CHAPTER - VII

RIGHTS OF WOMEN AND THE CRIMINAL JUSTICE SYSTEM IN INDIA

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CHAPTER - VII

RIGHTS OF WOMEN AND THE CRIMINALJUSTICE SYSTEM IN INDIA

The criminal justice system has been a matter of frequent review and debate in India. The Law Commission of India[1] as well as other commissions,[2] from time to time has suggested a number of proposals for reform in the administration of criminal justice. Most of the suggestions, predominantly loaded with the idea of fair, efficient and humane administration of criminal justice, not only insist for review of some of the fundamental principles of admonition of criminal justice and suggest appropriate amendments to the substantive and procedural law but has also recommend returning and redefining of operational orbits of all the constituent state functionaries-investigatory, prosecutory, and judicatory and custodial -of the criminal justice delivery system. However, majority of these proposals, unfortunately, are greeted with insensitivity by the policy-makers and the legislature.

In November 2000 the Ministry of Home Affairs, Government of India, probably realising the fact that the criminal justice system in India ails from some vices and "little is done and vast is undone", constituted, under the chairmanship of Dr. Justice V.S. Malimath, the "Committee on Reforms of Criminal Justice System"

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[1] *See* generally, Law Commission of India, Fourteenth Report. Reform of Judicial Administration (Government of India, New Delhi, 1958); Law commission of India, Forty-First Report code of criminal Procedure code, 1898 (government of India, New Delhi, 1969); Law Commission of India, Forty-Second Report ; Indian Penal Code (Government of India, New Delhi, 1971); Law Commission of India, Seventy-Seventh Report on Delay and Arrears in Trial Courts (Government of India, new Delhi 1978); Law Commission of India, Injuries in Police Custody-Suggested Section 114-B, Evidence Act (Government of India, New Delhi 1985); Law Commission of India, One Hundred and Fifty-Second Report on Custodial Crimes (Government of India, New Delhi, 1994); Law Commission of India, One Hundred and Fifty-Fourth Report on the Code of Criminal Procedure 1973 (Government of India, New Delhi, 1996); Law Commission of India, One Hundred Seventy-seventh Report on Law Relating to Arrest (Government of India, 2001), and Law Commission of India, One Hundred Fifty-Fifth Report on Review of the Indian Evidence Act, 1872 (Government of India, 2003).

[2] *See*, Annual Reports of the National Human Rights. Commission and Reports of National Police Commission.

to *inter alia*, "examine the fundamental principles of criminal jurisprudence and consider measures for revamping the criminal justice System".[3]

One of the accepted fundamental principles of criminal Jurisprudence," rather *raison deter* of the whole criminal justice delivery system, is 'fair deal and treatment' to an individual in the criminal law process. The present anthology, "Criminal Justice', endeavors to develop deep into the "human rights perspective of individuals accused, prisoner and victim of crime who come in contact with the vital state functionaries the police, prosecution, courts and peno-custodial-correctional institutions that are responsible for ensuring "criminal justice".

John Samuel, in his pursuit for "understanding" Human Rights, delves into 'the right based discourse of human rights. Referring to the three key contentious areas of the human right discourse, namely, universalistic versus cultural relativist argument,' individual rights versus collective rights argument,' and the 'argument about the hierarchy of rights', and indicating the growing uneasiness about the American Euro-centric human rights discourse, he attempts to 'understand' the key debates with eco-politico-historical perspective and feels that a human rights discourse need to be develop on a pluralistic historiography based on diverse cultural and political experiences of peoples across the world fighting against the tyranny of the oppressive regimes, colonialism and imperialism". Never the less, the cautions that the temptation to fall back to cultural relativism cultural, essentialism as defensive mechanisms to counter the hegemony of the global norm needs to be resisted if, in the name of culture, women are denied justice, unsociability is practiced and human rights are denied. Further, to understand the nuances of the contemporary human rights discourse, he extensively deliver into 'rights as language', 'rights as politics,' 'rights as ethics, and 'rights as praxis,' And he feels that the plurality, diversity and cross-cultural richness need to be woven in order to create such a human rights' praxis that could be 'the sigh of the oppressed and soul of this soulless world'. Human Rights Movement in the twentieth century has created "right-oriented' society, argues that human rights discourse be based on the Hohfeldian model to ensure a balanced evolution of human rights that assure equal place to duty and responsibility.

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[3] Government of India, Committee on Reforms of Criminal Justice system Ministry of home Affairs, New Delhi, March, 2003.

The emerging attempts at international codification of penal law and to a few problems emanating from penal jurisdictional, pluralism, penal cultural polarization and trans-national enforcement of penal laws. To emerging tensions between different penal cultures and the evolving "third culture" of international penal institutions. While Prof. Lorenz Bollinger, taking an illustration of the German Law dealing with possession of cannabis, also deliver into the "criminal law without limits".

The essay penned by Madhav God bole,[4] former Central Home Secretary, *inter alia* asserts that rule of law needs to be strengthened in India to bring down human rights violations. He pleads for an unrestricted access to international human rights organizations to study the so-called Human Rights violations in India and thereby to impress the intentioned community that India is not raising protective walls around herself to shield from the prying eyes. He feels that India has nothing to fear in comparison with a number of other countries in so for as upholding of human rights is concerned. Other areas that need attention to combat human rights violations are updating the old and outdated laws, overcoming the temptations of overloading the National Human Rights Commission (NIHRC) and Sate Human Rights Commissions with judges and heavy reliance of the Commissions for investigation on the police officer. He argues for greater public participation in manning as well as functioning of these Commissions in order to instill public confidence in these Human Rights watch dogs. Further, he perceives it a wrong to defend violations of Human Rights by the police in the interests' of maintenance of peace, security and law and order. Crime prevention, investigation and prosecution, according to him, contrary to the prevalent practice, should not be an excuse for the police to degenerate into violence against the suspect of the accused. A wide-ranging police reforms, such as in recruitment, training, modernization, investigative techniques, sensitization to Human Rights breaking the nexus between criminals, politicians and bureaucracy, de-politicization and decommunalisation of police, and their autonomy and independence, obviously, become imperative, Recalling terrorist threats India is facing, the former Union Home Secretary argues that there is an imperative need for special legislations and reminds his readers that human rights of victims of violence and terrorism are as important as, if not more important than, of those who take the law into their own hands.

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[4] Godbole Madhav, Criminal Justice System in India Bane of Human Rights.

The criminal justice system in India, files that most of the basic principles of the Covenant on Civil and Political Rights and the Universal Declaration of Human Rights are reflected in the Indian constitution (Parts III and IV). Major Pre-Covenant Criminal Law Statutes, the Indian Penal Code of 1860 and the Code of Criminal Procedure Code of 1898, have also incorporated in them the basic principles of criminal jurisprudence. Prominent among them are: presumption of innocence, principles of legality, independent and fair trial, principles against double jeopardy, and rights against self incrimination. However these statutes, from the human rights perspectives, remained "sterile in an alien administration which was essentially following a crime control model of Criminal Justice System with a bias in favour of the establishment'. Nevertheless, Legislature and Judiciary, responding to modern developments in criminal jurisprudence, have mode the Criminal Law System comparatively more human rights friendly. The Constitutional guarantees indicated in *Articles* 14 and 19-22, which are further strengthened by *Articles* 32, 226 and 227 of the Constitution and by the special statutory measures contained in the Code of Criminal Procedure Code of 1973 and the Protection of Human Rights Act of 1993, to depict human right perspectives of the Criminal Law System in India with appreciation, also takes stack of the pro - human rights contribution of the Supreme Court and High Courts in streamlining the power of arrest, ensuring human conditions of investigation, prosecutions and fabrication of false evidence, evolving the right to bail, putting limitations on police remand according pre-sentence hearing, and initiating restitutive sentencing. At the same time, he identifies a few existing blind spots, such as inability to curb excessive powers of arrest, lack of adequate recognition. To citizen's liberty, sentencing without guidelines and acceptance of the reality of differential enforcement of criminal laws, in the administration of criminal justice. Prof. Mahendra P. Singh[5] traces the evolution and spirit of Human Rights and of their incorporation in the Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV) of the Indian Constitution. He demonstrates that the spirits of human rights reflected in the Indian constitution is not only premised on individual liberty but also on the concern for the weak and the downtrodden and argues that such a spirit needs to be widely understood, supported and strengthened. Dr. Shivraj

[5] Singh Mahendra P. Human Rights - A Bird's Eye-View of the Indian Perspective.

Nakade devotes his essay[6] to a very extensive analysis of a cluster of Constitutional and statutory rights assured to the accused in the criminal justice delivery system. while B.V. Trivedi[7] highlights ills that associate with vital components the police, prosecution, judiciary and custodial- cum-correctional institutions- of the administration of criminal justice in India and urges for review of the niter criminal justice system, especially investigation of crime by the police and the prosecuting machinery, due to which conviction rates are declining at a very rapid pace, to make the administration of criminal justice more effective, humane fair and just and there by to instill confidence and faith of 'Common man in the administration of criminal justice.

In fact, one should not have any reservations in accepting observations of B.V. Trivedi. It is indeed our experience that administration of criminal justice in India, for a variety of reasons, in deteriorating day by day and not only laymen are losing their faith in the entire criminal justice delivery system and the criminal justice process but also all the vital units of the criminal justice system are losing their credibility. Hitherto different Commissions and Committees, on more than one occasion, have urged and stressed the need to review and revamp the criminal justice system. Recently in March 2003, the Justice Malimath Committee, which was asked by the Ministry of Home Affairs, Government of India, to suggest reforms of criminal justice system, has observed that "it is common knowledge that law and order situation has deteriorated and the citizens have lost confidence in the criminal justice system."[8]

The Justice Malimath Committee, with a view to ensure maximum convections in criminal trials, has recommended overhauling of the criminal justice system in India. It proposes to do this, however, by eviscerating many fundamental rights guaranteed by the Constitution of India. It recommends drastic increase in the powers of judges and the police even by altering the fundamental principles of the criminal justice system and obliterating many of the rights of the accused. It also seeks to erode the safeguards provided in the Indian Evidence Act, 1872. It seeks to

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[6] Nakade Shivraj B. *Rights of the Accused - Some Reflections on the Legislative scheme.* In India.

[7] Trivedi B.V. *Human Rights and criminal Justice System in India: A Reflection on their Mutual Contextual Nexus.*

[8] The Best Bakery ongoing controversy illustrates the ills of the criminal justice system in India. For comments see, Vibhute K.I. "*The best Bakery Case: Is our Criminal Justice Delivery System Best?*" 1(i) Scholasticus 108 (2003).

move the Indian judicial system from on adversarial system to an inquisitorial one. It suggests that the confessions mode to a senior police officer be made admissible, burden of proof be lowered, and a judge need only be convinced of guilt of a person to convict him. It proposes to endow the courts with broad new powers, including the power to direct investigation. At the same time, the committee seeks to eviscerate the rights of the accused and undermine existing procedural safeguards within the criminal justice system. Finally, it proposes the evisceration of the right to silence.

Ravi Nair[9] outlines a well-articulated critique of the Justice Malimath committee's proposals for revamping the criminal law system. He convincingly argues that the recommendations that erode the fundamentals of criminal jurisprudence and abridge the hitherto practiced rights conferred on, and safeguards accorded to, individuals do not merit consideration, These recommendations, according to him, represent a dangerous attempt by the Justice Malimath Committee to selectively incorporate aspects of the inquisitorial system without adequately considering the compatibility on those aspects with the criminal justice system existing in India, These recommendations, he argues, will weaken the rights of the accused and will erode due process of law. He is equally suspicious about the introduction of system of plea-bargaining in the Indian criminal justice system, The proposal as well as the subsequent Bill[10] promised on the Malimath Committee's proposals for reform do not include the safeguards that are necessary for such a system to function effectively in the interests of justice. It seeks to involve the police, a judge and the victim in the plea-bargaining process, and ignores the power imbalance between the prosecution and the accused. It also overlooks the fact that given the long periods of pre -trial detention in India, there is significant risk that innocent people will plead guilty under the scheme.

The enforcement of Human Rights by the National Human Rights Commission (NHRC) Created under the Protection of Human Rights Act, 1993 and through public Interest litigation (PIL). The essay written by Br. Rajeev Dhavan,[11] scanning the sixth report of the NHRC and extensively dealing with the complaint

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[9] Nair Ravi : *The Malimath Committee's Proposals for Reforms in Criminal Justice System in India : A Human Rights Reflection.*

[10] Criminal Law (Amendment) Bill, 2003 (Bill 60 of 2003).

[11] Dhawan Rajeev, *Looking Book and Forging Ahead: Reflecting On the National Human Rights Commission's* (NHRC) Sixth Report (1998-99).

jurisdiction and policies and tasks of the NHRC in the area of Socio-economic rights, particularly terrorism and state atrocities and rights of children and mentally disadvantaged persons, opines that "it is difficult to say that the NHRC has found acceptance as an institution of governance in its own rights; Recalling the controversy surrounding its origin and evolution, Dr. Rajeev Dhavan feels that the NHRC's Credibility was tarnished before it was born. Nevertheless, admitting that the Commission has, at least, half succeeded in its quest for legitimacy, he warns it to be aware of "many design faults in the statute under which it is constituted" and also adviser it to 'straighten out many matters concerning its working". While Prof. Parmanand Singh,[12] focusing on core Human Right issues through PIL, and, with a brief conceptualization, traces evolution of PIL in India and describes its essential features. Highlighting and evaluating contributions of PIL, he deliberates upon custodial violence; terrorism and insurgency, and violence against women. He also addresses the utility of PIL in giving redress to the exploited children and bonded labors. Highlighting instances of actions taken by the NHRC, he also assesses performance of the NHRC since its inception in 1993. Prof. *Parmanand Singh* perceives PIL as an effective devise for combating state repression and violation of human rights and be lives that higher judiciary in India, in times to higher judiciary in India, in times to come, will remain the main site for human rights struggle.

Recoding the evidentiary value of confessions in criminal process and the known irresistible temptations of the police, with a view to detecting the crime at the earliest to extract, even by resorting to the "third degree" methods, confessions at the earliest stage of investigation, feels that one of the major tasks a head of modern criminal justice system is to balance the society's interest with that of individual's human rights. "If the names of human rights the hands of the police are tied, it is true; the instances of human rights violence by police may come down. But as experience suggests there is a possibility of the conviction rate coming down resulting in the rise of crime rate. A society that experience law rate of crime detection and punishment for a long time is likely to develop a culture loosing faith in the criminal administration system and from such a culture it is very difficult to obtain liberation, he observes. In this spirit, taking clue from some of the latest statutes, like the Prevention of Terrorism Act, 2002 (POTA), he pleads for appropriate changes in the

[12] Parmanand Singh: *Protection of Human Rights through public Interest Litigation in India.*

Indian Evidence Act, 1872 to make, with a view to balancing the societal interest with individual's right against torture, confessions made to a senior police officer admissible as evidence especially in grave and serious crime. One, who believes in the rule of law and humane administration of criminal justice, will obviously find it difficult to support the argument without any reservations.

The 'crisis' in the Indian prison system, which, he believes, is caused by: (i) antiquated and over-worked nature of prison institution, (ii) lack of proper training, skills and motivation of the prison staff, (iii) Policy level ideological conflicts brought about by the modern ideas of prisoners' rights and egalitarianism, and, (iv) internationalization of prison system. 'The notable problems,' namely over-crowding inadequate provision for basic needs; torture; ill-treatment of, and repressive control over, prisoners, and unequal treatment and privileges, that substantially determine the very character of the Indian higher judiciary, which has been playing the role of custodian again, has insisted that a prisoner does not cease to be a human being even after his conviction, in taking initiatives in securing rights of prisoners and there by 'humanising' the prison administration in India. The judicial initiatives can succeed only if social and political ethos is changed and such a change, can be brought by: (i) making the prison system more transparent and accountable; (ii) creating greater community awareness and state in the key role of prisons: (iii) involving community participation in prison functioning, and (iv) creating a cadre of social activists to ensure prisoners' rights within the community.

West Bengal: A Historical Outline

India, that is Bharat, is a union of 28 States and 7 Union Territories. West Bengal is one of the major States in the eastern region of India, stretching for about 300 miles from the Bay of Bengal to the snow-capped summits of Himalayas. Three other States, namely Bihar, Orissa and Sikkim, are its close neighbours. It has international frontiers with three foreign countries, namely, Bangladesh, Nepal and Bhutan. It is bounded on the south by the Bay of Bengal. A part of it in the North falls within the range of Himalayas. The southern side of Bengal is on the plains of Ganga. The location of West Bengal is, therefore, strategic.

What is West Bengal today was once an integral part of the erstwhile "Bengal". It was a province during the British rule, covering an area of more than

200,000 sq. k.m. That was the position immediately before the independence of India. India won freedom on 15th August, 1947. It was, however, divided into two parts based on religion and distributed between two newly independent countries, India and Pakistan. The bigger part fell to the share of India and it continued to be called "Bengal". The other part was allotted to Pakistan and christened as "East Pakistan". Eventually, East Pakistan liberated itself from Pakistan, declared its independence and adopted the name "Bangladesh".

Bengal always played a significant role in the history of modern India. It was said "What Bengal thinks to-day, India thinks tomorrow". It was because Bengal was ahead of others in the fields of education, political consciousness, revolutionary upsurge, social movement and cultural renaissance. It was in the forefront of Indian National Movement.

West Bengal has over the years maintained a very low IPC crime rate. In 1999, while the All India average for IPC crimes was 178.9, West Bengal had a crime rate of 84.9. In contrast, NCT of Delhi reported the highest IPC crime rate at 431.6 in the country during 1999. Among states, Rajasthan reported the highest crime rate at 317.7 followed by Kerala 294.4, during the same year.

In 1999, West Bengal also witnessed a small decline in incidence of total cognizable crimes by - 2.4% when compared to the quinquennial average (1993-97) and by - 2.1% when compared to the 1998 figures. While a total, of 66,525 cognizable crimes occurred in 1999, the number in 1998 was 67,950 while the quinquennial figure was 68,181. In 1999, Madhya Pradesh reported the largest incidence of IPC crimes of 2,05,964 followed by Maharashtra at 1,77,436.

Criminal Justice: Brief History

During the days of *Mughal Empire*, *Zamindars* of Bengal used to maintain law and order within their *Zamindary* limits. They enjoyed significant judicial powers. There were *Kazi's* courts for deciding civil and criminal cases. There was K*azi* in each district *(Sarkar)*, in each *Parganah*, in each city and even in each big village. Village *Panchayats* were also quite active and they decided all kinds of cases except offences of serious nature. Appeals from the decisions of the *Panchayats* lay to *Kazi* of the district *(Sarkar)* and then to the Chief *Kazi of* the *Subali*. The judicial system was simple and it served the needs of the people. During the rule of the *Mughals*, the

judicial department was not as well organized as other departments. Men of intelligence and ambition tended to opt for departments other than the judicial, where they had better chances of fame and glory.

In 1668, the East India Company secured *Zamindary* of the three villages, of *Calikut, Sutanati* and *Govindapur* and the villages were gradually transformed into the modern city of Calcutta (Kolkata). As a *Zamindar*, the Company became entitled to exercise all those functions and powers within the limits of its *Zamindary* as other *Zamindars* in Bengal commonly exercised. The acquisition of this *Zamindary* was a significant event for the Company, which secured for them a legal status within the framework of the *Mughal Administrative* set up.

In 1699, Calcutta became a presidency and a Governor and Council were appointed to administer the settlement. The *Zamindary* functions of the Company within the settlement of Calcutta were entrusted to an English officer known as the Collector, who used to be a member of the Governor's council. He discharged judicial powers including hearing of all criminal cases. He used to decide criminal cases in a summary manner. The usual punishments were whipping, fines, work in chainson the roads, imprisonment, banishment and death. Death sentence was inflicted not by hanging but by whipping to death. Death sentence was executed only after confirmation by the Governor and the Council. Serious criminal offences committed by the Englishmen (not petty criminal offences) were, however, tried by the Governor and the Council under the authority of the Charter of 1661

In the case of the other *Zamindars*, death sentence was executed only after confirmation from the *Nawab of Murshidabad*. Appeals from the decisions of the *Zamindars* in other criminal cases lay to the *Nawab's Court* at Murshidabad.

The Charter of 1726 constituted a landmark in the history of Indian legal system. It is usually known as the "judicial charter". The basic features of the Charter were: justice would continue to be administered by non-professional judges and an intimate and integral relationship between the judiciary and executive was to be maintained.

The Supreme Court of judicature was created in Calcutta under the Regulation Act of 1773 superseding the judicial system prevalent under the Charter of 1753. The court was to enjoy civil criminal, admiralty and ecclesiastical jurisdictions. The

jurisdiction was not extended to all persons of Bengal, Bihar, Orissa. It was restricted to only a few defined categories of sons e.g. British subjects and His Majesty's Subjects.

Till the middle of the 18th century, the Company held its limits the presidency town of Calcutta and the judicial system created and concentrated within the town. As time passed Company expanded its political activities and brought new rotaries surrounding the presidency town within its fold the necessity of beginning an *Adalat* system beyond the limits the presidency town was felt.

(A) CRIMINAL JUSTICE SYSTEM IN ANCIENT INDIA

"Punishment should be inflicted on those who violate any rule of conduct. If any offender goes unpunished, the guilt falls upon the king and the priest who are enjoined to practice some penances"[13]

There were numerous laws in the ancient times, and each state had its own unique system of administration of justice and modes of punishments. Many of those laws were just enhancement or an improvement upon existing social customs in the society. Crime and punishment naturally were the focus of these early statutes. *Emperor Hammeerabi* evolved a code of laws to govern Babylon, and this was one of the earliest recorded legal codes. When it comes to the aspect of punishment, the code is simple but precise - an eye for an eye[14] and a tooth for a tooth.[15] An unduly heavy emphasis was placed on the death penalty.[16] And mutilation of body parts as a means of punishment. The ancient Egyptians and Greeks too practiced barbaric forms of punishment such as amputation of body parts, stoning to death, burning alive etc. The reaction of these early legal systems to crime was a knee jerk one. The state took it upon itself to satisfy the, blood lust and the vengeance of the victim's relatives and friends by punishing the offender in a swift and brutal manner. With the gradual evolution in systems of administration of justice during the Greek and Roman era, the theories of crime and punishment, though still at on incipient stage began to make their presence felt. While Plato Advocated retributive justice, his disciple Aristotle sought to mitigate the harshness of the punishments imposed and sought a more

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[13] *Vasistha*, XIX, 40-43.
[14] Code of Hummurabi, Law 196.
[15] ID., Law 200.
[16] Approximately 37 specific offences were punishable by death according to the code.

rational approach. In Rome, Seneca sought to develop his own theory of punishment that was primarily grounded in the concept of mercy. These issues shall be dealt with in detail in subsequent parts.[17]

It would be worthwhile to explore the ancient Indian legal system at this juncture. The Hindu political legal and economic thought is included in the *Mahabharata*, *Dharmashastras* of which *Manu-Smriti* is the most important *Niti-Shastras* or the science of state-craft (of which the *Shukranitisara*, is the most elaborate) and *Arthashashtra* (of which *Kautilya's Arthashashtra* is the most popular version that is easily the most recognized and frequently refereed work to this day). The concept of *dharma* governed Hindu life since the *Vedic* times and every one from the king down to the commoner was expected to follow it. The king had to ensure that al his laws were in conformity with the dharma and it was said, "Hunger, sleep, fear and sex are common to all animals, human and sub-human. It is additional' attribute of *dharma* that differentiates man from the beast."18 The great statement *Kautilya* left his imprint on this nation's thought with his work, the *Arthashashtra* a treatise on economic political and legal administration, in the 4th century before Christ.[19]

In an age when vast swathe of Europe was still emerging, from the primitive age, and the 'civilized' Roman Empire rapidly disintegrating, *Kautilya's Arthashashtra* provides a valuable insight into the legal system in ancient India. The *Arthashashtra* gives directions as to the treatment of petitioners in courts, behaviour of the judges, methods of identifying witness indulging in falsehood,[20] and punishment of offenders. *Kautilya* constantly rejects the rule of thumb, advocating instead a judgment based on the specifies of a particulars situation and punishment to an appropriate scale.[21] There was an intimate relationship between the sin and sinner, and the kings (and judges) were expected to decide upon the nature of the punishment after seeing if the offending party showed any repentance for having committed the

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[17] Quoted in A Lakshminath, Criminal Justice in India, 48(1) *JILI* (2006) 26.

[18] Sundeep waslekar, Dharma Rajya, 42 (1998).

[19] The *Arthashashtra* consists of 15 chapters, 380 Shlokas and 4968 sutras and deals with a wide variety of subjects like administration, law and order, taxation, revenue, foreign policy, defence and war.

[20] For instance, a person charging on innocent man with the ft or any other crime was to be punished as though he had committed the said crime himself.

[21] Different Kinds of punishments were inflicted based upon all the relevant facts and circumstances involved in the commission of the offence. The judge was expected to look at the Social Status of an affender and victim, the antecedents of the offender, the families involved, the occasion, place and time of the offence, and all other mitigating or extennating factors wherever found to be so present.

crime. It was not uncommon for sentences to be commuted by the king when the offender acknowledged his mistake and it was felt that he could be rehabilitated in society. Thus, the concept of separation of the offence the judge was expected to look at the social status of the offender and victim, the antecedents of the offender, the families involved, the occasion place and time of the offence, and all other mitigating or extenuating factors wherever found to be present.

Crime from the criminal was wholly in tune with the Hindu philosophy and appears to have been prevalent in ancient times. Having fully considered the time and the place (of the offence) the strength and knowledge (of the offender), the king had to justly inflict that punishment on men who acted unjustly.[22] The death penalty was not used very often, except in serious cases. Minors (in those days, any one under the age of 15 was not punished) were sent to reformatory homes.[23]

The award of punishment was governed by consideration of status of the accused. Rank played a very important role in determining the nature and punishments for most offences, especially those relating to defamation and assault. What is thus most revealing is that punishment varied according to a person's caste or position in the social order and the penalty for a crime was increasingly severe the higher the Verna of the victim. In ancient times, caste violations were often the crimes that attracted the save rest of punishments for these were issues closest to the people's hearts. It is striking to note the fact that crimes such as theft of cattle and destruction of property did not meet with barbaric executions, as was the case in the 'enlightened' western world. There was, therefore, a highly developed concept of monetary fines that were frequently imposed as an alternative to physical punishments.[24]

Another interesting feature was that punishments in the form of fines were imposed for 'doing mischief' to trees and plants i.e. degrading the environment.[25] Wherever possible, the accused was given the chance to return stolen property or its monetary equivalent to the victim. Besides, the judges were expected to punish first

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[22] Frederic B. Underwood, "Aspects of justice in Ancient India" 5 *Journal of Chinese philosophy* 271(1978).

[23] Bansi Pundit, "Some philosophical Aspects of Hindu Political, legal and Economic Thought," archived on www.ikashmir.org/hindudharma/books.html.

[24] Kautilya's Arthashashtra mentions on exhaustive list of offences and the fines charged for committing them. The amount varied based upon the gravity of the offence, the person who was affected, and the nature of the accused.

[25] In fact if any harm was done to the trees and plants located at places of pilgrimage or in the forests of king, double fines were imposed upon the offenders.

time offenders lightly. *Arthashashtra* also makes mention of the fact that judges could be punished for wrongly punishing offenders in a court of law.[26] This was a unique system of accountability that successfully regulated the judicial decision making process, making it quite immune from corruption and bias. Today, a similar system is unthinkable, especially given the fact that in a country like ours, even the slightest criticism of the judges invites criminal sanctions against the critic by way of contempt of court laws. The system of laws and punishment for violation of the same was an integral component of the ancient Hindu philosophy and was not an external irritant forcefully imposed upon, and barely tolerated by the society as was the case with the advent of the British and their legal system.

Post-modernism seeks to demolish the myth that the law speaks with one voice for all regardless of history, economics and social reality. The objective and neutral figure of justice has been revealed to be a myth, a dangerous anachronism that crushes, not the serpent of inequity and chaos but the flower of human experience beneath her feet. In rejecting totalizing narratives, and in embracing contextual narratives, recent critical challenges to the approaches to legal interpretation, from race and feminist theory and sentencing policy in particular, proceed in postmodernist fashion.[27]

(i) Sentencing Process

The purpose and general justification of the criminal law is to protect society, by maintaining social order, by methods of social control that maximize individual freedom within the coercive framework of law. Penal Codes give due notice of the offenders, and inform the citizens of how they are expected to behave and call their attention to the rule that any infringement deemed contrary to the general interest is followed by punishment.Punishment therefore is an expression of society's disapproval of the act, and the magnitude of punishment reflects the extent of the indiscretion. The humanizing of penal law in the past, however, has led to a marked lowering of general level of punishment. Nevertheless, punishment remains, as the counterpart of crime and criminal law stands to the passion of revenge in much the

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[26] The judge was liable to be punished himself by the first amendment if he did not enquire into the necessary facts and circumstances surrounding a crime, unnecessarily delayed in disposing of cases postponed worked with spite, helped witnesses by prompting them, was corrupt, resumed cases that had already been settled, etc.

[27] Joel F. Handler, The presidential Address, 1992 "Post modernism, protest, and the New Social Movements" 26 L & Socy. Rev 697 (1992).

same relation as marriage to sexual appetite. Though the last British colonialist left the country decades ago, the criminal laws framed by them in the mid and late 19th centuries florist nonetheless.

The Indian Penal Code of 1860 and the Code of Criminal Procedure, 1973 form the basis of the Indian Criminal Justice System. As the name indicates, the Code of Criminal Procedure is procedural while the IPC is substantive in nature. The IPC measures the gravity of violation by the seriousness of the crime and its general effect upon the public tranquility, whatever is the object of theory of punishment. The measure of guilt is therefore the measure of punishment. The law indicates the gravity of the act by the maximum penalty provided for its punishment and the courts will have to consider how far the crime committed falls short of the maximum punishment and what if any are the extenuating circumstances justifying the adoption of a lower punishment, than the maximum provided.[28] The IPC gives much leeway to the courts to give punishments. A sentence should reflect the seriousness of the offence and the sentence should suit the personality of the offender. The higher judiciary in particular has been exercising their power to modulate the sentences on the basis of the fact situation or on the basis of the circumstances that prompted the offender to commit the crime. Sections 53 to 75 of IPC lay down the general provisions relating to punishments.[29]

Statute law like the IPC and other local and special laws lay down the terms under which a criminal court may pass sentence after conviction. The role of legislation in Indian sentencing law is thus essentially one of providing powers and laying down the outer limits of their use. While drafting the IPC, Lord Macaulay in his own wisdom, preferred the gradation or the fixation of maximum sentence in a number of offences, so that the judge while scrutinizing particular facts and circumstances in a given case would be in a position to award 'appropriate sentence, to the guilty person. It would seem to indicate that the policy of the law generally is to fix a maximum penalty, which is intended only for the extreme cases.[30] The

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[28] V.V. Raghavan, Law of Crimes 94 (1986).

[29] *Section.* 53 enume rates several types of punishments that can be imposed on a convicted criminal Viz., death, imprisonment, forfeiture of property and fine.

[30] While taking a similar stand chief Justice Napier of South Australia in *Webb* v *O.Sullivan* (1952 SASR 65 at 66) observed; "The courts should endeavor to make the punishment fit the crime, and the circumstances of the offender as nearly as may be. Our first concern is the protection of the public but subject to that, the court should lean towards mercy. We ought not to award the

determination of appropriate punishment in a particular case has always been left to the court for the weighty reason that no two cases would ever be alike, and the circumstances under which the offence was committed and the moral turpitude attaching to it would be matters within the special knowledge. [31]

(ii) General principles

Punishment is an expression of social values as well as an instrumental means to a clinical penological end. An onerous duty of sentencing is cast upon the judges who are carrying out this duty under the IPC. The task of a judge in sentencing becomes more onerous and difficult since the modern penology regards crime and criminal as equally important for awarding an appropriate punishment. Thus, a duty is cast on the judge to see that the sentence shall consist of element of reformation of the criminal also along with the elements of deterrence, prevention and retribution. The sentencing judge has to ensure that the sentence is sufficiently severe enough to deter the criminal and like minded persons; satisfies the sentiments of the victims of the crime that the wrong doer is adequately punished: impresses upon the criminal and change his mental make-up and reform him and restore him to the society as a good citizen: and also adequately compensate the victims of the crime, leaving an impression with them that the law will take care of them and undo the misery caused to them by a criminal by the commission of the crime to the extent possible.

Thus, the judge has to balance all these conflicting interests, and choose the right and appropriate sentence, for it to be meaningful. He has to consider not only the crime committed and punishment prescribed under law for its commission, but also various other mitigating and aggravating factors. The law indicates the gravity of the act by the maximum penalty provided for its punishment and the courts will have to consider how far the crime committed falls short of maximum punishment and whether there are any extenuating circumstances justifying the adoption of a lower punishment than the maximum provided.

There is no hard and fast rule that can be laid down to determine the right measure of punishment. A day's imprisonment to an honorable man may have more deterrent effect than a life imprisonment awarded to a hardened criminal. Thus, to

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maximum which the offence will warrant, but rather the minimum which is consistent with a due regard for the public interest".

[31] *See*, 14th Report of Law Commission of India at 838.

determine right measure of sentence the gravity of offence, the position and status of the offender, the previous character and the existence of aggravating and extenuating circumstances have to be considered by the court. Thus, it is always desirable to prescribe maximum punishments leaving the imposition of desirable sentence within the maximum proscribed to the discretion of the court, which will always know what is the most appropriate sentence that aught to be handed down to the accused.

(iii) Provision of a Minimum Sentencing Period, is it Really Necessary ?

The present day sentencing scenario unveils, quite conspicuously, the relentless efforts of the legislature, to interfere with the sentencing discretion of the courts, particularly by introducing minimum mandatory sentences.[32] The sentencing judges are left with no discretion, except to award the mandatory sentence that induces them to indulge in a mechanical sentencing process. The introduction of minimum sentence in the ambit of penological jurisprudence is relatively of much recent origin. Of late, there is an increasing tendency shown by the legislature towards prescribing a minimum sentence. This tendency appears to be not only confined to socio-economic offences but also to other traditional offences.[33] The principal reason for the shift in the policy appears to be that courts seldom award sentence. Which would have a deterrent effect particularly in certain types of offences that are necessarily to be dealt with sternly in the interests of society. If a minimum sentence were to be prescribed for certain offences or classes of offences, the award of the really needed deterrent punishment would be assured in these cases.

The problem really arises when there are statutes that prescribe a minimum, instead of a maximum sentencing period. Numerous complications arise, most of which may not be apparent at the first instance. In case of heinous crimes, the penal statutes proscribe minimum sentences and in such a case the Court is bound to impose the minimum sentence. In case where the Statute prescribes mandatory minimum sentence, the Court is left with no discretion except to impose the minimum sentence

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[32] The difference between minimum sentence and minimum mandatory sentence is-in the case of former a limited discretion if recognized. In the latter, of course, it is purely non discretionary. As a matter of fact this kind in the treatment is nothing new.

[33] For instance *see Section* 4 of the Dowry Prohibition Act. 1961 (substituted by Act 63 of 1984) and also *Section* 376 (2) of the Indian Penal Code (substituted by Act 43 of 1983). In fact in the entire body of the IPC there are some sections which prescribed a minimum sentence like *Sections* 121. 297 and 398 etc.

prescribed. To illustrate the same, Under Section 302 of IPC[34] the maximum sentence proscribed is the death penalty and the minimum sentence is imprisonment for life. In such cases, the Court has no discretion to impose any other punishment less than the imprisonment for life. Similarly Section 397 of the IPC prescribes that the offence shall be punishable with imprisonment, which shall not be less than seven years, and Section 398 IPC[35] prescribes the imprisonment that shall not be less than seven years. Thus, when the Court found an offender guilty for committing the offence punishable under any of these sections and convicts him, the sentence imposed shall be the minimum mandatory sentence of seven years.

Instead of the current approach it would be far more preferable for maximum sentences to be provided for all these offences. This gives the adjudicating authority the maximum freedom to impose sentences based upon the gravity of the crime and the personality of the accused person. At the sentencing stage of the trial a judge has a fairly good idea of what kind of punishment the guilty person really deserves, but with minimum punishment periods provided for, the judge invariable feels constrained by the restrictive provisions of the law and is left with nothing more to decide than the guilt or innocence of the accused persons.

(iv) Deterrent Sentencing or Soft Sentencing

Handing down lenient sentences to guilty individuals has been a problem facing the courts and the criminal justice system for a very long time. While the tide is slowly turning against the concept of deterrent punishment, there is as yet no consensus as to whether soft sentencing is a boon or bane. In America, there is an extremely powerful and influential lobby that believes in harsher sentencing policy, since they feel that criminals are getting away too lightly. A minimum requirement in a rational system is that there should be some degree of correspondence between the crime committed and crime for which the defendant is convicted.

It is no doubt true that inadequate sentences can do harm to the system. Law must meet the challenges that criminalization offers for, after all, misconceived liberalism cannot be countenanced. There is a constant interplay between the rights of the victims and that of the accused. When it comes to soft sentencing the focus is undoubtedly on the victim and the victim's family. Suddenly the old ghosts of

[34] Punishment for murder.
[35] Attempt to commit robbery or dacoity armed with deadly weapons.

retribution and private vengeance surface at times when the state is perceived as being too lenient, and unable to properly punish its criminals. In cases that relate to anti-national activities, the adoption of a policy of soft sentencing would be disastrous. In such instances perhaps the deterrent method would be a better alternative.

(v) Philosophical Foundations of Punishment

Man endowed with conscience, generally follows certain dos and don'ts. Yet, the fact remains that is primarily an animal. When the bestial element overpowers his conscience, he inevitable does an act resulting in damage to his fellow beings. If such elements coerce to be left unchecked, organized society would turn chaotic with the passage of time. Hence to reduce, if not totally eliminate, the menace of such elements in society, the concept of punishment seems to have been evolved. One of the major questions with which the penologists are engaged today is whether the traditional forms of punishment should remain the primary weapon in restraining criminal behavior or should it be replaced or supplemented by much more flexible measure of reformative, curative and protective nature. The coercive strategies employed by the Criminal Law administration have always retied on the punishments, which throughout history consistently included deprivation of liberty. In the civilized society governed by rule of law, no punishment can be inflicted. In the civilized society governed by rule of law, no punishment can be inflicted on an individual unless it serves some social purpose.

Despite the best efforts of jurists like H.L.A Hart,[36] the concept of 'punishment' remains hard to define with a degree of accuracy. The object of punishment differs depending upon the theory it is based on The Supreme Court of India has however, in *Ram Narayan's* case,[37] stated the object as.

> *The broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs.*

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[36] H.L.A Hart has talked about it in terms of 'pain'- Which may be in the form of imprisonment, or fine, or for feature of property or some such other restriction or detriment, imposed by society as mark of its disapproval of the act of the individual punished.

[37] *Ram Narayan* v *state of U.P.*, (1973) 2 SCC 86, 91.

(vi) Retributive Theory

The basis of this theory is 'an eye for an eye and a tooth for a tooth which is drawn from *Hammurabi's* Code. Plato in his *Republic* has favoured the system of retribution or, revenge and accordingly "the doers must suffer". Thus there is an analogy that summer is the due retribution for the imbalance of winter and that more spring time would not be able to set the imbalance right.[38] Many theologists and philosophers of the ancient times genuinely thought that they were merely preventing society from descending into chaos by instituting retributive systems of punishment.[39] The punishments were often entirely disproportionate to the crime committed. For instance, stealing, a sack of grains met with amputation of the offender's hands, if he was lucky and death, if he were not. It has thus been said that.[40]

Retribution is nothing more than philosophically dressed up revenge, the irrational emotional and unjustifiably barbaric assuaging of hurt feelings and harm by inflicting hurt on their perpetrator.

> *Another major fault of the retributive theory is that it is oriented in the past, i.e. it treats, punishment purely as a backward looking response to an offence and thus offers no account as to how punishments can be forward looking or productive in any way. Retributive justice has therefore rightly been described as primitive and savage justice that has no place in civilized society.*

(vii) Deterrent Theory

The key to this theory is that fear plays a paramount part in every human being's life. The deterrent effect works in two directions. First to instill fear in the mind of the offender and secondly to warn others on the consequences that could be fall them if they committed the crime. The first purpose was not always served since the offender could become a more hardened criminal, for he looked up on society as his enemy. Holmes suggested that "the theory was immoral; in as much as it gives no measure of punishment except the law giver's subjective opinion... it is said to conflict with the sense of justice... that the members of such communities have equal rights to life, liberty and persons "Security."[41] The basis of the deterrent theory has been most aptly summed up by Barnet J. who told a protesting prisoner. "Thou art to

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[38] Martha Nussbaum, Sex and Social Justice 161 (1999).
[39] Not to mention Kant, Hegel etc.
[40] James penner Criminology 540.
[41] Holmes, Common Law (1963) 42-43.

be hanged not for having stolen the horse, but in order that other horses may not be stolen."[42] It is, however submitted that deterrence as an aim of punishment has not been entirely eliminated from the policy of modern government, though it has lost much of its former importance. A deterrent sentence may be justifiable only when the offence is the result of deliberation and preplanning and is committed for the sake of personal gain at the expense of the innocent and is a menace to the safety, health or moral well being of the community or is difficult to detect or trace. In rare circumstances such as anti national conspiracies, communal violence, etc., harsh punishment may act as the only effective deterrent. The fact is that not only has the idea of deterrence not been vindicated by experience, but from the stand point of exact justice, it is doubted whether the criminal should be punished in excess of his just deserts merely for the benefit of a potential criminal who in the absence of such extra punishment, might commit crime. This makes every punished criminal a martyr.

(viii) Reformative Theory

The reformative theory has been defined as an effort to restore man to society as a better and wiser man and a good citizen.[43] Victor Hugo's statement "to open a school is to close a prison", contains great truth. If persons of doubtful character are given training or education in such a manner as to enable them to earn their livelihood by honest means then they would not need to adopt criminal methods for their subsistence. Turner puts forward the logic of Carrit who said "reformative theories forget that if punishment is to be punishment it must be unpleasant while the cause of reformative education is only accidentally unpleasant. We cannot put remorse ready made into a criminals' mind but we can stimulate it by giving him a pain akin to that of remorse, making him feel the indignation of impartial observers."[44] Death penalty, according to this theory, has got no meaning for death would segregate the criminal forever and will not cure him. Open he criticized the reformative theory claiming it removes punishment of its sting. The criminal is looked upon as an object of pity, not of hatred, and punishment becomes the work of charity.[45] The trend in recent times is towards inflicting punishments on a person depending upon his status in society, the psychological reasons which prompted him to commit the offence and the nature of

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[42] Cited by Sinha B.S. in A Text Book of Jurisprudence 94 (1977).
[43] Prison Commissions Report 23 (1912).
[44] Canadian Bar Review 91 (1943).
[45] Oppenheim, Rationale of Punishment 245 (1975).

the individual himself- First offender or habitual offender. Despite its limitations, the reformative theory is here to stay.

(ix) The Concept of Restorative Justice

"Restorative justice" is a relatively recent phenomenon that has been growing in popularity with policy makers and academics alike. As with many innovative policies, the concept of restorative justice is still in the process of being defined. Restorative justice contains elements pleasing to both liberals and conservatives making for strange bed fellows Conservatives like it because it pays attention to victims (indeed, the concept was born out of the right wing victims rights movement in the western world) and liberals like it because it doesn't seem as punitive as jail. Probably because of its broad-based appeal, the growth of restorative. Justice programs manifested as victim offender, Reconciliation programs (VORPS) or, more commonly, victim offender Mediation (VOMs), in the United States of America and Western Europe in particular has been rapid since their inception in the mid-1970s. Essentially, VOMs are meetings between victims, offenders and mediators (although in some versions others might also be present such as family members, friends community members and the like). The outcomes of the meetings also vary, but the usual stated goals are to provide a forum for "clearing on a restitution contract for the offender and also giving the offender the opportunity to apologize to his victim. The meetings are optional for both parties and may either be diversionary or an adjunct to sentencing probation.[46] Flexibility is the key, since all of the parties who are present are deeply involved in deciding how to respond to the crime.

During a typical VOM, a victim gets to describe how much he/she lost materially as a consequence of crime. But the victim also gets to specify the emotional and psychological harms she suffered, often, those are status harms, or the sense of having been humiliated or violated. Representative community members, if present, also get to specify the losses they suffered (such as diminished social activity because of fears or an assault on community values). Offenders own participation gives them the opportunity, at least, to ameliorate the harm they caused, with less damage to themselves, their families and their communities than traditional jail sentences typically inflict. Because it recognizes an array of criminal harms,

[46] Mark S. Umbreit, Robert B. Coates and Ann Warner Roberts, "The Impact of Victim-offender Mediation: A Cross-National perspective" 17 Mediation Q 215 at 216-17 (2000)

restorative justice also enables and demands an equally diverse assortment of responses and actions designed to address them. It allows for creative, precisely tailored and therefore more deeply satisfying resolutions to criminal offending. Restorative justice is about healing (restoration) rather than hurting. In short, restorative justice is harm oriented.[47]

Critics feel that the major draw back of the restorative justice practice is that desperate treatment exists, for the outcome of any process would depend upon the personalities of the victim and the offender. After all it has been argued, why should one offender receive a particular type of response because his victim is magnanimous, where as another could receive a much harsher treatment because his victim is hard hearted. It has also been stated that by following the restorative approach to justice, criminal justice is made civil justice because of the fact that it effectively abolishes not only the punitive response, but also the very criminality of the offences with which it deals. Nevertheless, many jurists feel that the need of the hour is to have elements of the restorative method of punishment introduced into criminal justice systems world wide. Courts should be given the right to make compensation orders, victim offender mediation schemes, etc. In restorative justice philosophy, there cannot be a neat distinction between minor offences and more serious ones, with the former being treated as civil matters where as the latter are treated as crimes simply because the possibility of restorative justice in these cases simply does not exist. However, the truth and Reconciliation Commission in post apartheid South Africa for instance is seen as a model of restorative justice practice. Which more or less over turned traditional stereo types when it dealt with the heinous offences committed during the apartheid era.

(B) ROLE OF POLICE IN CRIMINAL JUSTICE SYSTEM

Robert Rainer rightly remarked that policing is an inherently conflict redder enterprise. Therefore, the police have 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 India society are looked with fear, suspicion and distrust by the people. This public apathy towards the police demoralizes them to such an extent that policemen lose self-confidence and are

[47] *Ibid*

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 petting merit to near in competency and dishonesty to the front.[48] 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 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 demoralized 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. I[49] In a Zeal of criticizing 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 feel 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 argumentation 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 foot 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 laws, defect or omission on the part of the police officials in dealing with the suspect or offender. This is evident from the large number

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[48] Ghosh S.K. Law-breakers and keepers of peace, (2nd Ed.) 1969.

[49] 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.

of damage-suits pending against the police in law courts. That apart, certain provision for the Code of Criminals' 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 at least two respectable inhabitants of the locality. More often than not it is difficult for the police to procure such witness who are willing to co-operate in this work. This obviously adversely affects the process of seizure or search.[50]

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 quenches 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 quilt, 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 cum 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 realize 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 an 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.[51] The major problem of the modern police, in India, therefore, is to inspire the public to appreciate the police values. The general impression that the policemen are inefficient

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[50] *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 investigational the time when such statement was made.

[51] Sharma P.D. Police and Criminal justice Administration in India (1985) 8.

brutal, corrupt and lawless[52] 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 view on the functioning of the police in India the noted jurist Nani Palkhiwala observed, "A professional and honorable 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"[53]

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 fundamental freedom an the basic human values demand and 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.

(i) 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 form society for prosecution; they play a vital rote 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.[54] Thus, the police are perfectly justified in using force while tackling 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 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 –

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[52] Donald Taft: Criminology (4th Ed.) 318.

[53] Nani Palkhiwala's observations in *miscellany* dated 8th September, 1985.

[54] An article entitled 'Police and Authority and Practices by Richard C, Donnelly published in 'Readings in Criminology an penology," Edited by David Dressler (IInd print) 1966.

limits of the use of violence and adopt brutal methods to influent 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 Convocation 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 may not always be on the bona fide belief of suspicion and much 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[55] 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:-

(ii) 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 utilized 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 development 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

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[55] Ahmad Siddique: Criminology, (3rd Ed.) 1993.

anti-social elements which require special watch. The information about these originals 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-social 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.

(iii) 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.[56] Sections 71 of the Code, further afford adequate protection to the police officials against legal action for wrongful restraint of an innocent person who was paper handed and kept in police custody under a *bona fide* belief that he was on offender or a law- violator. The legal limits of arrest and detention of suspects are clearly defined in the Criminal Procedure Code[57] 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 feel 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.[58] The law costs 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[59] the period of such remand shall, however, not exceed fifteen days.

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[56] *Sections* 149 to 158 of the Criminal Procedure Code, 1973.
[57] *Sections* 57,167,169 and 170(2) of Cr. P.C.1973.
[58] *Section* 167, Cr.PC.
[59] *Rajni Kanta* v *State of orissa*,1975 Cr L.J.83.

The Constitution of India also provides safeguards against the arbitrary use of preventive powers by the executive.[60] 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[61]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 under trial for escorting and preventing his escape, the Supreme Court in *Prem Shankar Shukla* v. *Delhi Administration*,[62] *inter alia*, observed, "handcuffing is *prima-facie* in human 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 gets the approval of the Presiding Judge. And once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorizes stringent deprivation of life and liberty.

(iv) Investigation by Police

The purpose of investigation is to collect evidence and apprehend the culprit. It is the duty of every one 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 giving those answers which will expose him to

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[60] *Article* 2(1) to (7) of the Constitution of India.
[61] *Section* 42(i), (ii) and (iii) of the Code of Criminal Procedure, 1973.
[62] AIR 1980 SC 1535

any criminal charge.[63] 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.[64] 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.[65] 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.[66]

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. PC. 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[67] in the case, the politicians more often than not enter into an unholy alliance with the investigating officers to get things done in their favor.

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 in vest gating 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 form other duties and would result in more successful detection and prosecution;

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[63] *Section* 161
[64] *Ibid.*
[65] *Section*160.
[66] *Section* 160 proviso.
[67] *State of Bihar* v *J.A.C. Saldhana*, 1980 Cri. L.J.98(SC).

that apart, separation of 'investigating police' form law police will also result in speedier investigation and overall quick disposal of investigation cases.[68]

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 percent during 1961 to 79.5 percent during 2002, the percentage of cases charge-sheeted has shown appreciable increase from 53.6 percent to 80.0 percent during the same period.

Out of total cases for investigation, the police could charge-sheet in only 59.5 percent 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 percent respectively. As many as 191 cases were with drawn by the government at the investigation stage.

(v) Interrogation of offenders and Suspects

Another important function that develops on police is to "frisk" and interrogate the criminals or suspects. Frisking implies searching the pockets and clothing's of the suspect as a measure of safety and security while enforcing law against him. It differs from a 'search' which a legal process is meant for collecting evidence against the offender.[69] The police powers 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 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.[70] It is significant to note that the suspect is under no obligation to speak or answer or answer questions, and anything done or said by the police officials to make him feel that he is under an

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[68] Deb R.: Police Investigation: A Review 39 *JILI* (1997) 266.
[69] Pande. D.C, *The limits of police Coercion* (In USA & India) 38.
[70] A confession made by the accuse before. Police is an inadmissible piece of evidence under the code, Section 25 of the Evidence Act.

obligation, will be transgression of the legal limits of the power to interrogate by the police.

The restrictions to inadmissibility of confession made to a police. Through a confession made to a police official is not admissible is 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.[71] 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 relevant piece of evidence.[72]

(vi) Search & Seizure

The police also conduct search and seizure.[73] 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[74] issued by a Magistrate, it must invariably contain the following details:-

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

(ii) A specification of a place or place 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 civil or a criminal action against the police or it may result into acquittal of the accused. The legal provisions relating to

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[71] *Sections* 27, Evidence Act 1872.
[72] *State of U.P.* v *Deoman Upadhyaya*, AIR 1960 SC 1125
[73] *Sections* 94 to 104 of Cr. PC, 1973.
[74] *Sections* 93 and 94 of the Code of Criminal Procedure, 1973.

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.

Thus, during the course of investigation, the police is empowered to make search, order production of documents, seize and 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.

(vii) Maintain Inquest Register

The Police are 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 of fence. The Magistrate would hold the inquiry himself or inundation to police- investigation[75] 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 and 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 have 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 presently.[76]

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[75] *Sections* 176, Cr. P.C.

[76] *Kadali Puronchandra Rao* v *Police Prosecutor, Andhra Pradesh*, AIR 1975 SC 1925.

(viii) 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 appraises 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 unfavorable 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 evidence being lost to the prosecution. Greater care should be exercised by the prosecutor while examining an accomplice[77] or an approver[78]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 minimize chances of offender's escape on the plea that a proper charge has not been framed.

(ix) Identification.

In additions 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

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[77] 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 interference. Though accomplice evidence is legally sufficient to sustain a conviction, such conviction is hardly acted upon unless corroborated by material circumstances.

[78] 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.

records.[79] 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.

(x) Control of Juvenile Delinquency

Since child care is a developmental function of the welfare state, the police have an important role to play in controlling juvenile delinquency. The police are 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 organization, juvenile outstand social welfare Homes etc., help and assist the police with their specialized services, it is only the police organization 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.[80]

(xi) Welfare Functions

As a part of welfare measure, the police are 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 dead with missing persons and owe a responsibility. To restore them to their families this is indeed a laudable shame of social welfare entrusted to police force.

From the foregoing discussion it is evident the efficiency of the police reflect 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 not 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 organization was started after the Indian Independence to cope up with the additional work of the police. These volunteers can be utilized to assist the regular police force in maintaining law and order in times of

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[79] Donald Taft: Criminology (4th Edn.) 325.

[80] Such Bureaus are already functioning into Metropolitan cities of Bombay, Calcutta Madras, Delhi etc.

emergency. They also help in protecting people from flood, fire, famine or diseases etc. Attempts have also been made to popularize this scheme in rural areas through intensive propaganda.

(xii) Rural Policing in India

There are more than 7.5 lakhs of villages in India. the launching of the integrated of the integrated rural development programming 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 organization for the effective prevention and control of the ever-increasing wave of crime in the rural areas. [81]

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 have to deal with traditional crimes but it has also to play the role of a welfare service organization. Most of the welfare legislations are meant for the benefit of the rural masses which are to be implemented in villagers. The malfunctioning of *Panchayats* and co-operatives and bungling in various developmental schemes have necessitated restructurings the rural police to combat these crimes.

The types of crime that commonly occur in Indian village may include dacoit or robbery with violence agricultural feuds. Generally over disputes about irrigation, cattle or possession of land, village vendettas over sex intrigues, murders, poisoning for the sake of inheritance, election rivalries misappropriation of Funds, cheating in relation of advances of Bank loans, traffic in contraband goods, untouchables 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 multifaceted developments.

The introduction of police welfare centers have provided sufficient mental and psychological background to boost up police morale and tone up their efficiency.

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[81] "TRANSACTIONS" Vol. 38(1983) published by National police academy: Hyderabad, P.175.

However, studies have revealed that despite best intentions, the 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 justice and exploitation. [82] Attempts made by the landless poor to organize themselves of 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 held 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.

(xiii) The National Police Commission

On the national front, with a view to revitalizing police force and suggest measures of reforms in the working of police, the Government of India appointed a National Police Commission on 15thj November, 1977 under the chairmanship of *Mr. Dharmavir*. It consisted of members, namely, *Messers N.K. Reddy, K.F. Rustumji, N.S. Saxsena, 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 reference 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 ad prevention of crime.
2. To review the working of the police and suggest concert measures for reform.
3. To suggest remedial measures for eliminating deals in investigation and prosecution of cases.
4. To examine the existing methods and sources of preparing crime statistics and suggest was and means for working out a uniform pattern of crime indices.
5. To review the system of policing in non-rural areas.

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[82] The Papers presented in the All India Police Science Congress held at Itanagar in Arunachal Pradesh in Dec., 1988.

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 expeditions disposal of their grievances.

8. To suggest adequate training and development programmer 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 instates 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 Commission on matters relating to police organization 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 have recommended setting up of an all India Police Institute on the pattern of similar bodies of professional 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 the 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.[83] 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 form Magistrate. This power should not be misused by the police.

In State of U.P. v Niyamat [84]the Supreme Court of India acknowledged the right of private defence of the accused against illegal police arrest ad observed "indiscriminate arrests by police not only sustain its anti-people image but also cause unnecessary drain on Exchequer for such detentions."

(xiv) 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 a way from the public every thing is forgotten.[85] The magnitude of police custodial torture in India is evidenced 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 person 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.

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[83] Cr. L.J. March 1990, Vol. 96, 28.
[84] AIR 1987 SC 152.
[85] Saini R.S. "Custodial Torture In Law and Practice with Reference to India,XXXVI (2) *JILI* (1994)

Expressing concern about the agony of arrested person in custodial investigation, the Supreme Court in *Sheela Barse* v. *State of Maharashtra*,[86] *inter alia* observed:

> *" Whenever a person is arrested by the police without warrant he must be immediately in formed of the grounds of his arrest and in case of very 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 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*,[87] emphasized the need to organize 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 orders to improve the police image any officer found guilty of conviction, 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 inflections 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 purity, activity, vigilance and discretion.[88]

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[86] 1983 Cr. L.J. 642 (SC).
[87] 1980 Cr. L.J. 801 (SC).
[88] Ghosh S.K. : Police Informant (1981) 27.

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:-

I. Professional and hardened criminals understand the language of violence only. They would not tell the truth unless sternly dealt with.

II. When these offenders have no respect and regard for the rights of innocent persons i.e. Victims why should the police respect their rights.

III. 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.

IV. 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

V. 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[89] of 1980 when suspects in police custody were blinded by puncturing their eye balls.

Whatever may be the justification for the institutionalization of custodial torture, the developing human rights jurisprudence demands that this dangerous practice should be eliminated 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.*[90] 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 in charge of police station records which they do not find difficult to manipulate. It is only in few cases that some direct evidence is available".*

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[89] AIR 1981 SC 928. *See also, Mathura Bai's case i.e. Tukaram* v *State of Maharashtra*, AIR 1979 SC 185. Where in a girl was gang-raped in police custody.

[90] AIR 1990 SC 709.

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

In *Yusuf Ali* v *State of Maharashtra*, [91] the Supreme Court reiterated that if the accused is beaten or starved or tortured in any way during the 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 Sutpati* v *P.L. Dhani* [92] laid down certain guidelines to provide protections to 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.

In *Niranjan Singh* v *Prabhakar Rajaram.*,[93] while dealing with the cases of custodial torture in police station the Supreme Court observed "the police instead of being protector of law, have become the engineer of terror and panic putting people in fear". Again, in *Kishore Singh* v. *State of Rajasthan*,[94] the Supreme Court expressed its concern for gruesome act of police tortured 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*.[95] 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 [96] 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,

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[91] AIR 1968 SC 150.
[92] AIR 1978 SC 1075.
[93] AIR 1980 SC 785.
[94] AIR 1981 SC 625.
[95] AIR 1993 SC 2302.
[96] The Hindustan Times (Delhi) dated 6 Nov., 1993.

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 blatant violation of fundamental right to life used guaranteed by *Article* 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*[97] may be cited to illustrate the point. In this case the Supreme Court treated the letter of one *Nilabati Behara*. As a writ petition under *Article* 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 custody death. The Government also raised the plea of sovereign immunity. The Supreme Court rejected both the contentions of the respondents and held that defense 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*, [98] a writ petition was filed by the Women Civil Rights Organization, called 'SAHELI" under Article 32 one-half of the deceased's mother for recovery of compensation consequent to the death of her nine year old child caused in custody of and Prabhat Police Station in Delhi. The Court awarded compensation of 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 Article 21 in the light of personal liberty as held by the Supreme Court in *Prem Shankar Shukla* v *Delhi Administration*.[99] The Court *inter alia*, observed:

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

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[97] AIR 1993 SC 1960; other cases are *Ravi Kant* v *State*, (1991) 2 SCC 373; *Bhim Sigh* v *State of J&K*, AIR (1985) 4 SC 677; *Jwala Devi* v *Bhoop Sigh*, AIR 1989 SC 1441.

[98] (1990) 1 SCC 422.

[99] AIR 1980 SC 1535.

It must be stated that custodial torture is an offence under the Indian Penal Code,[100] the Code of Criminal Procedure and the Code of conduct of the police. Besides, it is also violative of the right guaranteed under Article 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 but, 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 out cry against the law enforcing agencies. The annual reports of the National Human Rights Commission indicate that the protected practice of custodial torture, inspite of being controlled, is showing an alarming increase every year. Although India has signed the international Convention Against Torture and Other, Cruel Inhuman or Degrading Punishment, (1984) on October 4, 1997, but despite this, the wide spread practice of torture still continues unabated.

(C) HUMAN RIGHTS AND THE CRIMINAL JUSTICE SYSTEM

The concept of Human Rights is an ancient, universal and inherent phenomenon and is as old as humanity in the Indian society. There are certain rights which are fundamental to human existence. These are neither privileges nor gifts given at the whim of a Rural or a government. They cannot be taken or denied or forfeited by any arbitrary powers. They occupy prominent status in numerous international covenants in vogue aiming at the promotion and protection of a wide variety of human rights in the administration of Criminal Justice. The definition of the term 'human right', as enumerated in the Protection of Human Rights Act, 1993 says, 'the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International, covenants and enforceable by courts in India. Some of them are constitutionally recognised in India.

(i) Genesis of Human Rights

The first, documentary use of the expression 'Human Rights' could be seen in the Charter of the United Nations adopted on 25th June, 1945. It perceives

[100] *Sections*.330, 331 and 339 of the IPC; Sec. 176 (i) of the Cr PC & also The Police Act. 1861.

'Fundamental Human Rights' as one of its objectives. Article 1 of the U.N. charter states that the United Nations should seek to achieve international cooperation in promoting and encouraging respect for Human Rights and Fundamental freedoms for all without any discrimination premised on race, sex, language or religion. However the charter does not define the contents of Human Rights. This leaves it to the Organisation itself.[101]

(ii) Criminal Justice System in India

In India, the administration of Criminal Justice System follows the Anglo-Saxon adversarial pattern. It has four vital units, namely, the police, prosecution, judiciary and correctional institutions. These components are supposed to work in a harmonious and cohesive manner with close co-ordination and cooperation in order to produce desired results more effectively, fairly and quickly. Moreover, the success or failure of the administration of criminal justice depends upon the efficacy of these allied units.

However, it is a common perception that administration of Criminal Justice in our country is deteriorating day by day and laymen are losing faith in the entire system due to obvious reasons. It is therefore; repeatedly felt that there is an urgent need to review the entire Criminal Justice System, especially investigation of crime by the police and the prosecuting machinery due to which conviction rates are declining at a very rapid pace. This had also been attributed to the lack of continuous and effective co-ordination amongst the law enforcement agencies, i.e. the police, magistracy, judiciary and correctional administration in general, and the police and prosecuting agencies in particular.

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[101] Some of the Prominent international instruments Having bearing on the administration of criminal justice are : the universal Declaration of Human Rights (1948) : the International Covenant on Economic, social and cultural rights (1966); the international covenant on civil and political rights (1966); the two optional protocols to the International covenant on civil and political rights (1966); the code of conduct for law enforcement officers (1979); the Basic Principles on the use of Force and Fire arms by Law Enforcement officers (1990); the body of principles for the Protection of all persons under any Forms of Detention or Imprisonment (1988); the standard Minimum Rules for Treatment of Prisoners (1955); the Basic Principles for the Treatment of Prisoners (1990); the Declaration of Basic Principles of Justice for victims of Crime and Abuse of Power (1985); the Safeguards, Guarantying Protection of Rights of those facing the Death Penalty (1984); the standard Minimum Rules for Non-custodial Measures (1990); the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the UN standard Rules for the Administration of Juvenile Justice (Beijing Rules); the Declaration on the Protection of all persons from Forced Disappearance (1992), and the Principles of Extra-legal Arbitrary and the summary Executions (1989).

(iii) Police and Prosecution

Police, being a front-line segment of the Criminal Justice System, have a very important role to play in providing justice to needy persons. They are the ones who arrest culprits and assist courts in discharging their judicial functions effectively. The police have to facilitate the courts for conviction of the real culprits in order to maintain and enhance the faith of the people in the administration of criminal justice.

It has been observed that the Code of Criminal Procedure, overhauled in 1973, has widened the gap between two vital units namely the police and the prosecution at the operational as well as organizational level this has led to a state of frustration and ambiguity it has also been considered a sorry state of affairs in the sense that the police and the prosecution are two side of the same coin as the police functioning has a direct bearing on the success or failure in the prosecution of Criminal cases in Courts . The police have a very vital role in marshalling facts, while the prosecution has a very crucial role in effective presentation of the facts before the courts during trial proceedings.

The National Police Commission, in its fourth report, has also observed that the ultimate success of police investigations depends upon the efficiency of the prosecuting agencies in presenting the evidence in courts in a convincing and effective manner. It calls for a good measure of co-operative and interaction between the investigating officers and prosecutors.

It has been observed since long that in most of the states, police are facing serious problems of proper co-ordination and cooperation with the prosecution due to their casual approach in dealing with cases in the courts, want of adequate follow-up action of cases on their part and also due to the lack of proper legal advice available to the investigating officers on complicated legal matters which come up during investigation. The prosecuting officers are not properly scrutinizing charge sheeted cases before putting them in courts for trial. Consequently, the defence in such cases takes advantage of negligence on the part of the prosecuting agencies in securing acquittals despite the facts on record indicating *prima facie* guilt. This is evident from the official data which reveals that the conviction rate has been constantly declining.

The Law Commission of India in its 14th Report[102] has also pointed out that defective investigation and the lack of legal assistance at the investigation stages often result in acquittal. The existing arrangements under which legal guidance is sought at the time of filing the charge-sheets are not satisfactory. In this connection, the National Police Commission is also of the view that the prosecuting staff should be made responsible not only for conducting prosecution in courts, but also for giving legal advice to the police in any matter arising from the investigation and the trial. The role of the prosecution staff should be that of a legal advisor. The Police Commission therefore, recommended that a full - time functionary of the rank of Assistant Public Prosecutor, free from prosecution work in courts, be assigned the role of legal advisor to the Superintendent of Police (SP) in each district. He should be responsible for advising the SP in specific cases and other general matter relating to police work in the district. The suggested arrangements, however, can work effectively only if the investigating agency and the prosecution machinery are brought together under a single chain of command.

(iv) Non-Registration of Cases

Non-registration of cases by the police constitutes one of the most serious forms of violation of human rights. According to the National Police Commission (1976) the most important factor responsible for non-registration of complaints is the anxiety of the political of complaints. Executive in the state Governments to keep the recorded crime figures law so that they can claim that crime has been well controlled and is going down because of the efficient and effective police administration.

Again, it is noticed that subordinate officers avoid registration of cases on the place that the offence in question occurred in the Jurisdiction of another police station. As a result, a complaint is made to run from pillar to post to locate a particular police station and get the case registered. Under Section 154 of the Cr PC the officer -in-charge of a police station has to register cases and draw up a First Information Report (FIR) as soon as a complaint of a cognizable offence is laid at the police station. There is no scope for non-registration of cases under the pretext of jurisdictional controversy.

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[102] Law Commission of India: Fourteenth Report: Reform of Judicial Administration (Government of India, New Delhi, 1958).

(v) Arbitrary Arrest

The Supreme Court in *Joginder Kumar* v *State of U.P.*[103] The power of the police to arrest is also often very grossly abused the National Police Commission, in its report, has adversely commented upon abuse of this power by the police and perceived it as one of the prominent sources of corruption in the police. The report pointed out that nearly 60 percent of the arrests were unnecessary and unjustified. The Commission estimated that 43.25 percent expenditure in jails was over such prisoners, whose detention, in ultimate analysis, was unwarranted and uncalled for has put clear restrictions on the powers of police to make arbitrary arrests. The Court has laid down that the police need to contact one of the friends or relatives of an arrestee or one likely to take interest in his welfare and also to inform the arrested person of his right. An entry to this effect is directed required to be made in the station diary. Subsequently, the Apex Court in *D.K. Basu* v *State of W.B.*[104] further streamlined the procedure relating to arrests.

These protections, according to the court of law, flow from Articles 21 and 22(1) of the Constitution and are to be enforced strictly.

(vi) Custodial Crimes

It is noticed that persons belonging to backward and disadvantaged groups are the principal victims of torture and violence. The National Police Commission in 1977 recommended that judicial inquiries in all cases of custodial deaths be made mandatory. Such a judicial inquiry, according to it, should be conducted by an Additional Sessions Judge to be nominated for the purpose and designated as the District Inquiry Authority. He should be assisted by an assessor who can be an Additional Superintendent of Police or Superintendent of Police nominated for the purpose in each district or a group of districts. This is, undoubtedly, a very pragmatic recommendation of the National Police Commission. But, unfortunately, it has been implemented so far. High-ranking police officers should impress on their subordinates that whatsoever may be the situational compulsions and impediments, there is no justification for them to resort to custodial violence. And that a case of death in police

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[103] (1994) 4 SCC 260: 1994 SCC (Cri) 1172.

[104] (1998) 6 SCC 380. *See also, Ashok K. Johari* v *State of U.P.*, (1997) 6 SCC 642.

custody, obviously, causes irreparable damage to the image of the police force and severely erodes its credibility.

The Supreme Court in June 1985, in its pronouncement dealing with the custodial death of one *Brij Lal* a farmer in UP, observed:

> *"We would like to impress upon the government the need to amend the law appropriately so that policemen who commit atrocities on persons in their custody are not allowed to escape due to paucity or absence of evidence. The police officers alone and none others can give evidence as regards the circumstances in which a person in their custody ties of brotherhood, they often prefer to remain silent, and when they choose to speak they put their own glass upon facts and upon the truth. The law on the burden of proof is such that it should be re-examined'.*

The Law Commission of India has recommended that a provision (Section 115-B) be inserted in the Indian Evidence Act, 1872, as a rebut table presumption that injuries sustained by a person in police custody are presumed to have been caused by police officers.[105] This would shift the burden of proof on the Police Officer. It is felt that this kind of an amendment will have a restraining effect on the officers indulging in custodial violence and torture. In this connection, however, it is also to be stressed that there are other blatant anomalies that require immediate attention. The outdated Indian Police Act of 1861, which governs the structure and working of the Indian Police Force, should be immediately scrapped. An Act passed by the colonial regime with the primary aim of suppressing the people, unfortunately, continues to operate in independent India. The National Police Commission in its concluding report not only strongly recommended that, The Police Act of 1861, be replaced by a new one but also it prepared a draft of the proposed Act with a view to making the police 'service-oriented, free from extraneous influences and yet accountable to the law and the people of India.'

(vii) Prisons

The working of prisons in India has been more complex in the fast-changing social order of our democratic polity where a series of socio-economic transformations, leading to social maladjustment, have taken place, awareness has considerably increased among the people about their fundamental rights along with

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[105] Law Commission of India: One Hundred and thirteenth Report: Injuries in Police Custody-Suggested Section 14-B, Evidence Act 9 Government of India, New Delhi, 1985.

their enormous amount of expectations from the law enforcement machinery including the prison administration. Consequently new aspirations and value system have emerged is society.

It has been observed that the prison administration in India is uncounted with manifolds problems in the changing scenario and has been considered as a most neglected and disgruntled lot on the part of the State Governments despite the fact that our jails have enormous potential to produce excellent goods and respond positively to the correctional philosophy. Jails in India will undoubtedly be more self-reliant in future if prisoners and prison staff are relived from managing the unpredictable lot of under trials. Increasing numbers of drug traffickers and sexual offenders, along with under trials, in our over crowded prisons, are also posing a serious threat to prison management, prison security and prison discipline such a situation, obviously, makes the reformation and reconciliation of prisoners a difficult and unattainable task.

Prison personnel, being the basic functional unit of the prison administration, are made directly responsible for any sort of deteriorating state of affairs in prison management at any point of time. The un-conducive service conditions of prison personnel, leading to prostration and job stress, have also affected their morale adversely and in turn also affected their work performance *vis-à-vis* professionalism. But Human Rights Organisations engaged in the evaluation of prison administration and rights of prisoners, are actively engaged in the blemish appraisal of prison management without realising prison personnel's operational and professional impediments. They are suffering from a number of quantitative as well as qualitative limitations due to which they are losing their credibility in achieving their organizational goals. They are not adequate equipped with advanced professional skills to meet new challenges in the changing scenario. The career development and the establishment of a coder of prison officers have been a burning issue since long and a number of commissions, including the All-India Jail Reform Committee (1980-83), have made various significant recommendations to make the prison administrative structure and staffing pattern uniform throughout the country.

The maintenance of security in our prisons and advancement of vocational training in prisons, which make prison inmates 'self reliant', have been drawing the attention of professionals, administrators and policy-makers as it operates as one of the integral arts of our prison administration.

Our prison administration, like other agencies of our criminal justice system, needs to be advanced in consonance with the ongoing developmental changes on economic fronts specially when our jails are getting a very limited, rather negligible, financial assistance from State Governments. 'Prison' being a State subject, the Central Government has a lot of administrative, legislative and financial limitations to contribute effectively to prison reforms in India especially when state government exhibits an indifferent attitude in this direction. It is now high time as recommended by the All-India Jail Reforms Committee (1980-83) to put 'prisons' in the Concurrent list of the Seventh Schedule of the Constitution to boost prison reforms in India and to relieve them from financial crunches Prison training, which has also been considered a highly-neglected aspect of our modern prison administration, also needs to be argumented on priority basis in order to attain the desired correctional goals. In other words, it can be safely said that our prison administration is suffering from a number of quantitative as well as qualitative limitations due to which it is losing its credibility in achieving its organizational goal, especially when our prisons are under the close scouting of human rights activists, who are engaged in criticizing our prison staff destructively not only before the judiciary but also in public without realizing the fact that these officers are not only responsible for keeping prisoners in jail with dignity but also for maintaining discipline and security in jails and they are not solely responsible for the deteriorating state of affairs in prisons. If we blame only them for such deterioration, it would leave numerous moot questions before us that require immediate attention of everyone including those who claim to be the torch bearers of human rights.

It is not a secret that our existing prisons are overcrowded and the prison population is dominated by a large chunk of under trials. And the prominent factors associated with the overcrowding are: an unpredictable number of under trials; sudden influx of prisoners involved in petty offences; shortage of authorized accommodations and other amenities in prisons; lack of perspective prison-planning; imbalance in the functional aspect of the bail system; lack of special action in dealing with offenders involved in petty offences and the shortcomings of our premature release mechanisms (like probation and parole).

(viii) Delay in Disposal of Cases

Article 21 of the Constitution of India, as interpreted by the higher judiciary, incorporates in its ambit the right to speedy trail. The Supreme Court of India has repeatedly emphasized that the right to speedy trial, even though it is not expressly indicated as a Fundamental Right in the Constitution, is implicit in the spectrum of Article 21. The Apex Court in *Hussainara Khatoon* v *Home Secy, State of Bihar*[106] held that procedure which keeps such a large number's of people behind bars without trial for so long can not possibly be regarded as reasonable just or fair as to be in conformity with the requirement of Article 21. In *Raj Deo Sharma* v *State of Bihar*,[107] it held that in cases where the accused has been in jail for a period of not less, than half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such condition as it deems fit.

The UN Minimum Standard Rules for Treatment of Prisoners (1955) also calls for proper accommodation and separation of under trials and convicts. The All-India Jail Manual Committee (1957-59) also suggested for separate institutions for under trial prisoners. None of these standard Minimum Rules, obviously, can be followed if there is over crowding in prisons.

In view of this contention, there is an immediate need to devise an effective mechanism to accelerate the disposal of cases in courts as one of the Constitutional obligations in the spirit of Article 21 of the Constitution.

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[106] (1980) 1 SCC 81.

[107] (1998) 7 SC 507; 1998 SCC (Cri) 1692 But SCC P. *Ramchandra Rao* v *State of Karnataka* (2002) 4 SCC 578: 2002 Cri LJ 2547.