Chapter 7

WOMEN AND THE CRIMINAL JUSTICE SYSTEM
– PONDICHERRY EXPERIENCE

7.1 FRENCH LEGAL SYSTEM IN PONDICHERRY

The rapid progress made in science and technology has made it possible to interact with any corner of the world. Vast developments made in science and technology has made communication easy and we come to know about the different political, economic and social setup of various countries with ease. But in spite of the development and progress there is disharmony among Nations because of the difference in political, economic and social set-up. The focus of many world organizations is to bring about a harmony between Nations.

Law has played a major role and it continues to play a major role in bringing harmony among Nations. There are various legal systems existing in the world. Jurisprudential thinking is to make a comparative study of the legal systems and to try to bring harmony among the nations. Pondicherry, the window of French culture had the experience of French law. France, today is a powerful Nation in the world politics and economics.

France is the representative of the Civil law system. England, which has the common law system, has been in clash with the civil law system. A
harmony between the two systems has to be worked out.¹ The legal fabric of Pondicherry has the influence of the Continental Law and Common Law. Number of issues relating to marriage, adoption and nationality of spouses arose in respect of the French nationals in Pondicherry. How the courts in Pondicherry resolved these problems, is an interesting study.

Professors Dragnich and Rasmussen who studied the judicial systems in various countries of Europe and North America had appreciation of the French Courts. To quote from their book, “French Courts are free from technicalities. They are trusted to do substantial justice and the law is less likely to be tortured out of its obvious meaning than is true in the United States or Britain. Justice in France is also more accessible and cheaper. Just as France considers crime an offence against society and therefore engages actively in the prosecution of the accused it also provides legal aid to those who cannot afford it”.² The appreciation of the French courts by Professors Dragnich and Rasmussen bears truth because their study is based on thorough comparative study.

¹N.R.Madhava Menon, Forward in Dr.David Annoussamy, French Legal System, Institute of Comparative Law and Jurisprudence, National Law School of Indian University, Bangalore, 1995, p.xviii.

7.1.1 Administration of Criminal Justice in Pondicherry during the French Regime

Pondicherry is described as "the living monument of French culture in India". It was founded by Francois Martin in 1674. When war broke between various European powers in India and in Europe, Pondicherry changed hands often in the 16th and the 17th centuries. The Dutch and the English gained control but neither the Dutch nor the English changed the French law that was prevalent in the Establishment by their own laws. After a series of changes Pondicherry was restored to the French in 1816 by the Treaty of Paris 1814.

French Criminal law was extended to Pondicherry from the time Pondicherry came under the French sovereignty. At the same time, the Indian law regarding administration of Criminal Justice was also followed because it was found to be more effective.

Crimes are classified into three categories. They are:

- Technical violations
- Misdemeanors
- Felony.

The Sovereign Council dealt with all offences committed by the Europeans. Regarding Indians, only grave offences committed by them

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3 Home Tourism Department, Government of Pondicherry, Pondicherry.


5 Dr. David Anoussamy, French Legal System, op.cit., p.142.
were handled by the Sovereign Council. Other offences committed by the Indians were taken before the Choultry court. The procedure that the Sovereign Council followed was the French Criminal procedure and the procedure in the Choultry court was summary procedure. The sentences imposed by the French on Indians included mutilation of the ears and enslavement in the Iles de Bourlion. Whipping was also added to all sentences.

Subordinate councils were set up in other Establishments of Chandranagore, Mahe, Yanam, and Karaikal to render similar function of the Sovereign Council. Procureur de Roi or Public Prosecutor were attached to the Subordinate Council and they performed similar function of the Procureur General or Public Prosecutor attached to Sovereign Council. They tried criminal and civil cases in the first instance. Sovereign Council had the power to hear appeal from Subordinate Council.

By an edict of 30 December 1772 the Subordinate Council was abolished. Their powers were conferred on the commandants whose decisions were subject to appeal to the Sovereign Council in Pondicherry. In 1776 the administration of Justice was reorganized on a broader basis. The Sovereign Council was abolished and in its place Council Superior (Higher Council) was instituted. A bench of seven Judges was required to adjudicate criminal matters. It had the Jurisdiction to deal in the first original side instance and last instance, all cases between the King’s
subjects in Pondicherry and other French Indian Establishments. The
Judgements of the Counsel Superior were short. In one interesting case of
adultery, it found the chief weaver of the town guilty of the offence. The
weaver was ordered to pay a fine of Rs.1000 to the King and to pay double
the amount to the husband of the woman with whom he had committed
adultery so that he can contract a new marriage. The woman's head was
shaved and she was mounted on a donkey and chased out of the town. If
the weaver failed to perform the direction given by the court his property
both real and personal shall be seized and sold through legal process.6

The Conseil Supérieur was to follow, in its decisions the customs
of Paris, the Ordinance of 1670 and laws and ordinances promulgated in the
colony. By an arrêté of 18 November 1769, appeals could be taken to the
Conseil Supérieur from the decisions of the Choultry Court for suits
whose money value exceeded to 50 pagodas. The arrêté of 30 December
1768 reorganized the Choultry Court. It was composed of a councillor of
the Sovereign Council as President and two sub dealers as assessors. In
criminal cases French Criminal Law was applied.

In breaches of arrêté the Lieutenant General of Police took
cognizance of offences. The Police regulations empowered them to
sentence Indians to the punishment of whipping and mutilation of ears.
When the punishment was severe, it had to be placed before the Council for

6 Justice Dr. David Annoussamy, French Legal System, op.cit., p.142.
its consideration. The Judge of the Choultry Court and the Lieutenant General of Police participated in the court proceedings of the Superior Council if they had no first hand knowledge of the case from the court of first instance.

By the regulation of 28 of January 1778 Jury system was introduced in the Choultry Court. Wherever the issues regarding the laws and customs of the Indian was involved opinion was sought from the jury consisting of eight prominent Indians. This saw the origin of Consultative Committee in the Indian Jurisprudence (Comité Consultatif de Jurisprudence Indienne), which was set up in 1828.

After the revolution in France many changes were made in India through ordinances and regulations, which, to be enforceable needed the approval of the Governor. The administration of Pondicherry came under the British rule on 21 August, 1793. The Counsel Superior under went some changes in the process. In spite of the British rule, French law continued to be administered by the British for 23 years from 1793 to 1816.\(^7\)

To administer Indian Law, a Committee was constituted in 1828. Members of the Committee were drawn from different caste groups. Their services were honorary and they could carry a golden cane with the inscription of Comité Consultatif de Jurisprudence Indienne. The proceedings of the Committee used to be held in camera.

In 1842 by a royal ordinance of 7 February the whole system of judicial administration was reorganised. Article 3 of the ordinance has set right the misconception made by common law lawyers. It read: "Hearing shall be open in civil and criminal matters, unless such publicity is prejudicial to law and order or to morals; in case the hearing is not public, the court shall state so by delivering a prior Judgement."8 "In all cases judgement shall be delivered in open hearing save those passed on incidents that have occurred during sitting of the Court in Camera".9

Under the Royal Ordinance of 7 February 1842 and the De’cret of 22 August 1928, the courts that were set up in French Establishments consisted of the Superior Tribunal of Appeal, Tribunal of First Instance, and Courts of Justice of the Peace. The Procureur de la République of the Superior Tribunal of Appeal performed the function of the Head of the Judicial Department.

The Superior Tribunal of Appeal sat as sessions Court to try persons charged of serious offences. It consisted of three judges and four assessors. A majority of the judges and assessors decided the guilt of the accused. After taking into consideration any extenuating circumstances the sentence was pronounced by the President. The punishment that could be imposed by

8Ibid., p.17.
9Ibid.
the sessions court was capital punishment, rigorous imprisonment for life, deportation and imprisonment in another colony.

The tribunal when it exercised criminal jurisdiction was called correctional tribunal. The penalties prescribed were imprisonment ranging from six days to five years and a fine of more than fifteen francs. The justices of the peace could sit as correctional tribunal and try misdemeanors. They had the power to impose sentence of simple imprisonment not exceeding five years.

On 21st October 1954, prior to the defacto cession of the French Establishment to India on November 1954, an agreement was signed between the Government of France and India. It was stated in the agreement that legal proceedings instituted prior to 1st November 1954 shall be judged in conformity with the basic legislation and procedure in force at that time in the Establishment. A publication of the Government of Pondicherry asserted that the Articles 14, 15 and 16 of the Treaty of Cession provided comprehensive safeguards against hasty change over from one system of law and justice to another.10

The statement made by Prime Minister Nehru when the Proce’s-Verbal was signed by the Government of France and India on 16 March

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1963, reinforced the earlier assurance that transfer of the legal proceedings will not be hasty. The Proce’s-Verbal reads:

"The Indian delegation stated that the Government of India did not contemplate any sudden reform of the judicial organization in Pondicherry. Changes which would be necessary to bring the system in Pondicherry in harmony with that prevailing in the rest of India will be introduced gradually, allowing a reasonable period of transition."\textsuperscript{11}

Within a few months of signing the \textit{Procès-Verbal} the Union of India extended to Pondicherry, a number of Central Acts. The enactments came into force in Pondicherry on 1 October 1963. Among the various enactments extended were, The Indian Penal Code, The Code of Criminal Procedure and the Indian Evidence Act.

After the introduction of the Indian Criminal law and procedural laws, the Superior Tribunal of Appeal in Pondicherry functioned as a Court of Sessions of the Indian Pattern in matters relating to Crimes. The Superior Tribunal of Appeal consisted of a President, two judges and one Procureur de la République. The President was appointed as Principal Sessions Judge, the two judges were made Additional Sessions Judges and the Procureur de la Republic was appointed Public Prosecutor.

The Tribunal of First Instance at Pondicherry which consisted of a President, and Assistant Judge, an Investigating Judge and a Procureur de la Republic in Criminal matters turned into an Assistant Sessions Judge’s

\textsuperscript{11}Minattur Joseph, \textit{Justice in Pondicherry}, \textit{op.cit.}, p.122.
Court, with the President as Assistant Sessions Judge, Investigating Judge as District Magistrate, the Assistant Judge acting as First Class Magistrate and the Procureur de la Republic as the Public Prosecutor.

The functions of Justice of the Peace were carried out by a Judge of the Tribunal of First Instance. The proceedings of this court were summary proceedings. Thus inroads into the French Judicial organization started creeping in.\textsuperscript{12}

By process of extension of laws and also by the new laws enacted by the Indian Parliament and the Pondicherry Legislature, the basic legal fabric of Pondicherry has been completely modified\textsuperscript{13} With Indianisation of the laws, the judicial set up in Pondicherry has also been modified.

Keeping in view, the existence of both the systems of Criminal Jurisprudence in Pondicherry, this study is to focus attention upon identifying the areas where there is scope of bringing about changes in existing legislation. The ancillary objective of this study is to highlight the finer aspects of French Criminal Procedure wherever possible.

\textbf{7.1.2 Highlights of the French Criminal Procedure Code}

Article 11 of the French Criminal Procedure Code lays down the principle that the proceedings in the course of inquiry and investigation

\textsuperscript{12}Minattur Joseph, \textit{Justice in Pondicherry}, \textit{op.cit.} p.123.

\textsuperscript{13}Justice Dr.David Annousamy, \textit{French Legal System}, \textit{op.cit.}, p.180.
shall be secret unless otherwise provided by law and without prejudice to the rights of the defence.

As a consequence of the above principle, the French Criminal Procedure has adopted the inquisitorial system at the state of enquiry by the Police and investigation by the Judicial Officers. The authorities entrusted with the prosecution and investigation are (1) the judicial police (2) the official counsel minister public (3) the examining magistrate.

The Judicial Police are specially empowered to make enquiries in criminal matters under the supervision of prosecuting attorney (procureur de la Republic) who is a judicial officer.

The official counsels under the name Ministere Public a special institution in France whose main duty is to conduct prosecution in criminal matters. They have a duty to see that the law is applied in a proper manner.

The Prosecuting attorney receives complaints and decides what to do with them. He must undertake or cause to be undertaken all measures and steps necessary to discover breaches of penal law. He thus exercises public action, which involves the filing of the case before the competent court, and conducts the prosecution against the incriminated persons. To that effect, he can issue directions to the officers and agents of the judicial police within the jurisdiction of his court. He has the right to require police assistance in the performance of his duties. He has power at the preliminary stage of the
inquiry, to control the proceedings in his capacity of Judicial Police Officer. He keeps himself informed of the investigation.

The Examining Magistrate has to pass him information regarding the cases sent to him. He is present when the local inspection is made and house search takes place. Also when the witnesses are examined, the public prosecutor is present.\textsuperscript{14} The notable feature of this system is, the control, the Public Prosecutor exercises over the investigation.

Under the French law, apart from the Police inquiry in criminal matter, a magistrate makes an investigation in important cases of misdemeanor and in all cases of felony. The examining Magistrate can investigate only after having received the case by requisition of the prosecuting attorney. He has the right to require police assistance in the performance of his duties.

The trial in the French Criminal Court is public except when, for security reasons or, for reasons of law and order in the interest of public morality, the court orders that it should be held in camera. In rape cases the trial in camera is compulsory if the victim of the offence asks for such a procedure. Even when the trial is held in camera, the final judgement should be pronounced in the open court. Once the trial has started it cannot be adjourned or interrupted till the judgement is passed.

7.1.3 Offences Relating to Women under the French Penal Code

The French Penal Code distinguishes the various sexual acts that the law intends to crack down as (a) rape (b) other aggressions (c) sexual harassment (d) sexual showing off and (e) public soliciting.

The code defines rape as "any act of sexual penetration whatever kind it is, committed on the person of the other". Henceforth rape is not considered as a crime, which only a woman can be a victim and a man only guilty. Use of violence, constraint, threat or surprise establishes that free consent has not been obtained from the partner. In the case of marital rape the court of causation has set out the principle, that the presumption of consent of spouses to sexual acts accomplished in the intimacy of one’s married life is worth only until contrary proof is brought out.\(^\text{15}\)

The punishment for rape is fifteen years imprisonment. But under aggravating circumstances if the offence is committed the prison sentence is increased to twenty years. The aggravating circumstances are:

(a) When it leads to a mutilation or a permanent disability of the victim.
(b) When it is committed on a minor of fifteen years old.
(c) When it is committed on a person whose particular vulnerability, due to disease, to disability, to physical deficiency or to a state of pregnancy is known to the accused.

(d) When it is committed by a legitimate natural or adoptive ascendant or by any other person who has authority over the child.

(e) When it is committed by a person who abuses of the authority that his function confers on him for example the director of reception center where the victim was employed.

Rape is punished for thirty years imprisonment when it has led to the death of the victim and for perpetual imprisonment when it is accompanied or followed by torture or acts of barbarism.\(^{16}\)

Sexual harassment has been added as a new crime under Articles 222-23 of the French Penal Code. The ingredients of the offence states that the culprit should be someone who is abusing his power or authority that his function has conferred on him, usually the superior, in the hierarchy of the victim. Again like other aggression, the culprit uses orders, threats or constraints. The punishment for sexual harassment is one-year imprisonment and fine of 100,000 Francs.\(^{17}\)

In French law, prostitution, even if remunerated is not an offence. But the legislation imposes sanctions very severely on all acts that promotes, facilitates the exercise of prostitution. Thus procuring by help or assistance, the supply of things that facilitate or put locals at disposal are punishable. What can be inferred is public soliciting is made a crime. The

\(^{16}\)Ibid., p.46.

\(^{17}\)Ibid., p.47.
act of soliciting constitutes the essential element of the offence. Soliciting is carried on if it is done in a place opened to public. Advertisement made in press and also if soliciting in a private place with easy access to public is made an offence.\textsuperscript{18}

Public soliciting is punished with a fine of 10000 Francs. If the offence occurs subsequently, is to have the fine enhanced. Some conditions or complementary punishments are also imposed like banning the holding of any weapon for a period of three years, confiscation of any weapon, confiscation of things that has served or was used to commit the offence like motor vehicle, banning for a duration of three years maximum to issue cheque etc.\textsuperscript{19}

The strategies adopted in the above method of sanction is based on the doctrine of social defense or "Defence social Nouvelle". According to the Defence Social Nouvelle the purpose of the sanction is to rehabilitate the criminal and protect the society. The rehabilitation, which is to be adopted, should create on the offenders a sense of responsibility. Marc Ancel was greatly influenced by the theory and he advocated this theory.\textsuperscript{20} He opposed the classic system of criminal law that considers crime and

\textsuperscript{18} Ibid., p.50.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ancel, "La Defence sociale Nouvelle: Un mouvement de politique Criminelle humaniste" (2\textsuperscript{nd} ed. 1966); Ancel, Social Defense", 78 The Law Quarterly Review, 497 (962).
punishment to the legal problems and that bases punishment on the offender's guilt.

7.2 VIEWS ELICITED BY JUDGES WHO HAD ADMINISTERED JUSTICE DURING FRENCH PERIOD IN PONDICHERY

As the present chapter aims at to examine the working of the Criminal Justice System in Pondicherry a questionnaire was prepared to examine whether there is scope to bring about changes in the existing legislation. Since Pondicherry had the unique experience of administering French Criminal Justice System for nearly one and half centuries, it is proposed to extend the study to include a chapter highlighting the special features of the French System of Criminal Administration of Justice. The limited study is mostly empirical and with an objective of comparison and with a view to ascertain the opinion of the enlightened public of Pondicherry.

For the purpose of the study the researcher interviewed, Justice Dr.David Annoussamy, retired judge of High Court of Madras, who was a judge at Pondicherry administering French law and who has made extensive study of the French legal system.

According to Dr.David Annoussamy the problem of dowry as it exists today did not pose a serious crime fifty years ago because the daughter-in-law had some member of the relatives in the joint family of the matrimonial home whom she took into confidence. There was no over
prizing of money and the tendency to cheat was less. So the question of returning to the parental house due to ill treatment did not arise. No special step was taken by the French Government to deal with the problem.

Dowry related crime was not a serious problem of such dimension as it is today. Basically the psychology of the society is the same. The family in those days was joint family and the habitat was a spacious house. Today they live in small flat with limited space for movement. The various members meet too frequently, as a result of which some quarrel arises. In those days living in the same house the members never met one another for days together, so there was less scope for clash among the members and thus dowry related offences was not very rampant.

The distance between the matrimonial home and the parental home is another factor, which has contributed to the offence of dowry. Marriages were performed by selecting boys in the nearby localities. If any problem relating to dowry arose, it was resolved by the elders in the family.

The increase in the importance of money and decline in values of the society is the third factor responsible for dowry crimes. Today consumerism has created greed in acquiring more and more wealth. There is no end to the contentment to purchase articles and things.

Basically the same phenomena existed between the mother-in-law and daughter-in-law in their relationship. This relationship has not changed today. The mother-in-law requires more patience, thinking and generosity.
She is unable to see her son with another woman though it is her daughter in law only.

Sex is a strong impulse. Women had more control over it than men. Marriage was one institution, which tried to give an outlet to the feelings. When the spouses had dissatisfaction in marriage they had to seek satisfaction outside marriage. Society has to provide other ways to give an outlet to the impulse of sex and this is one of the causes for prostitution. The law cannot eradicate or prevent it. Prostitution has to be regulated. How to regulate it, is the work of the law. Police will not easily bring the person involved in prostitution to book. In the course of the interview Justice Dr. David Annousamy in regard to prostitution observed:\(^{21}\) "There are limits to law. Law has to respect the reality. If law follows the reality it will get applied. If it wants to shape reality, its access is dim."

These are some of the observations made by the Hon’ble Judge on offences relating dowry, rape and prostitution. One interesting case which came before his Hon’ble Court on the crime of rape during the French rule in Pondicherry, was narrated by the Hon’ble Judge. The high light of the case was the way the body of the woman victim was handled after murder. The victim was raped after murder. The court laid more emphasis on desecration of the body. The sentence that the court pronounced was for murder, rape and desecration of dead body under aggravating

\(^{21}\) Dr. David was interviewed by this researcher and his response is quoted.
circumstances. Thus even after the victim was dead the accused did not care to show any human consideration. Hence he was undergo severe punishment.

The researcher had discussion with Sri. N.Krishnadattin, a retired District and Session Judge and who was holding the post of President of the Court of First Instance at Karaikal and Pondicherry during the French period. According to him the investigation under the French system of Criminal Procedure was more effective. One of the reasons being, that the Police function under the judiciary. The Police cannot take the criminal matter directly before the Court. The prosecution starts after informing the Procureur-de-la-Generale. The Procureur-de-la-Generale can also drop the case when he thinks it is necessary. There was less scope for Police to suppress evidence. He emphasized that since the judicial police handled criminal matters there was more guarantee to the public. He was of the view that equality between the sexes in France was the reason for less number of crimes against women.

7.3 REPORT OF THE QUESTIONNAIRE ON PRESENT DAY WORKING OF THE CRIMINAL JUSTICE SYSTEM

In order to access the present day working of the criminal justice system data was gathered from judges, Police Officers, Women Police, Public Prosecutors, Criminal lawyers, Academicians, Social activists, councilors and sociologists.
The overall aim of this study in Pondicherry is to evaluate how the Criminal Justice System is working today after the influence of the French settlement. The different personals dealing with the Criminal Justice System and their experiences in the court and trial, needs to be assessed. The limited study is empirical and the objective is to make the working of the Criminal Justice System more effective and need based by incorporating finer aspects of the French System. As with any piece of research there are limitations in the study’s methodology and generalizability which need to be acknowledged.

The tools employed for collection of data was a questionnaire. The questionnaire was distributed to 55 respondents and 52 responded. The analysis is made with reference to working in the field related to administration of the Criminal justice system. The analysis has been made taking entire group. The last question has been posed to express their individual view in the concerned field and that question will be analysed separately to reflect their personal view. The following is the report of the study made with regard to the questionnaire.

7.3.1 Increase in the Crime against Women (Fig.1)

With regard to the issue why the crime against women is increasing inspite of making special laws, 26% of the respondents feel that it is a social problem not to be dealt by law, 21% feel that people are unaware of the
existence of special law, 18% feel it is male supremacy, 14% feel that there is defect in the laws and another 14% also opine that the investigation is not done properly. 7% have given other reasons also. They have stated that one single factor cannot be attributed to the increase in crime against women.

Fig.1. In spite of many amendments and making special laws for women, crime against women is increasing. Why?

- 21% a. Investigation not done properly
- 14% b. Social problem not to be dealt by law
- 14% c. Male Supremacy
- 14% d. Defect in the laws
- 7% e. People unaware of existence of special Laws
- 7% f. Any other reason

The researcher also feels that to pinpoint a particular factor as the cause for a crime is difficult in a number of cases. Sometimes a specific factor in a particular situation becomes the cause for a specific type of criminal behaviour. However it has to be pointed out that the major group feel that criminal law failed to solve the problem.
7.3.2 Police difficulties in collecting the Evidence (Fig.2)

On the question whether the Police finds it difficult to collect the evidence because these crimes are committed in privacy, 70% of the respondents felt that the crime could be proved by circumstantial evidence. About 27% of the respondents felt that it is difficult to get adequate evidence. The remaining 3% suggested that direct evidence would not be possible to obtain. So Police have to gather evidence like any other crime from other sources.

Fig.2. Does the police find it difficult to collect the evidence because these crimes are committed in privacy?

- a. Difficult
- b. Can be proved by circumstantial evidence
- c. Any other reason
7.3.3 Investigation to be done by only Women Police Officers (Fig.3)

On the issue of investigation to be done by women police officers the study revealed (diag.3) that 50% of the respondents felt that it need not be mandatory. Only 9% strongly felt that the investigation should be conducted by women police officers. About 41% opined that it is preferable.

Fig.3. Whether investigation of these crimes to be done by only women police officers?

[Pie chart showing 9% for Yes, 41% for Not mandatory, 50% for Preferable]

Regarding the other modalities to be adopted in investigating these crimes the study revealed 44% wanted social workers to participate in the investigation 42% wanted scientific investigating agencies to assist, 11% wanted psychiatrist to render assistance.
7.3.4 Creation of Special Police Cell (Fig. 4)

When asked about the creation of Special Police Cell, 48% indicated that it is required, 23% opined that it is not required and 29% felt that it is preferred.
7.3.5 Creation of Special Courts with Women Judges (Fig.5)

The study indicates that 44% were not for the establishment of special court consisting of women judges, 32% were for it and 25% preferred to create special courts.

**Fig.5. Should there be Special Courts consisting of Women Judges?**

- 25%
- 44%
- 31%

☐ a. Yes ☐ b. Not required ☐ c. Preferred

7.3.6 Creation of (A) All Women Police Station (B) Shelter Homes (C) Short Stay Homes (Fig.6)

On the issue of creation of all Women Police Station, 51% wanted the setting up of all Women Police Station, 36% were not for it and the remaining 13% wanted it to be set up in rural areas.
Fig. 6. Whether creation of more (A) All Women Police Station, (B) Shelter Homes and (C) Short Stay Homes required?

Regarding Shelter Homes, 78% wanted more such homes to be set up, 11% felt that it is not required and 1% wanted it to be rural or urban areas.

An overwhelming majority of the respondents wanted the creation of short stay homes i.e. 81%. 12% of the respondents stated that it is not required and the remaining 7% stated that it could be established in rural or urban areas.
7.3.7.1 Penalty to be Imposed (Fig.7)

With reference to the offence of rape, 36% were for minimum sentence of 7 years, 30% wanted reformation and another 30% were for rigorous punishment, 4% did not want the minimum to be fixed.

On Dowry death 40% wanted the minimum punishment of 7 years to be imposed, 42% wanted the punishment to be rigorous. Only 18% thought in terms of reformation.

Fig.7. Imposing severe penalty like minimum sentence - 7 to 10 years, death penalty for these offenses. Can it have any deterrent effect?
7.3.7.2 Cruelty in Marriage

Regarding this offence, the majority opinion is that reformation is required 44%. About 38% wanted rigorous punishment to be imposed and 18% felt that minimum punishment to be imposed.

7.3.7.3 Sexual Harassment

An overwhelming majority of 98% felt that punishment is required for this offence. Only 2% have stated that no punishment is needed.

7.3.7.4 Prostitution

With reference to this offence, the persons who exploit the woman are to be punished. About 62% have opined that punishment of five years imprisonment is required. The remaining 38% did not want punishment to be imposed.

7.3.8 Publicity given to these Offences (Fig.8)

On this issue the study reveals that 48% wanted publicity to be given to these offences in papers and other media. Of the remaining group 21% have stated that it is not required and the other 22% have opined that publicity should be given but it should not be made sensational.
7.3.9 Participation of Public/Activists Group (Fig.9)

The analysis to the issue of participation of public and activists group to these crimes show that 39% did not want the involvement of the activists group and public, 32% felt that to some extent their participation is required and 29% have stated that it is required at all stages.
7.3.10 Proceedings Held in Camera (Fig. 10)

When asked to state whether the proceedings should be held in camera, 64% have expressed that it should be held in camera while the remaining 36% felt that it can be conducted in open court.
7.3.11 Shifting the Burden of Proof (Fig. 11)

The burden of proof in rape, dowry death, and cruelty in marriage has been altered. In custodial rape cases, it is on the accused that he has not committed the offences. In dowry death cases, presumption is made that the death was due to cruelty when it occurs within seven years of marriage. On this matter, the question raised was whether the shifting of burden of proof required for these offences.

A big slot 57% felt that it has to be decided by the judge according to each case, 12% have expressed that it is not required and only certain limited presumption has to be raised. 24% have opined that it has to be
shifted, as there is practical difficulty of prosecution in obtaining direct evidence. 5% felt that it is against the elementary principles of criminal justice i.e. presumption of innocence of the accused and 2% felt that shifting of the presumption of proof will be misused by the police.

![Pie chart](image1)

- a. Yes - there is practical difficulty of prosecution in obtaining direct evidence
- b. No - certain limited presumption to be raised
- c. Will be misused by Police - easy to book culprits
- d. Against the elementary principles of criminal justice i.e. presumption of innocence of the accused
- e. To be decided by judge according to the case

7.3.12 Increasing Number of Crimes Committed by Women (Fig.12)

When asked to give reasons for the increase in crimes committed by women 33% have attributed the reason that they have no economic independence. 28% have stated that their low social status is the factor, 18% feel that more women are coming out of their homes to the outer world
and hence they are committing crimes, other 18% have given other reasons like degeneration of moral values, wrong approach to life.

**Fig. 12. Crimes committed by Women is increasing. Why?**

- a. Low Social Status
- b. More Women coming out of their homes to the bigger world
- c. No economic independence
- d. Any other reason

7.3.13 Should we Decriminalize Prostitution? (Fig. 13)

The study indicates that, 37% were for not to decriminalize the offence. 32% wanted amendment to be made in the existing law and 31% for decriminalizing the offence.
7.4 Concluding Inferences

The study conducted among the persons involved in Criminal Justice System relating to women gives us a picture that the increase in the number of crimes against women, is due to the failure of the law enforcement agencies. Majority of them feel that it is a social problem. Hence gearing up the law enforcement agencies is required so that the people will gain confidence in seeking recourse to criminal law.

With regard to collection of evidence we can infer on the basis of the opinions given that it is difficult to collect evidence because it happens in privacy. So relying on circumstantial evidence, the prosecution should
establish that the crime has been committed. As regards the investigation done by women police officers the survey report gives us conclusion that, it is not mandatory that only women officers do the investigation. It is submitted that a better way of doing the investigation is to give special training to police officers and then utilize their services. Wherever necessary the assistance of social activists, psychiatrist and scientific investigation should be utilized.

On the question of Special Police Cell consisting of only women police officers, majority of them felt that it is required, whereas on issue of establishment of the court consisting of only women judges, majority of them were not for women judges only. It is submitted that the court need not have only women judges but should be judges who can appreciate such problems. About the working of the All Women Police Cell the opinion given by Senior Police Officers and Public Prosecutor is that some how the case when brought to the women police cell is shifted to the police station having jurisdiction in some other related case. Hence delay occurs. It may be that the women victim may find it more secure if the police cell has women police officers.

The creation of shelter homes and short stay homes protects women to a great extent and at least it gives them temporary relief from exposure to crimes.
On the question of punishment, the study reveals that minimum punishment of 7 years should be imposed. Already the Indian Penal Code has provided for minimum punishment. It is submitted that, this provision can act as a deterrent to prospective criminals. Similarly for dowry death also the majority view is that the punishment should be rigorous. There has been opinion that death penalty should be imposed. It is submitted that there should not be any relaxation in the present punishment of life imprisonment in the case of such offences. Cruelty in marriage is an offence where the criminal law has to interfere in the private life of married people. Reformation is the better way to deal, according to the opinions elicited. It is submitted that only in extreme cases should imprisonment be used. In sexual harassment cases an overwhelming majority felt that punishment is required. In most of the cases that come before the court, fine as an alternative punishment is used and the accused escapes after the paying the fine. If there is any possibility of reforming the accused, then reformation can be adopted.

Prostitution is an offence where both the parties are punished. Regarding the women indulging in such crimes the information gathered reveals that she is to be fined and imprisoned. It is submitted that view of the researcher is that it should be decriminalized. Hence the question of punishment does not arise.
On the question of publicity given to these offences majority opinion is that publicity should be given to these offences. It is submitted that this view is a welcome idea. Women who are affected by such crimes will not suffer in silence. They will come forward to report the crime and seek recourse through law.

With regard to the participation of activists group in the investigation of these crimes the opinion revolves around the fact that their participation is not required. It is submitted that this opinion requires a re-thinking because the experiences reveals that the role of the activists cannot be under-estimated and further, in number of cases, when the police failed to do their work properly the activists group and public have geared up the matter and exposed the offenders.

On the question of the proceedings to be held in camera, the opinion is given that it should be held in camera. It is submitted that this appears to be the correct approach, so that the affected women will be free enough to depose in the court.

On the issue of shifting the burden of proof, the replies furnished suggest that it has to be decided by the judge according to the circumstances of each case. Shifting the burden of proof to the accused is required because of the practical difficulty in collecting the evidence since these offences are committed mostly in privacy.
With regard to increasing number of crimes committed by women the survey attributes that no economic independence is given to them, as the major factor. It is submitted that women’s empowerment is required, to bring down the crimes committed by them.

On the question of decriminalizing prostitution, the majority opinion is not for decriminalization. It is submitted that this view may not be fully justified because years of having laws to prevent the offence of prostitution has not provided any remedy. If the offence is decriminalized, at least the health of the women indulging in such offences can be given more attention. Moreover measures can be taken to prevent deadly disease like AIDS.

The views elicited by interview and through questionnaire reveal that a proper co-ordination between the various agencies involved in the administration of Criminal Justice System is the first step that is required to deal with crimes relating to women. The ultimate remedy lies in the change in the attitude of the society.