

## CHAPTER- 5

### ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM

#### 5.1 EVOLUTION OF CRIMINAL JUSTICE SYSTEM

Like in every civilized society, in India a criminal justice system evolved. Socio-economic and political conditions prevailing during different phases of the history of India influenced its evolution. Accordingly, the objectives of the criminal justice and methods of its administration changed from time to time and from one period of history to another. To suit the changing circumstances the rulers introduced new methods and techniques to enforce law and administer justice.

In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion.<sup>1</sup> Even in the advanced *Rig-Vedic* period there is a mention that punishment of a thief rested with the very person wronged.<sup>2</sup> Gradually, individual revenge gave way to group revenge as the man could not have grown and survived in complete isolation and for his very survival and existence it was necessary to live in groups. Group life necessitated consensus on ideals and the formulation of rules of behavior to be followed by its members. These rules defined the appropriate behavior and the action that was to be taken when members did not obey the rules.<sup>3</sup> This code of conduct, which governed the affairs of the people, came to be known as *Dharma* or law. In course of progress man felt that it was more convenient to live in society rather than in small groups. Organizations based upon the principle of blood relationship yielded, to some extent, to larger associations—the societies.

In the very early period of the Indian civilization great importance was attached to *Dharma*. Everyone was acting according to *Dharma* and there was no necessity of any authority to compel obedience to the law. The society was free from the evils arising from selfishness and exploitation by the individual.<sup>4</sup> Each member of the society scrupulously respected the rights of his fellow members and infraction of such rights rarely or never took place.<sup>5</sup> The following verse indicates the existence of such an ideal society.

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1. Choudhuri, Dr. Mrinmaya, *Languishing for Justice*, p. 4.
  2. *Ibid.*, (quoting Keith, A. Berriedale: “*The Age of the Rig Veda*” in *The Cambridge History of India*, edited by J. Rapson, Vol. I, p. 87).
  3. *Ibid.*, pp. 4-5.
  4. Jois, M. Rama., *Legal and Constitutional History of India*, Vol.I, pp. 575-76.
  5. Choudhuri, *op. cit.*, p. 5 (quoting Alfred Russel Wallace as quoted by Durant, Will: *The Story of Civilization* (Part I) Our Oriental Heritage, p. 27.)

*There was neither kingdom nor the King; neither punishment nor the guilty to be punished. People were acting according to Dharma; and thereby protecting one another.*<sup>6</sup>

However, the ideal stateless society did not last long. While the faith in the efficacy and utility of *Dharma*, belief in God and the God fearing attitude of people continued to dominate the society, the actual state of affairs gradually deteriorated. A situation arose when some persons began to exploit and torment the weaker sections of society for their selfish ends. Tyranny of the strong over the weak reigned unabated. This situation forced the law abiding people to search for a remedy. This resulted in the discovery of the institution of King and establishment of his authority over the society, which came to be known as the State.<sup>7</sup> As the very purpose of establishing the State and the authority of the King was the protection of person and property of the people, the King organized a system to enforce the law and punish those who violated it. This system later came to be known as criminal justice system. Although the Indus-valley civilization suggests that an organized society existed during pre-*Vedic* period in India, traces of the criminal justice system can only be found during the *Vedic* period when well defined laws had come into existence. The oldest literature available to explain the code of conduct of the people and the rules to be followed by the King are *Vedas*. Therefore, while discussing the evolution of the criminal justice system the history of India is covered from the *Vedic* period onwards dividing it into three periods—Ancient India (c. 1000 B.C. to A.D. 1000), Medieval India (A.D. 1000 to 1757) and Modern India (A.D. 1757 to 1947).

### **5.1.1 ANCIENT INDIA (c. 1000 B.C. to A.D. 1000)**

This period of Indian history is also known as Hindu period because of the prevalence and dominance of Hindu law. The elements of state administration signifying rule by a King with the help of his advisers or assistants may be traced back to the early *Vedic* period. In the *Rig-Veda* the King is called *Gopan janasya* or protector of the people. This implies that he was charged with the maintenance of law and order.<sup>8</sup> According to the *Dharma sutras* and the *Arthashastra*, it was the duty of the King to ensure the security and welfare of his subjects.

Each state was divided into provinces and the provinces into divisions and districts. For each province, governors were appointed. District officers were

6. Jois, op. cit., p.576, quoting Mahabharata, Shanti Parva, 59-14: *Naiv rajyam na raja-assinnh dando na cha dandikah; Dharmenaiv parjah sarva rakshanti sma parsparam.*).

7. *Ibid.*

8. *The Gazetteer of India*, Vol. II, pp. 145-46;

mentrustrusted with the judicial and administrative functions.

According to Kautilya's *Arthashastra*, the administration of towns was entrusted to the *Nagarka*. He had not only to look after the maintenance of law and order but had also to enforce various building and sanitary regulations and to prepare census of the citizens.<sup>9</sup>

Apart from cities and towns, there were a large number of villages. In fact, the village was the basic unit of government. Each village consisted of a village headman and Village Council or *Panchayat*. The office of the village headman was mostly hereditary. In villages he represented the King's administration.<sup>10</sup> The most remarkable feature of the early *Vedic* polity was the institution of popular assemblies, of which two, namely, the *Sabha* and *Samiti* deserve special mention. In the later *Vedic* period, the *Samiti* disappeared as popular assembly while the *Sabha* became a narrow body corresponding to the King's Privy Council.<sup>11</sup>

The beginning of a regular system of state judicial administration may be traced to the pre-Mauryan age. The Mauryan period (c. 326-185 B.C.) fills a gap between two great epochs of administration of criminal justice in ancient India, namely, that as mentioned in the *Dharma sutra* on the one hand and that of Manu's code on the other.<sup>12</sup> The few references in Megasthenes' *Indica* to the penalties for offences current in Chandragupta's time breathe the spirit of the penal law of the preceding period.<sup>13</sup> From Pillar Edict IV of Ashoka, we learn that even after his conversion to Buddhism he continued the death penalty for crimes, only softening its rigour by giving the convicts three days' respite before execution. The system of justice of the preceding period appears to have been continued by the Mauryas.<sup>14</sup> The old division of urban and rural judiciary was continued in Ashoka's reign. The few references in the records of Mauryas point to the continuance of the state police of the preceding period. The jail administration of the earlier times appears to have been continued.<sup>15</sup>

The rule of the foreign dynasties of the pre-Gupta period is an important episode in the history of ancient Indian administration. Some of the Indo-Greek Kings

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9. *Ibid.*

10. Kulshreshtha, V.D., *Landmarks in Indian Legal And Constitutional History*, pp. 4-6..

11. *The Gazetteer*, *op. cit.*, p. 135.

12. *Ibid.*, p.152.

13. Smith, *op. cit.*, pp. 97-98. Megasthenes came to Patliputra during the period of Chandragupta Maurya about the year 302 B.C. as an ambassador of Seleukos following the peace between Syria and India.

14. *Ibid.*

15. *Ibid.*

organized their Indian dominions under provincial governors bearing Greek titles. The Kushanas (c. A.D. 120-220) brought with them an exalted conception of monarchy. They introduced two new grades of military or judicial officers, *Mahadandanayaks* and *Dandanayaks*, to make the justice system more effective.<sup>16</sup>

The Guptas (c. A.D. 320-550) created afresh a system of administration on imperial lines after the downfall of the Mauryan empire. The civil administration apparently was in the charge of the *Mantri* as before. In the branch of provincial administration the Guptas adopted the older models with changed official nomenclature and some striking innovations. The Municipal Board consisted of four members, namely, the Guild-President, the Chief Merchant, the Chief Artisan and the Chief Scribe. This marks a bold attempt to associate popular representatives with local administration.

After the Guptas, in Northern India, King Harshvardhana (A.D. 606-47) created a sound and efficient administration. The contemporary Chinese Buddhist pilgrim Hiuen Tsang gives high praise to Harshvardhana for his love of justice, his unremitting industry in the discharge of his duties and his piety and popularity.<sup>17</sup> However, on the other hand, the penal law was marked by a certain degree of harshness in strong contrast to exceptional mildness under the Imperial Guptas.<sup>18</sup> In the Deccan, the administration of the Imperial Chalukyas of Vatapi (A.D.540-753) was marked by the usual characteristics.<sup>19</sup> The administration of Rajput states of Northern India was of the bureaucratic type.

Salient features of the criminal justice system as evolved and prevailed during ancient India are described below.

### **5.1.1 A) CONCEPT OF DHARMA (LAW)**

The Hindu legal system was embedded in *Dharma* as propounded in the Vedas, *Puranas*, *Smritis* and other works on the topic. *Dharma*, i.e. law, constituted the blue print or master-plan for all round development of the individual and different sections of the society.<sup>20</sup> The following verse describes the importance of the *Dharma* (law):

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16. *Ibid.*

17. Kulshreshtha, V.D., *Landmarks in Indian Legal And Constitutional History*, pp. 4-6..

18. *The Gazetteer*, *op. cit.*, p. 135.

19. *Ibid.*, p.152.

20. Smith, *op. cit.*, pp. 97-98. Megasthenes came to Patliputra during the period of Chandragupta Maurya about the year 302 B.C. as an ambassador of Seleukos following the peace between Syria and India.

*Those who destroy Dharma get destroyed. Dharma protects those who protect it. Therefore Dharma should not be destroyed.*<sup>21</sup>

The law was recognized as a mighty instrument necessary for the protection of the individual's rights and liberties. Whenever the right or liberty of an individual was encroached upon by another, the injured individual could seek the protection of the law with the assistance of the King, howsoever powerful the opponent might be. The power of the King to enforce the law or to punish the wrong doer was recognized as the force (sanction) behind the law, which could compel implicit obedience to the law.<sup>22</sup>

### 5.1.1 B) SOURCES OF DHARMA

The *Veda* was the first source of *Dharma* in ancient India.<sup>23</sup> The *Dharma sutras*, *Smritis* and *Puranas* were the other important sources. Subsequently the *Mimamsa* (art of interpretation) and the *Nibandhas* (commentaries and digest) also became supplementary sources of law.<sup>24</sup> Whenever there was conflict between *Vedas*, *Smritis* and *Puranas*, what was stated in the *Vedas* was to be taken as authority.<sup>25</sup>

The source of the *Vedas* was believed to be divine.<sup>26</sup> The *Vedas* are four in number, viz. the *Rig Veda*, the *Yajur Veda*, the *Sama Veda* and the *Atharva Veda*. As per Wilkins, among the *Vedas*, the *Rig-Veda* is the oldest, next in order was the *Yajur-Veda*, then the *Sama-Veda* and last of all the *Atharva-Veda*.<sup>27</sup> Max- Muller gives the probable date of the *mantras*, or hymn portion of the *Vedas*, from 1200 to 800 B.C., and the *Brahmanas* from 800 to 600 B.C, and the rest from 600 to 200 B.C. Each of the *Vedas* consists of two main parts: a *Samhita*, or collection of *mantras* or hymns; and a *Brahmana*, containing ritualistic precept and illustration. Attached to each *Brahmana* is an *Upanishad* containing secret or mystical doctrine.<sup>27</sup>

The *Dharmashastras* laid down the law or rules of conduct regulating the entire gamut of human activity. This necessarily included civil and criminal law. The earlier works, which laid down the law in the form of *sutras*, were divided into three classes, viz. *Srauta sutras*, *Grihya sutras* and *Dharma sutras*. The *Dharma sutras*

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21. Smith, op. cit.

22. Ibid.

23. Ibid., p.156.

24. Kulshreshtha, op. cit., p. 4.

25. Jois, op. cit., p. 8, quoting Manu VIII-15: *Dharma ev hato hanti dharmo rakshiti rakshita, Tasmadharmo*

26. Ibid., p. 10.

27. Wilkins, op. cit., Part I, pp. 4-8.

dealt with civil and criminal law. The important *Dharma sutras*, which were considered as high authority, were of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishnu. These *Dharma sutras*, therefore, can be regarded as the earliest works on Hindu legal system.<sup>28</sup>

The next important source of the Hindu law was the *Smritis*. The compilation of the *Smritis* resembles the modern method of codification. All the legal principles scattered in the *Vedas* and also those included in the *Dharma sutras* as well as the custom or usage which came to be practised and accepted by the society were collected together and arranged subject wise in the *Smritis*. The *Smritis* dealt with constitution and gradation of courts, appointment of judges, the procedural law for the enforcement of substantive law, etc. They disclose a well developed legal and judicial system. The important *Smritis* are the *Manu Smriti*, the *Yajnavalkya Smriti*, the *Narada Smriti*, the *Parashara Smriti* and the *Katyayana Smriti*.

The eighteen sub-divisions of law, which cover civil as well as criminal law, are the special features of the *Manu Smriti*. All the law writers, from the 2<sup>nd</sup> Century A.D. onwards, appear to have attached great importance to the *Manu Smriti* and it came to be recognized as the most authoritative work.<sup>29</sup> However, in a research it has been found that out of 2685 verses (*shlokas*) in the *Manu Smriti* only 1214 verses are original and remaining 1471 verses are interpolated. The researcher has described how the interpolated verses of the *Manu Smriti* either contravene the views of Manu as expressed in other verses or are irrelevant to the subject matter where they are placed.<sup>30</sup>

*Puranas* were also a source of law in ancient India. Each *Purana* is devoted to the praise of some special deity, who, according to its teaching, is supreme. The deities, described in other *Puranas* in equally extravagant language, are slighted, and in some cases their worship forbidden. It seems to prove that these books must have been written at different times and in different places, and probably by those who were ignorant of what others had written.<sup>31</sup> All the 18 *Puranas* are classified into three categories—(i) those which are devoted to Brahma viz. the *Brahma*, the *Brahmanda*,

28. Ibid., The Samhitas of three of the Vedas are said to have some peculiarity. "If a mantra is metrical, and intended for loud recitation, it is called Rich (from rich, praise) whence the name Rig-Veda; i.e the Veda containing such praises. If it is prose (and then it must be muttered inaudibly), it is called Yajus (yaj, sacrifice, hence, literally, the means by which sacrifice is effected); therefore Yajur-Veda signifies the Veda containing such yajus. And if it is metrical, and intended for chanting, it is called saman (equal); hence Sama-Veda means the Veda containing such samans.

29. Jois., *op. cit.*, p.22.

30. Ibid., pp. 27-28.

31. Kumar, Dr. Surendra, *Manu Smriti*, published by Arsh Sahitya Prachar Trust, 455, Khari Baoli, Delhi-110 006, pp. 6-7.

the *Brahmavaivarta*, the *Markandey*, the *Bhavishya*, and the *Vaman*; (ii) those devoted to Vishnu viz. the *Vishnu*, the *Bhagavata*, the *Naradiya*, the *Garuda*, the *Padma*, and the *Varaha*; and (iii) those devoted to Siva, viz. the *Siva*, the *Linga*, the *Skanda*, the *Agni*, the *Matsya*, the *Kurma*.<sup>32</sup>

Kautilya's *Arthashastra* was considered to be another important and authoritative source of law during ancient India from the Mauryan period onwards. Kautilya, also known as Vishnugupta or Chankya<sup>33</sup>, was a Minister of Chandragupta Maurya (c. 322-298 B.C.).<sup>34</sup> He has given a detailed description of the legal system. According to Kautilya, an essential duty of government is maintaining order. He defines this broadly to include both maintenance of social order as well as order in the sense of preventing and punishing criminal activity. Kautilya has mentioned the law of procedures; the law of evidence in civil as well as criminal cases; procedure of criminal investigation; and quantum and method of punishments for various types of offences. Prisons, lockups and welfare of prisoners are also the subject matters of the *Arthashastra*. Kautilya has prescribed code of conduct for Judges and for the King.<sup>35</sup> However, some of the provisions in the *Arthashastra* relating to punishments have also been found to be interpolations.<sup>36</sup>

To understand the real meaning of the provisions of the authoritative texts, the adoption of *Mimamsa* (art of interpretation) became inevitable. In addition to the *Mimamsa*, the contemporary jurists contributed by *Nibandhas* (commentaries and digests) to the development of law. It is pertinent to note that some of the *Nibandhas* which were accepted and followed by the society and enforced by the courts in the past are recognized even at present in India such as *Mitakshara* by Vijnaneswara and *Dayabhaga* by Jimutavahana.<sup>37</sup>

*Dharmashastras* did not confer on or recognize any legislative power in the King.<sup>38</sup> Under the Hindu jurisprudence, though the law was enforceable by the political sovereign—the King, it was considered and recognized as superior and binding on that sovereign himself as is clear from the following verse.

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32. Wilkin, W.J., Hindu Mythology, Part II, pp. 90-91.

33. Ibid.

34. Smith, op. cit., pp.94, 141.

35. Rangarajan, L.R.(ed.), Kautilya-The Arthashastra, p. 377.

36. Ibid., P.47 quoting J.J.Meyer as cited by R.P.Kangale in The Kautilya- Arthashastra, Part II, Vol.III,

37. Jois, op. cit., pp. 46-48.

38. Ibid., pp. 10-13.

*Law is the king of kings; nothing is superior to law. The law aided by the power of the king, enables the weak to prevail over the strong.*<sup>39</sup>

However, the above position changed with passage of time as it came to be recognized that in case of conflict between the law laid down in the *Shrutis* (*Vedas*) or the *Smritis* and the *Dharmanyaya*, i.e. King's law, the latter prevailed.<sup>40</sup>

In addition to the literary works of the Hindu law, the customs and usages were also considered as law to administer justice. The *Gautama sutra* declared: "Administration of justice shall be regulated by the *Vedas*, the institutes of the sacred law; the *Vedangas* and the *Puranas*. The customs of the countries, castes, and the family which are not opposed to sacred laws have also the authority."<sup>41</sup> The *Katyayana Smriti* also provided that in the absence of a provision in the texts, a King should follow the usage. The *Yajnavalkya Smriti* prescribed that where two *Smritis* conflicted, principles of equity as determined by popular usages should prevail. The *Narada Smriti* mentioned: "When it is impossible to act up to the precept of sacred law, it becomes necessary to adopt a method on reasoning because custom decides everything and over-rules the sacred law."<sup>42</sup> From these provisions in the *Smritis* it is inferred that a practice had evolved to recognize the prevailing customs and local usage as authority during ancient India. As time elapsed the customs and usage had not only become the laws but also achieved superiority over the sacred law as found in the *Vedas*.

As regards the residuary matters, the power was vested with the King. It was provided that in cases where no principle of law was found in the *Shruti*, *Smritis* or custom, the King should decide according to his conscience.<sup>43</sup> As acknowledged by the *Smritis* themselves, they were based partly on usage, partly on regulations made by the rulers and partly on decisions arrived at as a result of experience.<sup>44</sup>

### 5.1.1 C) KING AND COURTS

Administration of justice, according to the *Smritis*, was one of the most important function of the King. The *Smritis* stressed that the very object with which the institution of kingship was conceived and brought into existence was for the

39. Ibid, quoting Brihadaranakopanishat:Tadetat-ksh rsya kshtram yaddharmah;Tasmadharmatatpram nasti.Atho abliyan baliyansmashanste dharmen;Yatha rajnya evam.

40. Rangarajan, L.R.(ed.), Kautilya-The Arthashastra, p. 377.

41. Ibid., P.47 quoting J.J.Meyer as cited by R.P.Kangale in The Kautilya- Arthashastra, Part II, Vol.III,

42. Jois, op. cit., pp. 46-48.

43. 38.Ibid., pp. 10-13.

44. Ibid, quoting Brihadaranakopanishat:Tadetat-ksh rsya kshtram yaddharmah;Tasmadharmatatpram nasti.Atho abliyan baliyansmashanste dharmen;Yatha rajnya evam.

enforcement of *Dharma* (law) by the use of might of the King and also to punish individuals for contravention of *Dharma* and to give protection and relief to those who were subjected to injury. The *Smritis* greatly emphasized that it was the responsibility of the King to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the King himself and to the people as well.<sup>45</sup>

The King's Court was the highest court of appeal as well as an original court in cases of vital importance to the State. In the King's Court, the King was advised by the Chief Justice and other judges, Ministers and elders, and representatives of trading community. Next to the King's Court was the Court of Chief Justice, which consisted of a board of Judges to assist him. In towns and districts the courts were presided over by the State officers, under the authority of the King, to administer justice.<sup>46</sup> Ashoka entrusted *Mahamatras* with the task of invigilation of the town judiciary by means of periodical tours.<sup>47</sup>

#### **5.1.1. D) JUDICIAL SYSTEM IN VILLAGES**

The criminal justice system of ancient India was so organized that every villager had easy and convenient access to a judicial forum. In Vedic society the village Samitis and *Sabhas* were two important instruments of Indian polity. The Village Councils, similar to modern *Panchayats*, consisted of a board of five or more members to dispense justice to villagers.<sup>48</sup>

The administration of justice was largely the work of these village assemblies or other popular or communal bodies. Village headman had the authority to levy fines on offenders. There were several village committees, including a justice committee, appointed by people's vote.<sup>49</sup> Village Council dealt with simple civil and criminal cases. Other criminal cases were presented before the central court or the courts in towns and district headquarters presided over by the government officers under the Royal authority to administer justice.<sup>50</sup>

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45. Jois, *op. cit.*, p. 489.

46. *Ibid.*, pp. 490-93.

47. *The Gazetteer*, Vol.II, p.153.

48. Kulshreshtha, *op. cit.*, p. 6. (quoting S. Varadachariar, *The Hindu Judicial System*, p.88).

49. Jois, *op. cit.*, pp. 676-78. (quoting an inscription of King Parantaka, found at Uttaramerur, and Annual Reports of Archaeological Survey of India 1904-5 p.131).

50. *Ibid.*, pp. 6-7.

### 5.1.1 E) ANCIENT POLICE

The first institution of state police may be traced to the pre-Mauryan period. Its full development is recorded in Kautilya's *Arthashastra*. It mentions that the police during ancient India was divided in two wings, namely, the regular police and the secret police. The regular police consisted of three tiers of officials: the *Pradesta* (rural) or the *Nagaraka* (urban) at the top, the rural and urban *Sthanikas* in the middle and the rural and urban *Gopas* at the bottom. In the course of his description of the *Pradesta's* duties, Kautilya tells how an inquest was held in case of sudden death. This involved a post-mortem examination of the body as well as thorough police investigation. In Kautilya's work the secret police is divided into two categories namely, the peripatetic and the stationary.<sup>51</sup> The *Manu Smriti* prescribed instructions for the King to detect offences with the help of soldiers and spies. The *Katyayana Smriti* mentions of informant and investigating officer. This suggests that an agency like modern police existed during that period to assist the King in administration of justice.<sup>52</sup>

Jails Like the institution of the state police, that of the state jail also begins with the pre-Mauryan period. It was provided that a jail should be constructed in the capital providing separate accommodation for men and women and it should be guarded. It was also prescribed that the prisoners should be employed in useful work. The policy of taking a sympathetic view, as regards persons found guilty of offences and punished with imprisonment imposed on them, was also laid down in the ancient Indian law.<sup>53</sup> The *Dharmamahatras* were charged with the duty of protecting prisoners from molestation and releasing the deserving ones. The *Arthashastra* gives a detailed account of jail administration.<sup>54</sup>

### 5.1.1 F) CRIME AND INVESTIGATION

Violation of criminal laws was considered an offence against the State. Any member duty to apprehend and punish the offender. It was provided that the King should take cognizance on his own, with or without any complaint by a private party, of criminal offences.<sup>55</sup>

The information or complaint about the offence committed by any individual could be made by any citizen and not necessarily by the person injured or his

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51. *Ibid.*, pp.320-21.

52. *Ibid.*, pp. 318-23 (quoting Manu IX 264-67, Katyana33-34).

53. *Ibid.*, p. 343.

54. *Ibid.*, pp.149-150; Rangarajan, op. cit., pp. 57-58.

55 *Ibid.*, p. 318.

relatives. The person, who on his own accord detected commission of offences and reported to the King, was known as *stobhaka*, i.e. informant. He was entitled to remuneration from the King for giving first information.<sup>56</sup>

A person who was appointed by the King to detect commission of offences was called *Suchaka*, i.e. Investigation Officer.<sup>57</sup> The special responsibility of the King in the matter of controlling crimes, detection of crimes and punishing the offenders was stressed in the *Manu Smriti* that contained the following guidelines for the King:

(i) Persons who commit offences or who conspire to commit offences are generally found in assembly houses, hotels, brothels, gambling houses, etc.;

(ii) The King must post soldiers and spies for patrolling such places and in order to keep away thieves and antisocial elements; and

(iii) He should appoint reformed thieves who were formerly associated with such doubtful elements and through them offenders must be detected and punished.<sup>58</sup>

### 5.1.1 G) PUNISHMENT

The *dandaniti*, i.e. punishment policy, is one of the elaborately dwelt upon subjects in ancient India as it was intimately connected with the administration of the State. Manu emphasized the importance and utility of punishment saying: "Punishment alone governs all created beings, it protects them and it watches over them while they are asleep."<sup>59</sup> As per Manu, Yajnavalkya and Brihaspati there were four kinds or methods of punishment during ancient India, namely, admonition, censure, fine and corporal punishment.<sup>60</sup> Corporal punishments included death penalty, cutting off the limb with which the offence was committed, branding on the head some mark indicating the offence committed, shaving the head of the offender and parading him in public streets. The nature and types of punishments were very cruel, inhuman and barbarous.<sup>61</sup>

Kautilya lays down that awarding of punishment must be regulated by a consideration of the motive and nature of the offence, time and place, strength, age, conduct, learning and monetary position of the offender, and by the fact, whether the offence is repeated.<sup>62</sup> An old man over eighty, a boy below sixteen, women and

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<sup>56</sup> *Ibid.*, p.320 (quoting Katyana 33).

<sup>57</sup> *Ibid.*, (quoting Katyana 34).

<sup>58</sup> *Ibid.*, p. 321 (quoting Manu IX, 264-267).

<sup>59</sup> *Ibid.*, pp. 324-25 (quoting Manu VII 19).

<sup>60</sup> Kulshreshtha, *op. cit.*, pp. 10-13; Jois, *op. cit.*, p.330.

<sup>61</sup> Jois, *op. cit.*, p. 328-29.

<sup>62</sup> *Ibid.*, p. 11 (quoting Kautilya's Arthashastra, Vol. IV, p. 10).

persons suffering from diseases were to be given half the punishment; a child less than five committed no offence and was not to suffer any punishment.<sup>63</sup> In certain cases, the court was empowered to grant compensation to the aggrieved party in addition to the punishment given to the offender.<sup>64</sup>

Manu prescribed that a *Brahmana* offender was not to be sentenced to death or corporal punishment for any offence; in such cases other punishments were substituted.<sup>65</sup> But Katyayana and Kautilya were against exempting *Brahmanas*.<sup>66</sup> The *Katyayana Smriti* prescribed death sentence for a *Brahmana* if he committed theft of gold, caused abortion or killed a woman.<sup>67</sup> Kautilya mentions that a *Brahmana* who aspires for the Kingdom, or makes forcible entry into the King's *harem*, or is guilty of sedition or instigates disaffection or rebellion against the King shall be drowned.<sup>68</sup> There are several references in the *jataka* passages referring to the execution of *Brahmanas*.<sup>69</sup>

The *Manu Smriti* and some other *Smritis* describe that the punishment was awarded according to the *varna* of the offender as well as of the victim. For example, the *Gautam Smriti*, the *Manu Smriti* and the *Yajnavalkya Smriti* prescribed that a *Kshatriya* or a *Vaisya* abusing or defaming a *Brahmana* was to be punished respectively with a fine of 100 panas and 150 panas while a *Sudra* was punished by corporal punishment. This shows that lower the *varna* of the offender the more severe the punishment. But, the *Katyayana Smriti* provided that if a *Kshatriya* was guilty of an offence the quantum of penalty imposed on him would be twice of the penalty imposed on a *Sudra* for the similar offence.<sup>70</sup> The *Manu Smriti* has also a similar provision which provides that higher the *varna* of the offender greater the punishment.<sup>71</sup> This indicates that there were contradictory provisions regarding punishment in different *Smritis*.

### 5.1.1 H) EXAMINATION OF WITNESSES AND PERJURY

It was prescribed that the examination of witnesses should not be delayed. A serious defect, namely, miscarriage of justice, would result owing to delay in

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63 Ibid., (quoting Yajnavalkya, II, p. 243).

64 Ibid.

65 Manu Smriti, op. cit., VIII 377-86.

66 Kulshreshtha, op. cit., pp. 11-12 (quoting Gautama-Dharma sutra, Vol. XII, p. 43; Kautilya's Arthashastra, Vol. IV, p. 8-11; Manu Smriti, Vol. VIII, pp. 125, 380-81; Yajnavalkya Smriti, Vol. II, p. 270; Katyana Smriti, p. 806.

67 Ibid., p. 341 (quoting Katyana 806).

68 Ibid., p. 342 (quoting Kautilya p. 259-60 (239 S).

69 Ibid., (quoting Kane's History of Dharmashastras, Vol. III, p. 399).

70 Ibid., p.341.

71 Ibid. (quoting Manu, VIII 337-38).

examination of witnesses.<sup>72</sup> Witnesses were under legal compulsion to give evidence before the court. Failure to appear before the court entailed heavy penalty. Failure to give evidence amounted to giving false evidence.<sup>73</sup> Perjury, i.e. the act of giving false evidence, was considered a serious offence and punishment was prescribed for it.<sup>74</sup> The entire wealth of a person, who cited false witnesses out of greed, would be confiscated by the King, and in addition he would be exterminated.<sup>75</sup> The party whose witnesses deposed against him could examine further and better witnesses to prove his case as well as to prove that the witnesses examined earlier were guilty of perjury.<sup>76</sup>

### **5.1.1 I) PEOPLES' PARTICIPATION IN CRIME PREVENTION**

Failure of duty towards society was taken very seriously. Any person who fails to render assistance according to his ability in the prevention of crime would be banished with his goods and chattel.<sup>77</sup> Any owner of a house failing to help another at the time of outbreak of fire was liable to be fined.<sup>78</sup> Double punishment was prescribed for those who failed to give assistance to one calling for help though they happened to be on the spot or who ran away after being approached for help.<sup>79</sup>

### **5.1.1 J) RIGHT OF SELF-DEFENCE**

Right of self-defence existed during ancient India. The law provided: "A person can slay without hesitation an assassin who approaches him with murderous intent. By killing an assassin the slayer commits no offence. A person has a right to oppose and kill another not only in self-defence but also in defence of women and weak persons who are not in a position to defend themselves against murderous or violent attack. Even killing a *Brahmana* in exercise of such a right is no offence."<sup>80</sup> As per Katyayana no blame is attached to one who kills wicked men who are about to kill a person, but if they have desisted from their evil act of killing, they should be captured and not killed.<sup>81</sup>

### **5.1.1 K) OFFENCES BY PUBLIC SERVANTS**

Offences and misconduct committed by police officers, Jail Superintendent and other public servants were taken very seriously and severe punishments were

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72 Ibid., p. 544 (quoting Katyana 339-340).

73 Ibid., p. 542 (quoting Manu VIII-107 and Yaj. II-77).

74 Ibid., pp 385-86.

75 Ibid., p. 388 (quoting Katyana 407).

76 Ibid., p. 550.

77 Ibid., p.380 (quoting Manu IX-274).

78 Ibid.

79 Ibid., p. 381 (quoting Vishnu p.31-74).

80 Ibid., pp. 371-372 (quoting Manu VIII 350-351).

81 Ibid., (quoting Katyana 800).

prescribed.<sup>82</sup> It was provided that the judges who passed unjust order, or took bribes, or betrayed the confidence reposed in them, should be banished.<sup>83</sup>

From the foregoing, it is seen that the institutions of the criminal justice administration had taken their roots during the *Vedic* period in India. The system gradually developed and during the Mauryan period a well-defined criminal justice system had come into existence as described in the *Arthashastra*.

### **5.1.2 MEDIEVAL INDIA (A.D. 1206 -1757)**

Towards the end of 11th Century began the downfall of the Hindu rule. Local Hindu rulers were attacked and defeated by foreign invaders of Turkish race. Gradually, old Hindu kingdoms began to disintegrate.<sup>84</sup> The numerous Hindu states, which took shape from time to time, varying continually in number, extent, and in their relations with each other, seldom were at peace. The never-ending dynastic wars and revolutions did not bring about any development of political institutions. No republics were formed, no free towns were established.<sup>85</sup> An atmosphere of great mutual distrust was created amongst the contending States which prevented their political unity against the common enemy.<sup>86</sup> The real weakness in Indian administration lay in the influence of the great feudatory families whose power and ambition constituted a perpetual threat to the stability of the Central Government. Hindu kingdoms also suffered from the prevailing caste divisions.<sup>87</sup>

The numerous raids of Mahmud Ghazni during A.D. 1000 to 1026 had revealed that India was vulnerable and fabulously rich.<sup>88</sup> After successive invasions by Ghazni, Mohammad Ghori attacked India, defeated Prithvi Raj, a Rajput King, in the year 1192 and occupied Delhi. After the conquest of various parts of India, Ghori returned to Khurasan leaving the Indian campaign in the hands of his slave Qutub-ud-din-Aibak. After the death of Ghori in 1206, Qutub-ud-din-Aibak established the Slave dynasty and became the first Muslim King to rule from Delhi.<sup>89</sup> Subsequently, the Khiljis (A.D. 1290-1320); the Tughluqs (A.D. 1320-1414); the Syeds (A.D. 1414-50); the Lodhis (A.D. 1451- 1526) ruled India as Sultans of the Delhi Sultanate. Babur defeated Ibrahim Lodhi in the famous First Battle of Panipat in A.D. 1526 and

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82 Ibid., pp. 389-390.

83 Ibid., p. 382.

84 Kulshreshtha, op. cit., p.14.

85 Smith, op. cit., pp. 197-99.

86 Kulshreshtha, op. cit., p.14.

87 Ibid.

88 The Gazetteer, op. cit., Vol. II, p. 325.

89 Jois, op. cit., Vol. II, pp.3-21.

established the , Mughal empire. The Mughal Emperors ruled India effectively up to A.D. 1707 except the period A.D. 1540-55 when the Suri dynasty established by Sher Shah Suri was in power.

After the death of Aurangzeb in 1707 the Mughal empire started declining. Bahadurshah II was the last Muslim ruler. The Muslim rule in India came to an end formally in 1858 when the British took over the control of Indian affairs from the East India Company.

The Muslim polity was based on the concept of the legal sovereignty of the *Shara* or Islamic law. The political theory laid emphasis on the fact that all Muslims formed one congregation of the faithfuls and it was necessary for them to unite closely in the form of an organized community. Any attempt to break away from the organized community was condemned by the religion.<sup>90</sup> All the members of the community elected the *Khalifa* or Caliph as the Commander of the faithfuls. It was made obligatory on all Muslims to owe allegiance to the Caliph who was their ruler. In India the Sultans of Delhi, though absolute regents, claimed to be the representatives of the Caliph.<sup>91</sup>

The civil administration during the Muslim rule was headed by the King who was known as Sultan or Emperor. He was assisted by his Minister (*Wazir*). The kingdom was divided into provinces (*subahs*). Each province was composed of districts (*sarkars*). Each district was further divided into *parganahs*. A group of villages constituted a *parganah*.<sup>92</sup>

The Muslim rulers emphasized the importance of administration of criminal justice and introduced reforms to improve the judicial machinery. For the first time in the country, the Chief Judge was appointed by Qutub-ud-din-Aibak. Balban introduced the system of espionage to find the truth about the criminals. Sikandar Lodhi initiated several reforms in criminal justice system.

The judicial reforms of Sher Shah Suri formed a bridge between the Sultanate period and the Mughal period. He reformed the judicial machinery. Sher Shah Suri was of the opinion that stability of the government depended on the justice and that it would be his greatest care not to violate it either by oppressing the weak or permitting the strong to infringe the laws with impunity. Heads of the Village Councils were

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90 Kulshreshtha, op. cit., (quoting Quran, III,192; XLII).

91 Ibid.

92 Ibid., pp18-20.

recognized. They were ordered to prevent theft and robberies. In case of robberies, they were made to pay for the loss sustained by the victim. However, he did not disturb the village autonomy. Police regulations were drawn up for the first time in India. The judicial officers below the Chief Provincial *Qazi* were transferred after every two or three years.<sup>93</sup>

During the Mughal period, Akbar introduced many reforms in the administration of justice. He created common citizenship and a unanimous system of justice for all. Besides, he prohibited slavery, repealed the death penalty clause for criticizing Islam or Prophet Mohammad, and prohibited the forcible practice of *sati*. Jahangir abolished the cruel and barbarous punishments and decentralized the power of the courts. Shahjahan established the regular system of appeal.<sup>94</sup> Aurangzeb entrusted the preparation of a comprehensive digest of Muslim criminal law to eminent Muslim theologians. The digest so prepared was entitled *Fatwa-i-Alamgiri*.<sup>95</sup>

When the Sultans ruled most of the parts of India from Delhi, a few Hindu kingdoms also existed in some parts of the country. Among these, the Vijyanagar empire, from A.D. 1336 to 1646, was the most famous. Krishnadevaraya was the greatest of the rulers of this dynasty. He reigned from 1509 to 1529.<sup>96</sup> The example of Vijyanagar and their system of adjudication of the criminal justice indicate the functioning of full-fledged judicial system.<sup>97</sup> But during the medieval period of Indian history the criminal justice system of India was highly influenced by the Muslim rulers and therefore, the period is generally known as the Muslim period.

Salient features of the Muslim polity and evolution of criminal justice system during the Muslim rule in India are discussed below:

### **5.1.2 A) CONCEPT OF LAW**

During the Muslim rule in India, Islamic law or *Shara* was followed by all the Sultans and Mughal Emperors. Muslim criminal law as applied in India, was supposed to have been defined once for all in the *Quran* as revealed to the Arabian Prophet and his traditional sayings (*hadis*).<sup>98</sup>

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93 Ibid., p.21.

94 Singh, Dr. D.R., "Evolution of Criminal Justice", Indian Journal of Public Administration, July-Sep.

95 Jois, op. cit., pp.10.

96 Smith, op. cit., Part II, pp. 311-17. Nuniz, a Portuguese visitor, mentioning about the punishments inflicted in the Vijyanagar Kingdom states, "For a thief, whatever theft he commits, howsoever little it be, they forthwith cut off a foot and a hand; and if his theft be a great one he is hanged with a hook under his chin." The extreme ferocity of the punishments inflicted for the offences against property was well designed to protect the rich against the poor.

97 Singh, op. cit., I.J.P.A., July-Sep.1994, p.383.

98 Choudhuri, op.cit., p.61.

The Muslims followed the principle of equality for men and they had no faith in the graded or sanctified inequality of caste system. Muslim religion places every man on an equal footing before God, overriding distinctions of class, nationality, race and colour. However, this concept of equality was applicable only to the Muslims. Under the Muslim law, non-Muslims did not enjoy all the rights and privileges which the Muslims did. They were not treated as equal to Muslims in law and were called “*zimmis*”. Their evidence was inadmissible in the courts against the Muslims. They had to pay an additional tax called ‘*jizya*’ and as regards other normal taxes also they had to pay at double the rate than what a Muslim paid.<sup>99</sup>

A special feature of the Muslim law was that the Muslim criminal jurisprudence treated criminal law as a branch of private law rather than of public law. The principle governing the law was more in the nature of providing relief to the person injured in civil matters rather than to impose penalty for the offence committed. It was for the private persons to move the State machinery against such offences and the State would not *suo-moto* take cognizance of the same.<sup>100</sup>

### **5.1.2 B) SOURCES OF LAW**

The main source of Muslim law, i.e. *Shara* is *Quran* and *sunnah* or *hadis*, which means the practices and traditions of the Prophet who, is considered to be the best interpreter of *Quran*. On all matters on which *Quran* was silent, *sunnah* or *hadis* was regarded as paramount authority. In addition to these the other two sources which developed inevitably in order to meet the needs of expanding Muslim society were: *Ijma*—consensus of opinion of the learned in *Quran*; and *Qiyas*—analogical reasoning having due regard to the teachings of Mohammad. As the society progressed, in view of the divergent views taken on various provisions of *Quran* by eminent Muslim jurists, four well-defined branches or schools of Muslim law came to be recognized by different sections of the Muslim society. They are the Hanafi school, the Maliki school, the Shafi school, and the Hanbali school.<sup>101</sup>

### **5.1.2 C) KING**

The administration of justice was one of the primary functions of the King. The monarch was the head of the judicial organization.<sup>102</sup> According to Islamic jurisprudence, as was the position under the Hindu jurisprudence, the ruler constituted

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99 Kulshreshtha, op. cit., p.28.

100 Jois, op.cit., pp. 12-13.

101 Ibid., pp.9-10.

102 Choudhuri, op. cit., p.67.

the highest court of justice.<sup>103</sup> To maintain and enforce the criminal code was one of the important functions of the King. Being head of the state, he was the supreme authority to administer justice in his kingdom.

### 5.1.2 D) COURTS

Different courts were established to deal with different kinds of cases. Courts were constituted at central capital and at the headquarters of a province, district and *parganah*.

During the Sultanate period the Court of *Diwan-e-mulzim* was the highest court of criminal appeal. To deal with the cases of criminal prosecutions of rebels and those charged with high treason, a separate court *Diwan-e-siyasat* was constituted. The judiciary and police were placed under the *Chief Sadr* and *Chief Qazi*, both offices being held usually by the same person. In due course a hierarchy of *Qazis* was established to dispose of cases of civil disputes and criminal complaints.<sup>104</sup> At each provincial headquarters, *Adalat Qazi-e-subah* was empowered to try civil and criminal cases of any description and to hear appeals from the district courts. Similarly, there were courts at the district and *parganah* headquarters. Appeals were filed before the district court from the judgements of the *Parganah Qazis*, *Kotwals* and village *Panchayats*.<sup>105</sup> Petty criminal cases were filed before the *Kotwal* who was the principal executive officer in towns.

Sher Shah Suri introduced many reforms in the court system. In the *parganahs*, separate courts of first instance were established for civil and criminal cases. The *Shiqahdars* who had until now powers corresponding to those of *Kotwals* (of cities) were given magisterial powers within the *parganahs*. They continued to be in charge of the local police.<sup>106</sup>

During the Mughal rule a separate department of justice (*mahukma-e-adalat*) was created to regulate and see that justice was administered properly. Justice was administered by means of a hierarchy of courts rising from the Village Council (*Panchayat*) to the *parganah*, *sarkar* and provincial courts and finally to the *Chief Sadr-cum-Qazi* and the Emperor himself.<sup>107</sup> The Emperor's Court had jurisdiction to hear original and criminal cases. In criminal cases the *Mohtasib-e-Mumalik* or the

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103 Ibid.

104 The Gazetteer, pp.457-58.

105 Choudhuri, op. cit., pp.69-70.

106 Kulshreshtha, op. cit., p. 21 (quoting W. Erskine, History of India, Vol. P. 443).

107 The Gazetteer, pp.464-65.

Chief *Mohtasib*, like the Attorney General of India today, assisted the Emperor. In order to hear an appeal, the Emperor presided over a Bench consisting of the Chief Justice and *Qazis* of the Chief Justice's Court. The public was allowed to make representations and appeals to the Emperor's Court in order to obtain his impartial judgement.<sup>108</sup> The second important court of the empire was the court of the Chief Justice (*Qazi-ul-qazat*).

This had original civil and criminal jurisdiction and also heard appeals. It was required to supervise the working of the provincial courts.<sup>109</sup> At each provincial headquarters, the Provincial Chief Appellate Court, presided over by the *Qazi-e-subah*, besides hearing appeals had also the original civil and criminal jurisdiction. In each district, chief civil and criminal court of the district was presided over by the *Qazi-e-sarkar*, who was the principal judicial officer of the district. *Qazi-e-parganah* presided over the *Adalat-e-parganah* that had to deal with all civil and criminal cases arising within the jurisdiction of the *parganah*, including the villages.<sup>110</sup>

### 5.1.2 E) JUDICIAL SYSTEM IN VILLAGES

During the Muslim rule in India village continued to be the smallest administrative unit of the government. Each *paragnah* consisted of a group of villages. For each group of villages there was a village *Panchayat*, a body of five leading men, elected by the villagers. The head of *Panchayat* was known as *Sarpanch*.<sup>111</sup>

From ancient times the Village Councils (*Panchayats*) were authorized to administer justice in all petty civil and criminal matters.<sup>112</sup> The institution of *Panchayat* as it existed during the Hindu period remained untouched during the Muslim rule in India. The authority of *Panchayat* was recognized and it continued to decide both civil and criminal cases of purely local character during the Muslim period. Village *Panchayats* were mostly governed by their customary law. Though the decisions given by *Panchayats* were based on local customs and were not strictly according to the law of the kingdom, yet there was no interference in the working of *Panchayats*. As a general rule, the decision of *Panchayat* was binding upon the

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108 Kulshreshtha., op. cit., pp.22-23.

109 Ibid.

110 Ibid., pp. 23-24.

111 Ibid.

112 Ibid., p. 24 (quoting Sir Charles Metcalfe in the Report of the Select Committee of the House of Commons, Vol. III, p.331).

parties and no appeal was allowed from its decision.<sup>113</sup> Mostly these *Panchayats* decided cases as between Hindus who formed the bulk of the population. Consequently, administration of justice under Muslim rulers did not cover about three-fourths of their subjects.<sup>114</sup>

### 5.1.2 F) MEDIEVAL POLICE

Policing of the cities and towns was entrusted to *Kotwals* and of the countryside to *Faujdars*. Judiciary and Police were placed under the *Chief Sadr* and *Chief Qazi* both offices being held usually by the same person.<sup>115</sup>

The Mughals had established the *kotwali* system in the cities and the *chowkidari* system in the villages. The Court of *Fauzdar* tried petty criminal cases concerning security and suspected criminals. *Kotwals* were also authorized to decide petty criminal cases.<sup>116</sup>

### 5.1.2 G) JAILS

Prisoners awaiting trial were detained in prisons in the Muslim period of India. The duties of the *Kotwal* were to check the number of the persons in the prison and ascertain their answers to the charges against them. Imprisonment as punishment was not expressly provided for under the Islamic criminal law and thus there was, generally no need of prisons as penal instruments. But due to the provision of *diya* in that law, many prisoners, after conviction, had to spend their days for their inability to pay compensation. Again the discretion left to the *Qazi* to impose *tazir*, that is in offences not categorized under *hadd*, *qisa* and *diya*, enabled him to award imprisonment, if he so wished.<sup>117</sup>

### 5.1.2 H) CRIMES AND CRIMINAL PROCEDURE

Contrary to the practice under Hindu law, all crimes were not considered injuries to the State under the Islamic penal law. The offences were classified under three heads, namely, (i) crimes against God, (ii) crimes against the State, and (iii) crimes against private individuals.

Crimes against God and the State were treated as offences against public morals. Other crimes were treated as offences against the individuals; it was for the

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113 Ibid.

114 Jois, op. cit., pp. 18-19.

115 The Gazetteer, op. cit., pp. 457-58.

116 Kulshreshtha, op. cit., p.23; Choudhuri, op.cit., pp. 69-70.

117 Choudhuri, op. cit., pp.148-49.

private persons to move the State machinery against such offences and the State would not *suo-moto* take cognizance of the same. While an offence like murder, which under modern law is treated as the most heinous crime, was considered as an offence against individual but drinking wine was considered a very serious offence against society.

In criminal cases, a complaint was presented before the court either personally or through a representative. To every criminal was attached a public prosecutor known as *Mohtasib*. He instituted the prosecutions against the accused before the court. The court was empowered to call the accused at once and to begin hearing of the cases.<sup>118</sup> The criminal process required a valid accusation made in the presence of the defendant who could confront his accusers and had the right to interrogate him, cross-examine him as also ask him to take the oath. The burden of proving the charge was always on the accusers and an accusation itself was no proof.

A criminal trial was not a process designed to put the state against the accused. The victim-accuser was directly involved in the process.<sup>119</sup> Ordinarily, the judgement was given in open court. In exceptional cases, where either the public trial was against the interest of the state or the accused was dangerously influential, the judgement was not pronounced in the open court.<sup>120</sup>

Evidence was classified by the Hanafi law into three categories: (a) *tawatur*, i.e. full corroboration; (b) *ehad*, i.e. testimony of a single individual; and (c) *iqrar*, i.e. admission including confession. The law of evidence prescribed for proving the offence was highly technical. Some of the rules of evidence followed under Muslim criminal law were as follows:

- i. No capital sentence could be inflicted on a Muslim on the evidence of a non-Muslim.
- ii. In other cases, evidence of one Muslim was considered as equivalent to two non-Muslims.
- iii. Evidence of two women was considered equivalent to that of one man.
- iv. Evidence should be direct, viz. that of eye witnesses only and not circumstantial and further specified number of witnesses was a must to secure conviction. For instance, for proving offence of rape not only eye witnesses were necessary but also four such witnesses were insisted upon.

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118 Kulshreshtha, op. cit., pp. 24-25.

119 Choudhuri, op. cit., p. 65

120 Kulshreshtha, op. cit., p.25.

- v. Evidence of women was inadmissible to prove a charge of murder and in all cases of *hadd* or *kisa*.<sup>121</sup>

### 5.1.2 I) PUNISHMENTS

The punishments for various offences were classified into four broad categories, viz (a) *kisa*, i.e. retaliation which meant in principle, life for life and limb for limb; (b) *diya* meant bloodmoney being awarded to the victim or his heirs; (c) *hadd* inflicted on persons who committed offences against God; (d) *tazeer*, i.e. punishment for the cases not falling under *hadd* and *kisa*. The punishment which fell in this category consisted of imprisonment, corporal punishments and exile or any other humiliating treatment.<sup>122</sup> The type and quantum of penalty to be imposed was entirely within the discretion of the Judge. In criminal cases, a great deal of discretion was allowed to them and they took a variety of factors into account in awarding punishment.<sup>123</sup>

Punishments prescribed were very cruel. Mutilation of the body was one of the type of punishment which resulted in great suffering and gradual death.<sup>124</sup>

A special feature of the punishments was that of *diya* i.e. bloodmoney. This applied to cases of certain offences including those falling under *kisa*. Bloodmoney was awarded to the victim or the heirs of the victim in a fixed scale. In the cases falling under *kisa* also the person entitled to inflict injury on the wrong doer could forego his right by accepting *diya*. If one of the heirs accepted *kisa* and gave pardon, the other heirs had no other alternative than to accept their share of bloodmoney. According to a *fatwa* delivered in march 1791, one man named Mongol Das murdered his wife and one of her heirs gave pardon and therefore no death sentence could be inflicted at the instance of other heirs and they had no alternative but to receive *diya*. Another special feature of the Muslim criminal law was that the death sentence was required to be executed by the heirs of the deceased.<sup>125</sup>

### 5.1.2 J) INSTITUTION OF LAWYERS

Litigants were represented before the courts by professional legal experts. They were known as *Vakils*. The legal profession flourished during the Muslim period. The lawyers played a prominent role in the administration of justice. Two Muslim Indian Codes, namely, *Fiqh-e-Firoz Shahi* and *Fatwa-e-Alamgiri*, clearly

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121 Ibid.

122 Jois, op. cit., P. 10.

123 The Gazetteer, op. cit., p.464.

124 Jois., op. cit., pp.12- 15.

125 Ibid.

state the duties of a *Vakil*. Ibn Batuta, who was a Judge during the reign of Mohammad Tughluq mentions about *Vakils* in his book.<sup>126</sup> Sometimes they were appointed to assist poor litigants by giving them free legal advice. A *Vakil* had a right of audience in the court. It was expected that the *Vakil* should maintain high standard of legal learning and behaviour.<sup>127</sup>

### 5.1.2 K) APPOINTMENT OF JUDGES

Chief Justice and other judges of higher rank were appointed by the Emperor. Sometimes the Chief Justice and other judges were appointed from amongst the eminent lawyers. Similarly, provincial and district *Qazis* were appointed from lawyers. The selection of a *Qazi* as a rule was made from amongst the lawyers practising in the courts.<sup>128</sup> Lapses on the part of government officers were thoroughly investigated, if necessary, through commissions of inquiry.<sup>129</sup> Corrupt judicial officers were punished and dismissed. Every possible effort was made to keep up the high standard of the judiciary.<sup>130</sup>

From the foregoing, it is seen that during the Muslim rule in India the criminal justice system marked a significant change from that of the Hindu period. Special emphasis was given on constitution and working of different courts.

### 5.1.3 MODERN INDIA (A.D. 1757 –1947)

On 31st December 1600, Queen Elizabeth I of England granted a Charter to the East India Company of London to trade into and from the East Indies, in the countries and parts of Asia and Africa for a period of fifteen years. The provisions of the Charter of 1600 were only in connection with the trade and were not intended for acquisition of dominion in India. The legislative authority was given to the Company in order to enable it to regulate its own business and maintain discipline amongst its servants. In order to enable the Company to punish its servants for grosser offences on long voyages, the Company secured the First Royal Commission in 1601. Subsequently, the Company was authorized to continue its privileges in perpetuity and some additional powers were given for enforcing martial law.<sup>131</sup>

After settling at Surat in 1612 the Company approached the Mughal Emperor Jahangir through Sir Thomas Roe, Ambassador of England's King James I, and

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126 Kulshreshtha, op. cit., pp. 24-26.

127 Ibid.

128 Ibid.

129 The Gazetteer, loc. cit.

130 Kulshreshtha, loc. cit.

131 Ibid., pp, 30-31.

succeeded in securing a Royal Order called *farman* in 1618. The *farman* conferred *inter alia* the rights on the Company to establish a factory at Surat; to live according to their religion and law without any interference; to settle disputes as among Englishmen and to have the disputes as between Englishmen and local persons settled through local authorities.<sup>132</sup> In view of the Charter of the King of England read with the *farman* of the Mughal Emperor, the legal position at Surat Factory was as follows:<sup>133</sup>

- (i) There was no common legal system which could apply to all persons in Surat.
- (ii) Civil justice was according to personal law of the Hindus and Muslims.
- (iii) Criminal law followed was the Muslim criminal law.
- (iv) Englishmen were to be governed by English law.

As the activities of the Company increased, King Charles II issued a new Charter in April 1661 authorizing the Company to try cases, both civil and criminal, relating to all persons whether servants of the Company or others according to the laws of England. By this Charter the laws of England were for the first time made applicable in the territory of India and through these powers, the Company started developing into a government for the locality.<sup>134</sup>

The Charter of 1668 was a step which further assisted the transition of the trading body into a territorial power. Charles II transferred in 1669 the island of Bombay, which he got as a dowry from Portugal, to the East India Company for an annual rent of ten pounds. The Charter of 1668 authorized the Company to make laws, orders, ordinances and constitutions for the good government of the island of Bombay. The Charter also empowered the Company to establish courts of judicatures similar to those established in England for the proper administration of justice.<sup>135</sup> Subsequently, the Charter of 1683 provided that a court of judicature should be established at such places as the Company might consider suitable and decide according to equity, good conscience, laws and customs of merchants.<sup>136</sup>

With the passage of time the Company continued securing more and more powers and privileges from the British Crown. Being encouraged by the constant support of the British Government, the Company went on expanding its spheres not only in the business field but also in the political arena. The Battle of Plassey of 1757

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132 Jois, op. cit., p. 27.

133 Ibid.

134 Ibid., p.26.

135 Kulshreshtha, op. cit., pp. 33-34.

136 Ibid.

was the first landmark in the history of the Company's political success in India. However, the Company's political power was established by the success in the Battle of Buxar of 1764. Thereafter, the Company continued to expand its rule in India till 1857. The Revolt of 1857 proved fatal to the Company's political career in India.<sup>137</sup> The British Crown assumed direct charge of the Indian affairs as the Government of India Act, 1858 deprived the East India Company of the Indian Government. The Proclamation of Queen Victoria of England on November 1, 1858 outlined the principles on which the Crown would govern India. The place of the President of the Board of Control was taken by a Secretary of State for India, who now became, in subordination to the cabinet, the fountain head of authority as well as the director of policy in India.<sup>138</sup> The British rule in India continued till 1947.

In order to control the vast area and population of India, the British had revamped the existing criminal justice system of India. They modified the existing laws, passed new laws and introduced new principles. The criminal justice system, as it exists today, was mostly evolved during the British period.

The steps taken by the British to establish a well defined and uniform criminal justice system in India are discussed below.

### **5.1.3 A) STATUS OF LAW**

During the Muslim rule in India, the Muslim criminal law had replaced the Hindu law as the law of the State. It was applied and enforced by the courts established by Muslim rulers. Hindu law, however, continued to be enforced by village *Panchayats*, but it could not be enforced in courts maintained by the State. The then prevalent Muslim criminal law and justice system were allowed to continue by the British not only for the Muslims but also for the non-Muslims as the general law except, however, at Bombay because at the time of its acquisition by the British from the Portuguese it was not under Muslim criminal law.<sup>139</sup> Illbert describes the circumstances, which made the application of the Muslim criminal law inevitable and the compulsions which rendered the change of the criminal law a must in the following words:

“The object of the East India Company was to make as little alteration as possible in the existing state of things. Accordingly, the country courts were required,

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137 Smith, *op. cit.*, pp. 672-73. The Company itself was formally dissolved from 1st January 1874 by Act of Parliament.

138 *Ibid.*

139 Choudhuri, *op. cit.*, p.73.

in the administration of criminal justice, to be guided by Mohammedan law. But it soon appeared that there were portions of the Mohammedan law, which no civilized government could administer. It was impossible to enforce the law of retaliation for murder, of stoning for sexual immorality or of mutilation for theft, or to recognize the incapacity of unbelievers to give evidence in cases affecting Mohammedans.”<sup>140</sup>

### **5.1.3 B) REFORMS IN CRIMINAL LAW BY WARREN HASTINGS**

Warren Hastings, Governor of Bengal from 1772 and Governor-General from 1774-85, could observe the defects and inequities of the existing system of criminal law and the machinery of criminal justice. He, however, could not venture to uproot the Muslim criminal justice system and tried to tread a pragmatic path and adopted the device of experimentation with the triple policy of the preservation of the heritage as far as possible, reorganization where inevitable and improvements where inescapable.<sup>141</sup> But such efforts of his could touch only the fringe of the problem.

### **5.1.3 C) REFORMS BY CORNWALLIS (A.D. 1786-93)**

Before accepting his appointment as Governor-General, Cornwallis laid down two conditions, that the Governor-General will have power to override his council and the office of the Governor-General and the Commander-in-Chief will be united under one person.

The conditions laid down by Cornwallis were accepted and thus, the Governor-General became the effective ruler of British India under the authority of Board of Control and Court of Directors. The Governor-General and Council now became the Governor-General-in-Council and this position continued till India became independent in 1947.

Certain specific instructions were given to Cornwallis in three matters: (i) to deal with the problem of land revenue; (ii) improvement in the administrative machinery; and (iii) to introduce reforms in the judicial system. The instructions contemplated the reuniting of the functions of revenue collector, civil judge and magistrate in one and the same person as it would lead to simplicity, justice and economy. Regarding criminal jurisdiction, it was stated that the powers of trial and punishment must, on no account, be exercised by any other than the established officers of the Muslim judiciary. Cornwallis reformed the whole system of civil and criminal justice by a method of trial and error. In the judicial system Cornwallis introduced reforms in three phases—in 1787, 1790 and 1793 respectively.

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<sup>140</sup> Jois, *op. cit.*, pp. 53-54.

<sup>141</sup> Choudhuri, *op. cit.*, p. 73.

(a) Judicial Plan of 1787—The existing separation of the revenue and judicial functions, brought about by Warren Hastings, was removed and both the functions were united under the district collector, an Englishman. The Collector was also entrusted with magisterial powers in his district. While discharging his duties as a Magistrate, the Collector was empowered to arrest, try and punish the criminals for petty offences. All Europeans who were not British subjects were placed on the same footing in criminal matters as the Indians and the *Mofussil Fauzdari Adalats* were authorized to try and punish them.<sup>142</sup>

(b) Scheme of 1790—After gaining sufficient experience from 1786 to 1790, Cornwallis realized that the prevailing system of the administration of criminal justice was very defective and futile.<sup>143</sup> Robberies, murders and other crimes relating to life and property of the natives were increasing; dacoits and murderers were protected by *zamindars*; conditions of prisons were highly unsatisfactory; judges and law officers were paid low salaries, persons eager to amass money joined these posts, there was no security to tenure of these posts; cases were delayed on account of collusion between judges and offenders; and there was no uniform standard of imposing punishments.<sup>144</sup>

In 1790 Lord Cornwallis circulated a questionnaire among all the Magistrates with the object of ascertaining the then existing conditions of the criminal justice system. He found that it was most uncivilized and intolerable. He noticed that death sentences, worst and cruel types of corporal punishments and indefinite imprisonment were frequent and numerous and at the same time the most notorious offenders very often escaped without punishment. He also noticed that the jails were over crowded with large number of criminals and offences such as murders, robberies and burglaries had become endemic. People were perpetually haunted with the fear of insecurity to their life and property.<sup>145</sup> According to Cornwallis two factors contributed to such a state of affairs of the criminal justice system, viz. (i) the Muslim criminal law which was, in the opinion of Cornwallis, against natural justice and humane society, and (ii) defects in the constitution, organization and administration of criminal courts.

With a view to reforming criminal judicature, Cornwallis prepared a new scheme and promulgated it in December 1790. The following were the most important reforms introduced under the scheme:

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142 Kulshreshtha, *op. cit.*, pp. 136-37.

143 *Ibid.*, p. 137.

144 *Ibid.*

145 Jois., *op. cit.*, pp.153-54.

- i. The *Nawab* was deprived of his position as the highest criminal court. This power was assumed by the Governor-General-in-Council with the designation of *Sadar Nizamat Adalat*.
- ii. Courts of Circuit were established at each divisional headquarters.
- iii. The Collector of each district was designated as Magistrate to preside over the lowest criminal courts in the hierarchy.
- iv. The Magistrates had to take an oath before the Supreme Court, to qualify themselves to function as Justices of Peace and thereby acquired the authority to arrest Englishman accused of any offence.
- v. Europeans other than the British were to be treated in the same manner as Indians in the criminal matters.
- vi. Cruel punishments were abolished, in case of murder, punishment was now to be given on the basis of the intention of the party; bloodmoney was abolished and choice given to the next of kin of the murdered person to remit the death penalty was done away with; and the courts were required to proceed against the accused even if the heirs refused to prosecute. Evidence of non-Muslims was admitted as valid.
- vii. Salaries and allowances of the judges and the native officers were increased in order to check corruption
- viii. Subsequently, in the year 1792, provision was made for payment of small daily allowance to all prosecutors and witnesses who were in need of such assistance, which was one of the important steps to enable the parties to come in greater number to seek justice.<sup>146</sup>

(c) Scheme of 1793—Cornwallis, after due consideration of the working of the system commenced in 1787, was convinced that concentration of power in the hands of collectors had proved injurious to the interest of the people and the administration of justice had suffered. He was of the opinion that the interests of the Company's government and that of the people were interconnected and therefore, protecting the interests of the people and ensuring their happiness and prosperity of the people was necessary to the Govt. even from the point of its own stability & permanency.<sup>147</sup>

In this background the scheme of 1793 was prepared and implemented by making necessary regulations. The scheme *inter alia* covered the following aspects:

- i. The Collectors were divested of judicial powers.

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146 Ibid., pp. 154-57.

147 Ibid.,p. 157 (quoting the minute of Cornwallis dated February 11, 1793).

148 Ibid., pp.160-161.

- a. By Regulation IX of 1793 the magisterial functions of collectors were transferred to the *Mofussil Diwani Adalats*.
- b. Court of Circuit established in 1790 was merged in the Court of Appeal. Each such court was to consist of three English Judges. The court was to break into two divisions, one consisting of a single senior-most Judge and other consisting of two other Judges while functioning as the Circuit Court. After completion of the circuit all the three judges were to sit together as the court of Appeal to hear appeals against the decisions of the *Mofussil Diwani Adalats*.
- c. Collectors and all executive officers were made answerable to the *Diwani Adalats* for their official acts. This established judicial supremacy over executive action.
- d. Regulation VII of 1793 was made in order to fulfill the requirement of a well organized legal profession. This *inter alia* made the following provisions:<sup>148</sup>
  - a) Pleaders who were found guilty of misconduct including misbehaviour in private life were liable to be suspended by the court;
  - b) The *Vakils* were required to charge moderate fees as laid down in the regulations and they were liable for dismissal if they accepted anything beyond the scheduled fee from their clients. To give effect to this provision, fees of lawyers were required to be collected by the court;
  - c) *Vakils* who were found to be willfully adopting dilatory tactics for their own advantage were liable for damages and also dismissal;
  - d) *Vakils* were liable for prosecution by their clients, if they resorted to fraudulent method or other types of malpractices; and
  - e) Provision was made to appoint a few government lawyers to conduct cases required to be conducted at public expenses.

During his second tenure as Governor General, Cornwallis introduced a very important reform in 1805 providing that the Chief Judge will not be a member of the Council. His main aim in doing so was to separate judicial functions from the executive and legislature.<sup>149</sup> However, one major defect in the reforms of the judicial system introduced by Cornwallis was the ineligibility of Indians to hold any judicial post except that of *Munsif*. But in the course of time this defect was removed and

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<sup>149</sup> Ibid., p.169.

more and more Indians came to be associated with the administration of justice.

### **5.1.3 D) REFORMS BETWEEN 1793 AND 1828**

Sir John Shore (A.D. 1793-98) could not do much as far as criminal justice was concerned.<sup>150</sup> Lord Wellesely (A.D. 1798-1805) introduced certain major reforms to improve the administration of justice. In order to expedite the disposal of the pending judicial work, in *zilas*, and cities, Head Native Commissioners, also known as *Sadar Ameens*, were appointed. In each district a civil servant of the Company was appointed as Judge and Magistrate, and another civil servant as Collector.<sup>151</sup>

Lord Hastings (A.D. 1813-23) brought about many improvements in the working of the criminal courts. The Magistrates were given powers to refer to Native Law Officers and *Sadar Ameens*, cases of petty offences for trial; the jurisdiction of Magistrates and Joint Magistrates was enlarged; efforts were also made to deal with the unnecessary delay in the administration of justice and to dispose of arrears of work. Lord Hastings took special interest in reorganizing the police force to deal with criminals and to maintain law and order in the country.<sup>152</sup>

Lord Amherst, who took over from Hastings in 1823, also introduced certain reforms in the judicial sphere. In criminal cases, where it was necessary to obtain more information from certain accused persons regarding the main crime, the Magistrates and the Superintendents of Police were authorized to pardon such persons. It assisted the police in investigating the crimes and punishing the persons who were really responsible for committing the crimes.

### **5.1.3 E) REFORMS OF LORD BENTINCK**

Lord William Bentinck as Governor-General from 1828 to 1835 showed keen interest in improving the machinery of the administration of justice and introduced several reforms of great importance. He reorganized and consolidated the whole system of civil and criminal courts. He abolished the Courts of Circuit and in their place appointed Commissioners of Revenue and Circuit to control the working of the magistracy, police, Collectors and other revenue officers. Because of the combination of three functions in the Commissioners, viz., revenue, police and judicial power to try criminal cases, the work load on them became too heavy. In order to reduce the burden of the Commissioners, in 1831, Sessions Judges were appointed to try cases

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150 Kulshreshtha, op. cit., p. 146.

151 Ibid., p.147-48.

152 Ibid., pp.149-52.

committed to them by the Magistrates. This became the origin of the district and sessions court.<sup>153</sup>

In 1829 Bentinck took a very bold step to abolish the prevailing in human practice of *sati*. It was made an offence punishable like culpable homicide and its abetment was also made a punishable offence.<sup>154</sup>

Lord Bentinck disliked the old policy of Lord Cornwallis to exclude Indians from judicial offices and appointed Indians in the civil and criminal courts of the country. This policy also resulted in economy as the English Judges were highly paid while Indians were available at a small salary. In 1832 the Commissioners of Circuit and Sessions Judges were authorized to take the assistance of respectable natives in criminal trials either by referring some matters to them as *Panchayat* for investigation or by calling them to the Court as jury.<sup>155</sup>

### 5.1.3 F) SYSTEM OF COURTS

Although the British had acquired control and obtained rights of fiscal administration of Bengal, Bihar and Orissa in 1765, the Company did not take responsibility of administration of justice. As a result the criminal jurisdiction in these provinces was still left with the puppet *Nawab*. Thus a system of dual government was established, under which the Company, whilst assuming complete control over the revenues, left in other hands the responsibility for maintaining law and order and administration of justice. The system proved disastrous.<sup>156</sup>

The Company introduced many reforms to bring about improvements in the court system. The Judicial Plan of 1772 prepared by Warren Hastings was the first major step in this regard. This followed a series of reforms. Consequently, the Company assumed full responsibility of administration of justice and a dual system of courts, namely, (i) the Company's courts and (ii) the King's courts came into existence in India.

The hierarchy of criminal courts, having their jurisdiction outside the presidency towns and known as the Company's courts was as follows :

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153 Ibid., pp.152-55.

154 155.Ibid.

155 Ibid.

156 Jois., op. cit., pp. 144-45.

- i. Magistrates (Collectors) whose jurisdiction was limited to petty offences involving the punishment of imprisonment for not more than 15 days.
- ii. *Mofussil Diwani Adalat* at district level.
- iii. Circuit court. It was a touring court having its headquarters at divisional headquarters. It also worked as a Court of Appeal.(iv) *Sadar Nizamat Adalat*, the highest criminal court headed by the Nawab till 1790 and thereafter by the Governor-General.

As regards the King's courts, in each province, i.e. Bombay, Calcutta and Madras, a Supreme Court was established which derived its authority from the King of England. Their jurisdiction was mainly limited to the presidency towns respectively. The original jurisdiction of the Supreme Courts was extended *inter alia* to (i) British subjects throughout India in all civil and criminal cases; (ii) inhabitants of Calcutta, Madras and Bombay within fixed limits, whether natives or others in all civil and criminal cases; (iii) all persons for maritime crimes.<sup>157</sup>

Thus, two sets of courts were administering justice in India. The King's Courts and the Company's Courts formed the dual system of courts having their separate jurisdictions and applying different laws.<sup>158</sup> The Supreme Courts mostly applied English law, both civil and criminal, with certain exceptions relating to Hindus and Mohammedans. The Company's courts in the *mofussil* area applied only the regulations of the government which were passed before 1834. English law was not applied by the Company's Courts. In cases for which there was no ascertainable law or custom, the Judges were required to exercise their discretion according to justice, equity and good conscience. In criminal cases, Mohammedan law of crimes, as modified by the Regulation, was applied by the *mofussil* courts in Bengal and Madras provinces but in Bombay a regular code superseded the Muslim law of crimes.<sup>159</sup> The existence of the dual system of courts created many difficulties and conflicts. In order to achieve uniformity, certainty and efficiency it was considered necessary to bridge the gap by legislative measures.

### **5.1.3 G) LAW COMMISSIONS**

As per the provisions of the Charter Act of 1833, the First Law Commission was appointed in 1835. The Commission was required to inquire fully into the

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<sup>157</sup> Kulshreshtha, op. cit., p. 160.

<sup>158</sup> Ibid., p174.

<sup>159</sup> Ibid., pp. 161-62.

jurisdiction, powers and rules of existing Courts and all existing judicial procedure and into the nature and operation of all laws in force in the British territories. Macaulay, who was a barrister and a member of the House of Commons in England, was appointed as the Chairman of the First Law Commission. The most significant contribution of the First Law Commission was the preparation of draft Indian Penal Code for purposes of codification of penal laws in India.<sup>160</sup>

The Second Law Commission was appointed in 1853 and the term of the Commission was fixed at three years. The Commission *inter alia* recommended that a body of substantive law as applicable to whole of India was necessary; such a uniform law should be prepared taking English law as the basis; exception may have to be carved out in favour of certain classes; and law should apply to one and all except those who are saved by the provisions.<sup>161</sup>

Subsequently, the Third Law Commission and the Fourth Law Commission were appointed in 1861 and 1879 respectively. These Commissions also recommended the codification of laws in different spheres in India and accordingly a large number of Acts were passed including the Indian Evidence Act, 1872. The labour of these Commissions, which consisted of eminent English jurists, spread over half a century, gave to India a system of Codes dealing with important parts of substantive and procedural civil and criminal law. The Commissions became powerful instruments which injected English common and statute law and equitable principles into the expanding structure of Indian jurisprudence.<sup>162</sup> The practice of appointing Law Commissions to study the prevailing law and procedures is still followed in India.

### **5.1.3 H) CODIFICATION OF LAW**

The Draft Penal Code, which was drafted and submitted to the Governor-General in 1837, was revised and enacted into law in 1860 by Indian Legislature.<sup>163</sup> The Indian Penal Code based on English principles wholly superseded the Mohammedan criminal law. A general Code of Criminal Procedure followed in 1861 and the process of superseding native by European law, so far as criminal justice is concerned, was completed by the enactment of Evidence Act of 1872.<sup>164</sup>

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160 Jois, op. cit., pp. 65-66.

161 Ibid., p. 72.

162 Kulshreshtha, op. cit., p. 254.

163 Ibid., p. 251.

164 Jois, op. cit., pp. 53-54 (quoting Illbert, pp354-55).

The British by codification and by introducing the English principles of equity, justice and good conscience, made significant improvement in the preceding criminal laws.

### 5.1.3 D) ORGANIZING THE POLICE

Lord Cornwallis was the first British administrator who tried to improve the police system. He appointed a Superintendent of Police for Calcutta in 1791 and thereafter, extended his efforts to the *mofussil*. Cornwallis took police powers out of the hands of the *zamindars* of Bengal, Bihar and Orissa, and ordered, in 1793, the District Judge to open a police station for every four hundred square miles and to place a regular police station officer over it. He was known as the *Daroga*. The *Kotwal* continued to be in charge of the police in the town.<sup>165</sup>

The period between 1801 to 1860 turned out to be a period of clumsy attempts in organizing the police system in the country. Each province made attempts to organize it in divergent ways. In 1816, Sir Thomas Munro, in such an attempt, took the Superintendent of Police in Madras out of the hands of the Judge and placed him in the hands of peripatetic Collector, who had the indigenous village police under his control.<sup>166</sup> This was soon followed by other provinces.

In 1843 Sir Charles Napier set himself to the task of introducing a police system on the lines of the Royal Irish Constabulary in the newly conquered territory of Sind, now in Pakistan. As per his plan, while the police force was to continue under the authority of the Collector, yet in each district they were to be supervised by an officer whose sole duty was to control and direct them. Napier created a separate police organization directed by its own officers. Direction throughout the area of Sind was in the hands of the Inspector General of Police and in each district with the Superintendent of Police. The latter was accountable to the Inspector General of Police as well as the District Collector. In 1848, Sir George Clarke, the Governor of Bombay, appointed full-time European Superintendents of Police in many districts. In 1853, the police in Bombay was remodelled on Napier's lines.<sup>167</sup>

The revolt of 1857 drew the attention of the Government of India to the urgency of police reorganization. Accordingly, a commission was appointed in 1860 to study exhaustively the police needs of the government. Its main recommendations

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165 Choudhuri, op. cit., pp. 110-112.

166 Ibid.

167 Ibid., pp. 112-13.

were embodied in the Indian Police Act of 1861. The aims of the Act as enshrined in the Act itself were to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime. This Act is still in force in India without any significant change.

### **5.1.3 J) JAIL REFORMS**

As the British continued to follow the criminal justice system of the Muslim period for a long time, the jails, as part of the whole system, were administered by the East India Company without any change. As the Company was reluctant to spend money on jails, the condition of the jails was deplorable. In many jails, there was no separation between male and female prisoners by day or night. Up to 1860, the management of District Jails had devolved upon the District Magistrate. There was no manual of rules or regulations for the guidance of the jail staff. In the presidency of Bombay a simple Code of Rules was framed in 1860 and this was followed by 'Gaols Rules' framed in 1866. In Bengal, the Jail Code was compiled in 1864 which defined *inter alia* the duties, responsibilities and powers of the various officers in the jails.<sup>168</sup>

With a view to understanding the problems in the jails and to bring about reforms, various committees were appointed in the latter half of nineteenth century. A few recommendations of these committees were carried into effect from time to time but the reforms never reached to a satisfactory level. Finally, the Prisoners Act of 1894 was enacted followed by the Reformatory Schools Act of 1897. The Prisons Act of 1894 provided that convicted prisoners may be confined either in association or individually in cells. It fixed nine hours' labour a day for convicts sentenced to labour.<sup>169</sup> The British appointed another committee in 1919 known as the Indian Jails Committee. As a result of the recommendations of this committee a number of changes were introduced in the rules governing the jail system of the country.

### **5.1.3 K) ESTABLISHMENT OF HIGH COURTS**

After codification of laws, the next step to reform the existing judicial system was to amalgamate the two sets of the courts, i.e. the Supreme Courts (the King's Courts) and *Sadar Adalats* (the Company's Courts). In 1858, the assumption of direct control of the Government of India by the Crown made the task easier.<sup>170</sup>

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168 Ibid., pp.158-59.

169 Ibid., pp. 164-65.

170 Kulshreshtha, op. cit., pp. 164-66.

The British Parliament passed the Indian High Courts Act, 1861 which empowered the Crown to establish, by Letters Patent, High Courts of Judicature at Calcutta, Madras and Bombay abolishing the Supreme Courts and the Courts of *Sadar Diwani* and *Sadar Nizamat Adalat*. The jurisdiction and powers of the High Courts were to be fixed by the Letters Patent. Accordingly, the High Courts at Bombay, Madras and Calcutta were established in the year 1862. Subsequently, High Courts were established at other places in India.

Each High Court was empowered to have supervision over all courts subject to its appellate jurisdiction. With this the number of courts were decreased; the quality of work of the lower courts improved; efficiency of the Judges improved; procedures were simplified and the appellate procedure also became uniform. The Letters Patent also empowered the High Courts to enroll and remove Advocates, *Vakils* and Attorneys-at-Law.<sup>171</sup> The establishment of High Courts was a significant step in the evolution of the criminal justice system in India.

### 5.1.3 L) PRIVY COUNCIL

The Privy Council, a committee under the King of England to hear appeals from colonies, was the highest Court of Appeal from India.<sup>172</sup> It originated in course of many developments in the judicial sphere in England in 17th century or earlier. In 18th century with the growth of the British Empire the work of the Privy Council greatly increased. As the working of the existing Privy Council was under criticism, the British Parliament passed the Judicial Committee Act, 1833 establishing a statutory permanent committee of legal experts to hear appeals from the British colonies. The Acts of 1844, 1908 and 1929 further modified the working of the Privy Council.<sup>173</sup>

Initially, there was no appeal to the Privy Council without its special leave. But from 1943 onwards appeals could be made under a certificate granted by any of the Presidency High Courts.<sup>174</sup> There was no provision to appeals to the Privy Council in criminal proceedings as of right. The Privy Council laid fundamental principles of law in a lucid manner for the guidance of Indian courts. The law declared by the Privy Council in the pre-Constitution period is still binding on the High Courts except in those cases where the Supreme Court of India took a different view. The principles of integrity, impartiality, independence and the rule of law, which were laid down by the

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170 Ibid.

172 Jois, op cit., p. 190.

173 Ibid., p. 183.

174 Ibid., (citing section 411-A of the Code of Criminal Procedure, 1898).

Privy Council, are still followed by the Supreme Court of India in its judgements. It shows the amount of respect which the Indian judiciary still has for the Privy Council judgements.<sup>175</sup>

### **5.1.3. M) FEDERAL COURT OF INDIA**

The Government of India Act, 1935 changed the structure of the Indian Government from “unitary” to that of the “federal” type. It laid the foundation for a federal framework in India. A federal Constitution involves a distribution of powers between the centre and the constituent units. Therefore, setting up of a federal court was necessary, and accordingly, as per the provisions of the Government of India Act, 1935 the Federal Court of India was inaugurated at Delhi on 1st October 1937.<sup>176</sup>

Although a Federal Court was established, the system of appeals from High Courts to the Privy Council remained intact and unaffected. The Federal Court was interposed between the High Courts and the Privy Council only for the restricted category of cases in which a question of constitutional law was involved. However, in criminal matters the Federal Court (Enlargement of Jurisdiction) Act, 1947 enlarged the jurisdiction of the Federal Court in India.

In 1949 the Constituent Assembly decided to give full judicial autonomy to the Indian judiciary. The Draft of the new Constitution of India was at its final stage and the leaders wanted to give it a smooth transition. The Assembly, therefore, passed the Abolition of the Privy Council Jurisdiction Act in 1949. The Act came into force from 10th October 1949 and it repealed section 208 of the Government of India Act, 1935 which was the basis of the Privy Council’s appellate jurisdiction over the Federal Court.

The Federal Court of India as such followed the same principles as were followed by the Privy Council in the exercise of its appellate jurisdiction in criminal matters. The Government of India Act of 1935 provided that the law declared by the Federal Court and any judgement of the Privy Council will be binding on all the courts in British India. Thus the English doctrine of precedent was introduced in

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175 Ibid., pp. 189-90. Shri. K.M. Munshi, an eminent member of the Constituent Assembly, speaking on the occasion of the abolition of the Privy Council’s jurisdiction over India in 1949, said: “The British Parliament and the Privy Council are the two great institutions which the Anglo-Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law, but co-ordinated the concept of right and obligation throughout all the Dominions and the Colonies in the British Commonwealth. So far as India is concerned the role of the Privy Council has been one of the most important one. It has been a great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our Constitution.”

176 Kulshreshtha, op. cit., pp. 192-93.

India. It is pertinent to note that the Federal Court Order-in-Council of 1937 fixed the salary of the Chief Justice of the Federal Court at Rs. 7,000 a month and of other Judges at Rs. 5,000 a month. They were specially paid high salaries so that they could maintain a high standard of living, befitting their eminent positions.<sup>177</sup>

The Federal Court functioned successfully and effectively during the transitional period in Indian history, when there was no written Constitution. It built up great traditions of independence, impartiality and integrity which all were inherited by its successor, the Supreme Court of India, established on 26<sup>th</sup> January 1950 under the Constitution of India.<sup>178</sup>

The criminal justice system in India has evolved over a period of three thousand years. Initially, the Law or *Dharma*, as propounded in the *Vedas* was considered supreme in ancient India for the King had no legislative power. But gradually, this situation changed and the King started making laws and regulations keeping in view the customs and local usages. The punishments during ancient India were cruel, barbarous and inhuman. As regards the procedure and quantum of the punishments there were contradictions between various *Smritis* and in certain cases even among the provisions found in one *Smriti* itself.<sup>179</sup> The system of awarding punishments on the basis of *varna* contravened the concept of equality of all human beings as propounded by the *Vedas*. The discriminatory system of inflicting punishments and contradictory provisions in different legal literature made the criminal justice system defective and confusing.

During the Muslim rule in India though enlightened monarchs like Sher Shah Suri and Akbar showed great zeal to administer justice impartially, yet as whole the administration of justice during the Muslim period in India suffered from defects. The concept of equality was applicable only to the Muslim population in India and thus the bulk of the population, i.e. non-Muslims, was subjected to humiliating discrimination. The Hindus suffered in almost similar manner as the people of lower *varna* suffered at the hands the people of higher *varna* among the Hindus. The major defect of Muslim criminal law was that most of the crimes were considered private affairs of the individuals. Many offences, including murder, could be compounded by the payment of *diya*, i.e. bloodmoney and human life was considered rather cheap, capable of assessment in terms of money. The criminal justice system developed

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177 Ibid., pp. 194-98.

178 Supreme Court of India

179 Vedas

by the Muslim rulers continued in India even after the British took control of India. It was in 1860 that the codification of laws changed the discriminatory provisions of Muslim criminal law.

The British after assuming power in India found the then prevailing criminal justice administration defective decided to bring about drastic changes in it. Lord Cornwallis made detailed studies of the existing conditions of the criminal justice administration. He introduced many reforms to revamp the whole system. Lord Hastings took special interest in reorganizing the police force to deal with the criminals and maintain law and order in the country. Lord Bentinck created the post of District and Sessions Judge and abolished the practice of *sati*. In 1843, Sir Charles Napier introduced a police system on the lines of Royal Irish Constabulary. He created the post of Inspector-General of Police to supervise the police in the whole province. Subsequently, the Indian Police Act of 1861 was enacted on the recommendations of a Commission which studied the police needs of the Government. They codified the existing laws; established the High Courts and Prisons Laws.

Thus, the British introduced reforms wherever necessary. They adopted new principles by modifying the existing laws wherever required and made new laws where they felt it was a must. The institutions of police, magistracy, judiciary and jails developed during the British period still continue without significant changes in their structure and functioning. However, the British rulers also, while restructuring the criminal justice system, did not fully implement the concept of equality. The reforms introduced by them treated all Indians and non-British Europeans equally but the British always enjoyed special privileges. It was only with the Constitution of India coming into being that the right to equality before law was fully recognized and incorporated in the Constitution as a Fundamental Right.

## **5.2 PRESENT CRIMINAL JUSTICE SYSTEM OF INDIA**

‘Criminal justice system’ refers to the structure, functions, and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment and correction. Some believe that it is not totally accurate to speak of a criminal justice system. A system, they argue, is an interactive, interrelated, interdependent group of elements performing related functions that make up a complex whole. The criminal justice system is a loose confederation of agencies that

perform different functions and are independently funded, managed and operated.<sup>180</sup> However, despite their independence, these agencies of criminal justice system are interrelated because what one agency does affects all others. That is why they are called a 'system'.

The present criminal justice system of India is the product of a continuous effort on the part of rulers who controlled the affairs of the country from time to time. In every phase of Indian history the rulers contributed to the development of the criminal justice system. However, most of them treated the criminal justice system more as an instrument to subjugate the masses rather than to protect their rights. The British rulers who made well-thought-out efforts for the establishment of a sound and well defined criminal justice system in India were also not free from this weakness. They too looked at the criminal justice system more as an instrument to uphold the colonial rule in India and less for the administration of fair criminal justice to the people.

The main objective of the criminal justice system is to create social harmony and maintain order by enforcing the laws and curbing their violation. For attainment of this objective, a network consisting of the police, bar, judiciary and correctional services constitute the criminal justice system. Since the criminal law provides the basic framework for the whole criminal justice system, it is also considered as a component of the whole system.

Various components of the present criminal justice system of India are briefly discussed below.

### **5.2.1 CRIMINAL LAW**

'Rule of law', which means that the law and not the wishes of any individual governs the public affairs, presupposes a set of laws including criminal laws to control the actions of the people as well as the State. The laws should be purposeful, public welfare oriented, unambiguous and practicable. The laws, made in an autocratic manner without due consideration for social welfare are liable to degenerate into an engine of oppression. Ambiguity or uncertainty in criminal law not only causes inconvenience and irritation to the people but may also create traumatic conditions for a man if the law enforcing agency resorts to arrest or detain him, or seize his property, under the pretext of a legal provision interpreted contrary to its spirit. Therefore, a

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180 Samaha, Joel, *Criminal Justice*, p. 6.

well defined criminal law is the foundation on which the whole structure of criminal justice system stands. It is the responsibility of the legislators to make the foundation strong by making criminal laws sound in all respects.<sup>181</sup>

After taking over the control of Bihar, Bengal and Orissa in 1765, the East India Company made some attempts to introduce reforms in the existing criminal laws. However, it was only after the British Crown took over the control of Indian affairs from the East India Company in 1858 that the process of improvement in criminal laws gained momentum. The British had realized that without sound and effective criminal law it was not possible to control a vast country like India where people of diverse cultures, religions, castes and classes lived. The reformation and codification of criminal laws being the need of the time, the British took up the task on a priority basis. The Indian Penal Code, 1860; the Police Act, 1861; the Code of Criminal Procedure of 1861; the Indian Evidence Act, 1872; and Indian High Courts Act, 1861 are the major landmarks in the history of criminal law of India. Most of the laws enacted by the British are still in force in India as adopted under article 372 of the Constitution.<sup>182</sup> The major criminal laws which are most commonly used for administration of criminal justice in India are: the Constitution of India, the Indian Penal Code, the Code of Criminal Procedure, and the Evidence Act. In addition to these major criminal laws there are numerous Central and State criminal Acts in force in India.

### **5.2.2 THE CONSTITUTION OF INDIA**

During freedom movement, repressive laws and high-handed attitude of the functionaries of the criminal justice system were at the top in the agenda to oppose the British rule in India. Having suffered injustice at the hands of the foreign rulers the people of India, after independence, expected a qualitative improvement in the existing criminal justice system. The framers of the Constitution rose up to the occasion to cater to those expectations. They not only put the 'justice' at the top among the aims and objectives of the Constitution and made elaborate arrangement in the Constitution itself to secure it to the people.

All laws in India, criminal as well as others, are made by Parliament or the State Legislatures in accordance with the provisions of the Constitution of India. To put the Constitution in the category of criminal laws may not sound well, but, it being

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181 Rule of law

182 Constitution of India

the source of all criminal laws of the country, may be reckoned as the supreme criminal law. The Constitution under articles 17 and 23 declares certain acts as offences punishable in accordance with law. It deals with many matters which have a direct bearing on the criminal justice administration, e.g. protection in respect of conviction for offences (article 20), protection of life and personal liberty (article 21), protection against arrest and detention (article 22), appeal to Supreme Court in criminal matters (article 134), and powers of President and Governor to pardon, suspend, remit sentences (articles 72 and 161).

The Constitution provides for a federal polity where Parliament as well as the State Legislatures share the powers to frame laws. Articles 245 to 255 and Seventh Schedule of the Constitution deal with the distribution of Legislative powers. The subjects have been divided into three categories, viz. (1) Union List, (2) State List, and (3) Concurrent List. Parliament and the State Legislatures have exclusive powers to make laws on the subjects under the Union List and the State List respectively. As regards the Concurrent List, both Parliament as well as the State Legislatures have concurrent jurisdiction to make laws. However, in case of conflict between the laws made by Parliament and the State Legislature on any subject under the Concurrent List, the law made by Parliament shall prevail upon the other.<sup>183</sup> The Constitution also empowers the President under article 123, and the Governor under article 213 to promulgate ordinances in urgent situations, when Parliament or the State Legislative Assembly, as the case may be, is not in session. However, the ordinance shall have the effect of law for a limited period of six months only.

The subjects relating to the criminal justice system as included in the Seventh Schedule of the Constitution of India are given below:

#### **List I—Union List**

- i. Central Bureau of Intelligence and Investigation.<sup>184</sup>
- ii. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.<sup>185</sup>
- iii. Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court) and fees taken therein; persons entitled to practise before the Supreme Court.<sup>186</sup>

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183 The Constitution of India, article 254.

184 Ibid., Seventh Schedule, List I, entry 8.

185 Ibid., entry 9.

186 Ibid., entry 77

- iv. Constitution and organization including vacations of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.<sup>187</sup>
- v. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory.<sup>188</sup>
- vi. Extension of the powers and jurisdiction of members of a police force belonging to any state to any area outside that state, but not so as to enable the police of one state to exercise powers and jurisdiction in any area outside that state without the consent of the government of the state
- vii. in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any state to railway areas outside that state.<sup>189</sup>
- viii. Offences against laws with respect to any of the matters in this List.<sup>190</sup>
- ix. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list; admiralty jurisdiction.<sup>191</sup>

#### **List II—State List**

- i. Public order but not including the use of any naval, military or air force or any other armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in aid of the civil power.<sup>192</sup>
- ii. Police including railway and village police subject to the provisions of entry 2A of List-I.<sup>193</sup>
- iii. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.<sup>194</sup>
- iv. Prisons, reformatories, Borstal institutions and institutions of a like nature and persons detained therein; arrangements with other states for the use of prisons and other institutions.<sup>195</sup>
- v. Offences against laws with respect to any of the matters in this List.<sup>196</sup>

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187 *Ibid.*, entry 78.

188 *Ibid.*, entry 79.

189 *Ibid.*, entry 80.

190 *Ibid.*, entry 93.

191 *Ibid.*, entry 95.

192 *Ibid.*, List II, entry 1.

193 *Ibid.*, entry 2.

194 *Ibid.*, entry 3.

195 *Ibid.*, entry 4.

196 *Ibid.*, entry 64.

- vi. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.<sup>197</sup>

**List III—Concurrent List**

- i. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.<sup>198</sup>
- ii. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.<sup>199</sup>
- iii. Preventive detention for reasons connected with the security of a state, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.<sup>200</sup>
- iv. Removal from one state to another state of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.<sup>201</sup>
- v. Administration of justice; constitution and organization of all courts, except the Supreme Court and the High Courts.<sup>202</sup>
- vi. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.<sup>203</sup>
- vii. Legal, medical and other professions.<sup>204</sup>
- viii. Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this List.<sup>205</sup>

**5.2.3 INDIAN PENAL CODE**

The First Law Commission of India, under the chairmanship of Lord Macaulay, the first Law Member of the Governor-General's Council, was constituted in 1834.<sup>206</sup> The Commission was entrusted with the duty to investigate into the jurisdiction, powers, rules of the existing courts and police establishments and into the

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197 Ibid., entry 65.

198 Ibid., List III, entry 1.

199 Ibid., entry 2.

200 Ibid., entry 3.

201 Ibid., entry 4.

202 Ibid., entry 11A.

203 Ibid., entry 12.

204 Ibid., entry 26.

205 Ibid., entry 46.

206 Choudhury, Dr. Mrinmaya., *Languishing for Justice*, pp. 91-92.

laws in operation in British India; and to make reports thereon and suggest alterations having due regard to the distinction of caste, religion and opinions prevailing among different races and in different parts of the country. Elucidating the task Lord Macaulay observed:

“I believe that no country ever stood so much in need of a code of law as India and I believe also that there never was a country in which the want might be so easily supplied. Our principle is simply this— uniformity when you can have it; diversity when you must have it; but, in all cases, certainty.”<sup>207</sup>

A Draft Code prepared by the Commission, popularly known as Macaulay’s Code, was submitted to the Governor-General on October 14, 1837. It was circulated among the Judges and law advisors of the Crown. For more than twenty-two years, the Code remained in the shape of a mere draft. Finally, it was passed by the Legislative Council on October 6, 1860. It, however, came into effect on January 1, 1862. It superseded all Rules, Regulations, and Orders of criminal law in India and provided a uniform criminal law for all the people in the then British India. Since then it is the main penal law of India.

The Indian Penal Code is a substantive law. It deals with the offences and provides punishments thereof. It is divided into 23 Chapters containing 511 sections out of which 386 sections are punitive provisions for various offences while the rest contain definitions, exceptions and explanations. Offences are divided into various categories such as offences against the State, offences against the public tranquillity, offences against public justice, offences against the human body, offences against property, etc. Classification of offences into cognizable or non-cognizable; bailable or non-bailable and triable by sessions court or a Magistrate of first class or second class is done in accordance with the provisions in the First Schedule of the Cr.P.C., 1973. Section 320, Cr.P.C. enumerates the compoundable offences under the I.P.C.<sup>208</sup>

The Indian Penal Code, being a criminal law falling under the Concurrent List of the Seventh Schedule of the Constitution, is amendable by Parliament as well as the State Legislatures. However, the offences against laws with respect to any of the matters specified in Union List and State List have been excluded from the concurrent jurisdiction. Since its enactment in 1860, Parliament, by way of amendments, has added about 45 new sections to it while about 15 sections have been either repealed or

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207 Ratanlal and Dhirajlal, *The Indian Penal Code*, 28th Ed., p. iv.

208 *Ibid.*, Appendices A and

omitted. Many other minor amendments have also been made in the I.P.C. by Parliament. In addition to the amendments made by Parliament, many states have also amended the I.P.C. to suit their requirements.<sup>209</sup>

#### **5.2.4. CODE OF CRIMINAL PROCEDURE**

Before 1882, there was no uniform law of criminal procedure for the whole of India. There were separate Acts, mostly rudimentary in their character, to guide the procedure of the courts in the erstwhile provinces and the presidency towns. Those applying to the presidency-towns were first consolidated by the Criminal Procedure Supreme Courts Act, 1852, which in the course of time gave place to the High Court Criminal Procedure Act, 1865. The Acts of procedure applying to the provinces were replaced by the general Criminal Procedure Code, 1861. This Code was replaced by the Code of 1872. It was the Criminal Procedure Code of 1882, which gave for the first time a uniform law of procedure for the whole of India. The Act of 1882 was supplanted by the Code of Criminal Procedure, 1898. The Code of 1898 was amended many times, the most important being those passed in 1923 and 1955.<sup>210</sup> The Code of 1898 remained in force till 1973 when a new Code of Criminal Procedure of 1973 replaced it. The new Code has separated the judiciary from the executive and thereby, implemented article 50 of the Constitution of India. Abolition of jury system for trials is another significant feature of the new Code.

The Code of Criminal Procedure, 1973, is today the main law of criminal procedure in India.<sup>211</sup> It is divided into 37 Chapters consisting of 484 sections. Two Schedules—the first, classifying the offences under the I.P.C. and against other laws, and the second, containing forms—have also been appended to it.

The Code of Criminal Procedure *inter alia* deals with the constitution of courts, powers of courts, various processes to compel appearance of persons and production of things, powers of police, maintenance of order, arrest, bail, trials, appeals, etc. The criminal procedure is a subject of concurrent jurisdiction enabling Parliament as well as the State Legislatures to amend it.

Parliament has brought many amendments in it during the last 27 years to meet the requirements of changing circumstances. Many states, according to their requirements, have also amended the Code of Criminal Procedure, 1973.

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209 Ratanlal and Dhirajlal, *loc. cit.*

210 Rattanlal and Dhirajlal, *The Code of Criminal Procedure*, 15th Ed., pp.1-4.

211 *Ibid.*

### 5.2.5 INDIAN EVIDENCE ACT

Before enactment of the Indian Evidence Act, 1872, the principles of English law of evidence were followed by the courts in India in presidency towns. In the *mofussil*, Mohammedan law of evidence was followed for some time by the British courts but subsequently various regulations, dealing with principles of evidence, were passed for the guidance of *mofussil* Courts. An Act of 1855 partially codified the law of evidence. But it did not affect the practice in vogue in *mofussil* courts. In 1868 Mr. Maine prepared a draft Bill of the Law of Evidence, but it was abandoned as not suited to the country. In 1871 Mr. Stephen prepared a new draft which was passed as Indian Evidence Act.<sup>212</sup>

One great objective of the Evidence Act is to prevent laxity in the admissibility of evidence, and to introduce a more correct and uniform rule of practice than was previously in vogue. The Act prescribes rules for admissibility or otherwise of the evidence on the issues as to which the courts have to record findings. The main principles, which underlie the law of evidence, are—(1) evidence must be confirmed to the matter in issue; (2) hearsay evidence must not be admitted; and (3) best evidence must be given in all cases.<sup>213</sup>

The Indian Evidence Act, 1872 contains 167 sections grouped into 11 Chapters. The Supreme Court had held in 1961 that for the interpretation of the sections of the Act the court could look to the relevant English common law.<sup>214</sup> But subsequently, in 1971, the apex Court held that the law of evidence which is a complete Code does not permit the importation of any principle of English Law relating to evidence in criminal cases to the contrary.<sup>215</sup>

The Law of Evidence falls under the Concurrent List of the Constitution of India.<sup>216</sup> However, there has not been much amendments to the Act by Parliament or the State Legislatures.

It is, thus, seen that even before the Constitution came into force in 1950 India had a set of criminal laws for administration of criminal justice and they still exist without much changes.

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212 Ratanlal and Dhirajlal's The Law of Evidence, 19th Ed. p. 1.

213 Ibid

214 State of Punjab v. S. S. Singh, A.I.R. 1961S.C. 493.

215 H.H Advani v. State of Maharashtra, A.I.R. 1971 S.C. 44.

216 The Constitution, op. cit., List III, entry 12.

### **5.2.6 POLICE AND CRIMINAL JUSTICE SYSTEM**

Police has always been and remains the central agency of criminal justice system. In theory, the safety and liberty of the people depend upon the laws and the Constitution, but in practice the decisions of the legislature and the courts would remain merely on paper if there was no effective police to enforce them. The functioning of police is law in action. As a law enforcement agency, the police in all societies, developing or developed, has to preserve and protect the very basic need of human survival and social intercourse, and when pushed to the rock bottom, this is what the criminal justice system has been all about. Having realized the importance of the instrumental role of the police in the society, the Gazetteer of India has concluded: “The creation and efficient operation of a modernized police force is essential to guarantee the ‘Rule of Law’ in the social structure of today.”<sup>217</sup>

The Revolt of 1857 led the British administrators to serious rethinking for reorganization of the police throughout India and to make it an effective and highly disciplined instrument of civil administration. In 1860 the Government of India appointed the First Police Commission. On the recommendations of the Commission, the Police Act, 1861, was enacted, which imposed a uniform police system. The Act established the police on a provincial basis with an Inspector General of Police as its head. Initially the Police Act of 1861 was not applicable to many parts of the country and in such areas local Police Acts were in force but subsequently, it was made applicable to most of such areas by making amendments in the local police Acts by the provincial/state governments or Regulations of the central government. The Police Act of 1861, which is still in force with minor modifications, regulates the organization, recruitment and discipline of the police force in India.

### **5.2.7 POLICE AND CONSTITUTION OF INDIA**

The Constitution puts police and public order (including railway and village-police) in the State List of the Seventh Schedule giving the State Legislatures the powers to legislate on these subjects. The Constitution, however, assigns a definite role of supervision and coordination to the Union Government also in the matters pertaining to police. While police and public order are within the State field of legislative competence; preventive detention for reasons connected with the security of a state, the maintenance of public order and persons subjected to such detention are

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217 The Gazetteer of India, Vol. IV, pp. 424-28.

under concurrent jurisdiction of Parliament as well as State Legislatures. Article 249 of the Constitution gives powers to Parliament to intervene in state police administration, if there is enough justification for doing so.

### **5.2.8 POLICE ACTS**

The Police Act of 1861, which prescribes the framework of police, is the nucleus structure around which the various central and varying state laws have grown to organize policing at village, tehsil, district, State and Union levels.

The Police Act of 1888 was enacted to create general police districts embracing parts of two or more provinces. It provided that the superintendence of the police throughout a general police district, so constituted, shall vest in, and be exercised by, the Central Government. The Police (Incitement to Disaffection) Act, 1922 was enacted to penalise any attempt by means of threats, intimidation and otherwise to induce members of the police force to refrain from doing their duty and to spread disaffection among them.

After independence another Police Act was passed in 1949 which empowered the Central Government to constitute a general police district embracing two or more Union Territories and applied the provisions of the Police Act, 1861 to such a general police district. The Police Forces (Restriction of Rights) Act, 1966 provides for the restriction of certain rights conferred by Part III (Fundamental Rights) of the Constitution in their application to the members of the forces charged with the maintenance of public order so as to ensure proper discharge of their duties and maintenance of discipline among them.

Many States have also enacted laws to create, restructure and regulate their police forces such as the Bombay Police Act of 1951, the Kerala Police Act of 1960 and the Mysore Police Act of 1963.

In addition to the Police Acts, the police derives powers from the Cr.P.C., I.P.C., Indian Evidence Act and numerous other central and state criminal laws. Chapters IV to VII, and X to XII of the Cr. P.C. contain detailed provisions relating to the powers of the police including the power to arrest, search, investigate, disperse unlawful assembly, take preventive action.

The police forces in India are broadly divided into two, namely, (1) State Police and (2) Central Police Organizations.

### 5.2.8 A) STATE POLICE

As regards the police set up in the States, the entire police establishment under a State Government is deemed to be one police force. The superintendence of the police throughout a State is vested in and, is exercised by the State Government and except as authorized under the provisions of the Police Act, 1861, no person, officer or court can be empowered by the State Government to supersede or control any police functionary. Since for maintaining public order in the Union Territories, the Union Territory police, though under the control of the Central Government, functions on the pattern of the State police as prescribed by the Police Act, 1861 and therefore, wherever State police is referred, it also includes Union Territory police unless otherwise stated.

As per the provisions of the Police Act, 1861 the administration of the police throughout the State is vested in an officer to be styled as Inspector General of Police. In post-independence period most of the States have created the ranks of Director General of Police and Additional Director General of Police which are higher than the rank of I.G.P. and therefore, now-a-days an officer of the rank of D.G.P. is posted as the head of the State police. However, in pursuance of the provisions of the Police Act the head of the State police is still designated as Director General of Police & Inspector General of Police.<sup>218</sup>

The State is divided into convenient territorial divisions called police ranges. Generally an officer of the rank of Deputy Inspector General of Police is posted as head of the police range, but in some states like Maharashtra and Haryana, the practice of posting I.G.P. as an incharge of police range has come in vogue. In some States like Uttar Pradesh and Madhya Pradesh, a number of police ranges, manned by the D.I.G.s, constitute the zone which is put under an I.G.P. A police range consists of a number of districts.

The administration of the district police, under the general control and direction of the District Magistrate, is vested in an officer of the rank of Superintendent of Police. The whole area of the district is divided into police stations which are considered the basic units of the State police. An Inspector or Sub-Inspector is posted as officer in-charge of the police station, who, in some States like Haryana, is also known as Station House Officer. Although the jurisdiction of a police station is

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218 Ibid.

further sub-divided into police out-posts, police chowkies or police beats, yet the police station continues to be the basic unit of the State/U.T. police. A group of police stations forms a police sub-division which is supervised by a Deputy Superintendent of Police or Assistant Superintendent of Police. In most of the States the incharge of a sub-division is designated as Sub divisional Police Officer while in some States like Uttar Pradesh he is known as Circle Officer.

In addition to the normal field hierarchy, as described above, there are specialized units and branches in the State, districts and police commissionerates which perform the subsidiary functions and work in coordination with the executive police. These include criminal investigation department, intelligence branch, traffic branch, motor transport section, wireless section, dog units, training institutions, etc.

#### **a) POLICE COMMISSIONERATES**

Some states have set up police commissionerates in some cities. Under this system, a certain area of one or more districts is put under the control of a Commissioner of Police instead of Superintendent of Police. Initially Commissioners of Police used to be appointed for metropolitan cities only but the recent trend is to create police commissionerates even for smaller cities. A Commissioner of Police may be of the rank of D.I.G.P. or I.G.P. or even Addl. D.G.P./D.G.P. according to the size and sensitivity of the area. Officers of the rank of S.P. can also be appointed as Commissioner of Police as is the practice in Kerala. At present there are 32 police commissionerates in seven States/U.T.s. Out of these Andhra Pradesh has 3, Delhi 1, Gujarat 6, Karnatka 4, Kerala 3, Maharashtra 9 and Tamil Nadu has 6 police commissionerates.

In police commissionerates, the District Magistrate does not have the powers of general control and direction of the police as these powers are vested in the Commissioner of Police. The C.P. is also empowered under various laws to issue arms and ammunition licences; to license and control places of public entertainment and public amusement; to issue prohibitory orders; and to detain persons under preventive laws. These powers are exercised by the District Magistrates in the areas which are not under the control of the Commissioner of Police.

A police commissionerate is divided into various territorial units such as regions, zones, divisions, etc. Officers of the rank of Dy.S.P., S.P., D.I.G.P., and I.G.P. are posted as Assistant Commissioner of Police, Deputy Commissioner of

Police, Additional Commissioner of Police, and Joint Commissioner of Police respectively to assist the Commissioner of Police. All these officers enjoy magisterial powers under the provisions of the Cr.P.C. and other state/central Acts to effectively discharge their duties of crime prevention and maintenance of law and order.

#### **b) RECRUITMENT**

The members of the Indian Police Service, who occupy senior positions in the State as well as the central police organizations, are recruited by the Union Government. The I.P.S. is an All India Service, created under article 312 of the Constitution of India. The service conditions of the members of the Service are governed by the Union Government. There are two methods of recruitment to the I.P.S.—(i) direct recruitment on the basis of a competitive examination held by Union Public Service Commission, New Delhi, and (ii) by promotion of substantive members of a State Police Service.<sup>219</sup>

Recruitment of the officers of the State police is done by the concerned State Government. In most of the States there is direct entry to the ranks of Constable, Sub-Inspector of Police and Deputy Superintendent of Police. Recruitment of police officers of the rank of Sub-Inspector and above is done by the State Governments on the recommendations of the State Public Service Commission or a recruitment board. Constables and other lower ranks are directly recruited by the district S.P./C.P. or Commandant of the armed battalion.

There is a uniform system of ranks and badges of police in India including the central police organizations. However, any government may create additional ranks for its police. For example, Maharashtra has created the ranks of Police Naik (above Constable) and Assistant Police Inspector (above Sub-Inspector). While the ranks remain same the police personnel are designated differently according to prevailing practice and nature of job.

#### **c) TRAINING**

For training of the members of newly created Indian Police Service, the Central Police Training College was established in 1948 at Mount Abu. The College was renamed as “Sardar Vallabhbhai Patel National Police Academy” and shifted to a new campus at Hyderabad in 1975. It is the premier training institute for newly recruited as well as in-service Indian Police Service officers.

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219 The Indian Police Service (Recruitment) Rules, 1954, Rule 4.

At the State level the police training is generally institutionalized in State Police Academies/Police Training Colleges and Recruit Police Training Schools. Training for newly recruited police constables and inservice policemen is also arranged at district level.

Introduction of sophisticated weapons like carbines, AK-47, etc.; development of wireless communication; use of computers; and new scientific methods in police work in post-independence period made it imperative to improve the training structure. The recommendations of the Gore Committee, constituted by the Union Government in 1974, paved the way for the revision of syllabi of training courses in the States to include behavioural science, management, socio-economic problems of modern India and application of science and technology to police work.<sup>220</sup>

### **5.2.8 B) CENTRAL POLICE ORGANIZATIONS**

The Union Government has created its own central police organizations for discharging certain specific duties such as investigation, vigilance, collection of intelligence and to assist the police forces of the states in certain situations such as elections, natural calamities, V.I.P. security, etc. Since the central police organizations play a definite role by assisting the state police forces and supplementing police functions, they play an important role under the criminal justice system. Brief description of the major police establishments under the Central Government is given below.

### **5.2.9 CENTRAL BUREAU OF INVESTIGATION**

The C.B.I. was created in 1963. Prior to that the organization was known as Special Police Establishment created and functioning under the Delhi Special Police Establishment Act, 1946. The functions of this organization were enlarged in 1963 covering besides investigation the role of National Central Bureau for India under the International Criminal Police Organization (INTERPOL), as also the Central Forensic Science Laboratory. The C.B.I. is the principal investigation agency of the Union Government and is concerned with the investigation of important cases of corruption, fraud, cheating, cases committed by organized gangs or professional criminals having inter-state or international ramifications. The C.B.I. derives its powers to investigate from the Delhi Special Police Establishment Act, 1946.<sup>221</sup>

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220 Mathur, Dr Krishna Mohan., Administration of Police Training in India, pp.63-65.

221 The Gazetteer., loc. cit.

### **5.2.10 INTELLIGENCE BUREAU**

The I.B. is the primary central agency of our country for collection of intelligence. Its network spreads all over India for the purpose of collecting intelligence relating to the security of the country and protection of foreign visitors. The I.B. maintains a close liaison with the similar establishments in states and advises them in matters of common interest.<sup>222</sup>

### **5.2.11 CENTRAL RESERVE POLICE FORCE**

The C.R.P.F. is a para-military force for internal security management. This Force was raised in 1939 as the Crown Representative's Police and was renamed as Central Reserve Police Force in 1949.<sup>223</sup> The C.R.P.F. assists state police forces in maintenance of law and order especially during elections, communal disturbances and natural calamities.

### **5.2.12. BORDER SECURITY FORCE**

The B.S.F., raised in 1965, is the largest para-military force of the Union. It is entrusted with the task of maintaining permanent vigilance on India's international borders. The B.S.F. has been assigned the role of promoting a sense of security amongst the people living in the border areas and preventing trans-border crimes, such as smuggling, infiltration and other illegal activities.<sup>224</sup>

In addition to the above, Indo-Tibetan Border Police, Assam Rifles, Railway Protection Force, Central Industrial Security Force, National Security Guards, Special Protection Group, Bureau of Police Research and Development, and National Crimes Record Bureau are other important central police establishments. These organizations keep vigil on borders; undertake counter insurgency operations; provide security to railway properties and industrial complexes; protect V.I.P.s coordinate police research and training; maintain records and perform subsidiary functions. The police forces of the Union Territories are also controlled by the Central Government but they, being governed by the Police Act 1861, function on the pattern of the State police.

### **5.2.13 RECRUITMENT**

The recruitment of officers in the gazetted cadre of the central police organizations is done by the Union Government on the recommendations of the

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<sup>222</sup> Ibid.

<sup>223</sup> India 1999, Publications Division, Government of India, pp. 541-46.

<sup>224</sup> India 1999, loc. cit.

U.P.S.C. while other officers and men are recruited directly by the chief of the concerned C.P.O. or on the recommendation of the U.P.S.C. In most of the C.P.O.s, the direct entry is at the ranks of (i) Constable, (ii) Sub Inspector, and (iii) Deputy Superintendent of Police. Recruitment to other ranks is by way of promotions.

The officers and men of the C.P.O.s have similar ranks and wear badges as the state police. However, they are designated differently according to prevailing practice and the nature of job.

#### **5.2.14 ADMINISTRATION AND TRAINING**

All central police organizations have their own administrative set up. An officer of the rank of Director General of Police heads each central police organization. To assist him, there are Addl. D.G.P.s, I.G.P.s, D.I.G.P.s and S.P.s at the C.P.O. headquarters. Keeping in view the requirements, each C.P.O. is divided into various territorial and functional units. Officers of different ranks from S.P. to Addl. D.G.P. are posted to supervise different field units.

The C.P.O.s have their own training institutes. C.B.I. Academy, Ghaziabad; Internal Security Academy, Mount Abu; and Advanced Weapons Training Centre of B.S.F., Indore, are some of the premier training institutes of the central police organizations.

From the foregoing, it is observed that the police plays a crucial role in the administration of criminal justice as well as in maintaining the unity and integrity of the nation. The police system of pre-independence period developed by the British rulers still continues in India. The Police Act of 1861, enacted in the wake of the Revolt of 1857, still governs the basic structure of police in India. The new Code of Criminal Procedure of 1973, which deals with the powers of the police in great details, has also not made any significant change. Though some efforts have been made to modernize the police and improve the administration and training, most of the old methods and procedures of policing still continue.

#### **5.2.15 BAR: PROSECUTION AND DEFENCE**

The Bar is another important component of the criminal justice system. Generally, only the prosecution is considered as a component of the criminal justice system. But the Bar, which includes prosecution as well as the defence, as a whole plays a vital role in the administration of criminal justice by assisting the judiciary in reaching to the truth in criminal cases and therefore, both its wings deserve to be

discussed together. Emphasizing the role of the lawyers, the Supreme Court in the case of *Bar Council of Maharashtra v. M.V. Dabholkar*<sup>225</sup> observed:

“The central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice— social justice.”

The Constitution, under articles 124, 217 and 233, makes qualified advocates eligible for appointment as District Judges, Judges of the High Courts and the Supreme Court. As on February 1, 1999, out of 382 permanent Judges of all 18 High Courts in India as many as 250, i.e. about two-thirds, were appointed from among the members of the Bar, and out of 24 Judges of the Supreme Court twenty two Judges came from the Bar while only two Judges represented the judicial services.<sup>226</sup> Apparently, in addition to its normal functions of assisting the judiciary in dispensing justice, the Bar plays another crucial role by offering its members for appointment as Judges.

#### **5.2.16 LEGAL PROFESSION INDIA**

Before the Constitution came into existence, there was no uniform system of legal profession in India; though there was a strong demand for a unified Indian Bar. With the establishment of the Supreme Court of India in 1950, a new stimulus was given to the demand for a unified All India Bar. The Supreme Court Advocates Act, 1951 provided that every advocate of the Supreme Court was entitled, as of right, to practise in any High Court whether or not he was an advocate of that High Court. Subsequently, the Government of India felt the necessity for sponsoring a Bill for setting up an All India Bar Council. Accordingly, it constituted a committee under the chairmanship of Justice S.R. Das of Supreme Court.

The Committee gave its report in 1953 and recommended creation of a unified national Bar, and compilation and maintenance of one comprehensive common roll of advocates. The Law Commission of India, in its 14th Report of 1958, adopted almost all the recommendations of the Das Committee. The Commission favoured division of the Bar into senior advocates and junior advocates.<sup>227</sup>

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<sup>225</sup> *Bar Council of Maharashtra v. M.V. Dabholkar*, A.I.R. 1976 S.C. 242.

<sup>226</sup> Judges of the Supreme Court and the High Courts 1999, Department of Justice, Ministry of Law and Justice, Government of India, New Delhi.

<sup>227</sup> Ibid.

### 5.2.17 ADVOCATES ACT, 1961

For implementing the recommendations of the Bar Committee and the Law Commission, the Advocates Act, 1961 was passed.<sup>228</sup> The main features of the Act are: (i) establishment of All India Bar Council and a common roll of advocates, an advocate on the common roll has a right to practice in any part of the country and in any court including the Supreme Court; (ii) integration of the Bar into a single class of legal practitioners as advocates; (iii) prescription of a uniform qualification for the admission of persons to the profession; (iv) division of advocates into senior advocates and other advocates based on merit; (v) creation of autonomous Bar Councils, one for the whole of India and one for each State—the Council for India being constituted by representatives elected by State councils; and (vi) punishment of advocates for misconduct.<sup>229</sup>

### 5.2.18 STATE BAR COUNCILS

A State Bar Council consists of 15 to 20 members from among advocates on the roll of the state Bar. The Advocate-General of the state is an *ex-officio* member.<sup>230</sup> The State Bar Council is *inter alia* empowered: (i) to admit persons as advocates on rolls; (ii) to entertain and determine cases of misconduct against advocates on its roll; (iii) to safeguard the rights, privileges and interests of advocates on the roll; (iv) to promote and support law reforms; and (v) to make rules for efficient functioning of the Bar council.

### 5.2.19 BAR COUNCIL OF INDIA

The Advocates Act, 1961 provides that the Bar Council of India shall consist of: (i) the Attorney General of India, *ex-officio* member, (ii) Solicitor General of India, *ex-officio* member, and (iii) one member elected by each state bar council from amongst its members. The council would elect its own Chairman and Vice-Chairman.<sup>231</sup> The Bar Council of India has laid down various rules as regards the duties of an advocate to the court; to his clients and to his colleagues. It *inter alia* carries out the following functions:

- i. Preparation and maintenance of the common roll of advocates.
- ii. Lays down standards of professional conduct and etiquette for advocates.

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228 Ibid.,p. 149.

229 The Gazetteer, Vol. IV, pp. 416-17.

230 Mann, Administration of Justice in India, pp. 149-50; Advocates Act, 1961.

231 Jhabvala, Noshirvan.H., Drafting, Pleading, Conveying & Professional Ethics, pp. 6-14.

- iii. Lays down the procedure to be followed by its disciplinary committee and the disciplinary committee of each state bar council.
- iv. Lays down standards of legal education and recognizes universities whose degree in law will be a qualification for enrolment.
- v. Exercises general supervision and control over state bar councils and safeguards the rights, privileges and interests of advocates.

#### **5.2.20 PROFESSIONAL MISCONDUCT**

The Advocates Act, 1961 deals with “Conduct of Advocates”. Section 35 of the Act provides that where on receipt of a complaint or otherwise, a State Bar Council has reason to believe that an advocate on its roll has been guilty of professional or other misconduct, it must refer the case to the disciplinary committee of that Bar Council. After giving an opportunity to be heard to the advocate concerned and the Advocate-General, the committee can either—(a) dismiss the complaint; or (b) reprimand the advocate; or (c) suspend the advocate from practice; or (d) remove the name of the advocate from the roll of advocates of the State.

Any person who is aggrieved by an order of the disciplinary committee of a State Bar Council can prefer an appeal to the Bar Council of India. The Advocate-General of the State is also given a similar right of appeal. Such an appeal is then heard by the disciplinary committee of the Bar Council of India. An appeal from the order of the disciplinary committee of the Bar Council of India lies straight to the Supreme Court.

The Supreme Court dealt with the subject of professional misconduct of advocates in great detail in the case of *Bar Council of Maharashtra v. M.V. Dabholkar*.<sup>232</sup> The apex Court, in this case, observed:

“The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioners as right. The canons of ethics and propriety for the legal profession totally taboo conduct of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarize the legal profession.”

From the criminal justice administration point of view the Bar is divided into two wings, namely, (1) Prosecution wing and (2) Defence wing.

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<sup>232</sup> Sections 24 and 25, Cr.P.C., 1973.

The prosecution wing of the Bar includes Attorney General of India and Advocate-General for each State and Public Prosecutors, Additional Public Prosecutors, Special Public Prosecutors; Assistant Public Prosecutors and Police Prosecutors. They represent the Union and State Governments before the courts at various levels. The Prosecutors are required to present the cases investigated by the police in the courts of law. Even a properly investigated case may fail to achieve desired results in the court if the facts are not properly articulated and the evidence in their support collected by the investigating agency is not put before the court in an efficient and effective manner so as to stand the scrutiny by the defence.

As in India the crimes are considered injuries to the State, all courts have been provided with a prosecution agency to conduct criminal cases on behalf of the State. Section 225, Cr.P.C. provides that in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor appointed under section 24 of the Cr.P.C. For trials before the courts below the sessions court, Assistant Public Prosecutors are appointed under section 25 of the Cr.P.C., 1973. Section 30, Cr.P.C. contains general provisions as to inquiries and trials. As per section 301(1), Cr.P.C. the Public Prosecutor or Assistant Public Prosecutor in-charge of a case may appear and plead without any written authority before any court in which that case is under inquiry, trial or appeal.

#### **5.2.21 CONSTITUTIONAL FUNCTIONARIES**

The Constitution contains provisions for appointment of Attorney General of India under article 76 and Advocates-General for the States under article 165. They are the principal law officers to represent the Union and the States respectively in the courts of law and advise the concerned government on legal matters. In the performance of his duties the Attorney General of India shall have right of audience in all courts in the territory of India. In the discharge of his functions, the Attorney General is assisted by Solicitor General and Additional Solicitor General.

#### **5.2.22 PUBLIC PROSECUTORS AND SPECIAL PUBLIC PROSECUTORS**

Section 24 (1), Cr.P.C. provides that for every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such court, any prosecution, appeal or other proceedings on behalf of the central government or state government as the case may

be. The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area under section 24 (2) of the Cr.P.C. Under section 24(3), Cr.P.C. for every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district. An advocate with seven years practice is eligible for appointment as Public Prosecutor or Additional Public Prosecutor for a district. As per the provisions of section 24 (4), Cr.P.C. the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district. Only those whose names appear in the panel prepared by the District Magistrate shall be considered for the appointment. However, where in a State there exists a regular cadre of prosecuting officers, the State Government may make the appointment from among the persons constituting such cadre.

Under section 24 (8), Cr.P.C. the Union Government or the State Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a special public prosecutor.

### **5.2.23 ASSISTANT PUBLIC PROSECUTORS**

Section 25 (1), Cr.P.C. provides that the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the courts of Magistrates. As per newly added sub-section (1A) of the section 25, Cr. P.C. the Union Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the courts of Magistrates. Where no Assistant Public Prosecutor is available for the purpose of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case under section 25 (3) of the Cr.P.C. But no police officer shall be appointed under section 25 (3) as Assistant Public Prosecutor: (a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or (b) if he is below the rank of Inspector.

The main points of difference between the public prosecutor and the assistant public prosecutor are two—(i) only an advocate with seven years of practice can be appointed as a Public Prosecutor while there is no such requirement for Assistant Public Prosecutor; and (ii) even a police officer of and above the rank of the Inspector can be appointed as Assistant Public Prosecutor while no police officer can be appointed as Public Prosecutor.

#### 5.2.24 PROSECUTION BY PRIVATE PERSONS

As per the provisions of section 301 (2), Cr.P.C. a private person can also appoint a private counsel to prosecute any person but such a private counsel or pleader shall act under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case. Section 302, Cr.P.C. provides that any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector. But no police officer, who has taken part in the investigation of such a case, shall be permitted to conduct the prosecution. The section further provides that any person conducting the prosecution may do so personally or through a pleader. Section 302, Cr.P.C. empowers a trial Magistrate to permit any person other than the Public Prosecutor to conduct a trial before it, when it is necessary to meet the ends of justice. However, the permission totally depends on the discretion of the court. No person can claim it as a matter of right. The provisions of this section apply to conduct a case before a trial court and they cannot be extended to an appeal.<sup>333</sup> It is only when a private counsel is entrusted with an independent charge of the case that permission is necessary under section 302, Cr. P.C. So long as that counsel acts under the supervision, guidance or control of the Public Prosecutor, no such permission is necessary, and he can examine and cross examine the witnesses and address arguments.<sup>334</sup>

The Karnataka High Court has held that in the prosecution of a case of murder, an advocate privately engaged is not a proper person to conduct the prosecution, for the government stands not necessarily for a conviction but for the justice.<sup>335</sup> It indicates in very clear terms that a prosecutor's duty is not necessarily to secure conviction in each case but to help the court in reaching to the truth to do justice. At any stage if he finds that the accused has been entangled falsely, he must inform the court accordingly. The Sessions Judge has no power to by-pass any of the provisions in sections 225 to 235, Cr.P.C. which include the requirement that a sessions trial must be conducted by a Public Prosecutor. A private pleader can be permitted under section 301(2), Cr.P.C. to assist the Public Prosecutor but the Public Prosecutor cannot leave the entire case in the hands of a private individual.<sup>336</sup>

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233 Chunchun v. State of U.P., (1983) Crimes 818.

234 Roop K. Shorey v. State, A.I.R. 1967 Punj 42.

235 Ahmed, (1950) Kar 482.

236 Immadi Suryanarayana Rao v. State, 1982 Mad. L.J.(Cr.) 445 (A.P.)

There seems to be a sound purpose behind the policy of not allowing private persons to prosecute. Had there been no such restrictions, people with enough means would have had another area to harass their opponents by prosecuting them by engaging private advocates. But the law seems to have taken utmost precaution to safeguard the people against prosecution on false and fictitious grounds. There is another risk in allowing people to prosecute the accused with the help of private advocates as the rich and influential people accused or interested in accused persons might force the victims/complainants, first to seek permission for private prosecution without any help or supervision of Public Prosecutor, and then to discourage them from pursuing the cases properly so that discharge or acquittal is sure outcome in the cases against them.

#### **5.2.25 DEFENCE WING**

As there are Public Prosecutors and Assistant Public prosecutors to present the criminal cases in the courts of law, the accused, who are not competent to defend themselves, also need help of legal experts to reply the charges leveled against them, to contradict the evidence of the prosecution, and to obtain bail, etc. The legal practitioners, who are enrolled as advocates, work as defence lawyers on behalf of the accused in the Magistrates' courts, sessions courts and also in the High Courts and the Supreme Court. Advocates are also designated as senior advocates and advocates on record.

#### **5.2.26 SENIOR ADVOCATES**

Until 1954, an advocate of not less than 10 years standing in a High Court was eligible to be enrolled as a senior advocate of the Supreme Court. He could, at his option, automatically become enrolled as a senior advocate of the Supreme Court. This rule is now altered and any person can enrol himself as an advocate of the Supreme Court on application. The applicant is required to give an undertaking that he shall not draw pleadings, affidavits, advice on evidence or do any drafting work of an analogous nature. Any advocate may be designated as a senior advocate, if the Supreme Court or a High Court is of the opinion that by virtue of his ability, experience and standing at the Bar, he deserves such a distinction. The Court confers the distinction of a senior advocate only if the full Bench opines that the applicant deserves such a distinction by virtue of his ability, status and reputation at the Bar.<sup>337</sup>

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237 Maan, *op. cit.*, p. 152.

### **5.2.27 ADVOCATES ON RECORD**

The advocates at the Supreme Court who pass a prescribed examination in court rules and procedures are designated as advocates on record. Only an advocate on record, on having authorized by the client, can file cases/petitions before the court and is entitled to the right of audience. However, other advocates can also appear on behalf of the clients in such cases before the court. Ordinarily, the main job of an advocate on record is to work as connecting link between the court and the client, and the client and the pleading advocate. From the foregoing it is seen that in post-independence period, passing of the Advocates Act, 1961 and constitution of the Bar Council of India and the State Bar Councils are the most important developments relating to the Bar.

### **5.2.28 JUDICIARY**

The judiciary is one of the three basic organs of the State—the other two being the legislature and the executive. It has a vital role in the functioning of the State, more so, in a democracy, based on ‘rule of law’. In governance of a federal polity where powers are distributed between the Union Government and the State Governments, the judiciary, by virtue of its very task of interpreting the constitutional provisions and reviewing the decisions of Union as well as State Governments, assumes a significant and special importance. Justice has to be administered through the courts and such administration would relate to social, economic and political aspects of justice as stipulated in the Preamble to the Constitution. The judiciary, therefore, becomes the most prominent and outstanding wing of the constitutional system for fulfilling the mandate of the Constitution.<sup>238</sup>

Having realized the importance of the role of the judiciary, the framers of the Constitution incorporated detailed provisions relating to higher as well as subordinate judiciary in the constitution itself. The Constitution has provided for a single integrated system of courts to administer both central and state laws.

### **5.2.29 SUPREME COURT OF INDIA**

At the top of the entire judicial system exists the Supreme Court of India. The Supreme Court acts as a federal court for determination of disputes between the constituent units of the federation. It is the highest interpreter of the Constitution and thus plays the role of its guardian and saviour. For this purpose, the framers of Indian

<sup>238</sup> Choudhary, Pawan “Manmauji”, “Indian Judicial System: It’s Nature and Structure and Distinction

Constitution vested the power of judicial review with the Supreme Court so that any law or order enacted, promulgated or passed by the State authorities which contravenes the provisions of the Constitution, could be declared null and void. Under article 32 of the Constitution, it is to act as the protector of the Fundamental Rights of the people. The Supreme Court is the highest court of appeal in the country in civil as well as criminal matters.

The Supreme Court, presently, consists of a Chief Justice and not more than 25 Judges. Parliament by law may raise the number of total Judges. Provisions are also made in the Constitution for appointment of ad hoc Judges and the attendance of retired Judges at the sittings of the Supreme Court, in case of need. The Constitution covers various areas such as qualifications, appointment, tenure, terms of office, procedure for removal and immunities of the Judges of the Supreme Court. Powers and jurisdiction of the Supreme Court have also been well defined by the Constitution.<sup>239</sup>

Every Judge of the Supreme Court is appointed by the President of India after consultation with the Chief Justice of India and such of the Judges of the Supreme Court and of the High Courts in the states as he may deem necessary. A citizen of India who has been a Judge of High Court at least for five years or have been for at least ten years an advocate of a High Court or is in the opinion of the President, a distinguished jurist shall be eligible for appointment as a Judge of the Supreme Court. The Judges of the apex Court hold office till they attain the age of 65 years if not earlier resigned or removed.<sup>240</sup>

The jurisdiction of the Supreme Court can be divided into three categories, namely, original, appellate and advisory. Parliament, may, by law, enlarge the jurisdiction of the Court.<sup>241</sup> Section 2, Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, has enlarged the Supreme Court's jurisdiction.<sup>242</sup> Important provisions describing the role and jurisdiction of the Supreme Court are as under:

1. Under article 132 of the Constitution of India, an appeal shall lie to the Supreme Court from any judgment or final order of a High Court in criminal proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

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239 Maan, *op. cit.*, p. 152.

240 *Ibid.*, article 124.

241 *Ibid.*, article 138(2).

242 Seervai, H.M., *Constitutional Law of India*, Vol. 3, p. 2646

2. As per the provisions of article 134 of the Constitution, read with the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, an appeal shall lie to the Supreme Court from any Judgement, final order or sentence in a criminal proceeding of a High Court if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to life imprisonment or to imprisonment for a period of not less than ten years; or (b) has withdrawn for trial before itself any case from any subordinate court and has in such trial convicted the accused person and sentenced to death or to life imprisonment or to imprisonment for a period of not less than ten years; or (c) the High Court certifies that the case is a fit one for appeal to the Supreme Court.<sup>243</sup> Section 379, Cr.P.C. also has similar provision of appeal to the Supreme Court.
3. Under article 136 of the Constitution, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, sentence or order passed or made by any court or tribunal. This includes criminal cases also.
4. Under section 406, Cr.P.C. the Supreme Court can transfer any particular case or appeal from one High Court to another or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court on application of the Attorney-General of India or of a party interested.
5. As protector of the civil liberties, the Supreme Court, under article 32 of the Constitution, is empowered to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* for the enforcement of any of the Fundamental Rights.
6. As per the provisions of article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts in India.
7. Article 144 of the Constitution provides that all authorities, civil and judicial, in the territories of India shall act in aid of the Supreme Court.

It is pertinent to note that prior to the Constitution of India, there was no provision of appeal against the orders of the High Courts in criminal cases as of right. It was only in a limited sphere that the Privy Council entertained appeals in criminal cases from the High Courts.<sup>244</sup> However, the framers of the Constitution decided, after

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<sup>243</sup> Ibid.

<sup>244</sup> Durga Das, Introduction to the Constitution of India, p. 291.

a long debate, to provide such right to the people of India and accordingly incorporated the provisions under article 134.<sup>245</sup> Thus, notwithstanding the fact that section 6, Cr.P.C. does not mention the Supreme Court among the classes of criminal courts, it being empowered under articles 132, 134 and 136 of the Constitution to deal with criminal matters is the highest criminal Court of India.

### **5.2.30 HIGH COURTS**

The jurisdiction of the existing High Courts, the law administered by them and the powers to make rules of the Court were allowed by the Constitution to continue as were immediately before then commencement of the Constitution.<sup>246</sup>

The Constitution contains provisions relating to High Courts under articles 214 to 231. It provides a High Court for each State or for a common High Court for two or more States. A High Court may have one or more benches at different place in its jurisdiction for keeping in view the convenience of the people. At present there are 21 High Courts in India with benches at different places covering all States and Union Territories in India including the three newly formed States of Uttranchal, Jharkhand and Chhatisgarh,.

Every High Court consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Every Judge of a High Court is appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court. A Judge of the High Court holds office till he attains the age of 62 years if not resigned or removed earlier. A citizen of India who (a) has for at least ten years held a judicial office in India; or (b) has for at least ten years been an advocate of a High Court or of two or more such courts in succession, shall be eligible for appointment as Judge of the High Court. There are also provisions for appointment of additional and acting Judges. The Chief Justice of a High Court, with the previous consent of the President, can request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court.

The High Courts enjoy original and appellate jurisdiction including powers of revision and review. The High Courts in the presidency towns of Calcutta, Bombay and Madras possessed an original jurisdiction, both civil and criminal, over cases

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<sup>245</sup> C.A.D., Vol. VII, pp. 596-601, 840.

<sup>246</sup> The Constitution, op. cit., article 225.

arising within the presidency towns whereas other High Courts did not enjoy such original jurisdiction. Though the original criminal jurisdiction of the Bombay and Madras High Courts has recently been entrusted to City Sessions Courts, the original civil jurisdiction of these High Courts is still retained in respect of actions of higher values. The City Sessions Court has also been set up in Calcutta but the High Court of Calcutta still retains its original criminal jurisdiction over more serious cases. The jurisdiction and powers of the High Courts, from the criminal justice point of view, can be summarized as under:

1. Any person convicted in a trial held by a Sessions Judge or an Additional Sessions Judge or in a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him may appeal to the High Court under section 374 of the Cr.P.C., 1973.
2. Under section 377, Cr.P.C. the State Government and the Union Government may file appeal to the High Court against the sentence imposed on the ground of inadequacy of such sentence.
3. In cases of acquittal, the State or the Union Government or the complainant, if the case was instituted upon private complaint, the High Court may grant special leave to appeal under section 378, Cr.P.C, 1973.
4. Under section 397, Cr.P.C., the High Court may call for and examine the record of any proceeding before any inferior criminal court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. The Court may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his bond pending the examination of the record.
5. As provided under article 228 of the Constitution, if the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it shall withdraw the case and may—(a) either dispose of the case itself, or (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgement on such question.
6. Section 407, Cr.P.C empowers the High Court to transfer any case or appeal from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction.

7. As per the requirement of section 28, Cr.P.C., any sentence of death passed by a Sessions Judge or Additional Sessions Judge shall be submitted to the High Court for confirmation. The High Court is empowered to direct, under section 367, Cr.P.C., that a further inquiry should be made or additional evidence be taken upon any point bearing upon the guilt or innocence of the convicted person, or it, under section 368, Cr.P.C., may confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction, or may acquit the accused person.
8. Article 226 of the Constitution empowers every High Court to issue to any person or authority directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari* for the enforcement of any of the Fundamental Rights and for any other purpose.
9. Every High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Supreme Court has held that the High Court has both powers of administrative as well as judicial superintendence over the subordinate courts within its jurisdiction.

### **5.2.31 SUBORDINATE COURTS**

The Constitution of India contains provisions regarding appointment of District Judges, recruitment of persons other than District Judges to the judicial service, control over subordinate courts, etc. in Part VI, Chapter VI— Subordinate Courts. Hence the courts of and below the District and Sessions Judges are called subordinate courts. District and Sessions Court is a principal civil court and also a criminal court to try serious offences as provided in Schedule I of the Cr.P.C., 1973. The District Judge while dealing with the criminal cases is called Sessions Judge. Below the District and Sessions Court, the judiciary is divided into two categories, namely, civil and criminal. The courts of civil jurisdiction are known as *Munsifs*, Sub-Judges, Civil Judges; whereas the criminal judiciary comprises courts of Magistrates.<sup>247</sup> However, as per the provisions of section 11(3), of the Cr.P.C., the powers of a Judicial Magistrate of the first class or of the second class can be conferred on a Judge of a civil court. Thus the lower judiciary below the District and Sessions Judge is not compartmentalized into civil and criminal in absolute sense as a court may deal with both civil as well as criminal cases in certain circumstances.

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<sup>247</sup> The Constitution, loc. cit.

Detailed provisions about criminal courts, their jurisdictions, etc. are found in Chapter II of the Code of Criminal Procedure, 1973. Section 6, Cr.P.C. provides that besides the High Courts and the courts constituted under any law, other than the Cr. P.C., there shall be, in every state, the following classes of criminal courts, namely:-

### **5.2.32 COURTS OF SESSION**

Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates; Judicial Magistrate of the second class; and Executive Magistrates, Courts of Session.

As per the provisions of section 7, Cr.P.C., every State shall be a sessions division or shall consist of sessions divisions. A sessions division may consist of one or more districts. Under section 9, Cr.P.C., for every court of session, the High Court shall appoint a Judge to preside over the court. Provisions have also been made for appointment of Additional Sessions Judges and Assistant Sessions Judges.

A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court. An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.<sup>248</sup> Courts of Judicial Magistrates

In every district, except the metropolitan area, there are courts of Judicial Magistrates of the first class and of the second class. Presiding officers of such courts are appointed by the High Court under section 11(2) of the Cr.P.C. The High Court may confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the judicial service of the state, functioning as a Judge in a civil court.<sup>249</sup>

To supervise the work of the Judicial Magistrates, the High Court appoints a Chief Judicial Magistrate in every district. The Court may also appoint an Additional Chief Judicial Magistrate, and may designate any Judicial Magistrate of the first class as Sub-divisional Judicial Magistrate. Every Chief Judicial Magistrate is subordinate to the Sessions Judge and every Judicial Magistrate, subject to the general control of the Sessions Judge, is subordinate to the Chief Judicial Magistrate. Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local jurisdiction of the areas within which the Judicial Magistrates may exercise their powers.<sup>250</sup>

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248 Cr.P.C., op. cit., Section 28.

249 Ibid., section 11(3).

250 Ibid., section 12.

The court of Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. The court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both. However, the court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

### **5.2.33 COURTS OF METROPOLITIAN MAGISTRATES**

For every metropolitan area there is a Chief Metropolitan Magistrate and under him a number of Metropolitan Magistrates. The presiding officers of such courts are appointed by the High Court. An Additional Chief Metropolitan Magistrate may be appointed by the High Court. The court of a Chief Metropolitan Magistrate has the powers of the court of a Chief Judicial Magistrate; and the court of a Metropolitan Magistrate has the powers of the court of a Magistrate of the first class.

The High Court may, if requested by the Union or State Government to do so, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable on a Judicial Magistrate of the first class or of the second class or a Metropolitan Magistrate. The persons who have been conferred such powers shall be called Special Judicial Magistrates or Special Metropolitan Magistrates.

Special Courts Criminal courts can also be constituted under Union and State Special Laws to meet particular needs. The courts of coroners in the presidency towns constituted under the Coroner's Act, 1871 and courts of Cantonment Magistrates in cantonments under the Cantonments Act, 1924 are examples of such courts. The powers of such courts are either specifically mentioned in the law under which they are created or such courts exercise powers specified in part II of the First Schedule of the Cr.P.C., 1973.

### **5.2.34 EXECUTIVE MAGISTRATES AND SPECIAL EXECUTIVE MAGISTRATES**

Although the Code of Criminal Procedure, 1973 has separated the judiciary from the executive, it still continues to describe Executive Magistrates as one of the classes of criminal courts under section 6 of the Cr.P.C. Generally the Executive Magistrates handle executive work which may be of quasi-judicial nature. However,

in certain circumstances they can deal with judicial work, e.g. section 167(2A), Cr.P.C. provides that where a Judicial Magistrate is not available, a person arrested by police can be produced before the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred.

Section 20, Cr.P.C. provides that in every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them as District Magistrate. The State Government may also appoint Additional District Magistrate for a district. The State Government may place an Executive Magistrate in charge of a subdivision to be called Sub-divisional Magistrate. All Executive Magistrates except the Additional District Magistrate shall be subordinate to the District Magistrate.

Sub-section (5) of section 20, Cr.P.C. provides that nothing in section 20 shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area. In pursuance of these provisions, the State Governments have empowered the Commissioners of Police, Joint Commissioners of Police, Additional Commissioners of Police, Deputy Commissioners of Police and Assistant Commissioners of Police to exercise powers under sections 107, 108, 109, 110, 133, 144, etc. of the Cr.P.C., 1973 within the areas for which they are appointed.

In addition to the above, there are also provisions for appointment of Special Executive Magistrates for particular areas or for particular functions. Such of the powers as are conferrable under the Cr.P.C. on Executive Magistrates may be conferred on the Special Executive Magistrates under section 21 of the Cr.P.C.

The above description of the judiciary as a component of the criminal justice system shows that a well-defined hierarchy of criminal courts exists in India to administer criminal justice. The very fact that the Constitution itself contains elaborate provisions for the judiciary including the subordinate courts, indicates the importance the framers of the Constitution accorded to this important organ of criminal justice administration.<sup>251</sup>

### **5.2.35 CORRECTIONAL SERVICES**

Today, the main objective of the criminal justice administration is not merely to punish the offender but to effect changes in his behaviour in the over all interest of

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251 Criminal justice system

the society. This calls for correctional agencies to decriminalize and reform the offenders to make them fit for society and not to dehumanize them by giving harsh and inhuman treatment. Any failure on their part to bring the offenders on the right path again will make the whole process a futile exercise and the main purpose of the criminal justice administration will be defeated. The role of the correctional services, therefore, becomes very crucial. The correctional system of India mainly consists of prisons, probation and parole.

### **5.2.36 PRISONS**

The prisons, reformatories, borstal institutions and other institutions of like nature are included in state list under the Constitution of India. The legal base for prisons is section 4 of the Prisons Act which requires the state governments to provide accommodation for prisoners in their territories, in prisons which, as per section 3, means any jail or place used permanently or temporarily for the detention of prisoners. Further, under section 417 of the Code of Criminal Procedure, 1973, a State Government may direct in what place a person liable to be imprisoned or committed to custody is to be confined.<sup>252</sup>

### **5.2.37 PRISON REFORMS AND PRISON MANUALS**

Many of the Indian leaders who had played an important role in the country's struggle for freedom and had spent many years in prison were fully aware of the urgency of improving the conditions in Indian jails. Therefore, immediately after India became free, steps were taken to improve the prisons on a priority basis.

The Government of India set up an All India Jail Manual Committee to prepare a Model Prison Manual for the use of various states in India. The Committee finalised a Model Prison Manual in 1960. It *inter alia* recommended diversification of institutions; setting up of Boards—(a) Central Bureau of Correctional Services, (b) Central and State Advisory Boards, and (c) Board of Visitors, Review Board and Service Board in each jail; adequate training of staff; personnel discipline; educational programme for all prisoners; vocational training; and after care and rehabilitation.

The administration of prisons being a state subject under the Constitution of India, the recommendations of the All India Jail Committee are not of mandatory nature and only provide guidelines to achieve some uniformity in all the states. However, the central laws, i.e. the Prisons Act of 1894 and the Prisoners Act of 1900 which still govern the management of prisons in the country, provide an overall

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<sup>252</sup> The Constitution, op. cit., Ninth Schedule, List-II, entry 4.

uniformity in the administration of prisons. The prison manuals of the State Governments are based on the central Acts.<sup>253</sup>

Prison establishments in different States/Union Territories comprise several tiers of prisons or jails. The most common and standard jail institutions in India are Central Jail, District Jails and Sub-Jails. The other types of jail establishments are Women Jails, Children or Borstal Schools, Open Jails and Special Jails.

#### **5.2.38 CENTRAL JAILS**

The criteria for a jail to be termed as Central Jail differ from State to State. However, the common features observed in all States are that the prisoners sentenced to imprisonment for longer period are confined in the Central Jail and these Jails have more accommodation in comparison to other jails in any State.<sup>254</sup>

#### **5.2.39 OPEN PRISONS**

The need for a change of attitude towards the treatment of prisoners has been growing since independence. With the advance of knowledge of human behaviour, the part played by psycho-social environment in the development of the criminal is being recognized. Treatment of offenders in open conditions, as similar to outside world as possible, is one of the new ideas which have come into practice recently.<sup>255</sup>

The 'Open Prison' means any open place or area fixed permanently under any order of the state government for the detention of prisoners. The object is to save lifers and long term prisoners from ill effects of prison life and continuous exposure to criminal culture of closed prisons having traditional walls. The concept of 'open prison' is based on containment of the offender with balanced deterrence so that his mental outlook is not impaired.<sup>256</sup>

#### **5.2.40 SPECIAL JAILS**

Special Jail means any prison provided for the confinement of a particular class or classes of prisoners which are broadly classified as follows:

- i. Prisoners who have committed serious violations of prison discipline.
- ii. Prisoners showing tendencies towards violence and aggression.
- iii. Difficult discipline cases of habitual offenders.<sup>257</sup>
- iv. Difficult discipline cases from group of professional and organized criminals.<sup>258</sup>

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253 Ibid.

254 Prison Statistics 1997, National Crime Records Bureau, pp.1-9.

255 Sirohi, op.cit., pp.122-23

256 Mathew, P.D., The Rights of Prisoners, , p. 46.

257 Ibid.

258 Ibid.

#### 5.2.41 BORSTAL SCHOOLS

Young offenders are kept in separate institutions known as Borstal Schools so that they do not come in contact with adult criminals. States have opened separate prison establishments for young offenders as the main emphasis of these is to impart education to the inmates. During 1997 there were 31 Borstal Schools in 11 States.<sup>259</sup>

#### 5.2.42 PRISON ADMINISTRATION

Prison administration is the responsibility of the State Governments under the provisions of the Prisons Act, 1894 and the respective jail manuals. At the State level, prison administration functions under the Home Department. The prison department is headed by Inspector General of Prisons who is assisted in some states by Deputy Inspectors General of Prisons. Prison Superintendents are in charge of district and central prisons. The organizational pattern of the prison department differs from State to State depending upon the local conditions. The Prison Superintendents are assisted by Jailors, Sub-Jailors, Warders, and other jail staff.

As regards the prison administration, the Supreme Court in the case of *Sunil Batra v. Delhi Administration*<sup>260</sup> observed: “Prisons are built with stones of law and so it behoves the Court to insist that, in the eye of law, prisoners are persons, not animals, and punish the deviant guardians of the prison system where they go berserk and defile the dignity of human inmates. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials dressed in a little, brief authority. For when a prisoner is traumatized, the Constitution suffers a shock.” The Court in this case further observed that the Prisons Act and Rules need revision if a constitutionally and culturally congruous code is to be fashioned.<sup>261</sup> The apex Court *inter alia* issued following directions:

1. The State shall take early steps to prepare in Hindi a Prisoner’s Handbook and circulate copies to bring legal awareness home to the inmates.
2. Copies of the Prison Manual shall be within ready reach of prisoners.
3. Prisons Act and Rules need revision.
4. All visitors, officials and non-official, at every visit, shall inspect the barracks, cell wards, worksheds and other buildings of the jail generally and cooked food.

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259 Ibid.

260 *Sunil Batra v. Delhi Administration*, A.I.R. 1980 S.C. 1579.

261 Ibid. para 60

5. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations especially those relating to work and wages, treatment with dignity, community contact and correctional strategies.

#### **5.2.43 PRISION PERSONNEL**

The prison personnel are selected by the prison department or by the State Government, except the Inspector General of Prisons, if he is an officer from the Indian Police Service. However, the All India Jail Manual Committee has recommended: "In filling the post of Inspector General, special care should be taken that only persons with sufficient knowledge and suitable experience shall be considered. If a suitable departmental officer is available, he should be given preference."

The concept regarding the duties, responsibilities and functions of correctional personnel has undergone a fundamental change. The All India Jail Manual Committee has stressed the necessity of careful selection of correctional personnel. During recent times, more attention is being paid to this aspect of prison administration. Method of selecting prison personnel has improved and trained social workers are being recruited in prison service. Likewise, graduates in social sciences are being recruited as prison officers. More attention is being paid to the selection of prison guards and other prison personnel.

#### **5.2.44 TRAINING OF PRISION STAFF**

The All India Jail Committee stressed the need of training of prison personnel. It is now recognized that correctional work is specialized work. The Tata Institute of Social Sciences, Bombay, and the Jail Training School, Lucknow, have done pioneering work in respect of training of prison personnel. The T.I.S.S. has set up a department of criminology and correctional administration. In 1955, Maharashtra State set up the Jail Officers Training School at Yeravada, Pune,<sup>262</sup> Subsequently, other Jail Training Institutions have been established.

#### **5.2.45 CENTRAL BUREAU OF CORRECTIONAL SERVICES**

As a sequel to the recommendations of the All India Jail Committee, the Central Bureau of Correctional Services was set up by the Government of India in 1961. The main functions of the Bureau are: (i) to standardize the collection, on a

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<sup>262</sup> . *Ibid.*

national basis, of statistics relating to crime, jail, probation and other correctional work in different states in India; (ii) to coordinate the work and develop a uniform policy of prevention of crime and treatment of offenders; (iii) to exchange information in regard to crime, prevention and correctional services between the states and provide technical knowledge and assistance and other information either generally or on specific programme; (iv) to examine information, where necessary, between India and foreign governments and with the United Nations Organization; (v) to promote research and staff training and to undertake studies, surveys and any required research and experimentation in the field; and (vi) to disseminate information and stimulate interest by publication of bulletins, etc. on the subject.<sup>408</sup>

#### **5.2.46 NATIONAL INSTITUTE OF SOCIAL DEFENCE**

In 1974, the Central Bureau of Correctional Services was converted into National Institute of Social Defence. This Institute reviews the implementation of the recommendations of the All India Jail Manual Committee. It has been the endeavour of the Institute to ensure that the recommendations about prison reforms are properly implemented and prison administration is streamlined on proper lines by the various states.<sup>409</sup> The Institute is becoming a focal point where a new thinking in regard to various aspects of social defence is evolving.<sup>263</sup>

#### **5.2.47 CENTRAL ADVISORY BOARD ON CORRECTIONAL SERVICES**

In 1969, a Central Advisory Board on Correctional Services, comprising social scientists and correctional administrators, was set up by the Ministry of Social Welfare, Government of India.<sup>264</sup> The objectives of this board are: (i) to advise the central and state governments on matters of policy in providing correctional services; (ii) to help the central and state governments to effectively develop programme of correctional services throughout the country and to fill up gaps that exist at present in different areas of services; (iii) to advise on matters relating to the social aspects of prevention, control and treatment of delinquency and crime; (iv) to suggest measures for improving levels of coordination between administration of justice, police administration and correctional administration;<sup>265</sup> and (v) to suggest ways and means of creating social consciousness for the rehabilitation of offenders.

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<sup>263</sup> The Gazetteer, op. cit., p.458.

<sup>264</sup> Ibid., pp. 438-39.

<sup>265</sup> Ibid.

#### **5.2.48 PROBATION**

Probation means conditional suspension of imposition of a sentence by the court, in selected cases, especially of young offenders, who are not sent to prisons but are released on probation, on agreeing to abide by certain conditions. Probation has been described by the Economic and Social Council of the United Nations as one of the most important aspects of the development of rational and social policy.<sup>266</sup>

Provincial Governments of C.P. and Berar, Madras, U.P., Bombay, West Bengal and Hyderabad had enacted Probation laws for their respective areas during the period 1936 to 1954. However, having realized the need of a central comprehensive law on probation, the Indian Parliament passed the Probation of Offenders Act, 1958. Section 19 of the Act provides that section 562, Cr.P.C. (section 360 of the new Cr.P.C.) ceases to apply to the states or parts thereof in which this Act is brought into force.

#### **5.2.49 PROBATION OF OFFENDERS ACT**

Before passing the Probation of Offenders Act, 1958 there was no central legislation containing provisions for reform, rehabilitation and supervision of the offenders released on probation as section 562 merely provided for release of the offenders. Passing of the Probation of Offenders Act indicates that something more was required than just letting a person off, in order to reform and rehabilitate him.

Section 3 of the Act provides that when any person is found guilty of having committed an offence-theft, dishonest misappropriation of property, cheating or any offence punishable with imprisonment for not more than two years, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him, the court may release him after due admonition.

Section 4 of the Act empowers the court to release any person found guilty of having committed an offence not punishable with death or imprisonment for life on probation of good conduct. The person being released on probation has to enter into a bond to appear and receive sentence when called upon during such period, not exceeding three years, and in the meantime to keep the peace and be on good behaviour.

As per the provisions of section 6 when any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment

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<sup>266</sup> . Sirohi, *op. cit.*, pp. 231-39.

(but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4. If the court decides to pass any sentence of imprisonment on the offender, it shall have to record its reasons for doing so. Section 14 of the Act deals with the duties of the probation officers. It provides that a probation officer shall, subject to such conditions and restrictions, as may be prescribed—(a) inquire, in accordance with any direction of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court; (b) supervise probationers and other persons placed under his supervision and where necessary, endeavour to find them suitable employment; (c) advise and assist offenders in the payment of compensation or costs ordered by the court; and (d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4.

The Supreme Court, in *Rattan Lal v. State of Punjab*,<sup>267</sup> has observed that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.

#### **5.2.50 PAROLE**

Parole is an administrative scheme under which a convict is released after serving some part of the sentence awarded to him and the release is not the result of any court decision. If an offender released on parole is found to have improved and has abstained from criminal conduct, he gets remission of the rest of the sentence and for sometime at least a part of the sentence.<sup>268</sup>

Parole shares some of the characteristics of probation. Both have to be selective, based on a thorough study of the personality and environment factors of the offenders, and both envisage provision for guidance and supervision. However, there are basic differences between probation and parole. To release on probation is a judicial decision whereas parole is purely an administrative action. Another point of difference is that in probation, the offender, after being found guilty, is released without sending him to jail but in case of parole a convict is released after serving

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267 Sirohi, *op. cit.*, pp. 231-39.

268 *Ibid.*

some part of the sentence awarded to him.<sup>269</sup>

The State Governments have their own rules on parole. However, with a view to preserving a basic uniformity of approach in the country a set of Model Parole Rules have been framed by the Central Advisory Board on Correctional Services.<sup>270</sup>

In the development of the scheme of parole in India, the Supreme Court's decision in the case of *Md. Giasuddin v. State of Andhra Pradesh*<sup>271</sup> is a milestone. In this case the apex Court *inter alia* directed the Government to release the appellant on parole. The Court observed:

“We have given thought to another humanizing strategy, viz., a guarded parole release every three months for at least a week, punctuating the total prison term. We direct the State Government to extend this parole facility to the appellant, Jails Rules permitting, and the appellant submitting to conditions of discipline and initiation into an uplifting exercise during the parole interval...The State will not hesitate, we expect, to respect the personality in each convict in the spirit of the Preamble to the Constitution and will not permit the colonial hangover of putting people behind the bars and then forget about them.”

Thus, in post-independence period efforts have been made to bring about qualitative improvement in the working of correctional services.

The above description of various components of the present criminal justice system of India shows that most of the major criminal laws such as the Indian Penal Code of 1860, the Police Act of 1861, and the Indian Evidence Act of 1872 are still in force with some peripheral amendments. Except some significant changes such as separation of the judiciary from the executive and abolition of jury system, even the new Code of Criminal Procedure of 1973 is a replica of the old Cr.P.C. of 1898. The structure of police and its working style has not changed much. However, establishment of police commissionerates in some of the States has certainly been a welcome development and has enhanced performance parameters.

With the Constitution coming into force, the higher judiciary has taken a new role of interpreting the Constitution and declaring laws keeping the spirit of the Constitution in view. The constitutional provision for appeal to the Supreme Court in

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269 *Rattan Lal v. State of Punjab*, A.I.R. 1965 S.C. 444.

270 Sirohi, *op. cit.*, pp. 264-73.

271 *A.R.Antulay v. R.S.Nayak*, A.I.R. 1988 S.C. 1531.

certain criminal matters as of right is certainly an innovative reform introduced by the Constitution in the judicial system of India.

Considerable developments have been made in the correctional services in post-independence period. The retributive theory of punishment has given way to reformatory and rehabilitative theories. Separate prison establishments have been opened for women and young prisoners. Prison reforms have laid emphasis on improving the conditions in the jails. To sum up, even though efforts have been made to effect radical transformation, yet we find ourselves clogged in transition. Consequently, the indelible legacy of the British era sustains. Thus, most of the criminal laws, procedures, institutions, and principles evolved during the British period still govern the functioning of various components of the criminal justice system of India.

### **5.3 EVALUATION OF CRIMINAL JUSTICE ADMINISTRATION**

The first and foremost objective of the criminal justice administration is to create an atmosphere of security by maintaining law and order. In pursuance of this objective the functionaries of the criminal justice system follow the principle 'protect the good and punish the wicked'. Succinctly, the criminal justice administration attempts to decrease criminal behaviour.

Like in every civilized country, the people of India are entitled to enjoy certain basic rights such as right to life, personal liberty, property and dignity of the individual. The Constitution and many criminal laws aim at securing these rights of the people. Criminal acts put these rights in jeopardy and thereby undermine the authority of the Constitution and other laws. Therefore, to keep crime under control and ensure swift and certain punishment to the criminals are the primary duties of various agencies of the criminal justice administration.

To achieve the final goal of establishing a just society, various components of the criminal justice system, viz. the police, bar, judiciary and correctional services, are expected to work harmoniously and cohesively. Success of one component may not endure unless other components too achieve success of almost similar degree. For example, in a case, the police may succeed in arresting an accused and submitting a charge-sheet with sufficient evidence, however, if the prosecution is not able to present the case efficiently before the court, or if the court fails to assess the evidence in proper perspective, the accused will be set free and the efforts of the police will go

in vain. Even if all these three components perform their parts well and the accused is convicted and sentenced to undergo imprisonment, it is not going to have a desired effect unless the sentence is executed properly. The jail authorities, instead of reforming the convict, may, unwittingly, aggravate the criminality in him by harassing him. They may also make the punishment ineffective by providing him such facilities and comforts to which he is not entitled. Thus, like in a relay race, all components of the criminal justice system have to play their role by supplementing the efforts of each other. Therefore, the criminal justice administration needs to be evaluated as a whole and not its components separately.

### **5.3.1 CRIME TRENDS**

Any act or omission punishable by any existing law is called offence. Offences with element of force or moral turpitude are generally termed as crimes. Weaknesses such as greed, passion, envy, lust, vengeance, etc. compel the weak lot of the people to cross the moral and legal boundaries and commit crime. Unemployment, income disparities, inequality, poverty, decline in moral values, etc. are also important factors that cause increase in crime.

Crime puts life, liberty, dignity and property of the people in danger and creates law and order problems. The law and order problem may spread its wings to disturb public peace and bring normal civic life to a grinding halt. This may, sometimes, pose a threat even to national security. Thus, crime is not just a concern of the victim or the criminal justice authorities; the hidden potential in it may harm the whole society or even the nation. In other words, crime undermines the 'rule of law' and thus digs out the very root of democracy. This is the reason that in India, as in most of the democratic countries, crimes are considered as injuries to the State. With the growth in population, increase in the incidence of crime is a natural phenomenon. Population based crime rate—which denotes incidence of offences per lakh population per year—is, therefore, considered as a more realistic indicator of crime situation in a particular area than the other methods. This method of calculating crime rate is universally recognized.

Crimes in India are broadly divided into two categories, namely, cognizable offences and non-cognizable offences. Cognizable offence means an offence for which a police officer may, in accordance with the First Schedule of the Code of Criminal Procedure, 1973 or under any other law for the time being in force, arrest without warrant.<sup>473</sup>

Cognizable offences are further divided into two groups, namely, crimes under the Indian Penal Code and crimes under the Special and Local Laws. Crimes under the I.P.C. affect human body, property, security of the State, etc. and hence, they are considered more serious than the S.L.L. crimes. Offences under most of the Special and Local Laws are of regulatory nature. Therefore, an analysis of crime trends of only I.P.C. crimes, specially the heinous crimes of murder, rape, dacoity, etc. may give a fair idea of the criminal behaviour of the people and effectiveness of the criminal justice administration in controlling the crime.

### **5.3.2 PENDENCY AND DISPOSAL OF CASES**

After crime prevention efforts, the next important function of the criminal justice administration is the criminal justice process, i.e. investigation of crimes, filing charge-sheets in suitable cases, holding trials and executing punishments. Swift arrest, prompt trial, certain penalty and at some point finality of judgement deter the people from committing crime. On the other hand inordinate delay in disposal of the criminal cases and meagre chances of punishment embolden the criminals.

The police register the cognizable offences which either come to their notice or are reported to them by members of the public. After registration, the police investigate the cases to collect evidence. Investigation of a case can be refused under section 157, Cr.P.C. if it appears to the officer-in-charge of the police station that there is no sufficient ground to entering on an investigation. In true and detected cases, the police, after completion of investigation, has two options, namely, (i) submit charge-sheet to the court if evidence is sufficient; and (ii) close the case if the evidence is not sufficient to prove the guilt of the accused. Unsolved cases are either closed or kept pending investigation for a certain period. In the event of any reliable evidence coming forward, a closed case can be opened at any time. In charge-sheeted cases, the court scrutinizes the police charge-sheet and papers annexed to it for framing the charge. At the time of framing charge, if the accused pleads guilty, the court may convict him without holding trial. However, where the accused pleads not-guilty, the court has to follow the procedure of holding a trial or summary proceedings to decide the case. In case the court feels that the charge-sheet does not disclose a cognizable case or the case is otherwise not fit 475 for trial/summary proceedings, it can reject the charge-sheet.

As the saying goes, justice delayed is justice denied, it is necessary that the cases are disposed of by the courts without delay. The right to speedy trial is properly

reflected in section 309 of the Cr.P.C., 1973. The Supreme Court, while delivering its constitutional bench judgement in *A.R. Antulay v. R.S. Nayak*, declared that right to speedy trial is implicit in article 21 of the Constitution and thus constitutes a Fundamental Right of every person accused of a crime. While deciding this case the Supreme Court laid down a number of propositions meant to serve as guidelines. Similarly, in *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court observed:

“No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the Fundamental Right to life and liberty enshrined in article 21.”<sup>272</sup>

In another important case, *Sheela Barse v. Union of India*,<sup>478</sup> wherein a petition was filed for the release of all children, below the age of 16 years detained in various jails in different States, the apex Court observed that the problem of children under detention would more easily be solved if the investigation and trial in respect of the charge against them could be expedited. The Court directed the State Government to take steps for completing the investigation within three months in cases lodged against children below the age of 16 years and to establish adequate number of courts to expedite trial of such cases.<sup>273</sup>

As regards delay in disposal of cases by courts, the Law Commission, in its 77th, 124th, 125th and 142nd Reports, showed grave concern and made detailed suggestions to face the challenge. The 124th Report of the Commission reveals that out of 4191 criminal appeals pending in the Supreme Court of India, as on 1st October 1987, more than half were pending for more than three years and over 500 appeals were more than seven years old. In case of the High Courts the situation was still worse as there were numerous cases more than five years old.<sup>274</sup> The Commission in its 142nd Report observed: “Grievances have been vented in public that disposal of criminal trials in the courts of the Magistrates and District and Sessions Judges takes considerable time. It is said that the criminal trials do not commence for as long a period as three to four years after the accused was remitted to judicial custody...It is said that in several cases the time spent by the accused in jails before the

272 *Hussainara Khatoon v. Home Secretary, State of Bihar*,

273 *Sheela Barse v. Union of India*, (1986) 3 S.C.C. 632.

274 A.I.R. 1979 S.C. 1377.

commencement of trials exceeds the maximum punishment which can be awarded to them if they are found guilty of offences charged against them.”

Despite the above observations of the Law Commission and directions of the Supreme Court, it was noticed that in 1994 over two crore cases, both civil and criminal, were pending all over India, tribunal cases excluded. High Courts had over 22 lakh cases on their rolls. Taking a serious view of delay in disposal of criminal cases, the Supreme Court in *Rajdeo Sharma v. State of Bihar* (1998) directed all High Courts in the country to decide criminal cases within 3 years. Again in November 2000 a three Judge Bench presided over by the Chief Justice of India voiced concern over huge pendency of cases, both on the civil and criminal side, in the subordinate courts of the country. The Rajya Sabha was informed in November 2000 that there were more than two crore cases pending in District/Subordinate Courts including 1,32,59,319 criminal cases. Rajya Sabha was also informed in April 2001 that there were 8,29,345 cases pending over 10 years in District/Subordinate Courts while in High Courts over five lakh cases were more than 10 years old.

Huge pendency causing inordinate delay in disposal of criminal cases not only contravenes article 21 of the Constitution but also leads to failure of the cases in courts. During long period of waiting, the investigation officers get transferred and lose track of the pending cases. The memories of the witnesses fade and they are not able to recall the incident that they witnessed long back. Obviously, the witnesses are not able to depose properly before the trial court. In some cases even the complainants start showing lack of interest in pursuing the cases. In many cases they are compelled by various circumstances such as social interaction, business relations and political intermingling to compromise or compound the cases. Consequently, the accused are either acquitted or discharged. The following table confirms the view that with declining trial rate the conviction rate also declines.

The following are a few glaring instances of delay in disposal of criminal cases in India and speedy disposal in the United Kingdom:

1. In the Samba spying case—in which over 20 army personnel including 9 officers were dismissed from service after found guilty of spying for Pakistan and seven of them awarded 6 to 14 years of imprisonment by the Court Martial in late 1970s—the Delhi High Court acquitted them after a period of over 20 years in December 2000. This is also not final disposal as the Supreme

Court has stayed the order of the High Court and thus this abnormally delayed case is going to take still more time before the final verdict is announced.<sup>275</sup>

2. The Supreme Court acquitted an accused who was first put on trial 14 years ago for having taken a bribe of 20 rupees. The appellant, Meena Hemke, a revenue record keeper in a Collectorate of Maharashtra, was convicted by a Special Judge and the Bombay High Court had upheld the sentence under the Indian Penal Code and the Prevention of Corruption Act.<sup>276</sup>
3. Bharat Bhushan, a 15 years old boy, was arrested in 1993 by the Akhnoor Police (Jammu & Kashmir) on charges of stealing Rs. 112.10 from a post office. He has nearly served the maximum term of seven years in jail, while he is yet to be found guilty.<sup>277</sup>
4. The Supreme Court acquitted an accused in February 14, 2001 convicted by the High Court under the Prevention of Corruption Act for an alleged offence committed in 1986. The accused, a *talathi* (a junior revenue official) in Maharashtra was trapped by Anti-corruption Bureau in 1986 for having accepted a bribe of Rs. 100. The Special Judge who tried the case acquitted the accused. But the Bombay High Court reversed the acquittal in an appeal filed by the State Government and convicted the accused in 1995. The accused challenged the conviction and the Supreme Court finally acquitted him setting aside the judgement of the High Court.<sup>278</sup>
5. The Bombay High Court, in April 2001, sentenced a 60 years old man to rigorous imprisonment for raping a minor girl 19 years ago. The High Court, while reversing a Sessions Court verdict which had acquitted the accused on March 25, 1985, held: “A deterrent sentence is necessary to curb such cases and sustain the faith of common man in the court.” In this case the accused, in March 1982, had raped a 9 year-old girl who used to attend tuition classes run by his wife. The Sessions Judge acquitted the accused in August 1985.<sup>279</sup>
6. An incident occurred one night at Cambridge University where some students were involved in riotous behaviour. They broke one street lamp and knocked down a Policeman’s helmet. By 10.30 next day, each of the student involved had been fined five pounds and the fine realized.

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275 The Times of India, dated 25.12.2000, 26.12.2000; The Indian Express, dated 28.12.2000; The Times

276 Ibid, dated 19.4.2000.

277 Ibid., dated 13.4.2000.

278 Punjab Rao v. State of Maharashtra, decided by a division

279 Bench of the Supreme Court, headed by Justice G.B. Pattanaik, on 14.2.2001. 490 State of Maharashtra v. Dudang, reported in the Indian

An international smuggler known to the Interpol was arrested one day at London Airport. On the 4th day, the trial commenced. The delay was occasioned because an Indian Intelligence officer had to fly London. Based primarily on his evidence, the smuggler that day was sentenced to seven years imprisonment. The above clearly indicates that the criminal justice administration of India has not been able to deliver speedy criminal justice to the people.

### **5.3.3 CONVICTION RATE**

Fear of punishment is an effective deterrent to the people inclined to commit crime. It is only after conviction in a criminal case that the court sentences an accused with punishment in accordance with law. In some cases the court instead of sentencing punishment releases the accused after admonishing him and on executing a bond of good behaviour for a certain period commonly known as 'probation'. However, in such cases also the concerned person stands convicted and the conviction in a criminal case is generally regarded as a blot on one's character. Hence, irrespective of the fact whether the accused is awarded a punishment or not, conviction itself is an effective instrument to deter people from committing crimes.

India, in most of the trials, follows the adversarial system which requires the prosecution to prove the charge levelled against the accused beyond reasonable doubt. Conviction rate (number of criminal cases ending in conviction per hundred cases in which trials have been completed and judgements pronounced by the trial courts) indicates the efficiency of the criminal justice administration in general, and the police and the prosecution in particular.

The statistics presented in table 3 indicates that in 1961 the conviction rate of I.P.C. cases was 64.8 but in 1998 it came down to 37.4. Analysis of the available data shows a significant decline in conviction rate during 1998 in comparison to the position of 1978. This reflects deteriorating performance of the agencies involved in crime punishment process. It is pertinent to note that while conviction rate has been declining since 1961, the crime rate of violent crimes is on the rise. It confirms the view that lesser chances of getting punished embolden the anti-social elements to indulge in criminal activities. It confirms the view that it is not the severity but the certainty of punishment that deters a crime.

However, the acquittal is also justice to the innocent persons entangled falsely with malafide intentions of the opposite parties. But the police have the powers to close a false case and in suitable cases may also initiate action against those who lodged false F.I.R. The police are also authorized not to charge-sheet a cases if the evidence is not sufficient to prove the charge against the accused. Therefore, failure of charge-sheeted cases, which are contested by the prosecution for conviction, is a reflection on the ability of investigation as well as prosecution agency. However, it is a common experience that despite sufficient supporting evidence and all possible efforts of the police and prosecution to rove the charges the cases fail because the key witnesses turn hostile. Hence, the police and prosecution may not be responsible for failure of the cases. But, acquittals in true cases certainly indicate that the criminals have gone scot free. This causes frustration in the minds of the victims and erodes people's faith in the whole criminal justice administration. Therefore, declining trend of conviction of I.P.C. cases reflects inability of the criminal justice administration in punishing the crime.

#### **5.3.4 OBSERVATIONS OF LAW COMMISSIONS**

The genesis leading to the appointment of the First Law Commission after India became independent lies in a non-official Resolution moved in the Lok Sabha on 19th November 1954. Pursuant to this Resolution the First Law Commission was appointed in 1955 under the chairmanship of Mr. M.C. Setalwad, retired Attorney General of India. The Commission not being a permanent body is reconstituted every three years and so far 15 Law Commissions have been constituted. The 15th Law Commission under the chairmanship of Justice B.P. Jeevan Reddy came into existence with effect from 1st September 1997.<sup>280</sup>

The Commission undertakes studies of the existing laws and justice delivery system, and submits its report to the Government of India. Since 1955 the Law Commissions have submitted 174 reports to the Government of India. Out of these, 71 reports have direct or indirect bearing on the criminal justice system. The reports of the Commission are recommendatory in nature and the Government of India is not bound to accept them and effect the recommended changes. However, the reports of the Commission are kept in view while formulating policies and enactment of new laws. The terms of references of many Law Commissions entailed review of various criminal laws and criminal justice system. The Commissions have evaluated the

<sup>280</sup> India 2001, Publications Division, Government of India,

working of various components of the criminal justice administration and recorded the findings in their reports. Some of the reports are examined here to know how various Commissions have viewed the functioning of the criminal justice administration.

The First Law Commission found flaws in the existing judicial system and recommended, in its 14th Report, large scale reforms in the judicial administration. The Fifth Law Commission, mainly concentrated on the matters relating to criminal justice system.

The Commission noticed lacunae in substantive as well as procedural law of India and accordingly submitted its reports to the Government. In its 41st Report, the Commission recommended large scale changes in the Code of Criminal Procedure, 1898 pointing out various flaws in it. These two reports on “Reforms in Judicial Administration” and the “Code of Criminal procedure, 1898”, submitted to the Government in 1958 and 1968 respectively, led to the enactment of new Code of Criminal Procedure, 1973.<sup>281</sup>

The Eighth Law Commission, under the chairmanship of Justice H.R. Khanna, in its 77th Report observed:

- i. The problem of delay in law courts has of late assumed gigantic proportions. It has shaken the confidence of the public in the capacity of the courts to redress their grievances and to grant adequate and timely relief.<sup>282</sup>
- ii. The police quite often deliberately refrain from producing all material witnesses on one date, the object being to clear up the lacunae in the prosecution evidence after the defence case becomes manifest by cross examination. This practice is unfair and not warranted by the Criminal Procedure Code, and results in prolongation of the trial.<sup>283</sup>

The Law Commission, in its 124th Report, observed: “In an adversarial system, the legal profession has a vital role to play in the administration of justice. There is recurrent phenomenon of strike by the legal profession paralyzing the court work, heaping insufferable hardship on the litigating public. It appears as if the two limbs concerned with the administration of justice in an adversarial system have not only ceased to be partners sharing any joint responsibility or a common concern but they have almost developed a confrontation.”<sup>284</sup>

281 Sharma, D.P., “Speedy Justice and Indian Criminal Justice System”, I.J.P.A., July-Sep.1999, pp. 3

282 Law Commission of India, 77th Report, p. 49.

283 Ibid., p. 56.

284 Ibid., 124th Report, p. 20.

The Fourteenth Law commission under the chairmanship of Justice K.J. Reddy had undertaken the study of the comprehensive revision of the Code of Criminal Procedure, 1973 so as to remove the germane problems relating to delays in the disposal of criminal cases.

The Commission's observations, in its 154th Report, include the following:

- i. With the advent of the modern scientific gadgets and technology, accused are often using modern scientific techniques to commit crime as well as to avoid tracing out their involvement. In such a situation, outdated methods of investigation do not match the modern techniques of committing the crime.
- ii. Consequently, new technology such as computers, photography/video-graphy, new methods of interrogation technology, new observation gadgets, highly sophisticated search equipment, etc. are essential for effective investigation of traditional and new type of organized crimes.<sup>285</sup>
- iii. Much delay in trial cases has been due to lack of coordination between investigating agency and the prosecuting agency.<sup>286</sup>
- iv. The plight of witnesses appearing on behalf of the State is pitiable. The allowances paid to them are very meagre. That apart, they are kept waiting for the whole day without being examined and the cases are adjourned at the last moment. Therefore, necessary steps have to be taken in the matter of paying allowances on realistic basis for all the days they attend. They should also be provided with adequate facilities for their stay in the court premises and they should be given necessary protection to instil confidence and faith in their minds so they can dutifully attend the courts.<sup>287</sup>
- v. It is, however, unfortunate that despite the provision under section 309, Cr.P.C. which contemplates for holding the proceedings as expeditiously as possible and examination of witnesses day to day. Yet it is an open fact that on account of adjournments there is inordinate delay in disposal of criminal cases. Such adjournments often take place on unsound grounds at the instance of the accused and prosecution and

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285 154th Report, p. 100.

286 Ibid.

287 Ibid., p. 102.

also due to the laxity on the part of the court and the investigating agency.<sup>288</sup>

Having observed the above flaws in the justice delivery system, the Commission made specific recommendations to revise the Code of Criminal Procedure, 1973.<sup>289</sup> The Commission also reviewed the Indian Penal Code and submitted its 156th report recommending many changes in various sections.<sup>290</sup> The Commission gave special attention to the extent and nature of the punishments prescribed in the I.P.C. for various offences and suggested modifications to bring them in accord with modern notions of penology.<sup>291</sup> The report *inter alia* contains the following observations and recommendations:<sup>292</sup>

1. In the context of fast changes in the sociological scenario warranting application of the reformatory theory of punishment, it is necessary to modify provisions of the Borstal School Act, 1970, Juvenile Justice Act, 1986 and Probation of Offenders Act, 1958 suitably.
2. About 120 offences in the I.P.C. are non-cognizable. It is voiced that some trivial offences affecting public order also can lead to serious developments if they are not dealt with promptly and, therefore, it is desirable that such offences are made liable for public intervention. It is recommended that the offences punishable under sections 290, 298, 431, 432, 434, 504, 505 and 510 be made cognizable.
3. The amount of the fine to be imposed should considerably be enhanced and it should, as far as possible, be substituted for short-term imprisonment. Further, the poor victims of uses and abuses of criminal law should be compensated by way of reparation and that the amounts of fine prescribed long ago have lost their relevance and impact in the present day and the fines imposed have no relation to the economic structure of society and necessary element of deterrence is generally absent. Therefore, a change regarding the quantum of fine should be made in all those sections correspondingly, at least by 20 times and make a provision in the Code of Criminal Procedure regarding the powers of the First Class Magistrate to impose such a fine.
4. The offence of sexual assault to be added to the existing offence of outraging the modesty of women in section 354 and punishment be increased from two

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288 Ibid., pp. 106-07.

289 Ibid., 156th Report, p. 341.

290 Ibid.

291 Ibid.

292 Ibid.

years to five years. Expanding the scope of section 354 would cover the varied forms of sexual violence other than rape on women and female children.

5. Another Explanation, Explanation 3 be added to section 494 which reads as under: “Explanation 3: The offence of bigamy is committed when any person converts himself or herself to another religion for the purpose of marrying again during the subsistence of the earlier marriage.” To reflect the concept of equality between sexes section 497 be amended as under: “Section 497. Adultery—Whoever has sexual intercourse with a person who is, and whom he or she knows, or has reason to believe, to be the wife or husband, as the case may be, of another person, without the consent or connivance of that other person, such sexual intercourse not amounting to the offence of rape, commits adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both.” If section 497 is amended on the lines indicated above, sub-section (2) of section 198 of the Code of Criminal Procedure, 1973 would also need to be suitably amended.

Thus, the Law Commissions have time and again observed numerous lacunae in the existing criminal laws and procedures which obstruct speedy criminal justice to the people. The Commissions have also pointed out flaws in the working of different components of the criminal justice system that cause delay in justice delivery.

### **5.3.5 VIEWS OF EMINENT PERSONS**

Many eminent persons, including senior functionaries of the criminal justice system, have expressed their views on the performance of the criminal justice administration in India. The excerpts from the published views of some of such persons are given below.

#### **Mr. K.R. Narayanan, President of India**

Addressing the golden jubilee function of the Supreme Court in January 2000, Mr. K.R. Narayanan, the President of India, stressed the need for an accountable judiciary in the country to dispense ‘quick, affordable and incorruptible justice’ to the people to sustain their faith in the courts. The President hit out against the falling standards in the judiciary. Quoting a famous English saying, he said, “Courts are no longer cathedrals. They have become casinos where the throw of the dice matters.” He, quoting Mahatma Gandhi, said, “Courts have become the saviours of the rich and

joy of the gamblers.”<sup>293</sup>

**Dr. A.S. Anand, former Chief Justice of India**

While speaking on ‘Approaching the Twenty-first Century: The state of Indian Judiciary and the Future Challenge’, Justice Anand said, “One of the greatest challenges that stares in the face as we approach the 21st Century is the failure of judiciary to deliver justice expeditiously, which has brought about a sense of frustration amongst the litigants. Human hope has its limits and waiting endlessly is not possible in the current life style.”<sup>294</sup>

**Mr. Ranganath Mishra, former Chief Justice of India**

“The Indian judicial system has failed to win confidence of the people in past 50 years...<sup>295</sup>If some people remain above law, faith in the judiciary will naturally erode<sup>296</sup> Advocates seek frequent adjournments and oppose arbitration and *Lok Adalat* settlements. Instead of focusing only on making money, lawyers must have a clear understanding of their social role.”<sup>297</sup>

**Mr. M.N. Venkatchaliah, former Chief Justice of India**

“The challenge to ‘Rule of Law’ by the present criminal justice system is perilous. I am afraid, if something is not done by a determined and concerted effort immediately, The whole system might collapse. The administration of criminal justice in the adversarial mould depends entirely on evidence, and quite often on oral evidence of witnesses. Today, witnesses are intimidated, suborned, bribed and won over. The result is for all to see. It is not the severity of punishment but the certainty of punishment that deters crime. No amount of economic development or desired social change is ever possible or enduring without an efficient criminal justice system. An inefficient criminal justice system is the worst negation of the Rule of Law.”<sup>298</sup>

**Mr. H.R. Khanna, former Judge, Supreme Court**

“The working of the judicial system has also suffered a severe setback by the tendency of the members of the Bar to frequently go on strike and for long periods. It is plain that the persons who suffer the most because of nonfunctioning of the Courts due to such strikes are the poor litigants who have to wait for long periods for the date

293 The Indian Express, dated 30.1.2000; Afternoon, Mumbai, dated 29.1.2000.

294 Anand, op. cit., pp. 299

295 The Times of India

296 The Times of India, dated 7.3.99

297 The Times of India

298 Venkatachaliah, M.N., “Rule of Law: Contemporary Challenge”, I.J.P.A., July-Sep. 1999, pp. 327.

of hearing and come from distant places to seek judicial redress. We must not forget that the system exists primarily for the people in distress seeking justice and not for the members of the Bar.”<sup>299</sup>

**Mr. V.R. Krishna Iyer, former Judge, Supreme Court**

“The Courts in our country are on trial and robes of the Judges are losing halo. ...Today, litigative justice has come to a grinding halt, the court process has caricatured itself into a dinosaur and the Bench and the Bar, alas, have become a law unto themselves, Indian humanity having come to discard the judiciary as barred by limitation of time and paralysis of performance. ...If all the judges and the lawyers of India pull down the shutters of their law shops nationwide, injustice may not any more escalate. Indeed, around 80 to 90 per cent of crimes investigated end in discharge or acquittal. So much so, law is dead, and if the Bench and the Bar go on long holiday, litigative waste of human and material resources may be obviated.”<sup>300</sup>

**Mr. J.F. Rebiero, former D.G.P., Punjab**

“Police is an organisation of people entrusted with the investigation of crime. Dogged by constant interference by politicians and lack of expeditious trials in the present judicial system, the police can barely function freely.”<sup>301</sup>

On an another occasion Mr. Rebiero said, “There is no respect for law if people know that they can get off so easily, that there is no chance of their being convicted. Or the chances are very small. In murder cases, the chances now are 15 per cent. It used to be 86 per cent conviction rate.”<sup>302</sup>

**Mr. J.F. Rustomji, former D.G.P., and Member, National Police Commission**

“The criminal justice system is in such a serious state of decay that even if the police were to prosecute, the decision in the case may take many years, during which the evidence even in good cases would become unreliable. ...Owing to the decay of the criminal justice system, we have ceased to deal with disorder in the normal, logical, legal manner. There is almost no dependence on punishment in a court of law. We depend only on police pressure—by means of arrests, firing, detentions, even torture—and to such an extent that to the new generation of police officers the universal method of policing which excludes punishment seems antiquated and ineffective.”<sup>303</sup>

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299 Ibid.

300 Krishna Iyer, V.R., *Access to Justice*, p. vii.

301 *The Times of India*, dated 29.1.1999; *The Indian Express*, dated 2.2.1999.

302 Interview with Pritish Nandy published in *the Times of India (Bombay Times)*, dated 9.2.1999.

303 Rustomji, K.F., “The Need for Police Reform” in Chaturvedi, S.K. (ed.), *Role of Police in Criminal*

**Mr. Vijay Karan, former Commissioner of Police, Delhi**

“Criminality is fast becoming a way of life and it has started appearing that crime does indeed pay. During the 40 years (1951-90) period, while India’s population increased by 127.6 per cent, crime went up by 146.9 per cent. If one presumes that about 50 per cent of the cases reported to the police are not registered, then it is obvious that crime has perhaps gone up by a frightening 300 per cent.”<sup>304</sup>

He further says, “The police point an accusing finger at the courts for indiscriminately giving both bail and anticipatory bail, for taking 10 to 15m years to decide even simple cases. The police also blame the prosecutors for their lethargy and de-motivated approach to criminal cases. India’s correctional system is also in shambles, doing anything but correction, with excessively populated jails, bursting at the seams, where ganglords live in style, bullying and bribing the jail staff and continuing with their criminal activities, their alibis intact. Everyone blames the lawyers too for their cynical and mercenary attitude towards crime and criminals, not to mention their ways with the courts, the manner in which they go on strike on the most frivolous grounds and bring the judicial process to a grinding halt for days together. Though the police thus blame everyone else, they are no better either, with their image so hopelessly negative and gross among the citizens. In this scenario, the victim is the nation, which of course means the citizen. The failure of the criminal justice system is perhaps the most manifest in the state of India’s judiciary, which is in a condition of terminal collapse.

Irretrievable caught in the vortex of pendency, it does not even know where the tunnel is, leave alone looking for the light. Desultory procedures, myriad stages of appeals, the licentious scope for both filibustering and adjournments, and most sadly, erosion of its reputation for integrity, have all crippled the efficacy and fair name of the judiciary.”<sup>305</sup>

**Mr. M.N. Singh, Commissioner of Police, Mumbai**

On low conviction rate, he said: “It is an accepted fact that conviction rates have declined over the years. But the police force alone is not responsible for it. There are several reasons behind poor conviction rates. The quality of police investigation has gone down. More over, our cumbersome legal system causes delays in judicial proceedings. Thirdly, public prosecutors are not part of the police department and we

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304 Karan, *loc. cit.*

305 *Ibid.*

do not have any control over them. As a result, it becomes difficult to get convictions in criminal cases.”<sup>306</sup>

**Mr. S. S. Puri, Director General of Police and Managing Director, Maharashtra State Police Housing Corporation.**

On pendency in courts, he said, “At present there is docket of explosion in the courts and far too many cases are coming in for adjudication that can be disposed of in a reasonable time frame only with the creation of more courts. In fact, the Law Commission should determine judge-case ratio, so that when cases exceed the ratio, more courts can be created. In order to have efficient functioning of C.J.S. all its components should become part of plan-subject.”<sup>307</sup>

**Mr. D. Sivanandhan, Inspector General of Police and Joint Director, C.B.I., Mumbai**

His views on the criminal laws are: “It cannot be denied that some of the substantive and procedural laws are in crying need of change to make the process of investigation more logical, simple and effective. We are perhaps the only country in the world where the evidentiary law of the land is suspicious of its own law-enforcing agency! The criminals take advantage of the fact that old laws are applied in a changing social and economic milieu. The procedural law, i.e. the Cr.P.C. and the evidentiary law, i.e. the Evidence Act, need to be victimoriented rather than accused-oriented.”<sup>308</sup>

The crime trends disclose significant increase in I.P.C. crime rate, especially violent crime. The pendency of I.P.C. cases in courts has increased from 8,00,784 in 1961 to 56,60,484 cases in 1998. This indicates inability of the criminal justice machinery to deliver speedy justice. Drastically declined conviction rate of I.P.C. cases—which has come down from 64.8 in 1961 to 37.4 in 1998—shows that in most of the I.P.C. cases criminals go scot free. The Law Commissions have also pointed out flaws in the working of different agencies of the criminal justice administration. Eminent persons have also expressed their concern over deteriorating performance of the criminal justice administration. All these indicate that the criminal justice administration is found wanting to improve its efficacy in keeping crime under control, punishing the offenders and delivering speedy criminal justice to the people.

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306 The Times of India, dated 3.7.2000.

307 Ibid., dated 2.1.2000.

308 Sivanandhan, D., “The State of Crime Investigation, Prosecution etc. and some Remedial Measure”,

The recent move of the Union and State Governments to set up Fast Track Courts to dispose of pending cases and special efforts made by the Supreme Court to reduce pendency are certainly welcome steps. Similarly, innovative measures taken by the police in many parts of the country, e.g. in Maharashtra and Delhi, to involve people in crime prevention activities, show the concern of the police leadership in reducing crime and creating social harmony. However, seeing the gigantic proportions of the problem, many more efforts are needed to be taken urgently by the criminal justice functionaries before the situation goes out of control eroding the common man's faith in the whole criminal justice administration.