition of British prisons during the eighteenth century. The prisons according to him were damp and vermin infected and were the places full of filth, corruption, sex indulgence and all sorts of vices. *Beccaria* was the first European criminologist who raised a voice against the continuance of harsh

1. Vold G. B. : Theoretical Criminology (1958), p. 122.
2. Leon Radzinowicz & Joanking : The Growth of Crime, p. 257.

and painful treatment to convicted prisoners. *Pope XI* also advocated the cause of human treatment to inmates in prisons. He established a cellular prison in Ghent within his Papal State. This was intended to afford an opportunity for criminals to spend some time in penance and reform themselves to return as a law-abiding member of society. This gave a fillip to the penitentiary movement in England. The first such penitentiary was established in 1776 at Hersham with solitary cells where inmates were kept in complete isolation with a view to enabling them to think over their past crime and correct themselves for future life. In order to mitigate the rigours of isolation, the prisoners were engaged in hard manual work during day hours. This kept them physically and mentally fit for the institutional life.

The Act of 1778 passed by the British Parliament marks the beginning of prison reforms in England. The Act contained elaborate provisions relating to prison reforms. The entire working of prisons was remodelled. Under the new system, the inmates were put to work during day and kept in solitary cells during night. Efforts were made to make them understand that despite their offensive acts they still had a chance of rehabilitating themselves in the community after their release from jail. By 1833, the inmates could meet their friends and relatives more frequently at fixed intervals and outside visitors were also permitted to go around the prison and hear complaints from the inmates.

Some significant changes were further made in the prison administration in the later half of the 19th century. In order to ease the pressure on British prisons, the prisoners were released on 'Ticket on leave' on condition that they would not resort to criminality. By this time the prison administration was transferred from municipal authorities to the national Government by the Act of 1877 which was a landmark change in the history of prison development in Britain.

In 1894, Gladstone Committee recommended the abolition of unproductive labour in prisons and emphasised the need for work in groups and improved classification of prisoners. The Committee also recommended separate reformatories for juvenile offenders. As a result of the Committee's recommendations the Prison Act was enacted in England in 1898, which was followed by the Children Act, 1908.

Despite penitentiary arrangements, the political upheaval in Europe during 18th and 19th century added to the problems of prison administration in Britain. A large number of war captives and political offenders had to be accommodated in the existing prisons. This inflood of war prisoners led to overcrowding and mismanagement in prisons. To cope with this situation, new penal colonies[1] were established where a large number of offenders could be migrated by way of punishment. Thousands of British prisoners were thus transported to American colonies with a view to reducing overcrowding in English prisons and at the same time meeting the problem of labour shortage in the colonies. In course of time, British colonies

1. During 1850's, the Government of France also started transporting the prisoners to the French Colony in Guinna (South Africa). But the climatic conditions of this region were so bad that most prisoners died of ill-health before they could return to their home country. The system was, therefore, suspended and finally abolished during World War II.

were also established in Australia and British prisoners could now also be transported to Australian regions. The following categories of British prisoners were preferred for transportation to Australia :

(1) Those convicts who were sentenced to transportation of life were migrated to Australian regions to settle there permanently.

(2) Those who were sent in probation-gang, included prisoners who were expected to work as labourers in the construction of roads and buildings. They had the option to return to their homeland on expiry of their period of transportation or settle in Australia permanently as free men. Significantly, such prisoners preferred to stay back and settle in Australia permanently rather than returning home. The obvious reason being that they could lead a honourable life in Australia but if they chose to come back, they were likely to be shunned and avoided by the community due to the stigma cast on them as ex-convicts.

(3) There were some prisoners who were transported to Australian regions on a 'parole-pass'. After a specified period the holder of a parole-pass was entitled to a 'ticket on leave' which corresponded to our modern parole system. Such prisoners could be pardoned with or without conditions and were permitted to return to homeland.

As the time lapsed, the transportation of British prisoners to Australia proved averse to the British interests. Apart from the huge expenditure involved in transportation of prisoners, the system proved detrimental to the interests of the free British settlers in Australia. Moreover, the transported prisoners being mostly males, the British settlements in Australia virtually remained womanless which was a great human as well as the sociological problem. The free-settlers also did not relish the idea that prisoners should be allowed to settle in these regions permanently. Thus there were frequent clashes between the prisoners and the free settlers which created new problems for the British administrators in Australia. As a result of these unhappy developments, the system had to be abandoned.

Sir Arthur Waller, the then Chairman of Prison Commission for England and Wales suggested to the International Penal and Penitentiary Congress in 1925 that a set of general rules should be drawn up governing the treatment of prisoners in all the member countries. Thereupon, he along with his two fellow Commissioners was assigned the job of drafting the Rules. Consequently, Standard Minimum Rules for the treatment of Prisoners were drafted for the first time and they were accepted by the United Nations after World War II. This paved further ground for discussion on this important topic at international level in subsequent years.

The history of prison reforms in United Kingdom shall remain incomplete without the mention of *Sir Lionel Fox* who was a great prison-reformer of the present century. His contribution to the field of prison reforms in England is so great that most of the modern techniques of prison administration owe their origin to him. He held distinguished positions as a prison administrator. He was the Secretary of the Prison Commission from 1925 to 1934 and later, the Chairman of the Commission from 1942 to 1960. During his association with prison administration, he emphasised on two

main considerations. Firstly, he suggested that public should always be kept well informed about the working inside the prisons through intensive reporting and arranging frequent visits of pressmen and other social workers in prisons. With this end in view, he initiated a Prison Service Journal in 1960. Secondly, he stressed that prison administration should aim at reconciling the conflicting objectives of deterrence and reformation. He suggested that English prison system since 1895 was modelled on the principles set out in the Gladstone Committee's Report which underlined the need for deterrence and reformation which were the primary and concurrent objects of treatment of offenders. *Sir Lionel Fox* further pointed out that the conflict between these two objectives, namely, deterrence and reformation, can only be resolved if it is accepted that "the element of deterrence in punishment lies fundamentally not in severity of punishment but in certainty of detection and punishment". Thus, in his view the deterrent inside the prison is to be found in the fact of imprisonment and not in the severity of the prison regime.[1]

These objectives were effectively incorporated in the prison regulations framed under the English Criminal Justice Act, 1948. *Sir Lionel Fox* advocated setting up of open-prisons and as a result of his persistent efforts, the number of such open institutions was raised from one in 1942 to thirteen during his tenure as the Chairman of the Prison Commission. These included three open prisons exclusively for women. He also increased the number of Borstals from one to fifteen including thirteen for boys and two for girls. Besides these institutions, he also started what he called the "Hostel system" in Bristol in 1953 for long-term prisoners. This institution was mostly used to accommodate the preventive detenues who earned their living by taking ordinary jobs in city and returned back to the hostel after their day's work. In 1958, the hostel system was extended to prisoners undergoing long term sentence. The working of the Hostel system was highly appreciated by the Prison Commission in its Annual Report of 1962. There are a number of such hostels functioning in England at present, some of them being exclusively for the women prisoners. *Sir Lionel Fox's* penal reforms were recognised throughout the Anglo-American world. He was also closely associated with the International Penal and Penitentiary Commission for several years.

The English Criminal Justice Act, 1982 envisages a scheme of liberalised parole system to ease the pressure of prison population. The mounting pressure on prisons in England and Wales is evinced by the fact that there were more than 45,000 inmates in prisons in July, 1981 with the result freedom of movement of prisoners in many prisons has been drastically reduced.[2] Some prisoners on remand had to be housed even in police station garages. To cope up with the situation, it was proposed to release prisoners on licence after serving one-third of the sentence, thus removing the discretion of Parole Board. The Parole Board, however, did not favour such a time-bound release and instead suggested that it should be

1. Lionel Fox : 'Studies in Penology (published by the International Penal and Penitentiary Commission in 1964, p. 187.)
2. Prison Statistics for 1981, Cmndl. 8654 (1982).

limited to short term sentences.[1] This proposal was, however, rejected by the British Parliament while discussing the Criminal Justice Bill in 1982 and partially suspended sentence[2] was accepted as an alternative to this proposal as it would make parole a more constructive measure because the minimum period under the Act is twelve months or one third of the sentence, whichever is longer. Thus, deduction of minimum period for release on parole brought greater number of prisoners into the parole scheme thereby reducing the pressure on prison administration.

The salient features of the present prison system in Britain may be summarised as follows :—

1. The prisoners are classified into different categories through Group therapy method.
2. The inmates are provided vocational training inside the prison for their physical, moral and mental upliftment.
3. Reformation of the prisoner is sought within the community itself.
4. After the prisoner's release from the prison, his rehabilitation and socialisation is entrusted to After Care institutions or voluntary social service organisations.
5. Prisons are treated as minimum security institutions wherein basic rights of prisoners, should be duly recognised.

The Russian Prisons

In Russia, the prisons are called *Miesta Lischenja Svobadi* meaning the places of withdrawn freedom. The Russian prison system also provides for open colonies for prisoners.

The noted penologist *Lenkon Von Koerber*, in her book entitled 'Soviet Russia Fights Crime' gives an interesting account of conditions in Russian prisons. The educative reforms system adopted in these prisons offers better opportunities for inmates to reform and rehabilitate themselves in normal life. A prison sentence is never less than a year so as to provide adequate training to the inmate. Liberal good time allowance[3] is granted to prisoners and they can be released before the expiry of their term of sentence : The prisoners are allowed wages for the work done by them. Thus their family and children are saved from hardship and starvation. The amount of wages depends on the quality and quantity of work done by the prisoners. Out of the total wage earned by an inmate two-third is paid to him in cash while the remaining one-third is given to him at the time of his release.

The system also provides for education, adequate means of recreation and religious discourses. The prisoners form a Council of Culture to settle their mutual disputes in a spirit of co-operation.[4] This also provides an opportunity for self-government in these prisons. They can use their own clothings instead of the uniform prescribed for inmates.

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1. The Report of the Parole Board for 1981 (1982).
2. The English Criminal Justice Act, 1982, Sec. 30.
3. Two days good work is reckoned as three day's detention.
4. Koerber L. : Soviet Russia Fights Crime, p. 177.

International Penal and Penitentiary Commission and Prison Reforms

As stated earlier, the International Penal and Penitentiary Commission made an endeavour in 1929 to work out Standard Minimum Rules for the treatment of prisoners which could be uniformly applicable throughout the world, but its attempt failed because of the variations in geographical, physical and political conditions of different countries. Thereafter, in 1949 the United Nations convened a meeting of the group of experts to consider the problem of crime prevention and to frame standard minimum rules for this purpose. Consequently, a draft of standard minimum rules for the treatment of prisoners was submitted by the First Congress on Preventon of Crime and Treatment of Offenders, U.N.O. Geneva in 1955. Modern prison reforms of most of the countries are mainly based on these Standard Minimum rules. The rules sought to eliminate undue torture and suffering to prisoners and narrowing down the gap between the prison life and the free-life. There was greater emphasis on rehabilitation of the prisoner and training him for his return to normal life in society. The prisoners were to be humanly treated and not brutally punished.

The General Assembly of United Nations passed a resolution in Geneva Congress in 1955 providing for convening every five years, a World **Congress on Prevention of Crime and Treatment of offenders.**[1] Consequently, the Congresses are held every five years as follows :—

1. The First Congress (Geneva, Switzerland), 1955.
2. The Second Congress (London, U.K.) 1960.
3. The Third Congress (Stockholm, Sweden), 1965.
4. The Fourth Congress (Kyota, Japan), 1970.
5. The Fifth Congress (Geneva, Switzerland), 1975.
6. The Sixth Congress (Caracas, Venezuela) 1980.
7. The Seventh Congress (Milan, Italy), 1985.
8. The Eighth Congress (Havana, Latin America), 1990.
9. The Ninth Congress (Cairo, Egypt) 1995.
10. The Tenth Congress (Vienna, Austria) 2000.

The objectives of the Congresses on Prevention of Crime and Treatment of offenders are to work out evaluative methodologies for correctional services and treatment of offenders.

Greatly impressed by the recommendations of U.N. Congress on crime prevention, many member countries modified their prison rules with a view to mitigating the rigours of prison life.[2] These changes were directed towards reforming the delinquents and preventing their relapse into crime.[3] The prisoners were to be kept engaged in work suitable to their health and physique and were to receive wages for their labour.[4] They were not to be subjected to unnecessary humiliation but were to be helped in readapting themselves to social life after their release.

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1. For details, *see* Infra chapter on 'Crime Prevention' pp. 429-439.
2. Art. 24 of the Swedish Constitution, 1945.
3. Art. 3 of the Yugoslavian Code, 1951.
4. Art. 18 of the Argentine Constitution.

Commenting on the ideals laid down for an efficient prison system, the Attorney-General of United States once observed that in fact an ideal prison is an impossibility. The Third International Conference held in Rome in 1955 recommended that work in industrial establishments without confinement is an effective alternative for imprisonment and admonition of offenders. It also serves the purpose of adequate punishment in cases of minor offences. During the preceding thirty five years, a number of conferences and seminars have been organised under the auspices of United Nations for the prevention of crime and treatment of offenders which have yielded positive results.

An overall assessment of the working of the Standard Minimum Rules was made in the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1975. It was found that not a single country had honestly claimed to have fulfilled these basic requirements. Only sixty two countries, which comprised less than half the total member nations replied to an enquiry on this matter and most of them expressed practical difficulties in adopting the rules. Financial constraints, lack of qualified staff and shortage of accommodation were the main restraints in adopting these Rules.

There has been a suggestion from certain quarters that offender should be compelled to pay reparation to the victim of his crime and this should also include the court-costs incurred by the latter. But, the success of this proposal is seriously doubted because reparation may be an adequate relief in civil matters but not in criminal cases. The reason being that wealthy persons find it easy to secure their discharge by paying off the requisite amount of compensation. That apart, it would provide opportunities for fraud in raising fictitious claims of reparation. Other alternatives suggested as a substitute for imprisonment of offenders are suspending the civil rights such as the right of citizenship, employment, pension etc. or compulsory work in industrial establishments. The Columbian legal system, however, considers externment of the offender from his native place for a certain period of time as an adequate alternative for prison system. Norway and Sweden have introduced the system of open camps for prisoners. The Canadian prisoners are permitted to visit their ailing relatives and friends. The prisoners in England can even be at the bed side of their dying relatives. The Japanese prison system considers parole as the most important characteristic of the progressive treatment system which aims at allowing prisoners to receive mitigated treatment and at the same time requires them to discharge their responsibility as a healthy minded citizen.[1]

Prisons in India

A well organised system of prisons is known to have existed in India from the earliest times. It is on record that *Brahaspati* laid great stress on imprisonment of convicts in closed prisons. However, *Manu* was against this system. *Kautilya* in his *Arthashastra* has stated that rulers in ancient India made frequent use of fortresses to lodge their prisoners. He was personally of the view that as far as possible prisons should be constructed by the

1. Penal and Correctional Institution in Japan, Ministry of Justice, Japan (1957), p. 2526.

road-side so that monotony of prison life is reduced to a considerable extent. In ancient India, greater emphasis was laid on the spiritual aspect of human life and therefore, the prisons were so modelled as to provide sufficient opportunity for penance and remonstrance. It was a common practice to keep the prisoners in solitary confinement so as to afford them an opportunity of self-introspection.

The object of punishment during the Hindu and Mughal period in India was to deter offenders from repeating crime. The recognised modes of punishment were death sentence, hanging, mutilation, whipping, flogging, branding or starving to death. Particularly, during the Mughal rule in India the condition of prisons was awefully draconic. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict surveille and control. Thus the prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentences.

The British colonial rule in India marked the beginning of penal reforms in this country. The British prison authorities made strenuous efforts to improve the condition of Indian prisons and prisoners. They introduced radical changes in the then existing prison system keeping in view the sentiments of the indigenous people. The Prison Enquiry Committee appointed by the Government of India in 1836 recommended for the abolition of the practice of prisoners working on roads. Adequate steps were also taken to eradicate corruption among the prison staff. An official called the Inspector-General of Prisons was appointed for the first time in 1855, who was the Chief Administrator of Prisons in India. His main function was to maintain discipline among the prisoners and the prison authorities. With this appointment, the jailor and other petty officials of prisons could no longer abuse their power and authority.

The second Jail Enquiry Committee in 1862 expressed concern for the insanitary conditions of Indian prisons which resulted into death of several prisoners due to illness and disease. It emphasised the need for proper food and clothing for the prison inmates and medical treatment of ailing prisoners. Thereafter, certain recommendations were also made by the third Jail Enquiry Committee in 1877 followed by further suggestions in 1889 and 1892.

As a result of these recommendations, the Prison Act, 1894 was enacted to bring about uniformity in the working of prisons in India. It empowered the then existing Provinces to enact their own prison rules for the prison administration. The Act provided for classification of prisoners and the sentence of whipping was abolished. The medical facilities which were already made available to prisoners in 1866 were further improved and better amenities were provided to women inmates to protect them against contagious disease. Despite these changes, the prison policy as reflected through the Act, by and large, remained deterrent.[1]

During the period from 1907 onwards vigorous efforts were made to improve the condition of juvenile and young offenders. They were now kept segregated from hardened adult offenders so as to prevent their

1. Vidya Bhushan : Prison Administration In India, p. 21.

contamination. A number of reformatories and Borstal institutions modelled on British pattern were established for the treatment of juvenile delinquents during early twentieth century.

It must be stated that the freedom movement had a direct impact on prison conditions in India. The dimension of national movement during the first half of the twentieth century brought the Indian prisons into social lime-light. The prison administrators who were mostly British officials, classified these political prisoners into two broad categories, namely, (i) violent, and (ii) non-violent. Summary trials were conducted for the political prisoners in jail precincts since most of these prisoners represented educated middle class or even the prestigious class of Indian society. The British prison authorities had to frame elaborate and rigorous jail regulations for the freedom fighters with minutest details about inmates food, medical care, recreation, family visitors, parole etc. With the additional burden on prisons due to inflood of political offenders there was extra burden on traditional jail budgets, with the result the conventional system was literally ignored and the condition of prisons deteriorated beyond imagination. The jail authorities had little time to attend to non-political prisoners.

Indian Jail Reforms Committee 1919-20

The Indian Jail Reforms Committee 1919-20 which was appointed to suggest measures for prison reforms was headed by Sir Alexender Cardew. The Committee visited prisons in Burma, Japan, Phillipines, Honkong and Britain besides the Indian jails, and came to the conclusion that prisons should not only have deterring influence but they should have a reforming effect on inmates. The Committee underlined the need for reformative approach to prison inmates and discouraged the use of corporal punishment in jails. It recommended utilisation of prison inmates in productive work so as to bring about their reformation. The Committee also emphasised the need for after-care programme for the released prisoners for their rehabilitation.

As a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size. In the meantime there was a movement against retention of solitary confinement as a method of punishment. Taking a lead in this direction, the State of Bombay abolished solitary cells from its prisons. Other provinces followed the suit and reformed their prisons on humanitarian principles.

In 1949 Pakwasa Committee accepted the system of utilising prisoners as labour for road work without any intensive supervision on them. It was from this time onwards that the system of payment of wages to inmates for their labour was introduced. Certain good time laws were also introduced in jails under which the inmates who behaved well during their term of imprisonment were rewarded by suitable reduction in the period of their sentence. The ultimate object of these reforms was to protect the society from criminals, to reform the offenders, to deter them and to extract retribution for criminal acts to the satisfaction of the society.

After the Indian Independence, the Constitution of India placed "Jail" along with Police and law and order in the State list of the Seventh

Schedule. As a result of this, the Union Government had literally no responsibility of modernising prisons and their administration. Unfortunately, even the Five Year Plans offered a very low priority to prison administration.

The treatment of prisoners on psychological and psychiatric basis received some attention as a measure of prison reform during 1950's. As *G.B. Vold* rightly observed, "the rehabilitative activities of the modern prison are generally of two kinds, namely ; (1) psychological and psychiatric treatment ; and (2) Educational or vocational training programmes. The case-work service is the operating instrumentality that makes these more specialised forms of treatment effective in practice.[1]

The Government of India invited *Dr. W.C. Reckless*, a technical expert of the United Nations on Crime prevention and treatment of offenders, to make recommendations on prison reforms in 1951. Later on, a Committee was appointed to prepare an All India Jail Manual in 1957 on the basis of the suggestions made by *Dr. Walter Rackless*. An All India Conference of Inspector General of Prisons of the Provinces was also convened. Consequent to these efforts, following major policy guidelines regarding reformation and rehabilitation of prisoners were unanimously accepted :—

1. The correctional services should form an integral part of the Home Department of each State and a Central Bureau of Correctional Services should be established at the Centre.
2. The reformative methods of probation and parole should be used to lessen the burden on prisons.
3. State After-Care units should be set up in each State.
4. Solitary confinement as a mode of punishment should be abolished.
5. Classification of prisoners for the purpose of their treatment was necessary.
6. The State Jail Manuals should be revised periodically.

As suggested by Pakwasa Committee, a Model Jail was established at Lucknow in 1949 where the prisoners were made to work on handloom machines and engaged in various other home industries. The first women jail was established in Maharashtra at Yarwada. During the last fifty years, several notable changes have been introduced in the system of prisons in India. An ideal classification of prisoners has been worked out to suit the new treatment methods. The prisoners avail the facilities such as, furlough, ticket on leave, medical aid, educational or occupational training etc. Thus the modern Indian prison is an institution for the treatment and reformation of inmates. Open Air Prisons and community service are the latest developments in this area which have proved beneficial to prison community. In short, the conservative and out-moded methods of handling prisoners are substituted by liberal treatment methods. The inmates enjoy considerable liberty these days in varying proportion depending on their perversity and response to correctional methods.

Despite the reformative measures listed above, the general condition of prisons in India is still far from satisfactory. The social contempt for prison

1. Vold G. B. : Theoretical Criminology (1958 Ed.), p. 293.

life keeps all sections of society uninformed about what goes on inside the prison cells. The press and the media seldom highlight the empirical relations of prison life and public opinion seems little concerned about modernising the prisons.

Plea for Setting up Prison Panel

The Government of India appointed an All India Jail Reforms Committee in 1980 with *Justice A. N. Mulla* as its Chairman. The Committee suggested setting up of a National Prison Commission as a continuing body to bring about modernisation of prisons in India.[1]

The Committee also made a suggestion that the existing dichotomy of prison administration at Union and State level should be removed. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prisons. The atrocities and personal assaults on juvenile prisoners which came to the notice of the authorities in the notorious Tihar Jail Inmate case and the Agra Protective Home case have served as an eye opener for the administrators. Consequently, a comprehensive legislation was enacted for the security and protective care of delinquent juveniles.[2] The Mulla Committee also recommended segregation of mentally disturbed prisoners and their placement in mental asylums.

Yet another recommendation of the Jail Committee was regarding classification of prisoners on scientific and rational basis. For this purpose, certain advanced countries have appointed Ombudsman for deciding the prisoner's grievances. Similar procedure may be adopted in India as well.

Some other recommendations of the Mulla Jail Committee were as follows :—

1. The condition of prisons should be improved by making adequate arrangements for food, clothing, sanitation, ventilation etc.
2. The prison staff should be properly trained and organised into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons & Correctional Service for recruitment of Prison officials.
3. After-care, rehabilitation and probation should constitute an integral part of prison service. Unfortunately, probation law is not being properly implemented in the country.
4. The media and public men should be allowed to visit prisons and allied institutions periodically so that public may have first hand information about conditions inside prisons and be willing to co-operate with prison officials in rehabilitation work.
5. Lodging of undertrials in jail should be reduced to bare minimum and they should be kept separate from the convicted prisoners. Since undertrials constitute a sizable portion of prison population, their number can be reduced by speedy trials and liberalisation of bail provisions.

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1. Justice Mulla Committee submitted its Report on Jail Reforms to Home Ministry on 31st March, 1983.
2. The Juvenile Justice Act, 1986.

6. The Government should make an endeavour to provide adequate resources and funds for prison reforms.

The National Expert Committee on Women Prisoners headed by *Justice V.R. Krishna Iyer* in its report submitted to the Government in Febuary 1988 recommended induction of more women in the police force in view of their special role in tackling women and child offenders. Envisaging a far greater, significant and useful role of women police in context of changing needs of society, the Committee observed that women police have a greater potential to cool, defuse and de-escalate many situations and, therefore, greater use should be made of them. Women can be employed in non-combative roles requiring restraint, patience and endurance. The women police should be an integral part of the police set-up, with a special role in juvenile crime squads specially in urban areas. They should be specially trained to deal with agitations and mob upsurges in a humane and sensitive manner and acquire mastery over tactics of unarmed combat.

Role of Prisons in Modern Penology

The utility of prison as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. Stressing on the need for retaining the institution of prison *Dr. Paripurnanand Verma* observed that "a prison symbolises evil and, therefore, evil doers find themselves in perfect harmony inside the house of 'evils'.[1] This assertion however, seems to be an over simplification of facts as this does not hold good for all categories of criminals. There are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall a prey to criminality on account of momentary impulsiveness, provocation or due to situational circumstances. There is yet another class of prisoners who are otherwise innocent but have to bear the rigours of prison life due to miscarriage of justice. Obviously, such persons find it difficult to adjust themselves to the prison surroundings and find life inside the prison most painful and disgusting.

The real purpose of sending criminals to prison is to transform them into honest and law abiding citizens by inculcating in them a distaste for crime and criminality. But in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods. Consequently, the change in inmates is temporary and lasts only till the period they are in prison and as soon as they are released, they quite often return to the criminal world. It is for this reason that modern trend is to lay greater emphasis on psychiatric conditions of the prisoners so that they can be rehabilitated to normal life in the community. This objective can be successfully achieved through the techniques of probation and parole. The sincerity, devotion and tactfulness of the prison officials also helps considerably in the process of offender's rehabilitation.

If the problem of overcrowding in western prisons is due to permissiveness, loose marriage ties and adorable values of violence and sex taboos of that society, the Indian prisons are no better for the reason that economic conditions do not permit to evolve better modes of prison management. Therefore, restructuring of prisons in India needs prime attention.

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1. Verma Paripurnanand : Crime, Criminal and Convict, p. 174.

The Problem of Overcrowding in Prisons

It is a known fact that prisons in most parts of India are overcrowded. For instance, there were 8500 prisoners in Tihar Jail of Delhi in 1995 as against the capacity of 2500 persons. The baneful effect of overcrowding is that it does not permit segregation among convicts—those punished for serious offences and for minor offences. As a result of this, hardened criminals may spread their influence over other inmates. The juvenile offenders who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hardened criminals and are likely to become professional offenders. It is in this backdrop that the problem of overcrowding in prisons needs to be tackled in right earnest.

The Law Commission in its 78th Report made some recommendations for easing congestion in prisons. These suggestions include liberalisation of conditions of release on bail, particularly release of certain categories of undertrials on bail. Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation. Overcrowding may also be reduced by release on parole a prisoner after he has served part of the sentence imposed upon him. It is a conditional release of an individual from prison. The system of remission, leave and premature release may also be useful in tackling the problem of overcrowding in prison institutions. The All India Committee on Jail Reforms, headed by Justice *A.N. Mulla* has in its Report (1980-83) mentioned about various types of remission and made useful recommendations to streamline the remission system in India.

The Problem of Prison Discipline

The problem of prison discipline has always been engaging the attention of penologists throughout the world. The main object of prisonisation is undoubtedly negative insofar as it aims at generating a feeling of dislike for prison life among the members of society, the object being to dissuade people from doing acts which may lend them into prison. Expressing his view about the prison administration, *Donald Taft* commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from general society. A prison, according to him, characterises rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. The prison personnel are usually untrained without any specialised training in their field.[1] Although with the modern facilities available to inmates, the rigours of prison-life are considerably mitigated nevertheless they are likely to become restive if not kept under proper discipline. There is yet another reason to justify the need for strict discipline in prison. One might be imprisoned either for the purpose of custody, control and discipline or from being prevented to escape or being sent to a correctional institution for treatment. Whatever be the object, it is certain that the life inside prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will. This consciousness of subjection to compulsive forces of the State through the agency of prison often leads to scuffle between prison officials and the inmates. The custody of prisoners should, therefore, ensure their safety and

1. Taft and England : Criminology (4th Ed.) pp. 419-20.

security as also minimise the chances of conflict with prison administrators.

Another problem which is so often faced by the prison authorities is to guard against the possibility of prison-riot which is essentially an outcome of the combined venture of inmates. In early times when prisoners were lodged in separate cells, this possibility was completely ruled out as they had no chance of communicating with each other in the modern sense. Today, the difference between the prison life and free life is reduced to such an extent that even the prisoners have become conscious of their rights and obligations of prison-authorities towards them. Their free intermingling with the outside world provides them opportunities to unite and raise a common front against the prison administrators and slightest provocation is sufficient to stimulate unrest. The general causes of such riots and disturbances are political instigations, crude disciplinary incidents, monotonous routine of prison life, separation from members of the family, differences with the prison staff and step-motherly treatment of wardens and guards towards certain inmates.

The Problem of Prisoners' Health

The state of health of prisoners is also an important issue which needs attention of the prison authorities. The term "state of health" includes the description regarding past and present suffering of the disease of the new entrants and its duration and treatment taken etc. Sections 37, 39-A, 39-B and 39-C of the Prisons Act deal with sick prisoners and require that prisoners at the time of their entry in prison be asked about their health, particularly relating to Tuberculosis and AIDS etc. and the treatment which they have undergone for the disease, so that such prisoners apart from being given special treatment may be segregated from rest of the inmates. It is the duty of the State to ensure that such type of serious diseases are cured and not allowed to spread, not only to other prisoners but also the other persons living outside the prison.

In order to tackle the problem of prisoners suffering from serious diseases, volunteers may be trained in prison for nursing so that they effectively help the suffering inmates and develop among them a system of self-help for protection against diseases like T.B. or AIDS etc.

The High Court of Madhya Pradesh, in *Anil Kumar* v. *State of M.P.*,[1] (decided on November 30, 1999), enumerated the factors which account for increase in the number of prisoners exposed to infection of tuberculosis in prisons. They are as follows :—

1. delay in diagnosis, neglect of prisoner's health problems, insufficient health services in prison and inadequate sputum smear microscopy facilities;
2. failure of medical services to refer T.B. suspects for diagnosis or to initiate timely treatment;
3. transfer of prisoners with infectious tuberculosis between and inside prisons;
4. overcrowding and prolonged confinement inside cells;
5. failure to segregate infectious cases from other prisoners;
6. sub-standard treatment resulting in failure to cure patients and

1. 2000 (1) C. Cr. J 118 (MP) (C. Cr. J stands for Current Criminal Judgments).

prolonged infectiousness;

7. poor ventilation and poor nutrition may also lead to cause of disease.

The Court issued directions to the State Government to initiate adequate steps to control spread of diseases in prisons.

The Problem of Criminality in Prisons

Yet another problem relating to prison discipline concerns criminality among inmates inside the prison. The continuous long absence from normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life. Not being able to control this sex desire, the prisoners quite often resort to unnatural offences such as homosexuality, sodomy etc. Therefore, such offences and personal assaults are common inside prison walls. To suppress this menace, some of the advanced countries have permitted periodical conjugal visits for inmates so as to offer them a legitimate opportunity to pacify their sex urge and thus eliminate crimes of this nature in prisons. Some penologists have, however, opposed the idea of 'conjugal visits' on the ground that sexual deprivation must continue as one of the inevitable suffering of imprisoned life. That apart, conjugal visits seem unnecessary for three obvious reasons, namely, most prisoners are imprisoned for six months or less, quite a large number of them are unmarried or separated from their wives ; and the provision of "home leave" and parole offers a much better and more natural solution than conjugal visits in the unfamiliar and embarrassing atmosphere of a prison.

The Indian prison management does not accept the idea of conjugal visits as the system of furlough and parole serves a more useful purpose so far marital relationship between spouses are concerned. That apart, such conjugal visits cannot be appreciated for the reason of morality and ethical considerations keeping in view the Indian values and cultural norms. The Prison Act, 1894 provides for release of prisoners on furlough and parole so as to maintain unity of their family life.

Another cause of criminality among prison inmates is their frequent quarrelling inside the institution. Every inmate tries to establish his superiority over his fellow prisoners. Therefore prisoners often narrate with exaggeration the tales of their adventure and the dangers overcome by them while committing crime. The conversation on the subject often leads to a heated discussion and eventually results into use of force and intimidation. At times, the situation takes the shape of a group rivalry resulting into clashes between the inmates. There are occasions when inmates quarrel on trifling matters like those of distribution of bread, toilets, etc. or the differences of their opinion about a particular warden, guard or jailor.

The offences of petty thefts are also common in prisons because the inmates are supplied only the articles of bare necessities. Obviously, the articles stolen are usually soap, oil, utensils or a few loaves of bread which are supplied to inmates in prisons.

Last but not the least, the distrust and lack of faith among inmates for the prison authorities is yet another cause of tension in prisons. The tendency of disobedience to prison officials and defiance of prison regulations

is common with prisoners. The officials of the prison, namely, the jailors, superintendents, wardens and guards on their part, are generally rough and tough with the inmates. Some of them even resort to corrupt practices and extend undue favours to certain inmates in exchange for petty gains. This obviously causes resentment among other prisoners and thus a kind of cold war ensues between the inmates on one hand and the prison authorities on the other.

Self-Government in Prisons

In order to ensure discipline and obedience among inmates experiments on self-government in prisons have recently been carried out in America and elsewhere. The underlying purpose is to ensure complete freedom to prisoners from external control. Under the system of self-government in prisons, the inmates are to elect some of their colleagues as their representatives and the entire prison management is run by this elected body of inmates. They have complete control over mess and are expected to look after the interests and welfare of their fellow prisoners. The self-government of prisoners in Osborn (U.S.A.) jail indicated that the system proved very successful and the number of escapes was almost negligible. The inmates generally behaved well and never tried to misuse the liberty extended to them.

In India, however, the system of self-government in prisons has not been quite successful. The reason for this unsatisfactory condition is perhaps the lack of general moral discipline among the criminals who are generally illiterate persons from the lower strata of society. It is for this reason that instead of introducing complete self-government system, India has adopted a system of partial self-government in its prisons. Under this system, the prisoners who have good prison record are attached to work with wardens and guards of the institution and thus they act as a common link between the prison authorities and the fellow inmates. They are extended certain facilities and are even allowed to move out of the prison occasionally during the course of their work. This proves helpful in many ways. Firstly, it develops a sense of duty, honesty, trust and loyalty among the prisoners and secondly, it has a psychological effect on other inmates as they are convinced that a disciplined behaviour in prison would entail them certain facilities including some reduction in their term of sentence like their fellow prisoners.

Prison Labour

Utilisation of prisoners in productive work has been accepted as one of the best methods of bringing about rehabilitation of offenders. The XIIth International Penal and Penitentiary Conference held at Hague in 1950 suggested 'work' as the best alternative for channelising the potential of prisoners for a useful purpose. Keeping the prisoners engaged in for productive work would be helpful for their physical and mental fitness. It would also infuse self-confidence among them and they can think of returning to society as a law abiding citizen. The greatest advantage of putting inmates to work as suggested by the penitentiary Conference is that the wages earned by the prisoners can be utilised for supporting their family and dependents. Thus it would save the entire family of the prisoner from

being ruined. In this way the inmates can help and support their family from inside the prison itself. In short, work would be beneficial to inmates and at the same time remunerative to the State. It is further suggested that the working conditions of prisoners should be at par with free workers so that the values of human dignity are respected[1] and they are adequately compensated for the injuries sustained or professional sickness suffered by them during work. The system of parole and probation and other treatment methods have helped considerably in the rehabilitation of prisoners.

The Supreme Court of India was called upon to decide the delicate issue whether prisoners, who are required to do labour as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under the Minimum Wages Act. Answering in the affirmative, the Apex Court in *State of Gujarat & another* v. *Hon'ble High Court of Gujarat*,[2] observed,

> "Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the convicted prisoner is protected under Art. 23 of the Constitution. Minimum wages be paid to prisoners for their labour after deducting the expenses incurred on them. No prisoner can be asked to do labour free of wages. It is not only the legal right of a workman to have wages for the work, but also a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar."

Referring to the Justice Mulla Committee Report (1983), the Supreme Court observed that it contains a lot of very valuable suggestions as :

> "All prisoners under sentence should be required to work subject to their physical and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, their training for work, the forming of better work habits, and of preventing idleness and disorder....."

The Court observed that the rates of wages for prisoner's work should be fair and equitable and not merely nominal and paltry. These rates should be standardized so as to achieve a broad uniformity in wage system in all the prisons in each State and Union Territory. However, the State Government may be permitted to deduct the expenses incurred for food and clothes of the prisoners from their wages. There is nothing uncivilised or unsociable in it.

The Court further recommended that the State Government should make law for setting apart a portion of wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entitled the sentence of imprisonment to the prisoner.

The Prison Community

Talking about the prison community *Dr. Sutherland* observed that an

1. Barnes & Teeters : "New Horizons in Criminology" (3rd Ed.), p. 541.
2. AIR 1998 SC 3164.

offender entering a prison for the first time is introduced to the culture in much the same way as a child is introduced to the ways of behaving with his elders. According to him, the general process by which a child is taught the behaviours of his group is called 'socialization' and the comparable process among inmates is named prisonization.[1] Every new prisoner has to learn the technical rules of the prison in which he is lodged. Gradually he adapts himself to the conditions of prison life. He is expected to be friendly and loyal to his fellow prisoners. He is to be co-operative with the prison officials and one who does not follow these traits is ridiculed by his fellow inmates. It is interesting to note that prisoners classify themselves informally into different groups according to their reaction to prison life and participation in prison activities. A few of them assume the role of 'leaders' and pose to look after the interests of other inmates. They often win the confidence of wardens and guards of the prison and enjoy certain privileges unofficially. It is usually said that in matters of food, articles of mess and toilet these so called 'leaders' manipulate things and even act as racketeers in collusion with the prison staff and earn huge profits. In return, they secure certain unofficial privileges for their fellow prisoners. Thus an understanding is reached between the prison community and the prison officials through these leaders which helps in maintaining harmony inside the institution. The prisoners who are sentenced for political reasons often assume this role by virtue of their superior status and knowledge. As *Sutherland* puts it "the administrator assigns powers unofficially to certain inmates who control other inmates and thus he enlists some inmates to aid and control other inmates.[2]

Classification of Prisoners

At the time when reaction to crime was purely punitive, there was no need for classifying prisoners and all of them were flocked together in a single prison. This system of singular treatment of criminals, however, turned the prisons into a living hell on earth with all sorts of vices. The sole object of prisonisation in those days was to subject the inmates to maximum torture and pain and therefore there was no need to classify them. With the evolution of penal science during the late eighteenth and early nineteenth century, the offenders were classified into different categories according to their sex, age and gravity of offence. Even at this time, objective approach to prisoners was not known. It was towards the end of 19th century that the idea of individualisation of prisoners drew attention of penologists and this principle has since then been firmly established into practice. Individualisation of offender as a method of his rehabilitation has now become the cardinal principle of modern penology. Evidently, in the changed circumstances the earlier classification of criminals on the basis of their physical differences serves no useful purpose. Therefore, modern penologist have worked out an objective classification of prisoners according to differential treatment. In spite of being lodged in maximum security prisons, the modern prisoners are placed in quasi-penal and even non-penal institutions for their reformation. The prisoners are now classified according to the treatment to which they are likely to respond most favourably. In the

1. Sutherland & Cressey : "The Principles of Criminology" (6th Ed.), pp. 497-498.
2. *Ibid.*

modern context, social-defence, namely, the protection of society from criminals is the prime object of punishment while classification of prisoners for treatment is the method of it. To achieve this end, the criminals are classified into two broad categories, viz, (1) hardened criminals who are fit for treatment in a conventional jail, and (2) casual criminals, who are fit for treatment in a medium-custody jail or even fit to be sent to a Borstal or Reformatory or released on probation.

Under the present correctional system in United States the task of classifying inmates for their rehabilitation is performed by the following agencies :

(1) The Central Classification Centre ;

(2) The Classification Committee ; and

(3) The Reception Centre.

All the convicted persons are first brought before the Central Classification Centre where their antecedents, past history and mental attitude etc. are thoroughly examined by the expert psychologists and psychiatrists. If in the opinion of these experts the inmate is considered responsive to reformation, he is sent to an appropriate correctional institution as recommended by the Central Classification Centre.

There is a Classification Committee associated with each correctional institution which decides the outline of treatment programme for individual inmate according to his mental attitude, psychology and possible reaction to the treatment.

The Reception Centre at each correctional institution, on the other hand, receives the new inmate on a trial basis for a month or so and plans to prepare him for his subsequent stay in the institution. Thus the major function of Reception Centre according to *Donald Taft* is "inmate-orientation through group meetings, pictures, booklets and interviews".

It may be suggested that if this pattern of classification of prisoners is adopted in India, the prison authorities may find it easy to tackle the problems of prison and prisoners and at the same time it may also accelerate the reformation of prisoners.

Overall Statistical View of Indian Prisons

The Report on prison statistics as on December 31, 2001 was released by the Ministry of Home Affairs, Government of India on 23rd March, 2004 during the All India Conference of Directors/IG's and Secretaries (Prisons) in New Delhi, contained details regarding various prisons and different categories of inmates as indicated below :

Jails

Total Jails in India—1119
Central Jails—98
District Jails—267
Sub-Jails—676
Open Jails—24
Special Jails—20
Women Jails—13

Other Jails—21

The total manning these jails numbered 44682 of which 2311 (*i.e.*, 5.1% were women at the end of year 2001).

Inmates

Total Inmates[1] in Indian Jails is 313635

Mentally Ill—307

Convicts—63975

Under-Trials—193627

Detenues—3580

Others—10590

Total Women Inmates—9069

Total Foreign Inmates—2425

Of the total 313635 inmates 302541 (*i.e.*, 96.5%) are males and 11094 (*i.e.*, 3.5%) are females.

As many as 75663 inmates were convicted prisoners of which 53.4% were convicted for the offence of murder. The number of under-trials detained in jail for more than 5 years during the year 2001 was 1264.

Jail Reform Committee's (1980-83) View on Classification of Prisoners

While agreeing that segregation of offenders on the basis of sex, age, criminal record, social background is an essential feature of modern prison system, the Jail Reforms Committee of 1980-83 observed that even today the undertrial prisoners, prisoners sentenced to short, medium and long terms of imprisonment, habitual offenders, lifers, hard and dangerous prisoners, juvenile or young offenders, women offenders, civil and political prisoners, detenus under National Security Act, FERA, TADA,[2] NDPS Act, etc. are all kept together and 'in reality segregation has become a provision only on paper'. The Committee, therefore, recommended a variety of institutions for catering to the needs of different categories of offenders. They are as follows :—

1. Separate prisons or annexes for undertrials;
2. Separate prisons or annexes for women;
3. Separate semi-open institutions for juveniles and young offenders with minimum security arrangements;
4. Maximum security prisons for professional and hardened criminals and gangsters who indulge in organised criminality;
5. Separate camps for offenders courting arrests in connection with social or political movements or participating in strikes, hartals, protests etc.

These recommendations have been accepted in principle by the Government but the major problem is about the resources needed for setting

1. This inmate population excludes the figures in respect of three newly created States of Uttaranchal, Jharkhand and Chattisgarh because of non-availability of data.
2. TADA was subsequently repealed and later POTA was introduced in its place in 2002. This in turn is also repealed by the Unlawful Activities (Prevention) Act, 1967 as amended by the Act of 2004.

up these different institutions. The State Governments must tackle the problem on priority basis.

The Problem of Undertrial Prisoners

The problem of undertrial prisoners has assumed new proportions in recent years. Thousands of undertrial prisoners are languishing in various jails in different States for periods much longer than the maximum term for which they could have been sentenced, if convicted. Many of them are innocent persons who are caught in the web of the law eagerly waiting for their trial date and several of them are even prepared to confess their crime and accept the sentence. There are several reasons for this miserable plight of undertrials, some of them being, courts' inability to take up the cases because of their busy calender, the prolonged police investigation, unsatisfactory bail system and legal representation being beyond the meagre means of poor offenders.

The pre-trial detention essentially involves the question of liberty, justice, public safety and burden on public exchequer. The poor are generally subjected to pre-trial detention mostly because they cannot afford sureties and stand personal bonds. It not only affects the family life of the undertrial but also adversely affects his morale due to vicious impact of prison environment. *Mr. Justice V.R. Krishna Iyer* highlighted the agonies of pre-trial detenues in the following words :

> "The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to psychological and physical depravation of jail life, usually under more onerous conditions than are imposed on convicted defendents. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.[1]

Expressing grave concern at the distressing condition of undertrials in Bihar Jails, the Supreme Court in *Hussainara Khatoon* v. *Home Secretary, State of Bihar*[2] observed that incarceration of undertrials who had virtually spent their period of sentence was clearly illegal and a blatant violation of their fundamental rights guaranteed under Artice 21 of the Constitution of India. The Court observed that "speedy trial" is a constitutional mandate and the State cannot avoid its constitutional obligation by pleading financial or administrative inability. Consequent to the directions issued by the Supreme Court in this case, the State of Bihar released as many as 18,000 under-trial prisoners in 1981 and other States followed the suit.

Despite the Supreme Court's landmark decision in *Hussainara*, the condition of under-trials in prisons is no better and more than a lakh of under-trials prisoners are languishing in the prisons of India at present. The provision of Section 167 of the Code of Criminal Procedure, 1973 regarding

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1. *Moti Ram* v. *State of Madhya Pradesh*, 1978 Cri. LJ 1703.
2. AIR 1979 SC 1360, *See* also *Guru Sevak Singh* v. *State of Punjab* (1988) Cr LJ 1605 (P & H) ; *Supreme Court Legal Aid Committee representing Undertrial Prisoners* v. *Union of India*, 1995 SCC (Cr) 39 ; *R.D. Upadhayaya* v. *State of Andhra Pradesh*, 1966 SCC (Cr) 519 ; *'Common Cause'—A Registered Society* v. *Union of India*, (1996) 4 SCC 33.

time limit for completion of police investigation and that of free legal aid to indigent and poor under-trials or liberalisation of bail etc. have not helped in minimising the number of under-trial prisoners in Indian Jails.

One of the reasons for multiplying number of undertrial prisons each day is the system of bail which operates very harshly against the poor because they find it difficult to furnish bail even without sureties. Being unable to obtain their release on bail they have to remain in jail until such time as the Court takes up their case for trial. Obviously, the pre-trial detention disrupts their family life and leads to disastrous economic consequences. They are also prevented from taking necessary step to prepare for defence. Although the provisions contain in Articles 39-A and 22(1) enumerate the constitutional rights of the accused to be provided free legal-aid services and the services of the counsel of their choice to the indigent accused persons and this help is implicitly guaranteed under Article 21, but the fact remains that the functioning of judicial system still weighs heavily against the poor as compared with the non-poor. Therefore, the Supreme Court in *Hussainara Khatoon* v. *State of Bihar*,[1] came out with a suggestion that where the court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on personal bond. In order to determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into consideration the following factors regarding the accused person :—

(1) length of his residence in the community;
(2) his employment details and financial condition;
(3) his family relationship and background;
(4) his reputation, character and past antecedents;
(5) his prior criminal record, if any;
(6) the identity of responsible members of the community who would vouch for his reliability;
(7) the nature of offence and possibility of his conviction etc.;
(8) any other factor indicating the ties of the accused with the community or bearing on the risk of wilful failure of the accused to appear before the Court when required.

The Court held that there are four major grounds when the accused may be denied bail. They are (1) where the offence is grave; (2) where the accused is likely to interfere with witnesses; (3) if he is likely to repeat the offence; and (4) he is likely to abscond.

Bar Against Handcuffing

The prisoners are quite often handcuffed while being brought from prison to court and *vice versa* for the sake of security and discipline. Even suspects and undertrials are subjected to this humiliating treatment. However, the Supreme Court, in *Prem Shankar Shukla* v. *Delhi Administration*[2] observed that, "handcuffing is, *prima facie*, inhuman and, therefore, unreasonable and harsh and at the first flush arbitrary....to inflict

1. AIR 1979 SC 1360 (1364).
2. AIR 1980 SC 1535 ; *see* also *Kadra Pahadiya* v. *State of Bihar*, AIR 1981 SC 939.

'irons' is to resort to zoological strategies repugnant to Article 21". The Court pointed out that where in extreme cases the accused is to be handcuffed, the escorting authority must inform the court and record reasons for doing so. It is only after getting judicial approval that handcuffing should be resorted to.

Earlier, in 1978, the Supreme Court in *Sunil Batra* and *Sobraj's* case,[1] was seized with the question of legality of prison bars and fetters on under-trials and held that handcuffing was violative of Articles 14, 19 and 21 and be used only in exceptional cases, that too with the prior judicial sanction. The two petitioners in this case were Sunil Batra, an Indian under death sentence and Charles Sobraj a French national, an under-trial facing detention under MISA from July 1976 and accused of jail-break and other serious charges. The Court held that locomotion is one of the facets of personal liberty and, therefore, should not be curtailed as far as possible. However, where absolutely necessary, handcuffing should be only for small spells and grounds for 'fetters' shall be given to the prisoner and recorded with due approval of the judicial authority.

Solitary Confinement

The validity of keeping prisoners under solitary confinement in the name of prison discipline was also challenged before the Supreme Court in *Sunil Batra's*[2] case on the ground that it was most inhumane and painful. The petitioner Batra was condemned to death on a murder charge and was locked in a single cell completely isolated from all inmates. He challenged this quasi-solitary confinement and alleged that Section 30 of the Prison Act, 1894 was violative of Arts. 14, 19 and 21 of the Constitution. Rejecting the petition, the Court held that putting a prisoner who is under a 'finally executable death sentence' in confinement is not solitary confinement since it is only a part of procedure for execution of death sentence. The Supreme Court has laid down the parameters of solitary confinement in its decision in *Kishore Singh Ravinder Dev* v. *State of Rajasthan*.[3]

Prison Reforms

Undoubtedly, the condition of modern prisons is better than that in the past but still much remains to be done in the direction of prison reforms for humane treatment of prisoners. The treatment of prisoners should be in accordance with the constitutional mandates to secure them the basic rights. Emphasising the need for change in the attitude of jail authorities towards the prison-inmates, the Supreme Court in *Mohammad Giassudin* v. *State of Andhra Pradesh*,[4] observed :

> "Progressive criminologist across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals—mental or moral—is the key to the pathology of delinquency and the therapeutic role of punishment. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. Our prison should be correctional houses, not cruel iron arching

1. AIR 1978 SC 1675.
2. *Ibid.*
3. AIR 1981 SC 625.
4. AIR 1977 SC 1926.

the soul".

The following modifications in prison administration may be suggested for improving the efficiency of these institutions :

(1) The maintenance of prison establishment is an expensive affair. It is in fact an unevitable burden on the public exchequer. Therefore, the offenders should be confined to prison for only a minimum period which is absolutely necessary for their custody. The elimination of long term sentences would reduce undue burden on prison expenditure. It is further suggested that where the term of imprisonment exceeds one year, a remission of one month or so per year be granted to the inmate so as to enable him to go to his home town and meet his near relatives. This will help in his rehabilitation and after his release he can face the outside world courageously casting aside the stigma attached to him on account of prisonisation. The periodical furlough granted to prisoners in India under the Prison Act and the rules framed thereunder is intended to achieve this objective.

(2) The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents because they need lesser control and custody due to their feminine temperament. Particularly, the women who fall a prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under-trial prisoners.[1] Women offenders should be handled only by women police or prison officials. The idea of setting up separate women jails exclusively for women prisoners, however, does not seem to be compatible keeping in view the huge expenditure involved in the process.

(3) The under-trials, minors, recidivists and first offenders should be kept separated from each other. Similarly, political offenders who are not guilty of violence should also be kept separate and not be housed in the same premises in which other criminals are lodged. It is inhuman and unreasonable to throw young boys to sex starved prisoners or to run menial jobs for hardened and affluent prisoners. The young prisoners should be separated from adults.

(4) There is need for scientific classification of prisoners based on the nature of the crime committed, age, sex character and propensities of the offender including his educational level and likely response to prison treatment.[2]

(5) The prisoners belonging to peasant class should be afforded an

1. *Francis Coralie Mullin* v. *Union Territory Delhi*, AIR 1981 SC 746.
2. *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675.

opportunity to go to their fields during harvesting season on temporary 'ticket on leave' so that they can look after their agriculture. This would enable them to keep in touch with their occupation and provide means of living to the members of their family. Thus the unity of family life can be maintained which would help rehabilitation of the prisoner after his release from jail.

(6) Though the prisoners are allowed to meet their near relatives at fixed intervals yet there is a further need to allow them certain privacy during such meetings. The meetings under the supervision of prison guards are really embarrassing for inmates as well as the visitors and many thoughts on both sides remain unexpressed for want of privacy. The rights of the prisoners to communicate and meet friends, relatives and legal advisers should not be restricted beyond a particular limit.
It must be stated that frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment which brings about a psychological communication between him and other members of the family.[1]

(7) The present system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for inmates needs to be changed. These auspicious days and festivals should be celebrated through rejoicings and other meaningful programmes so that the prisoners can atleast momentarily forget that they are leading a fettered life.

(8) The existing rules relating to the restrictions and scrutiny of postal mail of inmates should be liberalised. This shall infuse trust and confidence among inmates for the prison officials.

(9) The prison legislation should make provision for remedy of compensation to prisons who are wrongfully detained or suffer injuries due to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for prisoner's right to justice and fair treatment and requires prison officials to initiate measures so that prisoner's basic rights are not violated and they are not subjected to harassment[2] and inhuman conditions of living.

(10) The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honourable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended to inmates who are desirous of taking up advanced studies. Women prisoners should be provided training in tailoring, doll-making, embroidary etc. The prisoners who are well-educated should not be subjected to

1. Dr. Mir. Mehraj-ud-din : Crime & Criminal Justice System in India. Chapter IV.
2. *Sanjay Suri* v. *Delhi Administration*, (1988) Cr LJ 705 (SC). *See* also *Bhuvan Mohan Patnaik* v. *State of A.P.*, AIR 1974 SC 2092.

rigorous imprisonment, instead they should be engaged in some mental-cum-manual productive work.[1]

Of late, efforts are being made to impart *yoga* training to the prison inmates which not only keeps them physically fit but also makes them mentally healthy. This is indeed a commendable measure and the scheme should be extended to all the prisons in India.

(11) In order to make inmates discipline-conscious, 'good time laws' should further be liberalised. A general policy to cut-short inmate's sentence in case of good behaviour will offer them an early opportunity to join the community and at the same time relieve the burden of the State on their maintenance. The introduction of 'honour system' in prisons can also attain a similar goal. Those who react favourably to prison discipline and display loyalty, should be allowed to associate themselves with the prison staff and participate in the prison administration. The premature release of prisoners on national festivals by way of political expediency is generally not favoured by penologists because it goes against the set principles of sentencing.[2]

(12) On completion of the term of sentence, the inmates should be placed under an intensive 'After care'. The process of 'After care' will offer them adequate opportunities to overcome their inferiority complex and save them from being ridiculed as 'convicts'. Many non-penal institutions such as Seva-Sadans, Nari-Niketans and Reformation Homes are at work in different places in India to take up the arduous task of 'After care' and rehabilitation of criminals. Open Air camps may also serve a similar purpose. Many States have formed Prisoners Aid Societies for initiating steps to provide assistance to the discharged prisoners.

(13) There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programme using the media or press, platform and propaganda will. It will certainly create a right climate in society to accept the released prisoners with sympathy and benevolence without any hatred or distrust for them. The media-men should be allowed to visit the prison institutions frequently so that their misunderstanding about prison-administration may be cleared. Greater participation of public in prison administration shall certainly create an atmosphere conducive to reformation of the prisoners. In *Prabha Dutta* v. *Union of India*,[3] the petitioner, a newspaper correspondent filed a petition to interview two condemned

1. *Mohd. Gaisuddin* v. *State of Andhra Pradesh*, AIR 1977 SC 1925.
2. In *Rajendra Prasad* v. *State of U.P.*, AIR 1979 SC 916 the accused was undergoing life sentence. He was released on Gandhi Jayanti Day and the first thing he did after release was to avenge the person who got him prosecuted for murder and in course of scuffle he murdered an intervener.
3. (1982) 1 SCC 1.

prisoners Ranga and Billa for which permission was refused to her by Tihar Jail authorities. The Supreme Court allowed the interview upholding right of press to have access to prison inmates.

(14) Last but not the least, the existing Prisons Act, 1894 which is more than a century old, needs to be thoroughly revised and even re-stated in view of the changed socio-economic and political conditions of India over the years. Many of the provisions of this Act have now become obsolete and redundant. The National Human Rights Commission has also endorsed this view.[1]

The Supreme Court, in its landmark decision in *Ramamurthy* v. *State of Karnataka*,[2] has identified nine major problems which need immediate attention for implementing prison reforms. The Court observed that the present prison system is affected with the major problems of (1) overcrowding (2) delay in trial (3) torture and illtreatment (4) neglect of health and hygiene (5) insufficient food and inadequate clothing (6) Prison vices (7) deficiency in communication (8) streamlining of Jail visits and (9) management of open air prisons.

This decision of the Supreme Court has its origin in a letter written by one Ramamurthy a prisoner in Central Jail, Bangalore, and addressed to the Hon'ble Chief Justice of India. In the letter, the grievance was regarding denial of rightful wages to the prisoners despite their hard working, non-eatable food and mental and physical torture in jail. The Supreme Court thereupon passed an order dated 26th November, 1992 directing the District Judge, Bangalore to visit the Central Jail and find out the pattern of payment of wages and the general conditions of the prisoners such as accommodation; sanitation, food, medicine etc. The District Judge submitted his voluminous Report of more than 300 pages on 28th April, 1993 which stated that general condition of prisoners, the quality and quantity of food supplied to them, pattern of payment of wages and accommodation etc. was satisfactory but sanitary conditions, medical facilities, mental prisoners and sending prisoners to hospitals outside the jail was not satisfactory. Also the visits of prisoners to their homes was not proper and regular as per rules due to shortage of police escorts. The place and procedure followed for interviews between the prisoners and their kith and kin, friends, visitors etc. was far from satisfactory. The District Judge in his report also made some recommendations for consideration and implementation.

Appreciating the admirable work done by the District Judge, the Supreme Court ordered follow-up action by all the 1155 prisons of India in order to ensure prison justice.

The Apex Court in this case ruled that though overcrowding in jail is not constitutionally impermissible, but the same adversely affects health and hygiene and, therefore, must be taken care of. As regards delay in trial, the earlier directions of the Supreme Court regarding entrusting the duty of producing under-trial prisoners on remand dates to the prison staff instead of to the police, should be followed. The person authorised should inspect the standard of food and clothing and there should be a complaint book in all

1. Annual Report of NHRC (1994-95) Paras 4.18 & 4.21.
2. (1997) 2 SCC 642.

the jails. The Court also emphasised the need of introduction of open air prisons atleast in District headquarters of the country.

The shockingly poor and miserable conditions prevailing in Indian jails has been described by a team of journalists in the following words :—

> "...Many jails in this country continue to be a byword for human degradation on the one hand and dens of corruption, callousness and cruelty on the other. Numerous and repeated attempts at reforms have failed even to make a dent in the harsh and dehumanising situation, leave alone bringing out a thorough reform of the prison system So much so that an experienced observer of the prison scene has been constrained to mark that a jail sub-culture has grown in India which sanctifies barbaric treatment of inmates, including torture, forced labour, sexual perversion, starvation diet and large scale aggrandisement and exploitation by petty jail officials protected by power mentors."[1]

A noted social activist and journalist *Kusum Chadha*, has also expressed concern at the pathetic picture of Tihar Central Jail which is the Central Jail in the capital city of Delhi. To quote her own words :—

> "Like all big jails in poor and overpopulated countries, Tihar too bears the distressing marks of repression, avarice, lust and age-old attitude of men to his fellow humans. The convicts and the under-trials both share the common denominators of wilfully insufficient and inedible food, hard labour, corrupt warders and contaminated water. Added to that are over crowded cells and infected hospital, sugarless tea and flexible rules....[2]

It is, however, heartening to note that efforts are being made in recent years to humanise the conditions inside jails by not only providing them basic amenities but also initiating correctional measures for their rehabilitation and reformation.

Despite modern techniques of treating the offenders through a process of individualised method in prison, there are certain problems which still remain unsolved. The foremost difficulty arises in treating recidivists or habitual offenders who do not respond favourably to any of the reformative methods of treatment. They accept prisonisation as a normal way of life and criminality as a regular profession. When recidivists are placed in a correctional institution, they treat it as a place of leisure and comfort. Thus, the treatment methods hardly serve any useful purpose in case of recidivists. Therefore, such criminals have got to be confined to four walls of the prison and made to live a strictly regulated life. It need not be stated that hardened criminals and recidivists are an unnecessary burden on the State but they have to be tolerated at any rate, for the sake of respect for human life and social security. Commenting on the policy to be followed in case of recidivists, *Sir Lionel Fox* observed, "certain people are worthless from social standpoint and are in fact physically, mentally and morally a burden to

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1. Quoted from K.D. Gaur's Law & Criminology (2003) p. 316.
2. *Ibid.*

society and there exists no rational reason to provide care for them".[1]

Yet another problem about prisons in India is the ever increasing population of prisoners. This increase in the number of inmates adds to the cost of prison service while the results still remain far from satisfactory from the point of view of the protection of society as also the rehabilitation of offenders. May be, this is just a pessimistic assumption raised in an anxiety to combat crime and visualise a crimeless society. But it cannot be forgotten that crimes are essentially conditioned by social, economic and political situations of a particular place. The advancement of knowledge, technology and civilization has brought about radical changes in our social structure, economy, political strategy and thinking. Consequently, many new crimes which were hitherto unknown have sprung up, for example, the offences of fraud, embezzlement, forgery, theft of automobiles, gang-style crime, terrorist activities, bomb blasts, tax evasion, infringement of copyright, trade-marks and patents and many other corrupt practices are relatively of a recent origin. That apart, many old crimes are now repeated with new techniques and methods and with minimal chances of detection. The problem of increase in population, economic depression and criminalisation of politics have also contributed to stimulate crime rate. Under the circumstances, it is erroneous to think that rise in criminality is exclusively due to the failure of our penal policies. Far from being so, it is in fact an indication that we have yet to enlarge the scope of our penal programme to suit the needs of modern times. The general policy which seems expedient in the present context is the institutionalised treatment with provision of minimum security for adults and greater security for juveniles and young delinquents. The sole contention behind the entire scheme should be to preserve respect for human life at any cost. The ultimate object of prison institution should be to reform the offender rather than to torture and antagonise him.[2] As pointed out by *Dr. Sethna*, "prisons should be 'moral hospitals' or places of re-education, but they should not be so comfortable as to be attractive".[3] Inmates should be put to intensive manual labour which must be productive for the State and useful to the prisoner after his release. An ideal prison must provide for adequate work, vocational training, basic educational, medical and recreational facilities for inmates. The prison management should be made functional, effective and goal oriented so as to prove itself as an efficient agency of the criminal justice administration.

Custodial Torture in Prisons

The victims of prison injustice, particularly those who are poor and helpless and cannot afford legal representation have been protected against torture and harassment. A victim of custodial torture can move the court directly through a writ petition for protection of his fundamental rights, specially the right to life and liberty guaranteed by Art. 21 of the Constitution. The Supreme Court's judicial activism for protecting the rights of prison inmates and detenus is discernible from a series of cases decided by the Court. Thus in *Prabhakar Pandurang* v. *State of Maharashtra*[4] the

1. Sir Lionel Fox : Studies in Penology (IPPC Publication) 1964, p.112.
2. Curtis Bok : Problem in Criminal Law (1955) p. 78.
3. Sethna M. J. : Society and The Criminal (1964), p. 325.
4. AIR 1966 SC 424.

Apex Court ruled that detention in prison cannot deprive the detenu of his fundamental rights. In the same breathe, the Supreme Court in *D. B. M. Patnaik* v. *State of A.P.*[1] held that mere detention is no ground for suspension of detenu's fundamental rights. In its historic judgment in *Sunil Batra* v. *Delhi Administration*,[2] the Apex Court held that prisoners are entitled to all fundamental rights which are consistent with their incarceration.

Emphasising the need for humane treatment of prisoners and protection of their basic human rights, the Supreme Court in *Sunil Batra II*,[3] observed as follows :—

> "Fundamental rights do not flee the persons as he enters the prison although they may suffer shrinkage necessitated by incarceration."

Outlining the substantive and procedural rights to which the prisoners are entitled, the Apex Court said.

> "Infliction may take many protean forms apart from physical assaults. Pushing the prisoner into a solitary cell, denial of necessary amenity, and more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affiliation or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained."

The Court concluded that torture is a tradition in many penal institutions. That is why as a matter of policy, Articles 8 and 9 of the Declaration of the Protection of all persons from torture and other cruel, inhuman and degrading treatment of punishment adopted by UN General Assembly should be implemented by all nations.

In *Hussainara Khatoon*,[4] the Supreme Court observed that a procedure which does not make legal services available to a poor undertrial person cannot be regarded as just, fair and reasonable and, therefore, violative of right to legal aid of the poor accused as contemplated by Art. 21 of the Constitution. The Court in this case ordered release of those undertrials who were languishing in jails for an inordinately long period.

In *Sheela Barse* v. *State of Maharashtra*,[5] the Supreme Court on a complaint of custodial violence to women prisoners in jails, directed that to those helpless victims of prison injustice should be provided legal assistance at the State cost and protected against torture and maltreatment.

In *Sanjay Suri*,[6] the Apex Court held that the prison authorities should change their attitude towards prison inmates and protect their human rights for the sake of humanity.

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1. AIR 1971 SC 2092.
2. AIR 1978 SC 1675.
3. (1983) 3 SCC 488.
4. AIR 1979 SC 1819.
5. AIR 1983 SC 378.
6. *Sanjay Suri* v. *Delhi Administration*, (1988) Cr LJ 705 (SC).

Interestingly, some penologists have advocated the need of spiritual training for those who are condemned and incarcerated in prison cells. They strongly believe that the practice of *yoga* and meditation will enable the prisoners to control the evils of *Kama, Krodha, Madh and Lobha* which dwell in human body and help in gaining control over these evil forces so as to turn him a good man and a good citizen. This is indeed a new approach to penological problem of crime and criminals in the Indian setting. As rightly observed by Mr. Justice *Ram Pal Singh* of the High Court of Madhya Pradesh,[1] "human body is a temple where the deity of *Atma* and *Parmatma* reside. For keeping the temple of flesh and blood, the abode of good and bad, the sages and saints have prescribed *Sadhna* by regular practice of *yoga* which shall keep the human body not only healthy and strong, but also neat, clean and pure. Healthy people would avoid crime and try to do good to the society by establishing peace and tranquillity".[2] Thus by the practice of *yoga* in prisons crimes can be considerably controlled and hardened criminals can be reformed. Undoubtedly, the idea is laudable and must be adopted into practice.[3]

As regards the importance of prayers in prison institutions, suffice it to say that it provides sufficient spiritual strength to the inmates to change their human and social outlook. The experiment carried out in the Tihar Jail sometimes in 1993-94 when Vipassana meditation was introduced in a big way, brought about a big change in the living and thinking of the prisoners, as narrated by Shri Tarsem Kumar, the then Superintendent of the Jail in his book entitled Freedom Behind Bars.[4]

More recently, the Gujarat State Prison Administration has launched a 'Prison Reform' programme to help jail inmates to improve with Bhajans and Yoga. The Sabarmati and Baroda Central Jails are going to start a two-months long creative programme of Yoga and Bhajans which will be conducted by the Prajapita Brahma Kumaris Ishwariya Vishwa Vidyalaya to teach moral and ethical values to the jail inmates and to encourage them to live a better life. The programme has already been introduced in Nadiad Central Jail in March, 2001. The programme emphasises on ways to bring about a change in the attitude of the prisoners by developing their inner strengths and bring about a spiritual awakening in them. Yoga, Bhakti Sangeet and 'loknritya' are obviously an essential part of the programme.

Explaining the philosophy underlying this prison reform programme, Shri B.K. Niranjana of the Bramha Kumaris Seva Kendra, Baroda observed that, "a person often commits a crime because of anger, hatred or a feeling of rivalry or revenge." In order to help such offenders, it is essential to control their emotions. Besides, pessimistic feelings like tension, failure or anxiety also add to their woes. A majority of prisoners repent for their crime and they sincerely want to mend their ways but often lack necessary inspiration or the spirit. It is, therefore, essential to enlighten such people by

1. Afterwards the Judge of the Delhi High Court.
2. 'Yoga And Indian Penology' by Hon'ble Mr. Justice Ram Pal Singh Judge, High Court of Madhya Pradesh, published in the Central India Law Quarterly Journal Vol. 1 (1987) pp. 92-93.
3. Inspired by this idea, many State Governments have made training in Yoga compulsory for prison inmates along with religious discourses.
4. Quoted in *Ramamurthy* v. *State of Karnataka*, (1997) 2 SCC 642 (655).

inculcating in them values of morality and ethics so that they get the inner strength to distinguish between good and bad. An atmosphere of devotion, Yoga and spiritualism will certainly help the prisoners to become better human beings.

It is advisable that such programmes be also launched in jails of other States. This improvised Indian approach to prison reforms will surely bring about a positive change in the attitude of prison inmates and help in their rehabilitation.

It hardly needs to be stated that remedial rights of prisoners require deeper understanding. The real problem is not with the principles, but with their implementation. The Supreme Court and the High Courts have been gradually exercising jurisdiction in assuring prison justice including improvement in the quality of food and amenities, payment of appropriate wages, necessary arrangement for health-care of prisoners etc. The States often take the plea of financial limitations in assuring these constitutional remedies to prison inmates but this cannot be accepted as a valid ground for excuse else the very purpose of constitutional and human rights would be eroded.

Like prisons, the conditions of police lock-ups is still worse. The Mulla Committee on Jail Reforms in its Report of March 1983 pointed out :

> "Most of the lock-ups have insufficient accommodation and are without even such basic facilities as lavatories, light, water and ventilation. Sanitary conditions in these lock-ups are also utterly unsatisfactory. There seems to be no rules or scales prescribed for the diet or bedding for those detained in lock-ups. There are no visiting committees which would inspect or report about the conditions prevailing in these lock-ups. The essential requirements of law with regard to the time-limit for keeping in custody persons arrested without warrant are often flouted.....conditions of police lock-ups need to be urgently improved."

With a view to improving the plight of women prisoners in jail the Supreme Court's directives stated in *Sheela Barse* v. *State of Maharashtra*,[1] deserve particular mention. They are briefly stated as follows :—

1. Female prisoners and suspects should be guarded by female guards or constables. Obviously, they should be separated from male wards.
2. Interrogation of women should be carried out in presence of women officials.
3. Intimation regarding arrest of a woman offender must be immediately given to her relatives.
4. Information of such arrest must be immediately sent to the nearest Legal Aid Committee.

Finally, it need not be stressed that efforts for rehabilitation of an offender begin from the time he enters the prison. A comprehensive prison programme is, therefore, essential to cater to the needs of different categories of inmates. The prison-life should be so regulated that the

1. AIR 1983 SC 378 (382).

prisoner is able to overcome all his psychological strains and adapts himself as a law abiding citizen after his release from jail. It is always preferable to place the released prisoner under the supervision and guidance of a Probation Officer for his After-care and rehabilitation in the free community. The welfare officers appointed in prisons can also play an important role in providing adequate counselling, legal help and financial assistance to the prisoners at the time of their release so that they are properly rehabilitated in society.

It must be remembered that the role of prisons[1] has radically changed over the years and they are no longer regarded as mere custodial institutions, instead they have now acquired a new dimension as treatment and training centres for those who fall foul with law. The emphasis has thus shifted from custody to training and re-education of offenders and the policy of segregation now stands substituted by community-participation of prisoners. It has been amply realised that protection of society can be better ensured if the offenders are corrected and reformed within the society itself. To talk about treatment and training in prisons is not rhetoric; it can prove to be real, given the zeal and determination. There is need to improve the prison system by introducing new techniques of management and by apprising the prison staff with their constitutional obligations towards prisoners. This would surely end the gloom cast on our prison system and create new awakening among the prison community. In order to ameliorate the condition of prisoners, the Supreme Court has laid certain mandates which would certainly go a long way in improving the working conditions of Indian Prisons.

Judicial Mandates Regarding Prisoners & Detenues

The Supreme Court in its endeavour to ensure distributive justice in prisons has upheld the fundamental rights of detenues and prisoners in prison settings. The judicial mandates dealing with some of these aspects are as follows :—

(1) The prison administrators have no power to add additional punishment to the punishment imposed by the Court; even though it could have been solidly imposed by that court itself, but has in fact, not been so imposed.

(2) A prisoner sentenced to capital punishment might be kept in separate cell only "after the sentence becomes executable". But even in the separate cell, unless there are special circumstances, he must be kept within the sight and sound of other prisoners and be able to take food in their company.[2]

(3) Prisoners 'under sentence of death' shall not be denied amenities of games, newspapers, moving around and meeting prisoners and visitors subject to reasonable regulation of prison management.[3]

(4) Solitary confinement cannot be inflicted except in extreme cases

1. At present, there are 98 Central Prisons, about 267 district prisons, 676 Sub-Jails, 24 Open Jails, 20 Special Jails and 13 Women Jails for treatment, detention and training of prisoners in India.
2. Sunil Batra-I, 1978 Cri. LJ 1741 at 1795 (SC) (per Desai, J.).
3. *Ibid.* at 1799.

of necessity specifically made out by the jail authorities. A prisoner under the sentence of death can be inflicted and imposed solitary confinement only in view of the safety of the prisoner and the security of the prison.[1]

(5) If a prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends such facilities should be liberally granted.[2]

(6) Under-trials should be accorded more relaxed conditions than convicts. They are not under sentence of imprisonment, but only under custody.

(7) An undertrial prisoner, when transported from the prison to the court should not be handcuffed. In extreme cases, where the hand-cuffs have to be put on the prisoner the escorting authority must record reasons for doing so.[3]

(8) The hard labour has to receive a humane meaning. The punishment of rigorous imprisonment obliges the inmates to do hard labour, but not harsh labour. The prisoner cannot demand soft jobs, but may reasonably be assigned congenial jobs.[4]

(9) The right to the society of fellow men, parents and other family members cannot be denied in the light of Article 19. However, it is subject to search, discipline and other security reasons.[5]

(10) A detenue is entitled to have interview with his legal adviser after taking appointment from the superintendent of the jail. In case of COFEPOSA detenues a custom or jail official may watch the interview, but he should not be within the hearing distance of the detenue and the legal adviser.[6]

(11) An accused has the right to sit down in the court during the trial especially in long and arduous cases, unless it is necessary for the accused to stand up for identification. This facility is not against the established practice that everyone in the court should stand when the presiding officer enters.[7]

(12) Under-trials are not to be kept in leg-irons,[8] nor can be asked to work outside the jail walls. This would be in flagrant violations of prison regulations and contrary to I.L.O. conventions against forced labour.

(13) To reduce mental tensions among the prisoners, the prison authorities should provide for vital links between the prisoner and his family by periodically granting parole. However, the granting of parole for reasonable spells is subject to sufficient safeguards ensuring their proper behaviour outside and prompt

1. *Ibid* at 1798; see also Kishor Singh, 1981 Cri. LJ 17 (SC).
2. *Ibid* at 1789.
3. *Prem Shanker* v. *Delhi Administration*, AIR 1980 SC 1535.
4. *Sunil Batra-II*, 1980 Cri. LJ 1099 at 1114.
5. *Ibid.* at 1115.
6. *Francis Coralie Mullin*, 1981 Cri. LJ 306 at 313-14 (SC).
7. *See* The Indian Express, Chandigarh, December 9, 1981.
8. *Kadra Pahadiya* v. *State of Bihar*, AIR 1981 SC 939.

return inside.[1]

(14) No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him, such as to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities, like compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skill and techniques and all other fundamental rights tailored to the limitations of imprisonment.[2]

(15) The press should be allowed to interview prisoners sentenced to death if they are willing to do so, unless weighty reasons to the contrary exist.[3]

(16) Prior to the execution of any death sentence, the Jail Superintendent should personally ascertain whether the sentence of death imposed upon any of the co-accused who was due to be hanged, has been commuted. If so, the Superintendent should apprise the superior authorities of the matter who in turn, should take prompt steps for bringing the matter to the notice of the court concerned.[4]

(17) The commutation of the sentence of death into life imprisonment cannot be demanded by the condemned prison as a matter of right.

(18) A prisoner whether undertrial or convict has a right to legal assistance and that must be made available in jails.[5]

Judicial Mandates for General Administration of Prisons

Besides protecting the fundamental rights of prisoners and detenues, the Supreme Court has expressed its consciousness to eradicate the unhealthy atmosphere in prison settings full of mal-administration and torture. To restore distributive justice, the Court stipulated certain mandates for the general administration of the prisons which are given below :

(1) Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court should be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the vistatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned court results which have relevance to the legal grievance.[6]

(2) District Magistrates and Sessions Judges should personally or

1. *Hiralal Mallick*, 1977 Cri. LJ 1921 at 1927 (SC).
2. *Sunil Batra-II*, 1980 Cri. LJ 1099 at 1113 (SC).
3. *Smt. Prabha Dutt* v. *Union of India*, AIR 1982 SC 6.
4. *Harbans Singh* v. *State of U.P.*, AIR 1982 SC 849 (851).
5. *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378 (380).
6. *Sunil Batra-II*, AIR 1980 SC 1579 at 1602.

through surrogates, visit prisons in their jurisdiction and afford effective opportunities to the prisoners for ventilating their grievances; and should make expeditious enquiries therein and take suitable remedial action. In appropriate cases report should be made to the High Court to initiate, if found necessary, *habeas corpus* action.[1]

(3) Grievance Deposit Boxes should be maintained under the orders of the District Magistrate and the Sessions Judge and such boxes should be opened as frequently as is deemed fit and suitable action should be taken on complaints. Access to such boxes should be afforded to all the prisoners.

(4) Necessary steps should be taken to prepare in Hindi and other regional languages a prisoner's Handbook and circulate copies of it to bring legal awareness among the prison inmates. Periodical jail-bulletins should also be introduced stating how improvements and re-habilitative programmes are being carried out into prison. This may create a fellowship amongst prisoners easing their tensions. A prisoner's wall paper, ventilating their grievances should also be introduced.[2]

(5) The prisoner's rights should be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoners should be promoted by professional organisations recognised by the courts, such as, Free Legal Aid (Supreme Court) Society. The District Bar should keep a cell for prisoner's relief. The government of India and the State governments were also recommended by the Supreme Court to introduce comprehensive legal service programme.

(6) Large notice boards displaying the rights and responsibilities of prisoners should be hung up in prominent places within the prison in the language of the people.

(7) No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial or privileges or amenities, no transfer to other prisons with penal consequences, should be imposed without judicial appraisal of the Sessions Judge and where such intimation on account of emergency is difficult, such information should be given within two days of the action.

(8) The status based classification of prisoners in jail should be done away with, instead a scientific classification based on the nature of the crime committed, behaviour, character, propensities, age, sex, education and response to jail treatment should be introduced.[3]

(9) The under-trials, minors, recidivists and first offenders should be kept separate in prisons. The political offenders who are not guilty of violence are also to be kept separate and should not be

1. *Ibid.*
2. Section 61 of the Prisons Act.
3. *Sunil Batra-I*, 1978 Cri. LJ at 1778 (1791).

housed in the same premises in which other criminals are kept. It is inhuman and unreasonable to throw young boys to sex starved prisoners or to run menial jobs for the affluent or tough prisoners. The young inmates should be separated and freed from the adults.[1]

(10) The State should take steps to keep up the Standard Minimum Rules for the treatment of prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies.[2]

(11) The Prisons' Act needs rehabilitation and the Prison Manual total overhaul, even the Model Jail Manual being out of focus with healing goals. A correctional-cum-orientation course is necessary for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

(12) The prison officials should send directly to the court petitions made to them by the prisoners from within the prison, instead of routing them through the higher authorities.

(13) If a prison administration takes any legal step witch further affects the personal liberty of a prisoner, it should observe the principles of natural justice which are a part of fair procedure established by law.[3] If special restriction of punitive or harsh character like solitary confinement or putting of fetters have to be imposed for convicting security reasons, it becomes necessary to comply with the rules of natural justice. Moreover, there should be an appeal from prison authority to judicial organ when such treatment is meted out.[4]

(14) All the State Governments in the country were directed by the Supreme Court to convert these rulings bearing on Prison Administration into rules and instructions forthwith so that the violation of prisoner's freedom can be avoided.

The Repatriation of Prisoners Act, 2003

With the rising incidence of international crimes and Indian citizens committing crime outside the country and aliens indulging in crimes in India, the repatriation of convicted persons posed a serious problem before the criminal law administrators in the absence of any specific law on this subject. The Government of India, therefore brought out the Repatriation of Prisoners Act, 2003 with a view to providing for transfer of certain prisoners from India to country or place outside India and reception in India, of certain prisoners from country or place outside India. The Act came into force with effect from 1st January, 2004.

The Act provides that Government of any country or place outside India in respect of which arrangement has been made by the Indian Government for transfer of persons undergoing a sentence of imprisonment under an order passed by a criminal court, from India to such country or place or

1. *Vijay Kumar* v. *Public Prosecutor*, AIR 1978 SC 1485.
2. *Sunil Batra-II.*
3. *Ibid.*
4. *Kishor Singh*, 1981 Cri. LJ 17 (22).

vice-versa, shall by notification by the Central Government in the Official Gazette that transfer his custody from India to that country or *vice-versa*. The prisoner's record shall be transferred to such country under Section 10 of the Act. Every order of repatriation of prisoner from outside country to India or *vice-versa*, shall be laid before each House of Parliament as soon as possible as required by Section 16(2) of the Act.

Before concluding, it must be conceded that the great majority of individuals sentenced to imprisonment want to return to society as law-abiding citizens and only few are definitely anti-social and have no intention of changing their lawless ways after their discharge. Therefore, in order to make the prison life less abnormal and provide better opportunities for rehabilitation of those prisoners who behave well and who are not believed to be dangerous to their fellow-men, they should be granted regular furloughs in order to visit their families frequently. It must be realised that cure for crime lies not in incarceration of prisoners but only in speedy criminal justice by ensuring certainty of punishment rather than its severity. In this context, it would be worthwhile to quote the observations made by Sir Robert Mark who said, "permanent and determined criminals do not regard the present criminal justice system as sufficiently deterrent nor are they scared of imprisonment because they are aware of the limitations of the police, courts, prisons etc. and find crime to be highly profitable and rewarding".[1] In India, professional criminals seek the protection of resourceful patrons and taking advantage of the slow moving criminal justice system, they more often than not, manage to escape punishment and prisonisation.

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1. Sir Robert Mark : Policy in a Perplexed Society, p. 67.