CHAPTER-II

Criminal Justice System in India
Chapter II

CRIMINAL JUSTICE SYSTEM IN INDIA

I. Introduction

Criminal Justice dispensation system is as old as the mankind. It is oftenly said that crime and man were born together. With the development of the society, the criminal law has developed and like other laws has undergone tremendous changes. The laws are made and adopted by the society for its welfare.¹ Law is bundle of formal social rules for the preservation of society.² But the laws unless implemented are only paper rules. Therefore, in every civilized society laws are passed by the legislatures, executed by executives. But mere enforcement is not enough. People will follow the rules only if they know that, if they will not follow the law they will be punished. So to protect the life and property of people in the society, Criminal Justice System is developed.

The system for delivering criminal justice services in our society is composite of many complex relationships among formal public and private organizations. Police is main law enforcement organization, which performs the dual tasks; law enforcement and investigation of crime. The efficiency of criminal justice system depends on effective investigation, as it is one component of criminal justice system. The effective investigation has to be judged on the basis of manner of collection of evidences and their proof before the court. This can happen only if all the components of criminal justice system are compatible to each other. Therefore it becomes important to discuss the interrelationship between different components of criminal justice system so as to judge its affectivity.

II. **Meaning of Criminal Justice System**

Every Government whatever in its form must uphold the law and maintain order in the society which it governs. This is the basic function which every government must to perform. This is done through what is called criminal justice system.\(^3\) "The Concept of Criminal Justice as a system is comparatively new and there are acute difference of opinion whether it really constitutes a system or not. The common definition of system suggests that it is an established arrangement which leads to the attainment of particular objective according to the plan".\(^4\) The ‘system’ as the very term suggests to be consists of all the functionaries, which are concerned with the basic function of the State i.e. maintenance of law and order. As per Oxford dictionary, the term ‘system’ means ‘set of connecting things or parts’. So the criminal justice system is that collection of functions performed by the legislatures, police, prosecutors, courts, probation and correctional personal, private security personnel and other related agencies both within and outside of the Government; for the purpose of enforcing, administrating and adjudicating the criminal law. Each entity or agency with criminal justice responsibility has its own function and when taken together, these functions form a system or coherent grouping of functions and agencies for the delivery of criminal justice services. The ultimate objective of the delivery of these services is to ensure that the criminal law performs the function of social ordering.\(^5\)

A criminal justice system cannot work efficiently in the absence of adequate and effective laws. Criminal justice depends in many ways upon the existence of law. It is the first element that must be clearly understood and placed in perspective. The Criminal law establishes the rule that put the

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procedures of justice into operation and then regulate them.\textsuperscript{6} Criminal law defines crimes against the public order and provides for appropriate punishment. Prosecution has brought under it the proper governmental authority which involves an accusation that the defendant has violated a specific provision of law, an infraction of which a penalty has normally been provided by the Statute.\textsuperscript{7}

The process of operating the criminal justice system in order to work towards social ordering objectives may be termed as administration of justice. The criminal justice agencies operate to channelise, to control and to set standards for behaviour in both official and unofficial ways. Key to understanding that how the system works is to understand the concept of description on the part of each member of the criminal justice system. As each official plays his role in the administration of justice, the criminal law involves a flexible standard of conduct that differs from State to State and city to city in its substantive provisions, its procedures and its enforcement as such policeman, judge and correctional officer exercises his discretionary judgement of how best to perform his job in the social ordering process.\textsuperscript{8}

As a whole criminal justice system means a set of various components working together for providing justice to the people and preventing the criminal behaviour in the society. The system can work effectively only if every component of it works properly. If any component fails at any level, automatically it will lead to affect the other components also. As a result whole system will be affected.

III. Components of the Criminal Justice System

Our criminal justice system is composed of a series of inter-related parts. These parts constitute a social system of cause, effect and interaction. Apart from the provisions of substantive laws, the Criminal Justice System

\textsuperscript{8} \textit{Supra} note 5, p.12.
consists of three major components i.e. law enforcement agencies, i.e. courts and correctional institutes and the specialized auxiliary service of probation, parole and Juvenile Justice system. In many cases probation and parole etc. are grouped under correctional component, because as alternative to incarceration, these programmes seek to correct the offender.\textsuperscript{9}

A simple Criminal Justice model becomes a larger analogy to this input-processing-output sequence:

**MODEL OF WORKING OF CRIMINAL JUSTICE SYSTEM**

\begin{figure}
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\includegraphics[width=\textwidth]{criminal_justice_model.png}
\end{figure}

The normal input to the Criminal Justice system is by means of law enforcement agencies, which is shown as ‘Police Service’. The central process of this system is adjudication, with the help of prosecution and defence. It is known as ‘court process’. The third part, which creates the output by making people suitable to leave the system is ‘correction process’.\textsuperscript{10}

\begin{footnotes}
\item\textsuperscript{10} Ibid.
\end{footnotes}
A. Law Enforcement

Law enforcement is the first component of the Criminal Justice system. It consists of police agencies. Generally police is the first contact most offenders have with the law. It is the initiator of the relationship between the offender and Criminal Justice system services. The Police are in addition, the first line of defence against social disorders and criminality. The major function of police agencies is to prevent the criminal behaviour. Criminal Procedure Code gives wide powers to the police to arrest a person, who has committed the crime, violated any Criminal law or against whom arrest warrants has been issued by the competent court. Secondly, the police agencies are engaged in criminal investigations; the gathering of material, presenting this material in the court room; and testifying before the courts against those who violate the criminal law. Thirdly, the police agencies are involved in eliminating the causes of crimes by conducting delinquency prevention programmes and citizen education programmes. Fourthly, these law enforcement agencies are involved in efforts to ensure compliance by regulatory means with laws of public safety and security. This function includes activities such as traffic regulation, and crowed control etc.

The law enforcement functions serves the objective of social ordering in two primary ways. Firstly, the actual enforcement of the law (by arresting offenders) triggers the ‘official sequence of arrest-trial-punishment, thus maintaining social order by channelising and correcting the behaviour of individual offenders. Secondly, the mere presence of law enforcement personnel has a preventive effect, people are deterred from criminal acts by the presence of the police, or, more often, by their own belief that the police will arrest them if they commit a crime. The police exercise their discretion in the maintenance of social order by choosing to intervene or not in disputes, by choosing to arrest or not upon witnessing the crime or by choosing either

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12 Supra note 9, p.10.
to solve the problem themselves or by arresting, to let others in the system solve the problems of social ordering. The Police represents the largest, most fragmented and most criticised component of Criminal Justice System primarily because they are highly visible and have the most frequent contact with the people.

B. Adjudication

Courts play a dual role in the Criminal Justice System. They are both participant in the criminal justice process and supervisors of its practice. As participants they determine the guilt or innocence of those who are accused of crime and impose sanctions if found guilty. As supervisors they act as a guardian of the requirement of the Constitution and Statutory laws.\footnote{Paul Weston and Kenneth Well, \textit{The Administration of Justice}, (1973), p.105.}

One of the most important function of the judiciary is of responsible supervision. The judiciary has a high duty and a solemn responsibility to overview the work of the police, the prosecutor, opposing council; to preserve procedure established by law throughout the arrest - to - release procedure in the administration of justice; and to translate into living law the sanctions which may be imposed upon the offender after the fair trial.\footnote{Harry W. Mare, \textit{Principles and Procedure in Administration of Justice}, p.19.}

The Courts are charged with monitoring procedures and with coordinating the activities of those criminal practitioners engaged in the prosecutorial and trial processes to ensure that justice is carried out in a fair and impartial manner within the constitutional framework in order to sustain innocence or prove the guilt of the accused. The court is also responsible for the sentencing based on the protection of society and the rehabilitation of the offenders or convicted criminals.\footnote{Vernan Rich, \textit{Law and the Administration of Justice}, (1975), at 13.}
The Courts includes those judicial agencies at all levels of Government that perform the various functions of administration of justice. Theoretically the function of the court is adjudication. But in reality however, the courts are also called upon to decide what to do with those whose guilt is established. After the accused has been found guilty the court takes into consideration of all the factors, determines whether the offender should be removed from the society and incarcerated in order to protect the life and property or must give an opportunity to improve his behaviour by releasing him on parole etc.\textsuperscript{17}

Even when the punishment is clearly prescribed by the statute, the Judge may (except in very usual cases) exercise his discretion to suspend the sentence, to place the defendant on probation, to give less than the maximum sentence or otherwise to apply a punishment that is geared to have an impact on the individual offender. In serious cases the judge usually avails himself of a present investigation report prepared by the probation department, which gives the judge the information he needs to make the best decision for the sentencing of each offender.\textsuperscript{18}

In mass society the functioning of the Court is affected by litigation explosion, different factors, who are concerned with the administration of justice such as witnesses, investigation and prosecution etc. Therefore the role of the Courts from traditional adjudication is shifting towards bargain basement justice. This can be visualized by introduction of the concept of plea bargain and Lok Adalats. The Judge alongwith few others involve in the process of settlement of dispute through some other alternate mechanism.

C. Correctional Measures

Correction becomes the measure of the criminal justice system because it is from this sub-system that convicted offenders are released to

\textsuperscript{17} Supra note 3, p.9.
\textsuperscript{18} Supra note 13, p.14.
society again as free citizen. The successful adjudication or the new crimes committed by those people determines the success and failure of the criminal justice system. Those defendants whose conviction have not been overturned on appeal or through collateral attack and who have been sentenced to imprisonment or probation enter into the last and perhaps well known stage of the criminal justice system. There are various modes of correction, like penal institutions, parole and probation agencies and related social services and mental health agencies etc. The general objective of all these agencies is to rehabilitate the offenders in order to return him to a normal and productive life.

Punishment is of course one of correctional measures. Because the ultimate objective of punishment is to protect the society by maintaining social order by method of social control and at the same time having a deterrent effect on the convict, so that he might not commit the same offence again. Punishment is an expression of social values as well as an instrumental means to a clinical penalogical end. Punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offender or by incapacitating and preventing them from repeating the offence or by reforming them into law abiding citizens. Some of the major questions which engage the attention of Penologists today are whether the traditional forms of punishment should be supplemented and even replaced by a much more flexible or diversified combination of measures of treatment of a reformatory, curative and protective measures. How the punishment can correct an offender or why the punishment must be given to the offender, there are diverse opinion regarding this, varying from age old traditionalism to recent modernism, broadly speaking six type of views can be distinctly found to prevail. All these views or theories gives the objective and justification for a

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20 *Supra note* 13, p.9.
particular punishment. That is why modern penologists generally call these opinions as theories of punishment.\textsuperscript{23}

One view of fundamental importance and great antiquity is that the purpose of punishment is expiation. The basic idea behind this theory is that the offender must atone for his crime. Once the punishment has been inflicted, there is implicit in expiation the idea of squaring up of accounts. The crime has been paid for by the punishment and accordingly the State is clean again. This principle maintain some sort of balance between crime and punishment which occurs also in the doctrine of retribution.\textsuperscript{24} The idea of punishment according to the exponents of this theory is that suffering and pain of punishment should be equal in proportion to the enormity of the crime.\textsuperscript{25} This theory also assumes that punishment is to pay a debt due to the law that has been violated. It is generally said that guilt in addition to punishment is innocence.\textsuperscript{26}

It may even be said that the atonement in the religious sense of repentance, has made penal reforms possible, and certainly once a crime has been paid for, and the society feels that the account has been squared, there is a greater readiness to come to the offenders help for rehabilitating him in normal citizen life. But the theory of expiation presents practical difficulty in the matter of assessment of quantum of punishment which may be equal to and which may be capable of washing off, the moral guilt.

Retribution is probably the oldest and most ancient justification for punishment. At least since the formation of Hummurabic Code (in about 1875 B.C.) of "an eye for eye and tooth for a tooth", it has been urged by the leaders and accepted by the general public that the criminals deserve to suffer.\textsuperscript{27} Pluto in his "republic" has favored the system of retribution or

\begin{itemize}
\item \textsuperscript{23} Sirohi, J.P.S., Criminology and Criminal Administration, p.155.
\item \textsuperscript{24} Gaur K.D., Criminology and Penology, (2002), p.686.
\item \textsuperscript{25} Supra note 21, p.35.
\item \textsuperscript{26} Glanville Williams, (Ed.), Salmond on Jurisprudence, (1947), p.119.
\item \textsuperscript{27} Sutherland E.H., Principles of Criminology, (1968), p.287.
\end{itemize}
revenge and accordingly, the doer must suffer. It is argued by the supporters of this theory that unless criminal gets the punishment he deserves, one or both of the following effects will be produced; the victim will seek individual revenge, which may mean lynch-law if his friends co-operate him or offer testimony and the State will therefore be handicapped in dealing with criminals.

The theory of retribution has its origin in the crude animal instinct of individual or group of retaliate when hurt. The modern view however does not favour this contention because it is neither wise nor desirable. On the contrary it is generally condemned as vindictive approach to the offender. Most Penologists refuse to subscribe to the contention that offenders should be punished with a view to making them pay their dues. Hegal opposed the theory of retribution and observed that it is the manifestation of revenge for an injury. The modern penology discards retribution in the sense of vengeance. In the modern criminal justice system the fact that punishment gives satisfaction to the victim of offences and others cannot be accepted. However in the sense of retribution it must always be an essential element in the form of punishment.

Deterrence is usually defined as the preventive effect which actual or threatened punishment of offenders has upon potential offenders. The key to this theory is that fear plays a paramount part in every human being. The deterrent effect works in two directions. Firstly to instill fear in the mind of the offender and secondly to worn others on the consequences that could befall them if they committed the crime. Thus rigous of penal discipline acts as a sufficient warning to offenders as also on others. Therefore deterrence is undoubtedly one of the effective policy which almost every penal system accepts despite the fact that it invariably fails in its practical application. Deterrence as a measure of punishment particularly fails in case of hardened

28 Supra note 22, p.205.
29 Supra note 28, p.205.
30 Supra note 22, p.204.
criminals because the severity of punishment hardly has any effect on them. It also fails to deter ordinary criminals because many crimes are committed in spur of movement without any prior intention or design. Thus, the object underlining deterrent punishment is unquestionably defeated. It is therefore submitted that deterrence as a aim of punishment has not been entirely accepted in the policy of modern government.\textsuperscript{31} Though it has lost much of its former importance. But a deterrence sentence may be justified only when the offence is the result of deliberation and preplanning and it 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 trace or detect.

Preventive philosophy of punishment is based on the proportion 'not to avenge crime but to prevent it. It presupposes that the need for punishment of crime arises simply out of social necessities. In punishing criminal, the community protects itself against anti-social acts which endanger social order in general and person or property of its members in particular. To explain this theory Fichte has given an illustration, 'when a land owner puts up a notice 'Trespassers will be prosecuted', he does not want an actual trespasser and to have the trouble and expense of setting the law in motion against him. He hopes that the threat will render any such action unnecessary, his aim is not to punish trespass, but to prevent it. If trespass still takes place, he undertakes prosecution'.

The real object of the penal law, therefore is to make the threat generally known rather putting it accordingly into execution. The preventive theory seeks to prevent the recurrence of crime by incapacitating the offenders. It suggests that prisonization or imprisonment is the best mode of crime prevention as it seeks to eliminate the offender from the society. Thus, disabling them from repeating crime. It pre-supposes some kind of physical restraint on the offenders. According to the supporters of this theory,

\textsuperscript{31} Supra note 27, p.289.
murderers are hanged not merely to deter others from meeting similar end, but to eliminate such dreadful offenders from the society.\textsuperscript{32}

With the passage of time, development in the field of criminal science brought a radical change in criminological thinking. There has been a fresh approach to the problem of crime and criminals. Individualized treatment became the cardinal principle of reformation of offenders. This view found expression in reformatory theory of punishment. The reformatory theory has been defined as an effort to restore a man to society as a better and wiser man and a good citizen.\textsuperscript{33} Hugo’s statement, ‘to open a school is to close a prison’ contains a 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. The major emphasis of the reformist movement is rehabilitation of inmates in penocarrectional institutions so that they are transformed into good citizens.

The idea of involving pain or suffering in awarding the punishment has been modified in view of the modern reformatory methods introduced recently in dealing with the criminals. For instance probation, parole are treated as a substitute for the punishment. Even in the prison the basic idea is not to inflict pain or suffering but to teach the convict the methods and techniques including technical training to make the prisoner a law abiding citizen.\textsuperscript{34}

Although, modern Penologists reaffirm their faith in reformatory justice but they strongly feel that it should not be stretched too far. The reformatory methods have proved helpful in cases of juvenile delinquents and the first offenders. Hardened criminals, however, does not respond favourably to the reformist ideology. It also meets retributive demands by virtue of its length comparing comfortably with the crime very often on the other hand, a

\textsuperscript{32} Supra note 22, p.207.
\textsuperscript{33} Prison Commission Report 23 (1912).
\textsuperscript{34} Supra note 23, p.109.
particular form of punishment may achieve only one or two of the objectives e.g.: fine, probation.

All of the variations of these theories of crime and punishment, attempts to explain the rational basis for the exercise of the police power by the State for correcting the offenders. Each theory finds some support in the current application of criminal law in Indian Society. The ultimate rationale of the criminal law, however is simply that the criminal law provides a highly specialized form of social ordering for acts officially considered to be severe violations of normative behaviour.\(^{35}\) However, it is generally observed that despite the threat of punishment and despite the obvious benefits of obedience to the law, many people nonetheless disobey and become criminals because the law and punishment in case of disobedience has its impact on a person until he has committed a crime. Once a person commits crime and punished, the impact fades away. However, this is not the whole story and the correctional personals have the opportunity to deal with sensitized defendants and can have some impact on them. Because 98% of all inmates returns to the society. So the objective of the correctional agency must be the successful re-integration of the offenders into the community. This long run goal frequently necessitates the taking of short-run risks.

Corrections consists of those executive agencies at all level of Government that performs the following functions:

1. The correctional component is responsible for maintaining prisons, jails, and other institutional facilities to receive convicted offenders sentenced to period of incarceration by the courts.

2. To protect law-abiding members of the society – correction is responsible for providing custody and security in order to keep

sentenced offenders from praying another members of society through the further commission of crimes.\textsuperscript{36}

3. To reform offenders during their period of incarceration in a correctional institution. Correctional institutions are given the function of developing and providing services to assist incarcerated offenders to reform.

The role of correctional officers in the social ordering process is to provide rehabilitative services to channel the behaviour of convicted persons and misdemeanants into endeavors that are more productive than is crime. Too often however, this effort is deemed to failure because the case loads of correctional offenders are too great, their levels of training and competence is too low or their knowledge of successful techniques of criminal corrections is too sphere.

The auxiliary components of criminal justice are probation, parole and the juvenile justice system. Probation is a sentencing alternative. It permits the convicted offender to serve his sentence within the community without going to prison, under the supervision of the probation officer. It is a judicial act based on the right of the judiciary to suspend the imposition or execution of sentence. The probationer agrees to adhere to certain conditions established by the Court.\textsuperscript{37} During the probation period, the probationer receives treatment, guidance, assistance and varying degrees of supervision. Word 'Parole' has been derived from the French, which means 'word of honour'. It refers to the release of the prisoner from imprisonment, but not from the legal custody. Thus, in parole, the inmates get treatment, guidance, assistance and supervision outside the prison and within the community. Parole is a function of the executive agency, that is responsible for providing community supervision and assistance to an offender who has been

\textsuperscript{36} Supra note 5, p.11.
\textsuperscript{37} Supra note 13, p. 20.
conditionally released from a correctional facility prior to the statutory expiration of his or her sentence. The juvenile justice system consists of a broad range of the specialized juvenile agencies, which have to handle cases of delinquency and other matters involving minors. These agencies give separate treatment to minors. Correction becomes the measure of the criminal justice system because it is from this subsystem that convicted offenders are released to the society again as a free citizen. The successful adjustment or the new crimes committed by these people determines the success or failure of the criminal justice system.\textsuperscript{38}

\section*{IV. Interrelationship within the Criminal Justice System}

The Criminal Justice System is complex and interdependent. It is composed of a series of interrelated parts.\textsuperscript{39} These parts constitute a social system of cause and effect and interaction.\textsuperscript{40} What each one does and how it has a direct effect on each other. Neither the police nor the courts and correctional agencies can perform their task without directly affecting the efforts of others.\textsuperscript{41} The court must deal and can only deal, with those whom the police arrest; the business of corrections is with those delivered to it by the courts. How successfully correctional measures, reform the convict determines whether they will once again became police business and influences the sentence, the judge pass. The police activities are subject to court scrutiny and are often determined by the Court decisions. So, reforming or reorganizing any part or procedure of the system changes other parts or procedure also.

Although, the components of the criminal justice system are organizationally separate, they are functionally interrelated. Neither the

\textsuperscript{38} Chamelin N.C., Fox V.B., Whirenand P.M., "Introduction to Criminal Justice, p.438.
\textsuperscript{40} Supra note 9, p.6.
\textsuperscript{41} Supra note 13, p.8.
Police, the courts or correctional agencies can perform their tasks without the efforts of the other.

A. Courts and the Police

The courts as a middle step in the criminal justice system provides the natural focal point for interface relationship. But the courts can only decide a case and convict an offender, when he is arrested by the police and investigation is done properly. So there is a direct relation between these two components. But hostility and conflict typically characterize the interrelationship between the police and the courts, when court functions as participants in the criminal justice system. During the trial, police officers often observes and are subjected to procedural requirements that appear to them to be useless or even determinant to a determination of facts. Police may also be critical to the quality of prosecution. They may witness their efforts rendered meaningless by what they perceive to be a lack of skill or effort on the part of the prosecution Attorneys. Several informal aspects of court processing also cause interface conflict between the police and the courts. The courts reliance on the plea – bargaining process negotiation of a plea of guilty in exchange for a lesser sentence is one of the example. It shows the conflict and hostility that can characterize the interrelationship among the components of the criminal justice system. This practice can be defended on a number of grounds. But neither the police nor correctional agencies share the courts enthusiasm for plea-bargaining. The police often views the result of such bargain as unjustified leniency.

B. Courts and Correction

Courts came in contact with the correctional agencies when it acts as either participant or supervisor. When any offender is convicted and punished

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43 Supra note 4, p.462.
by the Court, it acts as a participant because punishment is one mode of correction. As supervisor, the courts monitor the condition of these correction homes, and is protector of constitutional and statutory rights of the accused and convicts. The interrelation between courts and corrections have been almost as stormy. As in the case of police, problems with corrections arise when the courts act as either participants or supervisors. As participants, the courts cause to the correctional agencies problems at each step alongwith the criminal process. Repeated court delays may neutralize the specific deterrent effect that the threat of immediate punishment may provide. Likewise the technicalities of litigation like plea bargaining may complicate rehabilitation by reinforcing the offender's belief that he can manipulate system. On one hand, sentencing disparity is often cited as a source of offenders resentment that makes the correctional task more difficult. On the other hand, however, individual sentencing that is making the punishment fit for the crime is also promoted as a desirable correctional objective.

Interface problems between courts and correction also occur as a result of courts supervisory role. As the courts have authority to monitor the conditions in the correctional homes and to protect all the rights of the prisoners and under trials.

C. The Police and Correctional Institutions

The police and corrections are the two components of the criminal justice system that are the most separated both in the sequence of their operations and in the nature of their tasks. But they are related to each other as they are the component of the same system. The effect of correctional risk taking police is great, but so is the impact of various police practices on corrections. The arresting by police officer is often the first contact on offender has with the criminal justice system. As such, he becomes a representative or ambassador of the society that the system serves, and, hence has a substantial influence on the
offender's attitude towards the society and its institutions and on his receptivity to rehabilitative measures.\textsuperscript{46}

The influence of the police on correctional endeavors is not limited to their initial contact with the offender at the time of arrest. The success of rehabilitative programs as probation and parole is often fundamentally dependent upon the police understanding and cooperation.\textsuperscript{47} Thus, the need for understanding of these interrelationships within the criminal justice system, wherein hostility and conflict frequently result, becomes increasingly important. So the conflict and hostility should be minimised, thereby improving the overall performance of the criminal justice system.

V. Goals of Criminal Justice System

Any Criminal Justice System is an apparatus that society uses to enforce the standards of conduct necessary to protect individuals and community. Under the American Criminal Justice System, the action taken against law breakers is designed to serve three purposes beyond the immediate, punitive one. It removes dangerous people from the community, it deters other from the criminal behaviour, and it gives society an opportunity to attempt to transform lawbreakers into law abiding citizens. What most significantly distinguishes the system of one country from that of another is the extent and the form of protections it offers to individuals in the process of determining guilt and imposing punishment.\textsuperscript{48} The basic function of the administration of justice in India is that of a sequential crime-control process with built-in inalienable safeguards for the protection of both rights of the society and the constitutional rights of the accused.\textsuperscript{49} It is a formal instrumentality authorized by the people of the nation to protect both their collective and individual wellbeing. According to Weston and Wells, the primary function of the system is:

\textsuperscript{46} Supra note 43, p.54.
\textsuperscript{47} Ibid., p.55.
\textsuperscript{49} Constitution of India provides certain rights to accused, i.e. Right against Self Incrimination, Right against Torture etc. These rights are enshrined under Article 21 of Right to Life and Personal Liberty.
"The prevention, detention, discovery and suppression of crime; the identification, apprehension, and prosecution of persons accused as criminals; the incarceration, supervision and reform and rehabilitation of convicted offenders. There are accomplished primarily through six major functional areas of government: Police, prosecution, criminal court, probation, prisons and other institutions for the care and treatment of offenders and parole". \(^50\)

Systematically then, the criminal justice system is composed of multiple, interacting subsystems. The system is concerned with the enforcement of legal norms (laws) and the imposition of legal sanctions (treatment and punishment) in order to prevent crime or social disorder and to preserve the peace and community. Similarly, the system is designed to protect life, property and personal liberty. \(^51\)

VI. Basic Features of Criminal Justice System

The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security when there is invasion of the rights of citizens. It becomes the duty of State to apprehend the person guilty of such invasion, subject him to fair trial and impart justice to people. \(^52\) To achieve peace in the society, is the goal of criminal justice system. However, there may be difference in the opinion as to how this can be achieved. There are two modes of achieving this goal. In common law countries generally adversarial system of trial is adopted, where as in continental countries, specially in France inquisitorial system is adopted. These are not criminal justice system in itself but only a form of trial. \(^53\)

In adversarial system accused is presumed to be innocent and the burden is on the prosecution to prove beyond reasonable doubt that he is

\(^{50}\) Paul Weston and Kenneth Wells, The Administration of Justice, (1973), p.1
\(^{51}\) Supra note 15, p.14.
\(^{52}\) Committee on Reforms of Criminal Justice System, Govt. of India, ministry of Home Affairs, Report Vol I, 2003, p.23.
guilty. Under this system of trial the accused enjoys the right of silence. The aim of criminal justice system is to punish the guilty and protect the innocent. Adversary system relies on the skill of different advocates representing their party's position and not on some central authority. Usually Judges try to ascertain the truth of the case. Truth is supposed to emerge from the respective version of the facts presented by the prosecution and defence before the neutral judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond doubt and in case of any doubt, gives benefit of doubt to the accused. The trial is oral, continuous and confrontational. The parties use cross examination of witness to undermine the opposing case and to discover information the other side has not brought out.

The Judge maintains his position of neutrality, never takes initiative to discover the truth. He does not correct the aberrations in the investigation or in the matter of production before court. As the adversarial system does not impose any positive duty on the judge to discover the truth, he plays a passive role. Investigation in adversarial system is done by the police or other investigative agencies. So investigation is free from judicial or central supervision. The adversarial system lacks dynamism because it has no lofty ideas to inspire. In adversarial system the prosecution has to prove the case beyond reasonable doubt. The system appears to be skewed in favour of the accused. It is therefore necessary to strengthen the adversarial system by adopting the suitable modifications in the present system.

The other system which is prevalent in the world is inquisitorial system; in which power to investigate rests primarily with the judicial police officers. They investigate and draw the documents on the basis of their investigation. The judicial police officer has to notify in writing of every offence which he has

55 Supra note 50, p.24.
57 Supra note 50, p.9.
taken notice of and submit the dossier prepared after investigation, to the concerned prosecutor. If the prosecutor finds that no case is made out, he can close the case. If however, he feels that further investigation is called for, he can instruct judicial police to undertake further investigation. Hearsay rules are unknown in this system. If the prosecutor feels that the case involves serious offences of complex nature or politically sensitive matters, he can move the judge of instructions to take over the responsibility of supervising the investigation of such cases.\textsuperscript{58}

It is the duty of the judge of instructions to collect evidence for and against the accused, prepare a dossier and then forward it to the trial judge. The accused has a right to be heard and to engage a counsel in the investigation proceedings before the judge of instructions. The accused is presumed to be innocent and it is the responsibility of the judge to discover the truth.

In this system accused and the victim are entitled to participate in the hearing before the trial judge. However, the role of the parties is restricted to suggesting the questions that may be put to the witness.\textsuperscript{59} It is the judge who puts the questions to the witness and there is no cross-examination. The standard of proof required is the inner satisfaction of the judge and not the proof beyond reasonable doubt as in the adversarial system. Another system is that in respect of the serious and complex offences, investigation is done under the supervision of an independent judicial officer i.e. the judge of instructions, who for the purpose of discovering truth collects evidence for and against the accused.

Fairness is the basic requirement of the trial. In the inquisitorial system the judge of instructions combines to some extent the roles of the investigator and the judge. Defence lacks adequate opportunity to sort the evidence of the

\textsuperscript{58} Supra note 48, p.25.
prosecution by cross-examination. It is left to the discretion of the judge, whether to accept the suggestions or not. Thus, the accused does not get fair opportunity of testing the evidence tendered against him which is one of the essential requirements of fair trial.\textsuperscript{60}

Both the systems has its own pros and cons and neither of the system is free from the defects. However, if the Indian Criminal Justice system adopts some of the features of the inquisitorial system, like involvement of judges in the investigation and by lessening the standards of proof in our Adversarial System. The Criminal Justice System can be made more effective and adequate.

VII. History of Criminal Justice System in India

The story of crime begins with the history of mankind.\textsuperscript{61} Man may be a little lower than the engels, but he has never shed off the brute completely and the brute within is opt to break loose on occasions. The breaking loose of the brute manifests itself in diverse forms and the same have been described in varied words and language. The concept of crime is a dynamic concept and has changed within the socio-economic background of the society. It always depends upon the force vigour and movement of public opinion and social sanction in the same country from time to time. In order to study the evolution and development of Criminal Justice System in India, it can be divided into three periods.

A. Criminal Justice System in Ancient Hindu Period

A study of evolution of Hindu Criminal Law in ancient India indicates that the rules essential to orderly relationship among the individuals and group identified particular behaviour to be regarded as criminal behaviour and

\textsuperscript{60} Supra note 54, p.13.

\textsuperscript{61} Khanna H.R., Some Reflections on Criminal Justice, 17 JILI, 1975, p.305.
others non-criminal though they resemble in most aspects of personality and behaviour.\textsuperscript{62} This was done keeping in view intention as main consideration. In early age, crimes were few and the society was simple. The use of violence against one's person or abduction of one's female were probably the two earliest known crimes.\textsuperscript{63} Although the modern criminology owes its origin in the European Criminology, a considerable amount of knowledge of criminal science was known to ancient India. The epics and other authoritative sources such as Manusmriti, Nayaya Mimansa and Kautilya’s Arthashastra contains exhaustive references, which clearly shows that a well defined criminal policy was existing in the early days of the Hindu society.\textsuperscript{64}

In ancient India, head of the tribe or king of the State had the power to decide any case. The King used to decide the matter under the guidance of Dharma. At that time there was no difference between law and Dharma. The most striking feature of the Penal law was that it made religion, morality as the basis to determine what was criminal and what was not. The King had to ensure that all his laws were in conformity with Dharma and it was said that, “Hunger, sleep, fear and sex are common to all animals, human and sub-human. It is the additional attribute of Dharma that differentiates man from beast.\textsuperscript{65}

The intricate provision for dealing in various kinds of crimes are given in Smritis of Brihaspati, Narada and Katyayana. These smritis give detailed consideration to crimes against person including abuse and assaults of various kinds. The act that disturbs social equilibrium has inspired imposition of penalty on the offenders.\textsuperscript{66} Kautilya’s Arthashastra provides a valuage insight into the legal system in ancient India. The arthashastra gives directions as to the treatment of petitioners in Court, behaviour of King, methods of identifying witnesses indulging in falsehood and punishment of

\textsuperscript{62} Dutta N.K., Origin and Development of Criminal Justice in India, p.1.
\textsuperscript{64} Sen P.K., Penology Old and New. (1943), pp.101-107.
\textsuperscript{66} A Lakshminath, Criminal Justice in India: Primitivism to Post Modernism, 48 JILI 2006, p.27.
The Dharamshastra and the Arthshastra reveal a more or less full-fledged and well developed judiciary. The King was the head and he was to attend the Court daily to decide disputes under the social system of ancient India. The status of the parties to the litigation and crime was very much important consideration in determining the seriousness of offence. A Brahmaana killing a sudra was awarded light punishment, whereas the killing of Brahmaana by a sudra was a very serious crime.

The Smritis record the precepts for administration of justice. There was hierarchy of courts. Primarily, it was the duty of the King to administer justice by hearing litigious disputes. In doing so he was directed to take assistance of councilors, who were to act as assessors or advisors of the King. Their number were required to be either three, five or seven, the reason for insisting upon an odd number perhaps being that in case of difference of opinion guidance might be obtained from the majority. The possibility of perverse judgement was guarded against by insisting that is no single judge, not even the King should give a judgement - Naikak, Nirnayam Kuryat.

According to Vasishta, "Punishment should be inflicted on those who violate any rule of conduct. If any offender goes unpunished, the guilt falls upon the King and Priest who are enjoined to practice some penance." In ancient India, the punishment awarded for crimes was generally capital, because the primitive society believed in eradication of the evil doer rather than their rehabilitation and reformation.

A study of the development of criminal justice system in India reveals that the number of capital offences has considerably reduced and the punishments have been made to humanize with the development of society. The first stage of development of criminal law took place in the law of Manu

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67 Ibid.
70 Vasishta, XIX, 40-43.
and Vishnu. In the next stage of Kautilya, capital punishment has been considerably reduced to the minimum and recommended in lighter offences comparatively mild punishments like imprisonment, corporal punishment, fine etc. For corporal punishment, Manu has selected certain places, however he says that Brahmans are to be banished without inflicting the least hurt.

B. Criminal Justice System During Mughal Period

During Mughal period in India, the criminal justice system was not much established. The system of inflicting punishment to a convict sometimes depended on the ground other than the actual crime committed rather than the punishment prescribed for the same in any law. In 1526 A.D., Shah Babar established a famous dynasty namely Mughal dynasty, which represents the Golden age of the Muslim rule in India.\(^1\) During his reign the influence of Ulema revived. During the period of his son Humayun and subsequent Kings of Mughal dynasty, there existed a judicial system which continued till its displacement by Britishers.

A drastic change occurred during the reign of the Akbar, which was commonly considered as a reversal of the policy of Islam.\(^2\) That trend was in realing a bolt to the Ulema. Akbar believed himself to be a divine head. The Emperor became the sole Judge of the final appeal. After Akbar in 1605 A.D., the Emperor Jahangir ascended the throne and revised his policies. He took interest in the administration of justice. It was said that with a view to redress the grievances of the people, he had a chain and bell attached to his royal apartment and one end of the chain was fastened to a tower of the bank of the Jamuna. The emperor frequently sat in the royal court to hear petitions.

In 1659, Aurangzeb became Emperor and he got produced a famous book, namely, Fatawa-i-Alamgiri containing various principles for deciding

cases. Mughal Empire started loving its grip on power in 1707, mainly due to passing away of Aurangazeb Alamgir. It was natural for the system of administration of justice to fall among with the fall of Political power.\textsuperscript{73}

C. Criminal Justice System During British Period

British Crown, after they took over from the East Indian Company in A.D. 1858, did a lot to evolve what can be termed as Criminal Justice System. Modern sense of the legal system had its origin in the establishment of the Supreme Court under the Regulation Act of 1773. Codification of the laws began with the enactment of Indian Penal Code in 1860, which defined offences and laid down punishment for each offence. The Indian Evidence Act was enacted in the year 1872, prescribing the process and determining the admissibility and non-admissibility of material in evidence and Criminal Procedure Code 1882 (Cr.P.C.) which was later on replaced by Criminal Procedure Code in 1898. The Criminal Procedure prescribes the procedure and method to be followed by the Police, the Prosecutors and the judiciary in the Criminal Justice System.\textsuperscript{74}

Under the British rule, India was divided into a large number of administrative units called districts. Unlike the Mughal authorization one-one rule, the British evolved a regular and uniform system of administration composed of hierarchy of authorities, with powers and functions clearly defined and demarcated. A coherent administrative pattern emerged in a unique institution, namely the ‘Collector’ by the Supreme Council, which combined the office of the Revenue Administration, Civil Judge and Magistrate. The Collector had the control over the Police, Prison and Prosecution.\textsuperscript{75}

\textsuperscript{73} Supra note 70, p.116.
\textsuperscript{74} Gupta N.J., Criminal Justice System in India – Whither Commitment?, CBI Bulletin, Jan., 2004, p.15.
\textsuperscript{75} Supra note 73, p.15.
The Police administration in the district during British period made it almost certain that crime would lead to conviction and lawlessness firmly suppressed. In the protection of life and property of the people, there was no compromise. Not only investigation of cases, but also their prosecution in the Court of law received personal attention of the Superintendent of Police. He was supposed to watch the progress of trial daily under trial case reports, which he received from the Police Court Officers.

There existed a unity of purpose during British time. This system however gave more value to 'order' than the 'law' with its own flaws. The basic principle of rule of law that criminal justice system shall observe i.e. due process of law suffered under this concentrated system, where different governmental functionaries were subordinate to a single person sacrificing the cordial principle of 'check and balance' on the exercise of arbitrary power of one agency of Government over another to prevent miscarriage of justice.\(^\text{76}\)

With India attaining independence adopting a constitution of its own, the criminal justice system underwent a sea change. The Constitution makers entrusted the Government with responsibility to separate judiciary from the Executive\(^\text{77}\) and the process of separation started with the amendment made in 1956 in the Criminal Procedure Code, 1898. The judicial powers were taken away from the District Magistrate. He no longer remained incharge of the judiciary, which started functioning in total independence. The second major change that followed was that the police was also brought away from the judiciary. Although, the Collector still continued to be primarily responsible for maintaining law and order in the district, but the kind of authority it could exercise on Police during British period no longer continued. The next change was in the prosecution. Prosecution was also separated from the direct

\(^{76}\) Supra note 72, p.16.

\(^{77}\) See Article 50 of the Constitution of India.
control of the collector. Finally, the Prison also no longer is controlled by the Collector but started functioning in a relatively independent manner.\textsuperscript{78}

VIII. Working of Criminal Justice System

The Criminal Justice System has a multiple role in the relationship among the state, society and individual. Firstly, according to two important postulates of modern political theory, the society's interest is collective interest of its individuals and the State is an instrument of the society. Since the legislation is an expression of the social will, non-enforcement of the legislation amounts to the violation of the society's mandate. The State is bound by the social will which is the individuals collective will. So the State which does not enforce the social will ceases to be the representative of the society. If the society in its turn fails to check the State at this stage, it is not enforcing or protecting the interest of its individuals. Hence, failure of machinery ultimately results in the breakdown of the social fabric.

The second is a political role, wherein society decides and declares that the individual harm is a harm to itself. This has a psychological effect. Whereby the society expresses solidarity with victim in his suffering and loss. The criminal justice system recognizes that the victim has an innate tendency to retaliate and in order to ensure that the rule of law prevails over instinctive retribution of the victims, takes over the retaliating function. The State emphasis more on reformation and treatment rather than retribution.

This shift of focus at the penalizing stage does not absolve the society or the State of its essential role in criminal justice. A cross examination of the penalties imposable by the criminal law at present would show that the nearest form of this retaliation is the verdict of guilty by the courts. Of course, an acquittal would mean that the concerned accused does not deserve to be

\textsuperscript{78} Supra note 73. p.16.
condemned. Under both the circumstances, the decision is to be formal and reasoned.\textsuperscript{79}

The concept of justice for a common man in the country refers to the criminal justice system. The civil, commercial and constitutional matters though important but are not the main concern of the common man.\textsuperscript{80} The matters relating to life, liberty and property affects the common man more. The criminal justice system can revived in a particular state only if it live upto the expectation of the people to a reasonable extent.\textsuperscript{81} The system can function fully well, if its all three components works efficiently and cooperate with each other. The success or failure of a criminal justice system can be seen from the effectiveness of its individual component. In India, where we have adopted adversarial system of trial, police is the most important component involved in the criminal justice dispensation system. Every person who violates any criminal law, firstly comes in contact with this component of criminal justice system.

This agency is entrusted with dual functions i.e. enforcement of laws and investigation of offence as defined under Section 2(h) of the Criminal Procedure Code authorizing the Police Officer for collection of evidence in relation thereto. The working and efficacy of police agency can be judged by comparison of crime rate, cases reported, investigated and disposed off by the police agency.

A. Crime Rate

In India, the alarming rise in crime rate clearly indicate that the system is not as effective as it is required to be. In 2010, a total of 67,50,748 cognizable crimes were reported showing an increase of 1.11 percent over


\textsuperscript{81} Supra note 54, p.388.
2009. In the year 2009, total 66,75,217 cognizable crimes were reported. The crime rate for IPC Crimes at national level has increased by 3.4 percent (i.e. 181.4 in 2009 to 187.6 in 2010). However, the crime rate in cities has decreased by 3.4 percent (from 321.8 in 2009 to 318.6 in 2010). A study of crime statistics of 2009 and 2010 reveals that although there is a growth of crime rate of IPC crimes, but the growth in crime rate of SLL crimes has decreased. SLL crime rate in 2009 was 381.7 as compared to 389.4 in 2008 recording an decrease of 2 percent in 2010 over the year 2009. From this data this is quite evident that there is a clear rise in crime rate both under IPC crimes and SLL crimes, however, this increase is more in case of IPC crimes.

In order to judge that, whether the crime rate of traditional offences is increasing or the trend is shifting from traditional offences to new category of offences. A comparison of various categories of cognizable offences for last five years has been made.

Bar Diagram 2.1 shows that, however there is increase in the incidences of crime against body from year 2006 to 2010. But there is a fluctuation in number of incidences every year. In cases of crime against property, there is a marginal increase in the incidence of crime every year. The crimes against public order are static and there was no increase or decrease, in incidences between these years. However, there is a constant increase in economic offences during this period of time. In crime against women there is a regular but marginal increase of incidences over this period of time. But there is no change in the number of incidences of crimes against SCs and STs. This bar diagram shows that in the last few years, economic offences are increasing rapidly than other category of offences.

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83 Besides the traditional offences defined under Indian Penal Code, a variety of other offences which have come into existence after the enactment of Indian Penal Code, are to be dealt under special statutes offences like smuggling, trafficking, terrorists activities, offences in the space and other economic offices relatable to development of society.
B. Disposal of Cases

The other factor to judge the working of a criminal justice system, is the disposal of cases of investigation by Police and disposal of cases in trial by Courts. If the cases are investigated properly and in time by investigating officers and disposed off by courts on time, then it shows the effectiveness of the system. Whereas, pendency of the criminal cases over the years is the reflection of the failure of the system in punishing the guilty and infusing the faith of a common man in the system.

1. Disposal of Cases by Police

The other important function of police agency is investigation. As the rapid growth in population in India, the incidences of crimes are also increasing due to urbanization, industrialization, prize rise and unemployment. As a result the number of cases for investigation are also increasing. The quantum of workload relating to IPC cases investigated by the police during last four decades are presented in table 2.1
It can be observed from table 2.1 that the cases investigated has increased considerably from 53.6 percent in 1961 to 79.1 percent in 2010. It means that in those cases where investigation is conducted, and prima facie evidences collected indicates the commission of cognizable offence, charge sheet is filed before the Court in 79.1 percent cases. Although the percentage of the cases investigated to the total cases for investigation has declined from 84.2 percent in 1961 to 72.2 percent in 2010. It means pendency of cases for investigation is decreasing year by year.
During last four decades, the gap between the cases for investigation is widening every year. Figure 2.1 under the head 'IPC Cases for Investigation disposal by Police' reveals that over the last four decades, the number of cases for investigation as well as the number of cases disposed off has been increased, but the gap between the two is widening. In 1961 the number of pending cases for investigation under IPC crimes was 109876, which increased to 244234 cases in 1971, 356066 cases in 1981, 426231 cases in 1991, 466868 cases in 2001, 826936 cases in 2010. This shows the decline in the efficacy of investigation agency. This may be due to increase in the workload during these years as the number of cases for investigation are increasing every year, but adequate number of investigating officers are not appointed.

In the year 2010, there were 2985719 IPC cases for investigation including the pending cases from the previous year. 2158783 of those cases were investigated by the police accounting for 72.2 percent of the total cases.
for investigation. The number of cases refused was 2526 (0.1%) of the total cases for investigation (including pending cases of previous year). Whereas 826936 cases remained pending for investigation at the end of the year 2010.

(ii) **Disposal of Special and Local Law Cases for Investigation by Police**

The analysis of the statistics given in crime in India shows that in the year 2010, 94.4 percent SLL cases were disposed off by the police including 0.9 percent cases, where investigation was refused out of the total 47,57,459 cases (including the pending cases from the previous year) meant for investigation. The disposed percentage of SLL cases were better as compared to percentage of IPC cases (72.2%) as in the previous year, only 5.6 percent SLL cases were pending for the police disposal at the end of the year 2010 against 27.7 percent under IPC. A high pendency was observed in TADA cases (97.2%), followed by the Indian Passport Act (67.3%) and Indian Railways Act (51.0%) in 2010.

The researcher believes that the delay on behalf of investigation can only be in those cases where the accused has absconded or cannot be apprehended immediately. In cases of offences against body and heinous crimes, such chances are more hence the delay is recorded more in IPC crimes. Secondly, where the investigation depends more on recording of oral statement under section 161 and 164 of the Code of Criminal Procedure, 1973. Generally recording of statements takes time, as the parties or witnesses may not be available on time.

So far as evidences which are available on scene of occurrence is concerned, they have to gather immediately, as there are chances of their destruction. But generally unreasonable time is taken by investigating officers to send the material and to receive the reports from the forensic science experts and chemical examiners. Apart from this, another factor contributing to the slowness of process is that all the components of criminal justice
system seems to have reeling under heavy pressure of work and years of pendency. Although, now, the investigation as branch has been separated from the police by appointing a separate police officer, but they work under the same Deputy Superintendent of Police. An Investigating Officer has to handle on an average 122 cases a year and hence disposal of all cases becomes very difficult.

2. **Disposal of Cases by Courts**

"Justice delayed is justice denied" a famous legal maxim refers to the disposal of cases on time as the essence for dispensation of justice. Judiciary being the most important component of criminal justice system plays a vital role for imparting justice. In the last four decades, India has recorded rapid growth in population. For the proper regulation of these subject many new laws have been passed and old laws are amended. In criminal matters, the cases come before courts not only under Indian Penal Code hereinafter used as (IPC), but also under special and local laws. Number of cases are increasing year by year, but the number of judges has not increased to that extent. Hence huge pendency is the result.
Disposal of Indian Penal Code Cases by Courts

Table 2.2
Disposal of IPC Crime Cases by Courts (Decadal Picture)

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Year</th>
<th>Total No. of Cases for Trial</th>
<th>No. of Cases Tried</th>
<th>No. of Cases Convicted</th>
<th>%age of trial completed</th>
<th>Conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
</tr>
<tr>
<td>1</td>
<td>1961</td>
<td>800784</td>
<td>242592</td>
<td>157318</td>
<td>30.3</td>
<td>64.8</td>
</tr>
<tr>
<td>2</td>
<td>1971</td>
<td>943394</td>
<td>301869</td>
<td>187072</td>
<td>32.0</td>
<td>62.0</td>
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<td>3</td>
<td>1981</td>
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<td>505412</td>
<td>266531</td>
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<tr>
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<td>1991</td>
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<td>667340</td>
<td>319157</td>
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<td>47.8</td>
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<td>2002</td>
<td>6464748</td>
<td>981393</td>
<td>398830</td>
<td>15.2</td>
<td>40.6</td>
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<td>7</td>
<td>2003</td>
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<td>959567</td>
<td>384837</td>
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<td>447516</td>
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</tr>
<tr>
<td>11</td>
<td>2007</td>
<td>7473521</td>
<td>1025689</td>
<td>433929</td>
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<td>12</td>
<td>2008</td>
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<td>1052623</td>
<td>448475</td>
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<td>42.6</td>
</tr>
<tr>
<td>13</td>
<td>2009</td>
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<td>427655</td>
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<td>41.7</td>
</tr>
<tr>
<td>14</td>
<td>2010</td>
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<td>1141031</td>
<td>464128</td>
<td>13.3</td>
<td>40.7</td>
</tr>
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</table>

* Excluding withdrawn/compounded cases.

Table 2.2 shows the quantum of IPC cases to be tried by Courts and the actual number of cases tried by Courts resulting in conviction etc. It has been observed that the percentage of cases tried to total cases for trial showed a declining trend. In 1961, trial was completed in 30.3 percent of the total cases, which showed a slight increase of 1.7 percent in 1971 by completing trial of 32.0 percent cases. After 1971, this has shown a declining trend. In 1981, only in 23.9 percent cases trial was completed, which reduced to 16.8 percent in 1991, and 15.0 percent in 2001. In the year 2010, only in 13.3 percent cases trial was completed. The increasing gap between the cases coming before courts for trial and the cases, where trial is complete is increasing rapidly.
Figure 2.2 shows the ever increasing gap, which shows that the pendency of cases is increasing very rapidly. In 1961, trial of 2,42,592 cases were completed living 5,58,192 cases pending. In 1971 court could complete trial of 3,01,869 cases leaving 6,41,525 cases pending, which increased to 16,06,379 cases, in the next decade, as in 1981 only 5,05,412 cases were tried completely. In 1991, the pendency increased to 32,97,270 cases. As trial was completed only in 66,67,340 cases. In 2001, 52,89,142 cases were pending. The pendency increased to 73,08,624 cases in 2010.
## Table 2.3
Disposal of IPC Cases by Courts During 2010
(State & UT-Wise)

<table>
<thead>
<tr>
<th>S.N.</th>
<th>State/UT</th>
<th>Total No. of Cases for Trial Including Pending Cases from Previous Year</th>
<th>Cases with draw n by Govt</th>
<th>No. of Cases</th>
<th>Pen dency %</th>
<th>%ag of pend ency to all India total</th>
<th>Convic tion Rate [%] x 100</th>
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</thead>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1</td>
<td>ANDHRA PRADESH</td>
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<td>88966</td>
<td>14682</td>
<td>28</td>
<td>11.8</td>
<td>22.9</td>
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<tr>
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<td>57811</td>
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<td>11.5</td>
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<tr>
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<td>37809</td>
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<td>105782</td>
<td>28</td>
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<td>22.9</td>
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<tr>
<td>5</td>
<td>CHHATISGARH</td>
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<td>14682</td>
<td>28</td>
<td>11.8</td>
<td>22.9</td>
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<tr>
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**Union Territories**

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<th>Total No. of Cases for Trial Including Pending Cases from Previous Year</th>
<th>Cases with draw n by Govt</th>
<th>No. of Cases</th>
<th>Pen dency %</th>
<th>%ag of pend ency to all India total</th>
<th>Convic tion Rate [%] x 100</th>
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**Note:** Percentage less than 0.05 is also shown as 0.0.

Huge mounting pendency in subordinate courts of the country is shaking. According to the statistics available on the end of 2010. There were
85,49,655 cases for trial (including pending cases from the previous year) during 2010 as compared to 71,92,451 during the previous year 2006. 84.9 percent IPC cases remaining pending for the trial at the end of the year in various criminal courts of the country. Some States of the country have shown very high pendency as compared to other states.

It has been observed from the table 2.3 that North eastern states, in general had high pendency of cases for trial. The highest pendency was reported by Lakshadweep (100%) followed by Manipur (98.0%), Gujarat (93.6%), Arunachal Pradesh (93.2%), A & N Islands (97.3%), Maharashtra (93.2%) and Meghalaya (94.1%). The lowest pendency is shown/reported by Mizoram (34.0%) followed by Tamil Nadu (67.8%), Pondichery (49.3%), Nagaland (69.7%) and Jharkhand (70.8%).

(ii) Disposal of Special and Local Law Cases by Courts

In the year 2010, there were as many as 93,14,925 Special and Local Laws (hereinafter used as SLL) cases including those pending from the previous year for disposal by criminal courts in the country during 2007. There was a decrease of 0.6 percent in SLL cases pending trial in 2010 as compared to 2009. The pendency of SLL cases in courts during 2010 was lower at 52.1 percent as compared to 54.8 percent in 2009.
Table 2.4
Disposal of SLL Cases by Courts During 2007
(State & UT-Wise)

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<th>Cases with drawn by Govt.</th>
<th>No. of Cases</th>
<th>Penetration %age in which trials were completed</th>
<th>Pendind trial at the end of the year</th>
<th>Conviction Rate (6)/($(6)$) x 100</th>
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Note: Percentage less than 0.05 is also shown as 0.0.
The State wise disposal of SLL crimes is given in table 2.4. The pendency of SLL cases was reported high from Manipur (98.8%) as relating to pendency in IPC cases. The next in order was Arunachal Pradesh (97.6%) followed by West Bengal (95.3%), Meghalaya (91.6%) and Jammu & Kashmir (90.4%). The highest pendency among Union Territories was reported from Lakshadeep (100%) followed by A & N Islands (96.5%) and Delhi (92.9%). The lowest pendency is reported from Andhra Pradesh (47%) during 2007, the next in order was Chhattisgarh (12.2%) followed by Uttrakhand (19.6%) and Tamil Nadu (17.9%). Among UTs, Puducherry reported lowest pendency of 45.8 percent.

An analysis of statistical data regarding disposal of cases by investigating agencies and court, it has now become clear that the pendency of cases is increasing rapidly both in investigation of cases as well as in trial. The ratio of pendency is more in Courts than at investigation level. This delay in disposal of cases shows the inefficiency of criminal justice system. It is regarded as major drawback of any criminal justice system. Looking at this aspect we find that the courts cannot be said to be less guilty, though there may be various reasons for it. It is oftenly found that the Court takes more time in disposal of appeal and revision, where nothing except hearing of arguments has to be done than trial.

During the course of trial, the main cause for delay, may be miscellaneous applications, which may be permitted to be filed under procedural laws. This problem is directly related to the strength of judges in relation to pendency. Judiciary is over-burdened, as the number of judges is not sufficient according to number of cases coming before the courts/population. Most of the substantial and procedural laws were enacted by the Britishers according to their common law system.
The procedure may be suitable to British legal system where population is less and having fair ratio of investigating officers and judges according to the population. But in India, where this ratio is fairly low. The lengthy procedure and technicalities prove a big hurdle in the quick disposal of the cases.

C. Conviction Rate

Efficiency of the Criminal Justice System in any State is primarily judged on the basis of the conviction rate, as it is the ultimate result of the combined effect for the system. In India, the conviction rate is far from satisfactory and is a serious matter. If the acquittal rate is more it indicates the failure of criminal justice system. The criminals get encouragement to commit crime, because of the developed belief that it is very easy to get free after committing any crime.

Conviction rate means the ratio of cases, where the accused is convicted to the total cases tried. There has been a constant decline in conviction rate in the last 4 decades. Table 2.2 shows the conviction rate of the last four decades. It is observed from the table 2.2 that, in 1961, the conviction rate at national level was 64.8 percent, which decreased to 61.1 percent in 1971, 52.5 percent in 1981, 47.8 percent in 1991, 40.8 percent in 2001 and 40.6 percent in 2002, 40.1 percent in 2003. Then there was a slight increase in conviction rate and it was reported to 42.5 percent in 2004. It was 42.4 percent in 2005. In 2006, there was a marginal increase in conviction rate and was recorded 42.9 percent, which again decreased to 42.3 percent in 2007. In 2008 the conviction rate was 42.6 percent, which decreased to 41.7 percent in 2009. In 2010 it was recorded 40.7 percent.
Table 2.5
Conviction Rate of Cognizable Offences During 2007

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<td>47.3</td>
<td>92.2</td>
</tr>
<tr>
<td>24</td>
<td>TAMIL NADU</td>
<td>55.6</td>
<td>85.4</td>
</tr>
<tr>
<td>25</td>
<td>TRIPURA</td>
<td>11.1</td>
<td>24.3</td>
</tr>
<tr>
<td>26</td>
<td>UTTAR PRADESH</td>
<td>58.4</td>
<td>96.5</td>
</tr>
<tr>
<td>27</td>
<td>UTTARAKHAND</td>
<td>67.3</td>
<td>99.8</td>
</tr>
<tr>
<td>28</td>
<td>WEST BENGAL</td>
<td>13.5</td>
<td>33.9</td>
</tr>
<tr>
<td>Total States</td>
<td></td>
<td>40.4</td>
<td>91.8</td>
</tr>
<tr>
<td>29</td>
<td>A &amp; N ISLANDS</td>
<td>49.7</td>
<td>99.7</td>
</tr>
<tr>
<td>30</td>
<td>CHANDIGARH</td>
<td>40.3</td>
<td>76.4</td>
</tr>
<tr>
<td>31</td>
<td>D &amp; N HAVELI</td>
<td>22.9</td>
<td>100.0</td>
</tr>
<tr>
<td>32</td>
<td>DAMAN &amp; DIU</td>
<td>14.0</td>
<td>28.6</td>
</tr>
<tr>
<td>33</td>
<td>DELHI</td>
<td>51.56</td>
<td>67.8</td>
</tr>
<tr>
<td>34</td>
<td>LAKSHADWEP</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>35</td>
<td>PUDUCHERRY</td>
<td>62.4</td>
<td>83.6</td>
</tr>
<tr>
<td>Total (UTs)</td>
<td></td>
<td>52.4</td>
<td>72.4</td>
</tr>
<tr>
<td>Total (All India)</td>
<td></td>
<td>40.7</td>
<td>91.7</td>
</tr>
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</table>

Source: Crime in India Report, National Crime Record Bureau, Ministry of Home Affairs, 2010
The statewise analysis under table 2.4 revealed that the conviction rate in 2010 was highest in Mizoram under I.P.C. Crimes (93.6%) whereas in Union Territories the highest conviction rate was recorded in Puducherry (62.4%). In IPC crimes lowest conviction rate has been recorded by Maharashtra (9.0%) followed by Orissa (9.9%), Tripura (11.1%) and West Bengal (13.5%). In SLL crimes highest conviction rate was recorded in Uttrakhand (99.8%), followed by Mizoram (97.5%), Chhatisgarh (97.3%). The lowest conviction rate in SLL crimes in States was recorded in Orissa (16.1%), Assam (21.4%). In Union Territories, Daman and Diu recorded lowest conviction rate (28.6%).

During the year 2010, the conviction rate of SLL crimes was much higher (91.7%) at national level than that of IPC Crimes (40.7%). The conviction rate of SLL Crimes was much higher than that of IPC crimes in respect of all States and Union Territories except Arunachal Pradesh, Jammu and Kashmir, Maharashtra, Dadra & Nagar Haveli and Delhi.

The reason for higher conviction rate of SLL crimes seems to be that in these crimes, there is shift of burden of proof in many respects towards the accused. Secondly, the requirement of proof may also be less e.g. : in offences under Excise Act, Essential Commodities Act, NDPS Act. Because the main fact to be established in possession of the accused which dispense with the establishment of intention as element of crime. Thirdly, many of these offences may be patty in nature, hence lengthy investigation or trial generally is not required. Because the trend shows that even amongst heinous SLL crimes the pendency is more as compared to other crimes e.g. : TADA Act, conviction rate in 2010 is 0.0 percent, Dowry Prohibition Act (20.0%), Antiquities and Art Treasuries Act 34.5 percent.

From the above discussion, it can be stated that our criminal justice system is not functioning to the extent, it is required to be. Reasons for this inefficiency may be many. It may be lack of coordination between all the
components, over burden on judiciary, and police agencies, corruption, lengthy procedures, technicalities involved in judicial process, or flaws in the existing laws.

IX. Recommendations for Improvement in Working of Criminal Justice System

In order to detect the defects in the present criminal justice system and to suggest reforms, Law Commission of India has given various recommendations. Government of India, Ministry of Home Affairs constituted the Committee on reforms of criminal justice system to make comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and relevant laws.

A. Justice Malimath Committee

The Committee on reforms of the Criminal Justice System headed by Justice V.S. Malimath (Retd.) has proposed important changes to various aspects of administration of justice with a particular focus on the principles of evidence and conduct of criminal trials. The Malimath Committee was constituted on 24 November 2000 by the Union Government. The report was submitted to the Union Home Ministry in April 2003 for further consideration and action. The Committee sought to expedite the criminal process as it considers that “the criminal justice system is virtually collapsing under its own weight or it is slow, inefficient and ineffective and the people are losing confidence in the system.”\(^{84}\) The salient features of report are:

1. Adversarial System

The committee examined in particular the inquisitorial system followed in France, Germany and other continental countries. The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the

\(^{84}\) See Criminal Reforms in India : ICJ Position Paper presented by International Secretariat of International Commission of Justice, p.3.
Judicial Magistrate, which results in a high rate of conviction. The committee felt that a fair trial and in particular, fairness to the accused are better protected in adversarial system. The committee felt that some of the good features of the inquisitorial system can be adopted to strengthen the adversarial system and to make it more effective. This includes the duty of the court to reach for truth, to assign pro-active role of judges, to give direction to the investigating officers and prosecution agencies in matter of investigation. Accordingly the committee has made some important recommendations.  

(i) The committee has recommended a preamble to the Criminal Procedure Code to make the ‘Quest for Truth’ the foundation of Criminal Justice System and the pursuit that quest for truth is the fundamental duty of every court.

(ii) Section 311 of the Code be substituted on the following lines:

'Any Court shall at any stage of any inquiry, trial or other proceeding under the Code, summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined as it appears necessary for discovering truth in the case'.

(iii) A provision on the following lines be added immediately below Section 311 of the Code:

Power to issue directions regarding investigation -

- Any Court shall, at any stage of inquiry or trial under this code, shall have such power to issue direction to the investigation officer to make further investigation or to direct the supervisory officer to

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See Recommendations of the Committee on Reforms of Criminal Justice System, Cr.LJ 2004, p.102

take appropriate action for proper or adequate investigation so as to assist the court in search of truth. 87

2. Right to Silence

(i) In recommendation of, the Justice Malimath Committee proposes to amend Section 313 of Code of Criminal Procedure, 1973, be adding a new clause. According to which:

“If the accused remained silent or refuses to answer any question put to him by the Court which he is not compelled by law to answer, the Court may draw such appropriate inferences including adverse inference as it consider proper in circumstances”.

The justice Malimath Committee assumption is that the right to silence is only needed in tyrannical societies, where anyone can be arbitrarily charged. 88

3. Rights of the Accused

The accused has several rights guaranteed to him under the Constitution and relevant laws. They have been liberally extended by the decisions of the Supreme Court. The committee, therefore felt that all the rights of the accused flowing from the laws and judicial decisions should be collected and put in the schedule of the Code.

The following recommendations were made in regard to the rights of the accused.

(i) The right of the accused recognized by the Supreme Court may subject to the classification in chapter IV and the manner of their protection be made statutory. Incorporating the same in a schedule to the Criminal Procedure Code.\(^{89}\)

(ii) The committee recommended that all interrogations should be carried out in the presence of lawyer. The interrogated person should be informed of their right to legal assistance before the interrogation. They should be given the opportunity to have recourse to a lawyer through legal aid.

4. Presumption of Innocence and Burden of Proof

There is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof in criminal cases. However, the standard of proof laid down by our courts following the English precedent is beyond reasonable doubt in criminal cases. In several countries of the world including countries following the inquisitorial system, the standard of proof is on the 'Preponderance of Probabilities. The committee has reconsidered the standard of proof beyond reasonable doubt prevailing in the Indian Criminal Procedure Code.

(i) It suggests a new standard of proof laying below "proof beyond reasonable doubt" and above "Preponderance of Probabilities". Therefore, it prepares a standard of courts conviction that it is true.\(^{90}\)

5. Police Investigation

The machinery of Criminal Justice System is put into gear, when an offence is registered and investigated. A prompt and quality investigation is


\(^{90}\) Supra note 87, p.22.
therefore the foundation of the effective criminal justice system. The committee made some important recommendations to improve investigation.

(i) The investigation wing should be separated from Law and order wing.

(ii) National Security Commission and the State Security Commission at the State level should be constituted, as recommended by the National Police Commission.\(^91\)

(iii) Police system in the country is functioning under the archaic Indian Police Act which was enacted in 1861 for the perpetuation of the British Empire. The Police now have to function according to the requirement of Constitution. The National Police Commission have recommended enactment of a new Police Act, for achieving the required goals about two decades back. The Central Government however, has not taken any action. The Committee strongly recommended that a new Police Act may be enacted by the Central Government on the pattern of draft proposed by the National Police Commission.\(^92\)

(iv) Audio/Video recording of statements of witnesses, dying declaration and confessions should be authorized by law.\(^93\)

(v) Forensic Science and modern technology must be used in investigation, right from the commencement of investigation. A cadre of sense of Crime Officers should be created for presentation of scene of crime and collection of physical evidence.\(^94\)

(vi) The network of Central Forensic Science Laboratories and Forensic Science Laboratories in the country needs to be strengthened for providing optimal forensic cover to the investigating officers. Mini Forensic Science Laboratory's and Mobile forensic unit should be


\(^{92}\) See, Committee on Reforms of Criminal Justice System, Govt. of India, Ministry of Home Affairs Report, p.120.


set up at the district level. The finger bureau and Forensic Science Laboratory's should be equipped with well trained man power in adequate number and adequate financial recourses.  

(vii) Section 167(2) of the Code be amended to increase the maximum period of police custody to 30 days in respect of offences punishable with sentence more than 7 years.

(viii) Section 161 of the Code should be amended to provide that the statements by any person to a police officer should be recorded in narrative or question and answer form.

(ix) Section 25 of the Evidence Act may be suitably amended on the lines of section 32 of POTA, 2000 that a confession recorded by the Superintendent of Police or officer above him and simultaneously audio/video recording is admissible in evidence subject to the conditions the accused was informed of his right to consult a lawyer.

6. **Courts and Judges:**

   (i) The committee has shown deep concern about the deterioration in the quality of judges appointed to the courts at all levels. The qualification prescribed for appointment of judges at different levels should be reviewed to ensure that highly competent judges are inducted at different levels. Intensive training should be imparted in theoretical, practical and in court management to all the judges.

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95 See Recommendation 22(b), Justice Malimath Committee on Reforms of Criminal Justice System, 2003.
100 See, Recommendation 63(a), Justice Malimath Committee on Reforms of Criminal Justice System, 2003.
Some of other recommendations of Justice Malimath Committee relates to the public prosecution, suggesting creation of post of Director of Public Prosecution in all states strengthening of coordination between Police and the prosecution branch. The committee has also recommended the need to enact the separate law to protect the witnesses from being threatened or intimated by the accused or some body else on his behalf.\(^{101}\) The committee has made in total 158 recommendations to overhaul the criminal justice system. But some of its recommendations have been criticized on the ground that these recommendations intend to remove many fundamental rights guaranteed by the Constitution.\(^{102}\) The legislature while implementing the report of the committee has to maintain a balance between the powers of police to investigate and the rights of an accused to defend himself. It needs to be remembered that the protection available to an accused under part III of the Constitution are actually meant for poor and illiterate litigants who cannot understand the legal implications of their reply or answer given by them to the prosecution case. So there is need to protect the accused against the State, which often uses all sort of pressure during the course of investigation as well as criminal trial. However, the recommendations regarding improvement of Police Investigation, witnesses and perjury, protection of witnesses etc. are acceptable and may be considered by the legislature.\(^{103}\)

B. Law Commission of India Report

Law Commission of India in its 154\(^{th}\) report on Code of Criminal Procedure, 1973, has made some valuable recommendations which were given in report of 1996. The recommendations of the committee are relating to establishment of separate investigating agency, independent prosecuting


\(^{103}\) Supra note 100, p.124.
agency and examination of witnesses and record of their statements under sections 161 and 162 of the Code of Criminal Procedure.

1. Establishment of Separate Investigating Agency:

Investigation of crime is a highly specialized process requiring a lot of patience expertise, training and clarity about the legal position of the specific offences and subject matter of investigation and socio-economic factors. It requires specialization and professionalism of a type not yet fully perceived by police agency. Hence the commission recommended for establishment of a separate investigating wing of the police which replenishes its knowledge and skills from developing technologies.104

The National Commission in its fourth report bemoaned the lack of exclusive and single minded devotion of police officials in investigation of crimes for reasons beyond their control. The Commission found a sample survey carried out of 6 States that an average investigating officer is able to devote 37 percent of his time to investigational work, while the rest of his time is taken up by other duties.105 So there is a urgent need for a separate investigating agency, who can devote their 100 percent time for investigation work.

It was also recommended by the Commission that investigation of serious offences punishable with sentence of 7 years or more should invariably be taken by senior officers not below the rank of Inspector of Police. Efficient investigation pre-supposes induction of scientific culture in police. New technologies like computers, vediography etc. are essential for effective investigation of traditional and modern crimes. Thus, there is a great need for systematized training for investigating officers in scientific method of investigation.106 The Commission hence recommended that the police officials entrusted with the investigation of grave offences should be separate

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105 Supra note 103, para 5, p.5.
106 Ibid.
and distinct from those entrusted with enforcement of law and order and miscellaneous duties.

2. **Independent Prosecuting Agency**

   The quality of criminal justice is closely linked with the caliber of the prosecution system and many of the acquittals in courts can be ascribed not only to poor investigations but also to poor quality of prosecution. There is a strong opinion in favour of the autonomy of the public prosecution and creation of a separate prosecution agency under the control of a Directorate of Prosecution to exercise administrative supervision over the work of a network of Public Prosecutors at various levels.\(^{107}\)

   The Commission also considered the difficulties arising from the lack of cooperation between the police department and the public prosecutor and observed that the Superintendent of Police as the head of the Police in the district has a duty to see that the prosecutors are given all the assistance and information they need at trial.

3. **Examination of Witnesses and Record of their Statements under Section 161 & 162 of Criminal Procedure Code**

   Section 161 empowers the Police Officer to record statements of persons. Under the existing provisions of the code, the preparation of the earliest record of the statement of witnesses is left in the hands of the investigating officers and as the mode of recording as provided under Section 162 does not ensure the accuracy of the record. It is necessary to amend section 164 Criminal Procedure Code so as to make it mandatory for the investigating officer to get the statement of all material witnesses questioned by him during the course of investigation recorded on oath by the Magistrate. The statement thus recorded will be of much evidentiary value and can be

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\(^{107}\) *Supra note 103, pra 3.5, p.9.*
used as previous statements. For this purpose section 161, 162 and 164 must be amended accordingly.¹⁰⁸

X. Relationship Between Criminal Justice System and Investigation

Criminal Justice System is the combination of various organs of a government, entrusted with the job of entrusting justice to the people. The main function of the criminal justice system is to maintain the law and order with the help of these functionaries i.e. Police, Court, Prison etc. All these functionaries though function independently are interdependent and interrelated as one unit when issue is seen in the society.¹⁰⁹

To preserve the law and order in the society it is necessary that the wrongdoer must be punished and the function of the investigator is to find out, who is the wrongdoer. In India, we follow adversarial system, where the accused unless proved guilty is considered innocent. The burden of proving guilt is on prosecution. Criminal procedure begins with investigation and investigation is generally conducted by the Police Officers. So police is the initiator in the criminal justice system.¹¹⁰ It is the police who collects the evidences and based on those evidences convictions are made. For a successful detection of crime, honest and qualitative investigation is an indispensable requirement. Whatever evidences are collected by the investigating officer and produced before the court; the case is decided on the basis of those evidences, if the court considers them relevant. So the conviction or acquittal of the accused to a great extent depends on the investigation conducted by the investigating officers.

¹⁰⁸ Supra note 103, para 76, p.39.
There are two type of evidences which are collected by the investigating officer. They are testimonial and physical evidences. Testimonial evidences are given in the form of statement under oath, usually in response to question. Human errors can be intentional or unintentional. The question of reliability of the testimonial evidence lies on how correctly and accurately the evidence is submitted. Thus, testimonial evidences often fail to come up to the accuracy demanded by law. Consequently strength of the evidence cannot come up to the mark, which leads in failure to convict the criminal.\textsuperscript{111}

Physical evidences are physical objects of any size, shape and dimensions, which are having objective and evidences. Nature and type of such evidences are widely varied. With the march of time, crimes are becoming more and more sophisticated and criminals are using the latest technology to commit crime. So automatically the types of physical evidence are also increased. They include so many items like blood, semen, saliva, documents, finger prints, tool marks, tyre marks, foot prints, fibers, firearms, ammunitions and so on. They are physical objects, which are involved in and related to crime. They are perfect witness, if they are understandable. They can be understood with the help of Forensic Science experts, who provide assistance to court, to understand such physical evidence. But firstly, it is the investigating officer who collects these physical evidence. If he does not know the importance of such evidences or does not know the right procedure/method to collect such evidences, then all the techniques of detecting crime with the help of experts becomes useless. So it is strongly felt that efficiency of investigating officers can be improved by giving them training to upto date their knowledge in investigation by using modern techniques of investigation.\textsuperscript{112}

If the investigation is done by the investigation officer properly, then the most of the evidences can be proved in the court beyond reasonable doubt,

\textsuperscript{111} Supra note 109, p.32.
\textsuperscript{112} Supra note 109, p.33.
hence, leading to a high conviction rate, which shows the efficiency and success of a criminal justice system.

XI. Relationship Between Investigation and Proof

In criminal trials, the burden of proving the guilt is on prosecution. Any accused can be convicted only if the prosecution succeeds to prove this guilt beyond reasonable doubt. This is a judge made law based on prudence.\footnote{Supra note 70, p.32.} So in order to establish the guilt of a person, evidences are to be proved against him in the court. If the investigation has been conducted by Investigating Officer properly, then relevant evidences can be collected and can be proved in the court beyond reasonable doubt e.g.: in a rape case, if the blood sample or semen sample has been collected properly by investigating officer and examined properly by experts, then it will be more helpful in establishing the guilt of the accused. In this way, there is a deep rooted relation between investigation and proof. If investigation is done properly then it will be easy to prove the guilt in the court.

XII. Conclusion

Criminal Justice System is a system established for maintaining law and order in the society. It is a set of various components like law enforcing agencies, courts, corrections and other ancillary components like parole, probation and juvenile system etc. All these components are interrelated and work for the common goals. The primary goal of the criminal justice system is to punish the wrong doer. In India, we have adopted adversarial system, where the burden of proving guilt is on prosecution. The accused is considered innocent unless proved guilty by establishing evidence against him beyond reasonable doubt. Evidences against the accused can be proved easily in the court, if the other component i.e. investigating officer has conducted the investigation properly.
If the guilt of the accused is established, then he will be punished according to the penal policies of the Criminal Justice System. According to sentencing policy of our system, the wrong doer is punished not for retribution but for prevention, deterrence and rehabilitation of offender.

Today, it is increasingly felt that the criminal justice system in India is probably not fulfilling the expectations of the common man to the fullest extent. Steep rise in crime, low conviction rate and unreasonable delay shows the failure of Indian criminal justice system. The reasons for the failure may be overburden on these components, corruption, political influence etc. In order to improve the criminal justice system, various commissions and committees are constituted but need here is of proper implementation of the recommendations and coordination between these components. It is also imperative that we coordinate the components of the system in a superhuman effort to achieve the ideals of justice that have been hailed as cornerstone of our Criminal Justice System.

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