In a democratic country Constitution guarantees certain basic rights and liberties to the people while criminal justice administration protects them by enforcing law and punishing the offenders. If the Constitution is a chariot then the four components of the criminal justice administration, viz., the police, bar, judiciary and correctional services are its horses. Harmonious efforts of all these four agencies are essential for moving the Constitution towards establishing a just society in India.

The present criminal justice administration of India is the product of a continuous effort on the part of the rulers who controlled the affairs of the country from time to time. In every phase of Indian history, the ruler contributed to the development of the criminal justice administration. However, most of them treated the criminal justice administration more as an instrument to subjugate the masses rather than to protect their rights. The criminal justice administration in India established by British rulers was also not free from this weakness. They too looked at the criminal justice administration 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 criminal justice administration is to create social harmony and maintain order by enforcing the law and curbing their violation. For attainment of this objective, a network consisting of the police, bar, judiciary and correctional services constitute the criminal justice administration. Since the criminal law provides the basic framework for the whole criminal justice administration, it is also considered as a component of the whole system.
THE CONSTITUTION OF INDIA

The Constitution of India was framed by the Constituent Assembly which comprised members elected through Provincial Legislative Assemblies and representatives of India’s princely states and Chief Commissioner’s provinces. While deliberating upon the Draft Constitution, the distinguished members of the Constituent Assembly, many of them being advocates and legal luminaries, discussed at length and expressed their views freely and frankly on subjects of vital importance.

Although the Indian Constitution was made during December 1946 to November 1949, most of its enduring values were shaped during the national movement of independence.\(^{257}\) Granville Austin observes: “The Constitution was to foster the achievement of many goals. Transcendent among them was that of social revolution. Through this revolution, the basic needs of the common man would be fulfilled. It was hoped that this revolution would bring about fundamental changes in the structure of Indian society.\(^{258}\)

The framers of the Constitution were committed to bringing about a social change by removing social disabilities and providing every citizen opportunities for his all round development. The core of his commitment lies in Part III and Part IV of the Constitution which deals with the Fundamental Rights of people and Directive Principles of State Policy. According to S.P. Sathe, in a society known for its hierarchical social structure based on inequality, the right to equality and liberty were indeed going to trigger revolution.\(^{259}\) In the Directive Principles to State Policy, the Constitution envisions profound social and economic change to be ushered into


\(^{258}\) Austin Granville, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, Delhi, 2000, p.17.

\(^{259}\) S.P. Sathe, n.1, p.398.
Most of the fundamental rights are protection against arbitrary and prejudicial state action while some aim at protecting the individual right without a remedy for their enforcement do not serve the intended purpose. Therefore, the framers direct to provide the remedy in the Constitution itself. The remedy for enforcement of fundamental rights or, to put in other words, against violation of fundamental rights, may be divided into two parts, namely:

(i) Approaching the Supreme Court and High Courts under Articles 32 and 226, respectively; and

(ii) Approaching the police or subordinate courts.

Since the Constitution declares violations of some of the fundamental right as offences under Articles 17 and 23 which are punishable under law, the criminal justice administration has a direct responsibility to enforce these rights and curb their violation. Contravention of some other fundamental rights such as right to life and personal liberty is offence under existing criminal law the enforcement of which is the responsibility to the criminal justice administration.261

While granting rights and liberties to the people, the framers also envisaged adequate provisions for maintaining public order, morality, decency, security of the state, etc. They empowered the state, which includes the authorities of criminal justice administration as defined under Article 12, to impose reasonable restrictions on some of the fundamental rights for ensuring protection of these national interests. Thus the criminal justice administration, by enforcing the fundamental rights and safeguarding unity and integrity of the nation, plays an instrumental role in facilitating the process of achieving the aims and objectives of the Constitution. The success of the Constitution largely depends upon the efficiency and effectiveness of the criminal

260 Ibid.
261 Ibid, p.400.
justice administration. On the other hand, without constitutional support, the principles and policies of the criminal justice administration cannot survive and hence, there is a reciprocal relationship between the Constitution and the criminal justice administration.

Keeping in view the importance of the criminal justice administration, the framers incorporated in the Constitution itself many provisions relating to the administration of criminal justice. They intended to establish a just society in India by ensuring fair and speedy criminal justice to the people. This required a qualitative improvement in the performance of the criminal justice administration. However, the rising violent crimes; huge pendency and inordinate delay in disposal of criminal cases; and declining conviction rate during the last six decades indicate the performance of the criminal justice administration in post-independence period has been constantly deteriorating, instead of improving. It is, therefore, imperative to find as what has gone wrong and how. Whether the framer failed to make adequate provision for a sound criminal justice administration or the state authorities and the peoples did not pay desired attention to enhance its efficacy.²⁶²

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 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

²⁶² Ibid, p. 405.
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 7 and 161).

The Constitution provides for a federal policy where Parliament as well as the State Legislatures share the power 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 Legislatures on any subject under the concurrent list, the law made by Parliament shall prevail upon the other. 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.

**Fundamental Rights and the State**

For the purpose of Part III, i.e., fundamental rights, the ‘state’ includes the government and Parliament of India and the government and the legislature of each of states and all local or other authorities as defined in the administration of criminal justice. Such as police and judiciary, is the ‘state’ and therefore, bound to ensure free exercise of fundamental rights by the people. Article 13 prescribes that any law, ordinance, order, by law, rule regulation and notification, etc. which takes away or

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abridges any fundamental rights shall be void. However, the state authorities such as the police and executive magistrates, under Article 19, may impose reasonable restrictions on the exercise of certain fundamental rights in the interests of decency or morality, public order, security of the state, etc.

When the above Articles came up for consideration before the Constituent Assembly, an honourable member, Mahboob Ali Baig Sahib Bahadur, objected to the inclusion of local or other authorities in the definition of ‘state’. He was of the view that in the light of that definition a magistrate or even a petty officer in authority could rightly claim to have authority to abridge a citizen’s rights. However, Dr. Ambedkar explained that the object of the fundamental rights was two-fold. First, that every citizen must be in a position to claim those rights, and secondly, they must be binding upon every authority which had got either the power to make laws or the power to have discretion vested in it. The authority which is under obligation to make available the rights to the people should also have the authority vested in it to make laws relating to the fundamental rights. After this clarification by Dr. Ambedkar, the Articles were adopted with minor modifications.

It is in accordance with these provisions that executive magistrates or police officers are empowered, under various laws such as the Criminal Procedure Court (Cr. P.C.) the Bombay Police Act, etc., to impose reasonable restrictions on the exercise of certain fundamental rights of the people by promulgating orders to prohibit assembly of persons, movements and certain other actions to maintain, decency, public order, etc.

264 Ibid.
265 Ibid.p.258
Prohibition of Discrimination

Article 15 of the Constitution *inter alia* deals with the provision of prohibition of discrimination on grounds only of religion, race, caste, sex or place of birth. The Article provides two things: (1) it required the state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, (2) it provides that no citizen shall be subject to any disability, liability, restriction or condition with regard to (a) access to shops, hotels, etc., and (b) the use of wills, roads, places of public resort, etc. maintained wholly or partly out of state funds or dedicated to the use of general public. Clause (1) prohibits the state from causing discrimination whereas clause (2) requires the state as well as general public not to subject any citizen to disability, etc. Clause (3) of the Article provides that nothing shall prevent the state from making any special provision for women and children, subsequently, clause (4) was added which allow the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.\(^{266}\)

With a view to making sure that the concerned state authorities or private persons refrain from causing any discrimination, Shri Mohammed Tahir moved an amendment to provide that any contravention of the provision of this Article should be an offence punishable in accordance with law.\(^{267}\) But Dr. Ambedkar pointing out the provision of Article 17 (which abolishes untouchability and makes its practice an offence) explained that the Constitution contained ample provision in that regard.\(^{268}\) After this, Shri Tahir did not press his amendment and the Article was adopted

\(^{266}\) *The Constitution (First Amendment) Act, 1951*, Section 2.
\(^{267}\) *Ibid.*
\(^{268}\) *Ibid.*
without any penal clause to Article 15, had referred to the discrimination being
practised against the people of Scheduled Castes, his amendment also covered
discrimination on other grounds also such as religion, race, sex, place of birth, etc. If
the Article has a penal clause, like that of Article 17, the aggrieved persons would
have got an easy remedy to approach the police or the lower criminal courts to lodge
complaints and set the state machinery in motion. In the absence of such a provision,
a person who is subjected to discrimination, as described in Article 15 has to approach
either the High Court or the Supreme Court for redressal of his grievance. As
approaching the Supreme Court or the High Court entails a cumbersome and
expensive procedure, the poor people are not able to make effective use of this
remedy.

Abolition of Untouchability

Article 17 provides, “untouchability is abolished and its practice in any form is
forbidden.” The enforcement of any disability arising out of ‘untouchability’ shall be
an offence punishable with law.

To give effect to this Article, Parliament enacted the Untouchability
(Offences) Act, 1955. This Act, as amended in 1976 as the protection of Civil Right
Act, 1955, declares certain acts as offence and prescribes punishment thereof.269
Subsequently, Parliament enacted another law, the Scheduled Castes and Scheduled

At the time of consideration of this Article in the Constituent Assembly, Shri
V.I. Muniswamy Pillai said that it was a matter of great satisfaction that the

269 *The Protection of Civil Rights Act, 1955 (Act 22 of 1955)* originally the *Untouchability (Offences)*
*Act, 1955*, which came into effect on 8th May 1955.
Constitution had brought out a very important item and thereby untouchability was abolished. He further said, “The very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called ‘untouchables’ will find solace when this Constitution comes into effect.”

Another member Dr. Manomohan Das after having mentioned the role of Mahatma Gandhi to remove untouchability, referred to the names of Swami Vivekanand, Raja Ram Mohan Roy, Rabindranath Tagore, stating that they had led a relentless struggle against the heinous custom. But the fact that a large number of offence are reported every year under the protection of Civil Right Act, 1955, and under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, shows that the practice of untouchability is still in existence in India. As observed by the Supreme Court of India, in Ganpat v. Returning Officer, the monstrous curse of untouchability has got to be eradicated not merely by making constitutional provisions or law but also by eradicating it from the mind and hearts of men. It seems that more efforts for effective enforcement of the provision of Article 17, obeying the spirit and not just the letter, are required.

**Rights Regarding Freedom of Speech**

Article 19 provides that all citizen shall have the right: (i) to freedom of speech and expression; (ii) to assemble peaceably and without arm; (iii) to form association or union; (iv) to move freely throughout the territory of India; (v) to reside and settle in any part of the territory of India; and (vi) to practise any profession, or to carry on any occupation, trade or business. The Article allow the state to make law to impose reasonable restrictions on the exercise of the right conferred by this Article in

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270 Ibid.
271 All India Report 1975 Section 420.
the interests of security of the state, public order, decency or morality, etc. The word ‘state’ includes the local and other authorities, and the word ‘law’ includes any order, rule, notification, etc. as defined in Article 13 of the Constitution.

Originally, the word ‘reasonable’ was not there in the Article of the Draft Constitution. But during the debates, Pandit Thakur Das Bhargava observed that under the provisions as suggested by the Drafting Committee if the state enacted a law saying that its object was to serve the interest of the public or to protect public order then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restriction. He suggested to put the word ‘reasonable’ before the word ‘restriction’ so that the court would have powers to see whether a particular law was in the interests of the public and whether the restriction imposed were reasonable, proper the necessary in the circumstances of the case.272

While making provision for the freedom of the people, the Constituent Assembly was equally concerned about the security of the state. Shri. K. Hunumanthaiya, supporting the proposal of the Drafting Committee to put restrictions on the freedom of the citizens, opined that no man who believed in violence and wanted to upset the state and society by violent means should be allowed to have his way under the colour of these rights. He was also of the opinion that the Article was so worded that it would be a fruitful source to constitutional lawyers. He apprehended that the Supreme Court would be full of disputes between individual and individuals, between individuals and state, etc. Referring to Kannada proverb, the meaning of which is ‘a successful party in a case is as good as defeated and a defeated party in a case is as good as dead’ he said, litigation surely ruins both the parties to it.”273

273 Ibid.
Dr. Ambedkar agreed to the suggestion of Pandit Bhargava and accordingly the Article was amended to put the word ‘reasonable’ before the word ‘restrictions’.\(^\text{274}\) This change was of great significance as it allowed judicial review of the state action of imposing restriction on the freedom described in Article 19. Thus the Constitution placed a major restriction on the scope of legislative competence, for the judges may review the reasonableness of restriction impose on the fundamental rights and thus have mutatis mutandis the same power in relation to Article 19 which the American judges enjoy generally under the clause of due-process law.\(^\text{275}\)

**Protection of Life and Personal Liberty**

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Although the right to life and personal liberty is most important, it can not be absolute with a view to maintain order and secure criminal justice administration. The state authorities in certain circumstances have to deprive the people of their personal liberty and life by arresting or executing them in accordance with the provisions of law. The only protection the Constitution can ensure is the legal procedure which governs such arrests and executions. There were two options available before the Constituent Assembly, namely, ‘procedure established by law’ and ‘due process of law’. There were long debates as which of these principles would suit India most. Finally the Assembly adopted the principle of ‘procedure established by law’. It is to be noted that the Advisory Committee on Fundamental Rights,\(^\text{276}\) appointed by the

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\(^{274}\) *Ibid.*

\(^{275}\) Austin Granville, *n.2*, p.46.

\(^{276}\) *Constitutional Assembly Debates*, Vol. III, p.328. The Honourable Sardar Vallabhbhai Patel, Chairman of the Committee submitted Interim Report on Fundamental Rights. The right at Sr. No. 9 reads as under:

“No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the within the territories of the union.”
Constituent Assembly, had suggested the principle of ‘due process of law’ as available in the American Constitution. But the Drafting Committee preferred to include ‘procedure established by law’ in the Draft Constitution.

Thus, Dr. Ambedkar, who had the responsibility of piloting the Draft Constitution through the Constituent Assembly, did not give his clear opinion whether to adopt the principals of ‘procedure established by law’ or ‘due process of law’. However, subsequently, he disclosed that he was in favour of ‘due process of law’ when he moved a new Article 15A (Article 22 of the Constitution). It is also observed that Dr. Ambedkar, as an ordinary member before his appointment as Chairman of Drafting Committee, had also preferred ‘due process of law’ in his note submitted to the Advisory Committee of the Constituent Assembly in March 1947. It is astonishing that despite being in favour of ‘due process’ clause, Dr. Ambedkar did not advise the Assembly to facilitate its adoption when it was on the verge of making a choice between the two principles. The Article was finally adopted as contained in the Draft Constitution, i.e., with the procedure established by law.

Prior to the decision of the Supreme Court in Maneka’s case (1978), Article 21 of the Constitution was enshrined narrowly only as a guarantee against executive action unsupported by law. But, the Supreme Court in his case widened the scope of Article 21. Subsequently, the apex court, in Francis v. Union Territory, further clarified the principle and observed: ‘Maneka’s case has opened up a new dimension and laid down that it imposed a limitation upon law making as well, namely that while prescribing a procedure for depriving a person of his life or personal liberty, it must

277 Ibid., Vol. IX, p.1531. Early in 1947 Dr. Ambedkar submitted a note to the Advisory Committee in the form of book styled, “States and Minorities – What are their rights and how to secure them in the Constitution of free India”. Among other thing he suggested the following fundamental right: “No state shall make or enforce any law or custom which shall abridge the privileges or immunities of citizens. Nor shall any state deprive any person of life, liberty and property without due process of law, nor deny to any person within its jurisdiction equal protection of law.”

278 Ibid., Vol. IX, pp.1498-1500.

279 Maneka v. Union of India, quoted in All India Report 1978 Section 597.
prescribe a procedure which is reasonable, fair and just.”280 Thus, the Supreme Court has expanded the scope and ambit of the right to life and personal liberty enshrined in Article 21 and sowed the seed for future development of the enlarging this most fundamental of the fundamental rights.281

**Protection against Arrest and Detention in Certain Cases**

Article 22 of the Indian Constitution is another important Article from criminal justice point of view. It deals with the safeguards of the people against arbitrary arrest and detention. The Article also contains provision for preventive detention which empowers the police and the magistracy to detain wanted persons for maintaining public order in exceptional circumstances.

Dr. Ambedkar, while speaking on Article 15, had not disclosed his opinion to advise the House to make a choice between the “due process” and the “procedure established by law”. But, while introducing Article 15A (Article 22 of the Constitution), he made it clear that he was in favour of “due process” clause.

Dr. Ambedkar continued: “Article 15A nearly lifts from the provisions of Criminal Procedure Code two of the most important fundamental principles which every civilized country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and therefore, probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because but we are doing by the introduction of Article 15A is to put a limitation upon the authority both of Parliament as well as of the provincial

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280 Francis v. Union Territory, quoted in All India Report 1981 Section 146. (para 3).
281 Ibid.
legislature not to abrogate these two provision, because they are now introduced in our Constitution itself.\textsuperscript{282}

After prolonged deliberations, Article 15A moved by Dr. Ambedkar, as amended by incorporating some of the suggestions of Pandit Bhargava and other members of the House, was adopted.

From the foregoing, it is observed that originally the Draft Constitution did not contain provision regarding protection against arrest and detention. It was during the debates in the Constituent Assembly that Dr. Ambedkar, who was disappointed by the Assembly’s decision of not adopting the ‘due process’ clause in the Article 15, wanted to introduce certain provision to safeguard the right of the people from arbitrary arrests and detentions. His desire was welcomed by the House. The speech of the Pandit Thakur Das Bhargava reveals the state of affairs of the then prevailing criminal justice administration. He had his apprehensions about the ramifications of not putting the ‘due process’ clause in the Constitution.

In pursuance of the provisions of the above Article, Parliament enacted preventive laws to detain certain persons in certain circumstances such as Preventive Detention Act, 1950; the Maintenance of Internal Security Act, 1971; the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980; and the National Security Act, 1980. Preventive detention being a subject of the concurrent list\textsuperscript{283} enables the state legislatures to enact preventive detention laws.

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\textsuperscript{282} Constitutional Assembly Debates, n.xviii, pp.1498-1501.
\textsuperscript{283} The Constitution of India, VII Schedule, Entry 3.
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During the emergency, between the period of June 1975 and March 1977, the Maintenance of Internal Security Act, was used frequently to detain leaders and workers of many political parties. The Janata Government which came to power in March 1977 at the union level passed the Constitution (44th Amendment) Act, 1978. Among other things it amended clauses (4) and (7) of the Article 22 to improve the procedural safeguards for prevention detention. However, while most of the other provisions of the 44th Amendment Act, which received the assent of the President of India in April 1979, have been implemented, the Government of India has not yet issued the notification to bring into effect the amendment relating to Article 22 of the Constitution.\textsuperscript{284} The matter was brought before the Supreme Court in \textit{A.K. Roy v. Union of India} (1982).\textsuperscript{285} Though the court did no appreciate the delay in issuing the notification, it could not direct the central government by issuing the writ of mandamus to bring the amendment into force. The implementation of provisions of Section 3 of the Constitution (44th Amendment) Act, 1978 will certainly improve the right to personal liberty of the individual.

\textbf{Prohibition of Traffic in Human Beings}

Article 23 of the Constitution provides that traffic in human beings and beggar and other similar form of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. A part of this Article was enforced by the Suppression of Immoral Traffic in Women and Girl Act, 1956 (called the Immoral Traffic Prevention Act, since 1986). However, to give effect to the provision relating to forced labour, it took a long time to enact the law. Parliament in the year 1976 enacted the Bonded Labour System (Abolition) Act, 1976, prescribing certain acts as offence and procedures to deal with the problem of bonded labour in India.

\textsuperscript{284} The Constitution of India, Article 22.  
\textsuperscript{285} Ibid
Remedies for Enforcement of Fundamental Rights

Article 32 of the Constitution entitles the people to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental rights. While speaking in the Constituent Assembly at the time of consideration of Article 32 (Article 25 of the Draft Constitution) Dr. Ambedkar made a remarkable statement signifying the utmost importance of the Article. To quote him:

“If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution would be nullity – I could not refer to any other Article except this one. It is the very soul of Constitution and the very heart of it and I am glad that the House has realized its importance.”

The debates in the Assembly indicate the anxiety of the framers to ensure that the administration of justice was not perverted by the executive or political pressure, and they took step to enact provision which would secure that object. Article 32 gives the Supreme Court power to issue writ of habeas corpus, mandamus, certiorari, prohibition and quo-warranto for enforcement of fundamental rights. Similarly, Article 226 empowers the High Courts to issue the writs for fundamental rights and for any other purpose. These two Articles secure judicial control of the administrative action.

Power of President and Governor to Grant Pardon

The Constitution under Articles 72 and 161 empowers the President and the Governor respectively to grant pardon or to suspend, remit or commute sentences in criminal cases. These are exceptional powers granted to the head of the union and the state to meet extraordinary requirement in certain circumstances when the judiciary had given its final verdict and no other remedy remained available to the concerned person.

The President’s powers of pardoning under Article 72 extends to (i) all cases of punishment by a court martial, (ii) offences against law made under the union and the concurrent lists, and (iii) all cases where the sentence is a sentence of death. Article 161 provides that the Governor of a state shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends. Though the Governor has no power to pardon a sentence of death, he has, under Section 54 of the Indian Penal Code and Sections 432 and 433 of the Criminal Procedure Code, the power to suspend, remit or commute a sentence of death in certain circumstances.

Article 72 empowers the executive with judicial powers to pardon or suspend, remit or commute the sentences in criminal cases including the death sentence. The Supreme Court has held that the power of the President to commute any sentence is not subject to any constitutional or judicial restraints expect that it can not be used to enhance the sentence. The Apex Court has also observed that Section 433A of the Code of Criminal Procedure, 1973, is not violative of the provisions in Article 72.

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because the source and substance of the two powers are different.\textsuperscript{290} In the case of \textit{Kehar Singh v. Union of India (Mrs. Indira Gandhi’s assassination case)}, the Supreme Court observed that being an executive, the power of the President is to be exercised on the advice tendered by the Council of Ministers.\textsuperscript{291} Since the President’s power under Article 72 is a constitutional power and is an executive power unlike the court’s statutory and judicial power.\textsuperscript{292} Under Sections 432 and 433A of Criminal Procedure Code, the order of the President under Article 72 cannot be subjected to judicial review and other merits.\textsuperscript{293} If, however, reasons are given in the President’s order, and these are held to be irrelevant, the court would interfere.\textsuperscript{294} The court has admitted judicial review on some specific grounds, e.g.: (a) to determine the scope of the President’s power under Article 72 of the Constitution, (b) where the President’s exercise of the power is vitiated by self-denial on erroneous appreciation of full amplitude of the power conferred by Article 72,\textsuperscript{295} or (c) to determine whether there has been an inordinate delay in disposing of a mercy petition which prolongs delay in execution of the death sentence, for no default of the accused.\textsuperscript{296}

The Supreme Court has also held that though the power under Article 72 (or Article 161) belongs to the President (or the Governor) the court may, in a case of manifest injustice, entertain a petition under Article 32 and recommend commutation of the death sentence to the President (or Governor) and stay the execution until the decision of the President or Governor.\textsuperscript{297} However, any person who has been

\textsuperscript{290} \textit{Maru v. Union of India}, quoted in \textit{All India Report} 1980 SC 2147.

\textsuperscript{291} \textit{Kehar Singh v. Union of India}, quoted in \textit{All India Report} 1989 SC 653.

\textsuperscript{292} \textit{Maru v. Union of India}.

\textsuperscript{293} \textit{Kehar Singh}, n. 35, Sec 654.

\textsuperscript{294} \textit{Maru v. Union of India}.

\textsuperscript{295} \textit{Ibid}.

\textsuperscript{296} \textit{Ibid}.

prejudicially affected by the grant of pardon or remission is entitled to challenge it.\textsuperscript{298} However, the court may interfere: (a) on the ground that the authority, which purported to have exercised the power had no jurisdiction to exercise it, (b) on the ground that the impugned order goes beyond the power conferred by the law upon the authority who made it, or (c) on the ground that the order was obtained by fraud, or (d) on the ground that the exercise of the power has been \textit{mala fide}, e.g., taking into account consideration not germane to the powers conferred.\textsuperscript{299}

The administration of justice through courts of law is a part of the constitutional scheme to secure law and order and the protection of life, liberty and property. Under the scheme, it is for the judge to pronounce judgment and sentence, and it is for the executive to enforce them. Normally such enforcements present no difficulty; but circumstances may arise where carrying out a sentence, or setting the machinery of justice in motion, might imperil the safety of the realm. If the enforcement of a sentence is likely to lead to bloodshed and revolution, the executive might well pause before exposing the state to such peril.\textsuperscript{300}

\textbf{Attorney General and Advocate General}

Articles 76 and 165 contain provision for the Attorney-General of India and the Advocate-General for each state respectively. Both these constitutional functionaries are closely associated with the administration of justice in their respective jurisdiction. Article 76 \textit{inter alia} provides that it shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be

\textsuperscript{298} \textit{State of Bombay v. Nanavati}, quoted in \textit{All India Report} 1960 LR 383.

\textsuperscript{299} \textit{Hukum Singh v. State of Punjab}, quoted in \textit{All India Report} 1975 SC 902.

\textsuperscript{300} \textit{Ibid}
referred or assigned to him by the President. Article 165 assigns the similar duties to the Advocate-General of a state.

**Appellate Jurisdiction of the Supreme Court**

Articles 110 to 112 of the Draft Constitution (132 to 136 of the Constitution) dealt with the appellate jurisdiction of the Supreme Court. Article 110 provided that an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution, while Article 112 continued the provision of appeal to the Supreme Court if the court, in its discretion, granted special leave to appeal, Article 111 dealt with civil matters only. In this the Draft Constitution had not made any provision of appeal to the Supreme Court in criminal matters as of right. Since under the then prevailing criminal justice administration, no such right to the people was granted and the appeals in criminal cases against the orders of the High Court were admitted by the Privy Council in the sheer discretion, the members of the Constituent Assembly objected to the decision of the Drafting Committee to continue the old practice in free India. They showed grave concern towards this lacuna and vehemently argued for having such a provision in the Constitution.

On the strong demand of the member, Dr. Ambedkar introduced a new Article 111A (Article 134 of the Constitution) to make provision in the Constitution for an appeal to the Supreme Court as of right in criminal cases.\(^{301}\) Since the Article suggested by Dr. Ambedkar covered most of the points suggested by different members, other amendments moved in that regard were either withdrawn or negatived and Article 111A was adopted. This Article gave the people of India a new right to approach the highest court in criminal cases. Prior to this, it was only in a limited

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\(^{301}\) *Constituent Assembly Debates*, n.30, p.840.
sphere that the Privy Council entertained appeals in criminal cases from the High Courts by special leave or on a certificate issued by the High Courts, but there was no appeal against the orders of the High Courts in criminal cases as of right. This was a significant reform in the criminal justice administration. It entitled the people, for the first time, to make an appeal to the highest court of the country in criminal proceeding as of right.302

**Authority if Law Declared by the Supreme Court**

The framers of the Constitution not only gave a high status to the Supreme Court but also adequately equipped it to assert its authority over civil and judicial authorities in the territory of India. This authority lies in the Supreme Court under Articles 141 and 144. Article 141 provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India while as per Article 144, all authorities, civil and judicial, in the territory of India shall act in aid to the Supreme Court. In absence of these Articles, the Supreme Court would not have been able to act as a guardian of the Constitution and upholder of the ‘rule of law’. Though the Constitution provides full support, it depends upon the prudence of the Supreme Court as to where and how to exercise its authority.

As regards declaring law under Article 141, the Supreme Court in *Delhi Transport Corporation case*,303 has held that the court must do away with the childish fiction that law is not made by the judiciary. The Supreme Court under Article 141 of the Constitution, is enjoined to declare law. The law declared by the Supreme Court is the law of land. The apex court, in this case, has further observed that to deny this power to the Supreme Court on the basis of some outmoded theory that the court only

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302 *Constitution of India*, Articles 132-134.
finds law but does not make it, is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.

As per the provisions of the Article 144, all civil as well as judicial authorities are required to aid the Supreme Court. Article 144 is wider in scope than Article 141 as it includes not only courts but also other civil authorities. In *Sachdev v. Union of India*, it has been held that any authority failing to comply with the direction of the Supreme Court shall be liable for contempt of court.304

In this case, the apex court has also held that where the contemtner is the union of India, the court will proceed against the secretary of relevant ministry. In another case, it has been held that even though the legislature may render ineffective, a declaratory decision of the Supreme Court by changing the law retrospectively and by enacting a validating Act, the executive cannot avoid a direction of the court in a case to which it was a part, by changing the rules retrospectively, so as to nullify the judgment of the court.305

Despite the fact that the Supreme Court’s order are legally binding on all civil and judicial authorities, there have been instances of non-compliance with the directions or the orders of the apex court. In the case of *Sachdev v. Union of India* (1991),306 the Supreme Court itself observed: “In recent times, instances of non-compliance with court’s direction have multiplied and it is necessary to curb such tendency of litigating parties.” Subsequent to this case, instances of non-compliance with or disobedience of the order of the Supreme Court also come to the notice of the apex court. In many of such cases, the court, taking a lenient view, accepted the apologies of the contemtners and did not take strong action. But in a few cases, the

304 *Sachdev v. Union of India*, quoted in *All India Report* 1991 SC 311.
305 *Mahul v. Union of India*, quoted in *All India Report* 1984 SC 1291.
306 *Sachdev v. Union of India*, n.48,sc 311.
apex court has taken a very serious view and sentenced the contemtiners to imprisonment.

**Jurisdiction of High Court**

Under Article 226 of the Constitution, a High Court is empowered to issue writs, direction or orders in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari: (a) for the enforcement of any of the fundamental rights, and (b) for any other purposes. A High Court may issue a writ if it finds that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed. Thus, the writ jurisdiction of a High Court is larger than that of the Supreme Court as the Supreme Court can issue a writ only in cases of fundamental right but the High Court has in power to issue writs for enforcement of fundamental rights as well as legal rights.

As per the provision of Article 227, every High Court has superintendence over all courts and tribunals through the territories in relation to which it exercises jurisdiction. However, any court or tribunal constituted by or under any law relating to armed forces has been kept out of purview of the High Court. The power of superintendence is not confined to administrative superintendence only and there may be judicial interference in appropriate cases. In the case of State of Haryana v. Inder, the Supreme Court has very clearly stated that the Constitution vested in the High Court administrative, judicial and disciplinary control over member of the judicial service.

**Separation of Judiciary from Executive**

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Article 50 of the Constitution, which is a Directive Principles of state policy, reads as: “The state shall take steps to separate the judiciary from the executive in the public service of the state.”

This Article was not a part of the Draft Constitution. Dr. Ambedkar introduced it by moving an amendment to the Draft Constitution in the Constituent Assembly. The most important feature of the article moved by Dr. Ambedkar was that, though a directive principle of the state policy, it prescribed a time limit of three years within which its provisions were to be implemented. While speaking on the occasion, Dr. Ambedkar reminded the House that it had been the desire of the country from long past that there should be separation of the judiciary from the executive and the demand had been continued right from the time when the Congress was founded. He made it clear that this was being put in the chapter dealing with Directive Principles instead of making it a fundamental principle so that it was not absolutely obligatory to enforce the principle instantaneously on the passage of the Constitution. However, he had suggested a time limit of three years within which the provision of the Article were to be implemented.\footnote{310}{Constituent Assembly Debates, Vol. VII, p.582.}

Shri T.T. Krishnamachari, opposing the move of Dr. Ambedkar, opined that the demand was made when the British were in power and now it was not necessary to separate the judiciary from the executive. Another member Shri B. Das was also of the view that the question of separation of the executive and the judiciary had changed in view of the attainment of the freedom. He suggested that the matter be postponed.\footnote{311}{Ibid., p.584.} But Shri R.K. Sidhwa strongly supported Dr. Ambedkar. To quote him:
“The District magistrate is a prosecutor and he is also the administrator of justice. May I ask whether under these circumstances, can impartial justice be dispensed by the same person who prosecutes and also at the same time sits in the judgment over that case?”

Pandit Jawaharlal Nehru, the then Prime Minister, also strongly supported the proposed Article. Dr. Bakshi Tek Chand while supporting the new Article referred to a few instances of misuse of the present system. He shared with the House that in one province in a case pending in a criminal court, the ministry sent for the recode and passed an order directing the trying magistrate to stay proceedings in the case. The matter eventually went up to the High Court and very strong remarks were passed against such executive interference with the administration of justice. In another province, a case was being tried against a member of the legislative assembly and a directive went from the district magistrate to the magistrate trying the case not to proceed with it further and release the man. This case also went up to the High Court and very strong remarks were passed by the Chief Justice of the High Court. After citing these instances, the honourable member submitted that with the change of the circumstances and with the advent of freedom and the introduction of democracy, it had become all the more necessary to bring about the separation of the judiciary from the executive at the earliest possible opportunity.

After prolonged debates, the move of Dr. Ambedkar to insert Article 39A (Article 50 of the Constitution) in the Constitution was adopted except the time limit of three years to implement the provisions of the Article.

The above discussion reveals that serious thought was given by the framers of

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312 Ibid., pp.586-587.
313 Ibid., pp.588-590.
314 Ibid., pp.590-591.
Constitution on the issue of separating the judiciary from the executive. They were keen to bring the magistrates, administering, criminal justice, under the control of High Court.\textsuperscript{315} Eminent members of the Constituent Assembly like Pandit Nehru, Dr. Ambedkar, Pandit Thakur Das Bhargava and many others desired that the provisions dealing with separation of judiciary from the executive should be enforced at the earliest. This indicates that they found the then prevailing system defective and wanted to bring about improvement by separating the judiciary from the executive.

However, the provisions of Article 50 were not fully implemented in many states for about 24 years. It was only with the new Code of Criminal Procedure of 1973 coming into force on April 1, 1974, that the judiciary was separated from the executive.

\textbf{Control over Subordinate Courts}

Articles 233 to 237 deal with the subordinate courts. This is one of the unique features of the Constitution of India that the provision relating to the subordinate courts are incorporated in it.

The Draft Constitution did not have such provisions and it was during the debates in the Constituent Assembly that Dr. Ambedkar moved Articles 209A, 209B, 209C, 209D, and 209E, as amendments.\textsuperscript{316} While introducing these Articles, Dr. Ambedkar explained their object. According to him, the first object was to make provision for the appointment of district judges and subordinate judges and their qualification while the other object was to place the whole civil judiciary under the control of the High Court.

\textsuperscript{315} \textit{Ibid.}
\textsuperscript{316} \textit{Constituent Assembly Debates}, Vol. IX, pp.1572-1579.
The Assembly adopted the amendments to the Draft Constitution moved by Dr. Ambedkar and thus the provision about the subordinate court came to be included in the Constitution itself under Articles 233 to 237.

Prior to the Constitution, the magistrates who administer criminal justice were under the control of the state government and the High Court had no hand in their appointment, promotion, etc. Under the old Criminal Procedure Code of 1898, all magistrates in every district outside the presidency town were subordinate to the district magistrate. He was empowered to make rules or give special orders as to the distribution of business among them, and subject to the control of state government, define local areas within which the magistrates were to exercise their powers. There was no court of Chief Judicial Magistrate and the powers and function which the Chief Judicial Magistrate under new Criminal Procedure Code of 1973, exercise were vested with the district magistrate. The magistrate including district magistrate and session judges, additional session judges and assistant session judges were appointed by the state government. Neither the district magistrate nor any magistrate was subordinate to the session judges except to a very limited extent. For the presidency town of Bombay, Madras and Calcutta, there were Chief Metropolitan Magistrates; they were appointed by the state government and were under its control.

The framers knew that the so long as the magistrates remain under the control or influence of executive, they would not administer justice in an independent and impartial manner. But they could not make such provision which could separate the judiciary from executive instaneously with the commencement of the Constitution. However, they inserted a Directive Principle under Article 50 to separate the judiciary

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317 Criminal Procedure Code, Act 5 of 1898, Sections 10, 12 and 14.
318 Ibid., Act 2 of 1974, Section 12.
319 Ibid., Section 17(5).
320 Ibid., Sections 18-21.
from the executive. Under Article 237, power was conferred on the Governor to apply the provision of Articles 233 to 235, which were applicable to civil judiciary, to the magistrate also whenever the reform of separation of judiciary, as provided in Article 50 of the Constitution was carried out. Accordingly, with the implementation of Article 50 by the Criminal Procedure Code of 1973, the provisions of Articles 233 to 235 have been applied to all judicial magistrates, bringing them under the control of High Courts.

An analysis of the constitutional provisions discussed in Constitutional Assembly Debates, revealed the fact that framers of Constitution emphasized the importance of the criminal justice administration and its role in the working of the Constitution.

SEVENTH SCHEDULE

The subject relating to the criminal justice administration as included in the Seventh Schedule of the Constitution of India, are given below:

Union List

(i) Central Bureau of Intelligence and Investigation.

(ii) Preventive detention for reasons connected with defence, foreign affairs, or the security of India; person subjected to such detention.

(iii) Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court) and fees taken therein; person entitled to practise before the Supreme Court.

(iv) Constitution and organisation including vacations of High Courts except provision as to officers and servants of High Courts; person entitled to practise before the High Courts.

322 Ibid.
(v) Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any union territory.

(vi) Extension of the powers and jurisdiction of members of a police force belonging to any state or 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 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.

(vii) Offences against law with respect to any of the matters in this list.

(viii) Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the members in this list admiralty jurisdiction.\textsuperscript{323}

\textsuperscript{323} The Constitution of India, Article 254.
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.\textsuperscript{324}

(ii) Police including railway and village police subject to the provision of Entry 2A of List-1.

(iii) Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts expect the Supreme Court.

(iv) Prisons, reformatories, borstal institutions and institution of a like nature and persons detained therein; arrangement with other state for the use of prisons and other institutions.

(v) Offences against law with respect to any of the matters in this list.

(vi) Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in the list.

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 the List I or List II and excluding the use of naval, military or air force or any other armed forces of the union in aid of the civil power.

(ii) Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

\textsuperscript{324} Ibid.
(iii) Preventive detention for reason 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.

(iv) Removal from one state to another state of prisoners accused persons and persons subjected to preventive detention for reason specified in Entry 3 of this list.

(v) Administration of justice; Constitution and organisation of all courts, except the Supreme Court and the High Courts.

(vi) Evidence and oaths; recognition of law, public acts and records, and judicial proceedings.

(vii) Legal, medical and other professions.

(viii) Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list.\(^{325}\)

Various other components of the present criminal justice administration of India are briefly discussed below:

**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 law 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 condition for a man if the law enforcing agency resorts to arrest or detrain him, or seize his

property, under the pretext of a legal provision interpreted contrary to its spirit. Therefore a 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.

After taking over the control of Bihar, Bengal and Orissa in 1765, the East India Company made some attempts to introduce reform 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 realised 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, 1861; the Indian Evidence Act, 1872; the 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. 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.  

THE INDIAN PENAL CODE

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The first Law Commission of India, under the Chairmanship of Lord Macaulay was constituted in 1834.\textsuperscript{327} The Commission was entrusted with the duty to investigate into the jurisdiction, powers, rules of the existing courts and police establishments and into the 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.

A Draft Code prepared by the Commission, popularly known as Macaulay’s Code, was submitted to the Governor-General on October 14, 1837.\textsuperscript{328} 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.\textsuperscript{329} It superseded all rules, regulations, and orders of criminal law of India and provided a uniform criminal law for all the people in the then British India.\textsuperscript{330} 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 provision for various offences while the rest contain definition, exceptions and explanations. Offences are divided into various categories such as offences against the state, offences against the public tranquillity, offences against the 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 session court of a magistrate of first class or second class is done in accordance with the provision in the First Schedule of the Criminal

\textsuperscript{327} Ibid.
\textsuperscript{329} Ibid.
\textsuperscript{330} Ibid.
Procedure Code, 1973. Section 320 of Criminal Procedure Code enumerates the
compoundable offence under the Indian Penal Code.\footnote{Ratanlal and Dhirajlal, Indian Penal Code, Wadhawa and Company, Nagpur, 1997, p.5}

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 Legislature.\footnote{The Constitution of India, List III, Entry 1.} 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.\footnote{Ibid.} 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 omitted. Many other minor amendments have also been made in the IPC by
Parliament. In addition to the amendments made by Parliament, many states have also
amended the Indian Penal Code to suit their requirement.\footnote{Ratanlal and Dhirajlal, n.75, p.6}

**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 Acts, 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
supplemented 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.\textsuperscript{335} 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.\textsuperscript{336} It is divided into 37 Chapters consisting of 484 Sections. Two Schedules – the first, classifying the offences under the IPC and against other laws, and the second, containing form – have also been appended to it. The Code of Criminal Procedure \textit{inter alia} deals with the constitution of courts, powers of courts, various process to compel appearance of persons and production of things, power 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.\textsuperscript{337} Parliament has brought many amendments in it during the last 27 years to meet the requirement of changing circumstances. Many states, according to their requirement, have also amended the Code of Criminal Procedure, 1973.

**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.


\textsuperscript{336} \textit{Ibid.}

\textsuperscript{337} \textit{The Constitution of India}, List III, Entry 2.
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. 338

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 prescribed rules of admissibility or otherwise of the evidence on the issues as to which the courts have to record finding. The main principles, which underline 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. 339

The Indian Evidence Act, 1872 contain 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. 340 But subsequently, in 1971, the apex court held that the law of evidence which is a complete codes does not permit the importation of any principles of English law relating to evidence in criminal cases to the contrary.

The law of evidence falls under the concurrent list of the Constitution of India. 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.

339 Ibid.
340 Ibid.
POLICE AND THE 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 Legislature the powers to legislate on these subjects. The Constitution, however, assign a definite role of supervision and coordination to the union government also in matters pertaining to police.\(^{341}\) While the police and public order are within the state field of legislative competence; preventive detention for reason connected with the security of a state, the maintenance of public order and persons subjected to such detention are under concurrent jurisdiction of Parliament as well State Legislature. Article 249 of the Constitution gives powers to Parliament to intervene in state police administration, if there is enough justification for doing so.

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 organise 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 provisions. It provides that the superintendence of the police through a general police district, so constituted, shall vest in, and be exercised by, the central government. The Police (Incitement and 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 provision of the Police Act, 1861 to such a general

police district. The Police Forces (Restriction of Right) Act, 1966 provides for the restriction to certain rights conferred by Part III (Fundamental Rights) of the Constitution in their application to the member of the forces charged with the maintenance of public order so 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 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 Criminal Procedure Code, Indian Evidence Act and numerous other central and state criminal laws. Chapter IV to VII, and X to XII of the Cr. P.C. contain detailed provision relating to the powers of the police including the power to arrest, search, investigate, disperse unlawful assembly, take preventive action.