CHAPTER - VII

CONCLUSIONS AND SUGGESTIONS

Law and legal institutions seem to have profound influence on the attitudes and impressions of the people. They are in fact part of the culture and as such have the tendency of being inextricably associated with the people's thoughts and actions.

If a particular society has evolved or embraced willingly or otherwise a legal system it becomes very difficult for the society to change it. There will be a tendency for many people to retain the system as a whole. If compelled by circumstances to change it they may concede only small changes. If at all total change is found necessary, society may resort to a slow and steady process so that the impact of change could be cushioned.

For a comparativist Pondicherry is a unique territory which have had the fortune of experiencing more than one system of criminal justice administration. Prior to its annexation to the French, it had the Indian system of criminal justice. Thereafter for a while the French
system or a blend of the Indian and the French and then intermittently the English system till finally it embraced the French system in toto.

Under the French system of criminal justice Administration, the judge, prosecutors, police officers, court clerks, prison guards, and probation officers were members of French National Civil Service. The judges and prosecutors were treated as Magistrates and they belonged to one service and were recruited by way of a national competitive examination. They were inducted into the services after a comprehensive training for two years at the National Magistrates' School in France. Those who underwent the training in the school were posted at Pondicherry.

The presiding judges were of two categories-examining magistrates and sentencing judges. The examining magistrates were entrusted with the responsibility of handling pre-trial proceedings including decisions regarding detention and preparation of cases. The sentencing judges not only dealt with the matters of adjudication but also with rehabilitative work like parole and probation. The independence of the judiciary was guaranteed by way of fixed tenure of service.
Under the French system plea-bargaining was unacceptable. While shutting out the controversial American practice of plea-bargaining, the French system also avoided the unsavoury feature of the defence justice. However it accepted the need for reducing the heavy calendar loads by adopting alternative procedures through a process known as 'correctionalisation'. That amounted to reducing the charge from a serious crime to a less serious one resulting in imposition of minor sentence. The distinctive feature of this practice was that the initiative used to be taken always by the judge and it could be resorted to if the complainant agreed to the procedure. This system functioned in Pondicherry very well. Under the French criminal justice delivery system the principles of restitution and victim compensation were incorporated. Naturally these were also incorporated in the system that prevailed in Pondicherry.

The judicial supervision of the investigation process under the French Pondicherry was remarkable. It was the examining magistrate who prepared the documents of case after investigation. Both the defence and the prosecution were entitled to suggest to him about new lines of investigation, new witnesses to be called for examination etc., The personality of the offender, his character, previous convictions, if any, were all gone into by the examining magistrate for preparing the
dossier of the case. Much of the time of the examining magistrate was spent in the conduct of examination.

It was on the orders of the examining magistrate that pre-trial detainees were released. The accused was otherwise required to remain in jail during investigation. However, the examining magistrate's rejection of the accused's request for release could be appealed against in the chamber of Accusation.

The French Administration seemed to have emphasized the need for pre-trial detention as a safeguard against tampering of evidence. The prosecutor also played a very active role in investigation, trial and execution of sentences.

The present Indian system differs in several ways from the French system. The primordial position of the examining magistrate has suffered erosion. The special position of the prosecutor and police has also undergone change. In fact, the investigation is conducted by the police and neither the public prosecutor nor the judiciary has any right to interfere with the work of the police. However, judiciary has stepped into many an area of investigation breathing vitality into the whole system, public prosecutor does not have the status that is enjoyed by
him under the French system. These changes -fundamental in the French system-have evoked reproach and approbation alike. An empirical inquiry into the public's approach was therefore conducted and the following conclusions and suggestions have been made.

There is no need to switch over to the French or a mixed system of criminal justice by throwing out the existing one. The existing one serves the purpose. Except for a few dilatory procedures and practices the system seems to work smoothly. In fact upon a comparative study of various systems it is found that the present Indian system of common law model is the best for a fair administration of criminal justice.

However, in tune with the latest trend of legal systems, it would be better if some of the good features of the French system are incorporated into the existing system. Some suggestions for adoption in Pondicherry are detailed below. Suggestions for changes in the Indian legal system are also made separately.
SPECIFIC SUGGESTIONS FOR PONDICHERRY CRIMINAL JUSTICE DELIVERY SYSTEM

1) A separate wing for process service attached with the criminal court as in the civil court practice could be made for avoiding delays in service of processes.

2) A separate police wing may be assigned to all the criminal courts exclusively for execution of warrants of arrests and for production of the arrested persons before the courts to avoid delay in disposing of the criminal cases.

3) All the summons cases should be tried summarily without any irregular proceedings.

4) A separate police wing for assisting investigation of the crime should be set up under the control of Director of Public Prosecutions. This would avoid delay in investigations.

5) The present system of having monthly Lok Adalat should be held every week for conciliation and settlement of compoundable offences.

6) The new scheme of the conciliatory jurisdiction introduced by the National Legal Services Authorities Act should be adopted in the criminal courts where there would be lot of possibilities to have amicable settlement upon conciliation. The courts sitting for Lok Adalat should be empowered to release the offenders under the probation of offenders Act. 1958.

7) It is suggested that a criminal justice Academy be established at Pondicherry to impart instructions and training to all the Judicial Officers dispensing criminal Justice. Such training may help the Judicial Officers in adopting the latest thinking on sentencing and treatment of Offenders.

8) Computerization of latest case laws of Supreme Court and High Courts must be made available to all the criminal courts of Pondicherry by Electronic mechanical devices system. Each court should be provided with a computer for feeding latest decisions and case laws for speedy analyses of cases.
9) Sitting hours of the trial courts should be modified as 10.30 a.m. to 1.00 p.m. and 2.30 p.m. to 4.30 p.m.

10) All the Administrative works of the Presiding Officers of the Criminal courts should be attended only between 4.30 p.m. to 5.30 p.m.

11) All the Saturdays except the second Saturdays must be made as working days.

12) Courts' sitting hours should not be used for giving dictations of orders and judgements. It has to be done at the residence of the Presiding Officers out of office hours as practiced in the state of Tamil Nadu.

13) All the courts should be provided with modern mechanical devices like, computers, photocopier etc. so as to prepare and furnish the copies of the judgements and orders on the same day of pronouncement.

14) Measures may be taken to place the case properties and material objects involved in criminal cases before the Presiding Officers, prior to the commencement of the trial. There should not be any search of them after commencement of trial.

15) To avoid delay in disposing of criminal cases, no expert need be summoned during the course of trial. Their depositions of statements and documents could be made use of for advancing arguments by both the counsels.

16) Both in the court of Magistrates and in the court of Sessions, trial should be conducted on a day to day basis.

17) All the witnesses of the prosecution must be produced by the police on the appointed day. The appearance of absentee witnesses shall be dispensed with by the Presiding Officer, if he finds no justification for adjourning the matter.

18) The cases in which the accused could not be secured for facing trial may also be tried in absentia and the judgements pronounced. If the case ends with conviction, the sentence should be served by the accused as and when he is appearing or apprehended by the police. This could avoid repeated adjournments of pending criminal cases.
19) An autonomous body like Directorate of Forensic Science Laboratory should be set up with its branches at each district headquarters for speedy investigation with the help of experts.

20) All the witnesses produced or appearing on a particular day appointed for their examination must be examined without any adjournments. Statements of the witnesses must be transcribed by typewriting in the open court itself.

21) To avoid any threat to the life of the under trial prisoner produced on the date of hearing, adequate security measures should be made in the courts. A separate room may be provided for guarding them at the courts.

22) After completion of trial, arguments should be advanced on the next working day and the judgements must be delivered not later than the third working day after advancing of arguments.

23) The de-facto complainants must be directed to be present at the time of pronouncing judgement and compensation if any ordered, should be paid by the court on the same day itself. The court will have to collect the fine amounts from the convicts.

24) Periodical inspections should be made in the prison by the Chief Judicial Magistrates so as to have control over the prison staff.

25) Prevention of crime could be better achieved by entrusting the work of educating the public with legal aid machinery.
A SCHEME OF NEW PROCEDURE SUGGESTED FOR
REMODELING THE EXISTING INDIAN SYSTEM

The new scheme and procedure suggested below is also given in Appendix in the form Figures.

All the suggestions suggested above for the Pondicherry Criminal Judiciary is also suggested for Indian Criminal Judiciary so as to make the system more effective.

As and when there is a report of commission of a crime it has to be immediately reported to the pre-trial Magistrates by the complainants directly or through some agents or by third parties. The pre-trial Magistrate should be stationed at every place and stations where police stations are situated. The pre-trial Magistrate will have to be provided with Investigation Police Force at each centre. There should be no role for the ordinary police force in crime investigations. Thus, it needs to create a new set up of police force for criminal investigation. They may be called investigation police. It must be exclusively for criminal investigation under the control and supervision of the pre-trial magistrates. The Pre-trial Magistrate should be in the cadre of First Class Magistrate. For that, office of the Pre-trial Magistrate should be established.
The pre-trial magistrate shall make necessary enquiry and upon satisfaction that a prima facie case is established he may conduct the investigation or cause it to be investigated by the investigation police. The registering of FIR and entering the cases in General Diary etc. should be made by the said police under the direction and supervision of the pre-trial Magistrate.

The investigating police have to be vested with the powers of arrest, search and seizures and to enquire about the commission of a crime. But there should not be any recording of statements by them (as followed under the present system u/s 161 of criminal procedure code). The examination of the victim and the witnesses if any during the days of investigation must be done only by the pre-trial magistrates at their office. The sworn information of the victim and witnesses if any, are to be recorded by the pre-trial magistrate. Upon perusing the deposition and testimony of documents magistrate shall have the discretion to commit the matter for trial to the ordinary court of Magistrates. This is already possible under the existing procedure of private complaints where the magistrate under section 200 of Criminal Procedure code entertains the matter directly and take cognizance of the matter after examining the complainant on oath.
If the pre-trial magistrate is satisfied with the allegations about the commission of a crime after apprehending the suspect with the help of investigating police he may refer the matter to the conciliatory Board for settlement provided the parties so will. The other cases should be sent to trial courts for trial. As such, there shall be no recording of confessional statements as permitted under the present systems.

There must be a Director of public Prosecutions (Deputed from the judiciary from and among the senior most subordinate judges) for supervising the functions of Investigating Police and pre-trial Magistrate. The matters relating to remand, Bail, release of the accused, dying declarations, 164 Cr.P.C statements and the like should be looked after by the pre-trial Magistrate himself. They will have to commit the cases ripe for trial to the trial courts or to the conciliation Boards. Then the trial courts should try the cases in accordance with the trial procedures.

In short, the present system should place the pre-trial Magistrate to be incharge of investigation into crimes with the help of a separated wing of the police. In other words, what is required is to adopt the French model of judicial supervision of criminal investigation.
PROSECUTION

As discussed above, there must be independent Directorate of Public Prosecution. There should be District Public Prosecutors in every district. No police officer should assume the office of Director of public Prosecutions. A competent judicial officer of the rank of Subordinate-Judge should be deputed as Directorate of Public Prosecutions. The pre-trial Magistrates in every police station jurisdiction limits should be supervised by the Director of Public Prosecutions. He shall also give advice to them as and when necessary about the matters of investigation.

The scheme of prosecution also needs to be streamlined. In each and every court of Magistrates, qualified and well trained Law Graduates with practical experience in handling criminal cases should be posted permanently as Assistant Public Prosecutor. They must also take care of the notice on bail applications and other connected matters emanating from pre-trial magistrates. In each and every court of sessions, qualified permanent public prosecutors like that of Assistant Public Prosecutors should be posted. The existing practice of appointment by the popular government for a specific term should be done away with. Instead a Public Prosecutor should be selected and appointed on a regular basis. Then it could be possible to have a fair
public prosecution. In the existing system of appointment by the popular government (political parties) there is also a possibility for the victim of rival political party to suspect that with the aid and help of the public prosecutor of the same political party the accused may go scot-free without conviction. That apart, there is also no justification to have the public prosecutors for limited tenures when the Assistant Public Prosecutors are appointed permanently. There would be accountability if a permanent government employment of Public Prosecutor is required to conduct the serious cases. The delay in political appointment causing hardship to the litigants will also come to an end if the public prosecutor is appointed permanently like the Assistant Public Prosecutors.

INVESTIGATING POLICE OR JUDICIAL POLICE

It is suggested to create an investigating police force - a wing of police personnel, exclusively for investigation of criminal cases. They must be placed under the control and supervision of the 'Director of Public Prosecutions' who should also have supervisory jurisdiction over the pre-trial magistrates. The pre-trial magistrates should be made the superior authority for conducting investigation. The investigating police should be made as subordinate to both the pre-trial magistrates and the Director of Public Prosecutions.
The investigating Police force may be formed with one Superintendent of Police for every sessions division and one circle Inspector for every pre-trial magistrates jurisdiction with adequate subordinate staff and police personnel. The statements made by the witnesses and accused should be recorded only by the pre-trial magistrates and not by the Investigating Police.

The Investigating Police should be entrusted with the duty of arresting persons for production before the pre-trial magistrates for investigation, production of witnesses, collection of material objects and case properties, search and seizure of documents and weapons involved in the cases. They also may be entrusted with the duty of service of summons and executing of warrants of arrests.

**PRE-TRIAL MAGISTRATES**

As suggested above it is better to have an independent pre-trial magistrate exclusively for criminal investigation and to refer the matter either for conciliation or for trials. The investigating Police must be made to assist the pre-trial magistrates in their investigation process. It should be made that all the investigations are conducted by the pre-trial magistrates who must be empowered to examine and record the
statements of the witnesses by obtaining the signatures of them in it. If the said pre-trial magistrates after conclusion of their investigation decides, that a case is fit for proceeding further with a prima-facie information, the matter may be either referred to the Board for conciliation or for trial courts according to the nature of the allegations of the offences committed.

There may be classification of offences like, petty offences, crimes, heinous crimes etc. with which the referring of the cases to the proper forum could be made. All the offences considered as petty should be transmitted to the Board called Board of Conciliation and compounding of petty offences.

As per this scheme all the information about the commission of a crime of whatever nature should only be lodged or made to the pre-trial magistrate. Hence, near every police station it is necessary to have an office of the pre-trial magistrates.

All the statements by the witnesses should be recorded by the pre-trial magistrates in an open hall in the presence of the Assistant Public Prosecutor. The magistrate recording statement must put his signature in the statement of witnesses recorded and the Assistant
Public Prosecutor must countersign it. The pre-trial magistrate should not be cited as a witness by either side and they must be empowered to claim immunity for their quasi-judicial functions.

BOARD OF CONCILIATION AND COMPOUNDING OF OFFENCES

It is suggested to introduce a pre-trial conciliation and compounding Board where both the accused and the victims of offences could be brought together and with the advice of the Board the disputes could be settled without referring the matter to the court of magistrates. This may be made upon the option being made by the parties. For that purpose, it is suggested, it requires to have creation of Boards in every pre-trial magisterial jurisdiction. The Board should have three members among whom one must be a Judicial Member deputed from the rank of Judicial First Class Magistrate. He should be made the Chairman of the Board. Out of the remaining two one must be a woman member with the working knowledge of law, and the other must be a retired professor of law of a University. The tenure of office must be made as 3 years and all must be paid equal salary. That the appropriate state government may appoint the members and the Judicial member should be deputed/ appointed by the Governor of the State in consultation with the High court having control over the subordinate Judiciary of the State. The Board may act as village
panchayat with the supervision and control of the Chief Judicial Magistrate.

The orders of the Board must be final and there should not be any appeal to any forum from the orders of the Board. It is already provided in the National Legal Services Authorities Act that there cannot be any appeal against the decision derived upon conciliation. That could be taken as a justification in not permitting any appeal upon the decision of the Boards.

Those matters which could not be disposed off either by compounding or by conciliation as a result of unwillingness of either of the parties should be transferred to the court of magistrates which could dispose off them according to law. Boards must be vested with the powers of compensating the victims of crimes.

If the above suggested system is introduced the present practice of protracted trial of the simple offences by wasting the time of the court, prosecutors, defence counsels and witnesses could be saved. That apart, the conciliation may not only make speedy disposal measures of criminal complaints but also have deterrent effect in view of the volunteered conciliated disposition. It is the need of the hour to
extend the conciliatory jurisdiction to the criminal cases not only to minimise the work load of the trial courts but also to avoid hardship to both the parties.

**BAIL**

Grant of bail at the pre-trial stage should be the concern of trial magistrates. During trial, bail could be granted by the boards and courts so that the pre-trial magistrate could concentrate on the investigation of the matters pending with him.

**SUGGESTIONS FOR TRIAL PROCEDURE- COURT OF MAGISTRATES**

It is suggested to post a senior first class magistrate [CHIEF JUDICIAL MAGISTRATE] in every district courts under the new scheme. This could be made as lower trial court with all powers except to award death and life imprisonment. As it is suggested to enhance the power of the magistrate courts so as to try all the matters except those that are having death or life imprisonment, there must be separate both Assistant and additional public prosecutors to conduct the cases in each courts. Any appeal from the judgement of the court of magistrates could only be presented before the high courts which would be made competent to entertain the first and final appeals from the court of magistrates. These appeal should be heard and decided by a
three judges bench of the high courts specially constituted for the same. There should not be any further appeal to the supreme court. The High court would be made as the final appellate court for the court of magistrates.

SUGGESTIONS - FOR PRACTICE AND PROCEDURE DURING TRIAL IN THE MAGISTRATE COURTS

For trial at the court of magistrates all the court of magistrates all the cases sent by the pre-trial Magistrate to the court of all magistrates should be posted for a hearing of the accused on the first day when the complainant also must be required to be present. After providing the copies of case dossiers to the accused, charges if any, should be framed at once and if there is no change the accused will have to be discharged at once.

After charging the accused if he is willing to go for compounding he may be permitted to do so if the other party is also willing. Compensation to the victim should be ordered to be paid by the accused. For payment of fine time may be granted. The fine amounts should be paid to the victims directly by the accused.

If there is no possibility for compounding, the matter will have to be adjourned and posted for Trial by fixing a date. On the fixed date it
must be made compulsory for the trial. Likewise the defence counsel should also be directed to finish cross-examination of all the witnesses on the same day. At any event the adjournment of any part-heard matters if needed must be in the next working day. There should be no repeated adjournments for enabling the police to produce the witnesses. If the witnesses are not produced promptly it should be possible for the court to dispense with their presence and decide the case.

It is also suggested to have trials both in the magistrate courts and sessions courts continuously, without any long adjournment, day by day. It is also suggested there should not be any examination of any witness on chief, as the chief was already done by the examining magistrate while examining the witnesses for recording their statements. Those statements will have to be placed before the courts for cross-examination only by both the parties.

After completion of trial, on the next working day the arguments by both the prosecutor and defence counsel may be advanced. After arguments are over it should be possible to pronounce judgements after three days of the arguments.
COURT OF SESSIONS

It is suggested to have the existing model of sessions courts at every sessions division. For every sessions court there must be a permanent public prosecutor appointed by the government for conducting cases. As there is no any appellate jurisdiction suggested for the sessions courts, the sessions courts will have to concentrate on the trial matters as stated for the Magistrates Courts. There should not be any adjournment of the trial in a sessions case. The matters will have to be heard day-by-day till the disposal of the same. However, the death penalty, if ordered, it is subject to confirmation by the Supreme Court and Supreme Court must be made as the appellate court to sit on the judgement of the sessions court.

It is suggested to curtail the second appeals from the judgments of the trial courts. This would avoid unnecessary and vexatious appeals often preferred by the convicts to drag on the cases so as to escape from the clutches of law for an intermediate period.

The whole system of compounding of offences under section 320 of Cr.P.C should be reconsidered by the law makers to extend the benefit of compounding to all types of offences except those which may pave way for controlling the docket explosion. In this connection it may
be pertinent to note that the legal services authority Act also attempt to
advocate the same.

PRESENCE OF VICTIM/DEFACTO COMPLAINANT DURING PRONOUNCEMENT OF JUDGMENT

Under the present system the defacto complainant/injured do not
have any chance to know about the outcome of his complaint. He may
be required to appear before the court at the time of the
pronouncement of Judgment so as to know the outcome of the case.

COMPENSATION TO VICTIMS

It is submitted that the State being in charge of the protection of
the rights and interests of the people, should have the responsibility of
indemnifying the victims. The present measure provided under Section
357 of Cr.P.C. DOES NOT WORK WELL. If any offence is made out
and the matter is sent for trial, irrespective of the result of the case the
victim of the case should be compensated by the State. However the
fine amounts collected could be deposited in the treasury.
Compensation must be adequate to make good the losses sustained by
the victim including the loss of earning and compensation for mental
agony suffered.
Thus a blending of some features of the French System with the present Indian system alone can help us to regain the confidence and add vitality to our system.