It cannot be denied that an important cause of proliferation of crime is improper enforcement of laws. One solution, therefore, of solving the problem of crime or at least minimising, it is to put pressure on the police and court to enforce laws strictly. Ellick (1957) observed, "strict enforcement of laws could certainly reduce the crime, but strict enforcement of laws is extremely difficult because the agencies of justice have been kept weak by the same conditions which have produced high crime rate". This, in fact, illustrates the point that law and order problem is not one sided. It involves law, law makers, and law enforcement agencies. In India, under the constitution the ideal that has been set is that the Indian State as a matter of policy should strive to establish a Welfare State. The concept of a Welfare State implies four components; (1) Social service — that means that the State must defend and protect the
the interest of those who are physically, socially and mentally handicapped, (ii) social defence — which is intended for reformation and rehabilitation of criminals. (iii) Social security and social justice — security from want and security of tenure of service etc., (iv) full employment — this speaks for itself. The present study is concerned with the third component i.e. social justice. The first step here must be to pass appropriate legislation. Understandably vast and discretionary powers have been given to the State, to pass legislation and also the courts to enable them to implement these legislations, and the powers have to be used wisely and purposefully so that the objects of the legislations are achieved. Reformation or rehabilitation as well as treatment depend upon the devising of appropriate institutions and institutional programmes. But they also depend upon the proper exercise of the powers given to them by the court. For this, it is necessary that the judiciary should be oriented to and grasp the philosophy and practices of correctional work. They must cultivate a proper outlook and design appropriate

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procedures for helping to solve unfamiliar and
difficult problems in what is known as social
engineering. What is law and what changes have
taken place in recent times in the concept of law?
Law is engaged in translating values of society
into legal norms or standards. The body of the
laws involve the resolution of issue in social policy.
Law is not ethics and courts of law are not moral
forums. The main functions of law is to regulate
human behaviour.

Police, judiciary and prison are interlinked
and their relationship and co-operation are intrinsic
indispensable factors in the administration of
criminal justice. Let us now examine the role of
police from this angle.

POLICE

"The police image has been defined as......
the outer reflection of the standing of the depart-
ment based on its performance and service. It is the

Contd.....225.
reaction which emanates from the public and which is based on the public's expression of confidence and respect in a police department or a lack of such confidence and respect" (see Murphy, 1966). It is the image that each member of the public visualises, real or imagined as being the police. Because of this, the "police image is many things to many people and it is changing image that can be buffeted by a hostile press, tarnished by dishonest members, dulled by inefficiency, enhanced by professional members of integrity" (see Haldane, 1980).

To maintain peace and tranquility in society is the purpose for which the police has been organised. Police also shoulders the responsibility of carrying out judicial as well as administrative decisions apart from the control and prevention of crime. Taken as a whole, the police function is to regulate and bring about uniformity in individual as well as group behaviour. The responsibility of the police is to prevent crime, so that there prevails in society order and peace. Towards this, they are required to perform

Contd.....226.
multifarious duties such as beat patrolling, registration and investigation of criminal cases. The criminals to court and to prison, making surveillance of the released habitual offenders, supervision of processions and besides all the ensure safety of life and property of the people etc.

POLICE AS LAW ENFORCEMENT AGENCY.

"In its traditional duties, the police was called upon to be an instrument of social defence and social change. The roles of the police which emerged were of a 'philosopher, a guide and a friend' (see Cumming et al, 1977). Although police perform an indispensable service to the community, a kind of love-hate relationship appears to exist between them and the people they supposedly serve. It is common to find that the public is not very warm towards the police in almost all parts of the country" (see Krishna et al, 1981)

Indeed, the dispositions decisions made by police officers may have potentially profound consequences for arrested persons. Thus 'arrest' the most

Contd.....227.
severe of the dispositions available to the police, may not only lead to confinement of the suspected offender but also bring him a loss of social status, restriction from education, employment, and further harassment by other agencies like court and prison. The stigma resulting from arrest, and lock up might reinforce deviant behaviour. However, little or no empirical analysis regarding the factors influencing or consequences resulting from police actions with the arrested persons, are available.

The police is the first major agency in the criminal justice system to deal with offenders. In India, the public-police relation is not found to be sound. In most of the cases the suspect avoid arrest, or being caught by the police, and if arrested by the he denies guilt or otherwise adopts a non-cooperative stance with them. The suspect when brought for the trial uses resources to resist conviction. If he is convicted he tries to secure as much 'freedom' in
prison as possible. Thus a struggle continues from the beginning to the end. This state of affairs give the police ground to use coercive methods to elicit and extract confession. Of course, evidence collected by such methods are not accepted by the court under section 23 of Indian Evidence Act. The police make a different approach: as the police are aware of the fact that the evidence taken by them by coercive methods are not taken into account by the court, they arrest a person and then search for evidence, criminal conduct of the person is incorporated in the charge sheet. Over the above, they also make fabrication on the charge sheet for not to escape from imprisonment to show their competence. If the police find this approach futile, then they include the charges in which one has been convicted by the court earlier.

As a matter of rule, the arrested cannot be confined in the police lock up for more than two days. If an arrested person sustained any physical injury as a result of third degree method are sent for medical examination before a doctor of a Government hospital.
with the remarks on the document on having injured
prior to arrest and similar or other cases in which
the delay occurred on the part of the police to pro-
duce an arrested person within 24 hours they then alter
the records as having arrested and produced before the
court within 24 hours. Criminals also play an active
role in the criminal justice process. In order to
avoid interrogation they would engage or request for
intervention of the counsel. Thus the crime prevention
lead to break-down by public order. Finally, law
abiding citizens become victims of all sorts of unjusti-
ifiable invasion.

The study naturally does not cover all the
areas of police functioning. However, the interaction
between the police and life-term offenders has already
been dealt with (see Chapter IV). But, what is perti-
nent at this stage is to look into the aspects of exis-
ting legal provisions and the police as it has already
been mentioned that one-third of long-term offenders
are those who are repeated or habitual offenders. It
is, therefore, necessary to know what are the preventive

Contd. . . . . 230.
Sections of the Code of Criminal Procedure which are commonly known in police vocabulary. Sections 376 and 290 are the preventive sections as far as the police is concerned.

The object of preventive sections is to afford protection to the public against a repetition of crime in which the safety of property is menaced. It is with a view to preventing and not punishment of offences that these provisions have been incorporated in the Code. These sections demand for good behaviour from persons who are vagrants and suspect persons and habitual offenders. Section 376 spells out a person 'who has no ostensible means of subsistence' and Section 290 spells out a person 'is by habit Dacoity, house breaker; stolen property, protects or harbours thieves or aids in the concealment or disposal of stolen property, habitually commit or attempts to commit; abets the commission of the offence of kidnapping, abduction, extortion, is so desperate and dangerous as to render his being at large without security hazardous to the community'. And police liberally use these Sections as a crime preventive method. It has been clary

Contd....231.
laid down that security proceedings are not intended to help the police to run in and detain persons against whom a definite charge of a substantive offence has failed (see 5 Cr L J 191, 9 Cr L J 528; 1932 Outh 16, and 23 Cr L J 119, 1932). Preventive sections not be used for blackening of enemy's character or merely to control indisciplined persons (4 P R 1898 Cr L J).

The police report should clearly specify the clause of the preventive section under which the case falls and give adequate information to the magistrate (1934 Sind 173 Cr L J). Avoid unnecessary police surveillance which will infringe the accused's personal right or liberty in any way (Cr L J 900 Punjab 1959). Arrest without warrant in bad livelihood cannot be made without the knowledge of a Magistrate (see Deb, 1960).

It is the duty of the police to watch over bad characters and maintain confidential records about them, the mere placing a person's name in the thana surveillance register and subjecting him to secret and confidential surveillance do not infringe his personal liberty in any way. Questioning such persons and disturbing them at

Contd....232.
night while they are at their house should not
be done (Trilok Singh V Superintendent of Police,
1959 Cr L J 900 Punjab). In the case of Kharak Singh
V State of Uttar Pradesh 1963 (2) Cr L J 329 (SC)
the Supreme Court held that surveillance involving
mere secret picketing of the houses of suspects and
keeping a record of the visitors was not violative
of personal liberty guaranteed by Article 21 of the
Constitution. Hence disturbing such persons at
their house is safeguarded.

The recidivists as per the police record
are known as 'History Sheeters'. History Sheeters
are the bad characters registered by the
police. They are likely to become habitual offenders
or abettors of such criminals. There are two types of
history sheeters i.e. Class 'A' and Class 'B'. The
former include dacoits, burglars, while the later
include all confirmed and professional criminals such
as Dacoits and others etc. They are considered to be
hardened criminals, who always kept under police
surveillance.

Contd.....233.
Habitual offenders, on release from
prison are not allowed to go home straightway,
but they are entrusted with the police who take
them to the home town/village police station
where a descriptive data about the offenders
are taken. It may be noted that even the police
take these offenders' finger print, and pictures
are made and maintained by them. To sum up, it
may be stated that the long-term offenders under
study may have to be under the clutches of police
and imposition of surveillance by the police makes
them to receive public and departmental condemnation
for whole of their lives.

JUDICIARY

In the field of criminal justice the judi-
ciary has a vital role to play. The primary decision
of the sentencer in a particular case is to determine
about the guilt. Once guilt is established he goes
with the decision and that decision is important as
it concerns with the type of punishment to be pronounced.

Contd.....234.
The objective of punishment is longer retributive or deterrent alone. Reformation is now the generally accepted chief aim. While the court is engaged in functioning as a guilt finding agency must also have certain information about the offender and the offence. Such information should be essential for the court as it will aid them to arrive at correct determination specially when the punishment is of individualisation of the offender. The probation of Offenders Act 1958 provides the necessity of the presentence reports. To enable the court to decide the volume of punishment, it is necessary to have such information before them. As the court's have not developed any theory bearing on the task of sentencing it would be of great help to them if they evaluate the treatment for the offenders, whoever they have sentenced.

"In all the year that the judges have been imposing sentence they have made little contribution to the possible science of penology. As a class they have failed to develop a method of comparing the individual cases with similar ones to evolve
a useful typology of both offences and prisoners" (see Glueck, 1961). The dissimilarities in awarding an irrational punishment would create distrust in the public and frustration in the mind of offenders.

"In studying the ten year records of six judges, Goudet, (1949) found wide variation in sentencing practices. Although each judge received approximately the same proportion of serious criminal cases and offenders with unfavourable background, their respective sentences to penal institutions composed of 33.5, 37.4, 46.1, 51.2, 52.9 and 57.4 percentages of the total disposi- tions when the types of crimes were considered, the judges not lenient in crimes of violence".

To obviate this, Mannheim, (1960) says "judges should only concentrate guilt part of offence and sentencing part should be attended to by sentencing Board of Experts".

Section 75 of the Indian Penal Code provides for enhancement of punishment of life imprisonment or imprisonment up to ten years, if an offender who has already been convicted of
an offence punishable under Chapter XII or Chapter XVII of the Code with imprisonment for a term of three years or upwards, is again found guilty of an offence punishable under either of those Chapters for life-term of imprisonment.

**PERSONAL CHARACTERISTICS**

At this, it is pertinent to ascertain the opinion of the members of judiciary with regard to the existing system of life-term sentences. We have, therefore, attempted to examine their personal characteristics of the samples under study. After presentation of their background the study variable would be analysed.

Table 5.01 brings out the distribution of the respondents according to their age. It would be seen that half of them are between the age group of 31 to 40 years, but a very few of them are above 51 years. The mean age is 29.72 which is considered to be an active phase of life.
However, the variation in the age is observed to 26.37 years which shows a wide fluctuation. This may be attributed to the recruitment policy. Nevertheless, majority of the magistrates are in the middle of their age. Generally speaking the factor of age tends to influence the sentencing practice (see Table 5.01).

<table>
<thead>
<tr>
<th>TABLE 5.01 : AGE WISE DISTRIBUTION OF THE MAGISTRATES (IN YEARS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-30</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>Frequency</td>
</tr>
<tr>
<td>Percentage</td>
</tr>
</tbody>
</table>

\[ \mu = 26.72; \quad \sigma = 26.37 \]

Except for one magistrate who is a female the rest are males. This goes to indicate the over predominance of males in the judiciary, although the literacy in Delhi is quite high for both males and females.
If the respondents religious affiliation is analysed it is found that Hindus are over represented (78.4%) in the cadre followed by others: like Sikh and Jain (16.2%) and Muslims come about (5.4%). In a way the above results almost run parallel to the general composition of the population.

It may now be relevant to examine the Caste in which the Hindu respondents belong to. Observably the Brahmin, Kshatriya, Vaishya run almost equal in proportion (22.9%). There are Judges belonging to lower castes but their strength comes to (9.6%) (see Table 5.02). Basing the conclusion on the present sample of judges it is heartening to note that all castes are equally represented. This may have implications on working as well as study variables.

**Table 5.02 : Caste Distribution of the Respondents.**

<table>
<thead>
<tr>
<th>Caste</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brahmins</td>
<td>8</td>
<td>22.9</td>
</tr>
<tr>
<td>Kshatriya</td>
<td>8</td>
<td>22.9</td>
</tr>
<tr>
<td>Vaishya</td>
<td>8</td>
<td>22.9</td>
</tr>
<tr>
<td>Sudra</td>
<td>3</td>
<td>8.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
Formal education for the administrative functionaries in judiciary is a must. By analyzing the educational background of the respondents some understanding of their academic abilities should be discerned. As is reflected in Table 5.03 a longer portion of the judges have a post graduate degree in addition to their legal qualifications. On the other hand the remaining have a bachelor degree along with a degree in law. Although difficult to surmise that a linear efficiency relation with

<table>
<thead>
<tr>
<th>TABLE 5.03</th>
<th>EDUCATIONAL QUALIFICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Graduate and law</td>
</tr>
<tr>
<td>Frequency</td>
<td>10</td>
</tr>
<tr>
<td>Percentage</td>
<td>27.8</td>
</tr>
</tbody>
</table>

increased qualifications some wishful thinking can be had that highly educated functionaries may relatively be more efficient.

Contd....240.
From which area the respondents hail?

It is found that out of 37 respondents, a majority of the magistrates (78.4%) in our sample come from urban areas while only 8.1% from the rural areas. About 13.5% come from semi-urban areas. Thus persons from rural areas appear to hold the post of magistrates in the Union Territory.

What are the different categories of the posts to which the respondents belong to? The respondents have been divided into three categories (1) those working in the District and Sessions Court, (2) Chief Judicial Magistrate's Court and Additional District and Sessions Court (3) Judicial Magistrate of the First Class and Second Class. In the present sample their frequency varies about 76.5% of them are from Magistrates Court, 8.8% District and Sessions Court, and 14.7% are from Chief Judicial Magistrates Court and Additional District and Sessions Court. Understandably magistrates from the Magistrates Court outnumber the others.

Contd.....241.
In the past the recruitment policies for a magisterial post favoured a person who had practised as a lawyer. But owing to certain exigencies the practice of appointing legal graduates through appropriate examinations, has also been there. As such there might be some variation in the total service of the respondents in the judiciary as against the experience in the present post.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>NR</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frequency</strong></td>
<td>31</td>
<td>1</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td><strong>Percentage</strong></td>
<td>83.9</td>
<td>2.7</td>
<td>13.5</td>
<td>100</td>
</tr>
</tbody>
</table>

As shown in Table 5.04, 31 out of the 36 respondents have worked as lawyers before being appointed as a magistrate. It is natural to expect that those who have worked as lawyers are bound to have experience in the legal matters.

The range of experience of the respondents in judicial service varies from below five years to over...
a quarter century. The mean comes to 12.56 years with a variation of 6.01 years. This goes to show that the respondents do not vary much, in so far as their experience in judiciary is concerned. These results get further reinforced when read with the results of last table that except a few the bulk worked as lawyers. Of course the analysis of their experience in the present post assumes relevancy.

**TABLE 5.05 : LENGTH OF SERVICE (IN YEARS)**

<table>
<thead>
<tr>
<th></th>
<th>1-5</th>
<th>6-10</th>
<th>10-15</th>
<th>15-20</th>
<th>20-25</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>5</td>
<td>8</td>
<td>10</td>
<td>10</td>
<td>4</td>
<td>37</td>
</tr>
<tr>
<td>Percentage</td>
<td>13.5</td>
<td>21.6</td>
<td>27.0</td>
<td>27.0</td>
<td>10.8</td>
<td>100</td>
</tr>
</tbody>
</table>


\[ M = 12.56, \quad SD = 6.01 \]

The total trend confirms to earlier results.

In this case, although the variation of the experience on the post varies below one year to above five years, average experience and range of experience of the respondents, one fact emerges that about half of them seem relatively more experience-wise i.e., that they have experience of five years and above. On the whole some amount of desirability on experience in the post of the respondents creeps in (see Table 5.05).
Training

"The complexities and the refinement of any science are the province of the expert whose special training fits him to deal with, but in broad principles and the practice applications are matters of general interest and need only ordinary intelligence for their comprehension" (see Miles, 1945). "It is usually claimed that however well trained judges may be in the criminal law and in matters of evidence and procedure their education and experience do not equip them to determine the nature or duration of treatment that criminals should receive. More specifically it is generally alleged that the lack of training in the social and behavioral sciences upon which to make sound judgments measures, judges are either retributive at one extreme, or sentimental at the other and that in any case, they ignore the rehabilitative objectives of correctional therapy? (see Tappan, 1960).

Training has been accepted universally as an indispensable adjunct in preparing the persons for
their posts. Besides pre-service training such facilities like in-service training, refresher courses are organised which, if undergone, add substantially to the efficiency of the individual and to the prosperity of the organisation. In the case of respondents in the present study, surprisingly except for the one respondent who has attached a training course on life-termers the rest any specialised training course. The meritable corollary on this aspect would be that in the coming years more and more magistrates must be trained in different aspects. In view of the delicate nature of life-sentences this aspect needs focused attention.

Although the position of training for the magistrates leaves much to be desired the respondents are personally not oblivious to the importance of training. The nine respondents who have given their views : besides practical training and refresher programmes there should be specialised courses on life sentences, criminal psychology and penal theory.
Turing towards the aspects relating to the income of respondents it is found that their income ranges from less than rupees 1300 to rupees 1700 and above. However, the average income works out to be 1498.61 rupees. Although salary pattern tends universally to be unsatisfactory, taken at face value it is difficult to conclude that they are well off economically. Further there is a variation of rupees 437.76 between the respondents.

<table>
<thead>
<tr>
<th></th>
<th>-1300</th>
<th>1300-1500</th>
<th>1500-1700</th>
<th>1700+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>7</td>
<td>3</td>
<td>10</td>
<td>17</td>
<td>37</td>
</tr>
<tr>
<td>Percentage</td>
<td>19.4</td>
<td>5.6</td>
<td>17.8</td>
<td>47.2</td>
<td>100</td>
</tr>
</tbody>
</table>

\[ M = 1498.61 \; \text{and} \; SD = 437.76 \]

When the income level is pursued along with the experience of the magistrates the inevitable conclusion would be that the salary of these functionaries needs immediate attention. Because upon this factor depends the efficiency of the judiciary. Does this variable has any association with the length of service?
On cross tabulating the variables it shows a signifying variation ($\chi^2 = 11.77837$, $df = 4$, $p < 0.001$). It therefore emerges that the more experienced are relatively paid more salary (see Table 3.05).

**SENTENCING PROCEDURE**

In the absence of effective legislative guidance on the relative gravity of various classes of offence, the responsibility for determining the permissible range of sentences in each case remains with the sentencers. The Indian Penal Code spells out for the maximum range of punishment.

Judges give protection to women, children and minority groups (Rubin, 1957) sentencing on the basis of type of offenders (Conard, 1965), punishment should be based on the gravity of offence (Barnes and Tawes, 1966). While sentencing the judges should know what conduct is and what conduct is not criminal (Coffey, 1968), judges should know the aims and objectives of punishment (Packer, 1970). Punishment should be based on the personality of the offender (Thomas, 1970), sentencing should be given with the assistance of social workers and probation officers (Orfield, 1947) and
and sentencing should be based on the adequate information about the offender (see Jackson, 1977).

From the present study it has been found that offences relating to 'hurt, and grievous hurt' which are punishable with a term upto seven years have been disposed by awarding long-term imprisonment. In fact 72% of the offenders who have committed offences against property and Homicide and under culpable Homicide have been awarded imprisonment for a period less than sixteen years and the remaining 28% cases the imprisonment is for a period of six years to 12 years have been awarded.

Maximum terms of punishments have been provided in the Indian Penal Code, hence the court have to apportion the quantum of punishment basing on the gravity of offences. Therefore, the judiciary in deciding the volume of punishment are often in a quandary as to what measures to be applied for his arriving a decision. Hence different magistrates differ in their sentencing. However there is no minimum punishment provided in the statue. But the sentencing

Contd....248.
magistrate has to give in writing the reasons for
awarding sentence of imprisonment for a long period.
In view of this, different principles are adopted by the
magistrates. The courts are to view that the aim of
punishment and its approach are mainly for individua-
isation, as some offenders need treatment, and some are
to be detered.

The courts are to consider a case for imprisonment
if the offence is of serious nature; when an offender
joins voluntarily a criminal group; if there is an
impending danger of his involving in further crimes;
needing custodial treatment; and for whose case the
probation and fine has been tried and found ineffective.

PUNISHMENT FOR HABITUAL OFFENDERS

Section 75 of the Indian Penal Code provide for
enhancement of punishment of life imprisonment, or upto
ten years, to offenders who have a previous conviction
for the offences punishable under Chapter XII and XVII
of the Code with imprisonment for a term of three years or
upwards, is again found guilty of any offence punishable
under either of those chapters for like term of imprisonment.
The present study found that one out of every three long-term offenders are those who are recidivists.

And a majority of these offenders committed offences punishable under Chapter XII and XVII.

To this end it is necessary to know of the offenders status who are lodged in Central Jail, Tihar.

It may be noted that as on 31st December 1980 there were 2285 convicts which constitutes 2240 males and 45 females.

Out of these, 1500 males and 35 females were non-recidivists while 400 males and five females were those who had two previous convictions, 100 males and three females had three previous convictions and as many as 50 males and two females had more than three previous convictions.

As a whole as many as 15.7% of the males and 22.2% of the females may be said to be recidivists. (See Table 5.07)

**Table 5.07 : Distribution of Male Offenders According to Their Length of Sentence as on 31st December, 1980**

<table>
<thead>
<tr>
<th></th>
<th>Below Six years</th>
<th>6-12 years</th>
<th>Above twelve years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Andhra Pradesh</td>
<td>53</td>
<td>3179</td>
<td></td>
<td>3232</td>
</tr>
<tr>
<td>2. Assam</td>
<td>88</td>
<td>64</td>
<td>832</td>
<td>984</td>
</tr>
<tr>
<td>3. Bihar</td>
<td>763</td>
<td>6315</td>
<td>1947</td>
<td>8946</td>
</tr>
<tr>
<td>4. Gujarat</td>
<td>693</td>
<td>100</td>
<td>643</td>
<td>1426</td>
</tr>
<tr>
<td>5. Haryana</td>
<td>78</td>
<td>78</td>
<td>1025</td>
<td>1181</td>
</tr>
<tr>
<td>6. Himachal Pradesh</td>
<td>16</td>
<td>12</td>
<td>129</td>
<td>157</td>
</tr>
<tr>
<td>7. Jammu &amp; Kashmir</td>
<td>37</td>
<td>20</td>
<td>104</td>
<td>243</td>
</tr>
<tr>
<td>8. Karnataka</td>
<td>58</td>
<td>226</td>
<td>1398</td>
<td>1692</td>
</tr>
<tr>
<td>9. Kerala</td>
<td>66</td>
<td>53</td>
<td>1093</td>
<td>1206</td>
</tr>
<tr>
<td>10. Madhya Pradesh</td>
<td>690</td>
<td>724</td>
<td>6827</td>
<td>8241</td>
</tr>
</tbody>
</table>

Contd.....250.
<table>
<thead>
<tr>
<th>State</th>
<th>Below Six Years</th>
<th>6-12 Years</th>
<th>Above Twelve Years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manipur</td>
<td>4</td>
<td>2</td>
<td>48</td>
<td>54</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1392</td>
<td>710</td>
<td>4533</td>
<td>6635</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>17</td>
<td>10</td>
<td>17</td>
<td>44</td>
</tr>
<tr>
<td>Nagaland</td>
<td>26</td>
<td>28</td>
<td>101</td>
<td>155</td>
</tr>
<tr>
<td>Orissa</td>
<td>128</td>
<td>147</td>
<td>1786</td>
<td>2061</td>
</tr>
<tr>
<td>Punjab</td>
<td>467</td>
<td>352</td>
<td>1067</td>
<td>1456</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>91</td>
<td>123</td>
<td>1385</td>
<td>1599</td>
</tr>
<tr>
<td>Sikkim</td>
<td>9</td>
<td>5</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>1266</td>
<td>702</td>
<td>2598</td>
<td>5556</td>
</tr>
<tr>
<td>Tripura</td>
<td>-</td>
<td>-</td>
<td>37</td>
<td>37</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>917</td>
<td>707</td>
<td>6770</td>
<td>8394</td>
</tr>
<tr>
<td>West Bengal</td>
<td>1020</td>
<td>190</td>
<td>684</td>
<td>1854</td>
</tr>
<tr>
<td>A&amp;N Islands</td>
<td>-</td>
<td>-</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>3</td>
<td>8</td>
<td>37</td>
<td>48</td>
</tr>
<tr>
<td>Delhi</td>
<td>65</td>
<td>60</td>
<td>347</td>
<td>472</td>
</tr>
<tr>
<td>Goa, Diom &amp; Diu</td>
<td>25</td>
<td>11</td>
<td>92</td>
<td>128</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>12</td>
<td>9</td>
<td>9</td>
<td>30</td>
</tr>
</tbody>
</table>

**TOTAL**

<table>
<thead>
<tr>
<th>Below Six Years</th>
<th>6-12 Years</th>
<th>Above Twelve Years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>7941</td>
<td>10700</td>
<td>40317</td>
<td>58958</td>
</tr>
</tbody>
</table>

Source: Jail Reforms Committee Office, New Delhi

**NOTE:** There were no cases in Dadar Nagar & Havelli, Lakshadweep and Mizoram.

As regards the females 19.6% of them were sentenced to a period less than six years, and 12.1% were sentenced from six to 12 years so that 31.7% of the female offenders undergoing rigorous imprisonment were termpered. Of those undergoing long imprisonment 88.9% were sentenced to less than six years and 2.6% from six to 12 years showing that 91.5% of the female offenders were undergoing simple & long
imprisonment. Taking both rigorous imprisonment and long imprisonment about 50% of them having sentenced to long-term imprisonment.

<table>
<thead>
<tr>
<th></th>
<th>Deterrence</th>
<th>Rehabilitation</th>
<th>Mixture of all</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>31</td>
<td>4</td>
<td>1</td>
<td>36</td>
</tr>
<tr>
<td>Percentage</td>
<td>96.1</td>
<td>11.1</td>
<td>2.3</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 5.09: Opinion of the respondents about the aim of punishment

Hence implications for the tendency to respect to long-term sentences (see Table 5.09), when this response pattern is cross tabulated with other three variables like, whether long-term sentences protect the society, whether the sentencers are aware of the existing institutional programme in place of sending them to jail. The relationship shows that since the judges give importance to deterrence the reformatory aspects are ignored by them.

Further the opinion of the respondents has been sought on the question why long-term sentences are imposed?
A large majority of the respondents feel that long-term sentences are awarded as a deterrent measure (67.6%); prevent from further crime (23.5%); and protect the offender from an undesirable home (8.8%). Again here the tendency to highlight the deterrent aspect appears (see Table 5.10).

<table>
<thead>
<tr>
<th></th>
<th>Undesirable situation at home</th>
<th>Prevent further crime</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deterrance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>23</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Percentage</td>
<td>67.6</td>
<td>8.8</td>
<td>23.5</td>
</tr>
</tbody>
</table>

**VISIT TO JAIL**

It is hoped that if a magistrate pays visit to jail, he may be able to get an idea about the life in prison, and how the prisoners are treated. By such visit he may know whether the superintendence is lax or strict, and whether prisoners are pampered or denied the basic human necessities. His impression of the prison is bound
to influence his future sentencing behaviour. Most of the respondents (59.46%) had paid visit to jail officially, but none of them had occasion to listen and understand the problems of long-term offenders. This variable has been cross tabulated with the variable 'in your opinion is it possible for the jail authorities to provide institutional programmes to the long-term offenders which shows no statistical significance (τau = 0.07559; p<0.2519). It has also been cross tabulated with the variable 'Do you agree that the life-term sentences have bad effect on the offenders?' This also shows no significance statistically \( (χ^2 = 1.48645, df = 1; c = 19653, p<0.4756; τau = 0.18992, p<0.0442) \). It implies that reformative feelings were among such magistrates is wanting.

**Table 5.12: Showing the Responses of the Respondents 'Have you paid visit to any Jail?'**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frequency</strong></td>
<td>22</td>
<td>15</td>
<td>37</td>
</tr>
<tr>
<td><strong>Percentage</strong></td>
<td>59.46</td>
<td>40.54</td>
<td>100</td>
</tr>
</tbody>
</table>
CONSIDERATION OF CONFESSION

A confession is not deemed to be voluntary if it appears to the judge to have been caused by inducement, threat or promise. "Proceeding from a person in authority and having reference to the charge against him, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the judge, such inducement, threat or promise gave the accused person reasonable grounds for supporting that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him" (See Hart, 1941, also see Indian Evidence Act Section 24).

Therefore, the opinion of the respondents regarding the confession made before the police as an evidence has been collected. It may be noted from 5.14 that three out of every five respondents do not take into account the confession made before the police by the offenders for averting the punishment. Nevertheless, one third of the respondents take into account such confession.
TABLE 5.14: OPINION OF THE RESPONDENTS TO 
"WOULD YOU TAKE INTO ACCOUNT 
The confession made by the offenders 
BEFORE THE POLICE?"

<table>
<thead>
<tr>
<th></th>
<th>None of the cases</th>
<th>Some of the cases</th>
<th>Most of the cases</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>18</td>
<td>10</td>
<td>2</td>
<td>30</td>
</tr>
<tr>
<td>Percentage</td>
<td>60.0</td>
<td>33.3</td>
<td>6.7</td>
<td>100</td>
</tr>
</tbody>
</table>

Generally, majority of the life-term offenders spend a major portion of their sentence in jail as remand prisoners due to various reasons. There are offenders who have no relatives to render any assistance and if at all they have relatives they may not have immovable property of their own to make surety bond. There are offenders who view that they would be released or their cases disposed of by the court in the subsequent hearing. It is possible that offenders may have to remain in prison as remand prisoners for months. There are chances of release of such offenders direct from the court as the sentence allows for setting off the remand period. It is also possible that such prisoners might have already spent more than the period of sentence as remand prisoners at the time of sentencing.
It is found from Table 5.15 that majority of the respondents are of the opinion that the suspects cannot be released on self bond because they fear that the suspects would abscond or violate the bond rules. One fifth of the respondents are of the opinion that they do not release on bail by executing a self bond because it would be against the aim of protection of society. A very few of the respondents opined they

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Fear the suspect would abscond</th>
<th>Against the aim of protection of society</th>
<th>Fabricate evidence</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td></td>
<td></td>
<td>1</td>
<td>30</td>
</tr>
</tbody>
</table>

| Percentage | 76.7 | 20.0 | 3.3 | 100  |

denied self bond for fear the suspects would fabricate evidence. The variable has been cross tabulated with the variable 'professional experience' which shows no significance statistically ($X^2 = 3.45621$, df = 2; $c = 0.13242$, p(>0.1152)).
TABLE 3.16: SHOWING THE RESPONSES OF THE
RESPONDENTS TO 'PLEASE TELL US
HOW OFTEN YOU HAVE BEEN MEDICALLY
EXAMINED ?

<table>
<thead>
<tr>
<th></th>
<th>At the time of joining</th>
<th>Not at all required</th>
<th>Can't say</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>15</td>
<td>3</td>
<td>12</td>
<td>30</td>
</tr>
<tr>
<td>Percentage</td>
<td>50.0</td>
<td>10.0</td>
<td>40.0</td>
<td>100</td>
</tr>
</tbody>
</table>

**DELAY IN SENTENCING**

Henry (1958) "voiced the fear that the elements may be lost in sentencing procedure if the delay takes place." "Delayed disposition of cases puts an extra expense on the tax payers, it causes wastages of energy because a blockade in the routine, as it impose on the state an undue expense, on the witnesses an unnecessary loss of time and money, on the prosecutor a duplication of labour and on our judicial system is a needless encumbrance." (See Barnes, 1976).

The delay in administration of criminal justice would cause much handicaps to the defendant or suspect, especially to the recidivists as they are not released on self bond. One third of the life-term offenders in the present study are recidivists who are from a poor economic set up and most of them do not have
parents or relatives to take them on surety bonds.

Such delay would, therefore mean that they have to remain under custody until their cases are disposed of.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>35</td>
<td>2</td>
<td>37</td>
</tr>
<tr>
<td>Percentage</td>
<td>94.6</td>
<td>5.4</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 5.17 indicates that an overwhelming majority (94.6%) of the magistrates feel that the criminal justice system involves long delay in processing the cases. This variable has been cross-tabulated with the variable 'professional experience' of the respondents, it shows a significant variation ($\chi^2 = 5.64234$, df = 2, c = 0.43252, $p < 0.0002$). This implies that the magistrates who have put in more number of years in judicial service feel that the administration of criminal justice involves long delay.

**POLITICAL INTERFERENCE IN CRIMINAL JUSTICE SYSTEM**

Many researchers and academicians state that unless some professional spirit be introduced there is
bound to be politics in the civil services as outside of it. A Court should not be considered as a forum for political debate. The judicial method involves only the areas of decision making and interpretation. The judge's role is legal and not moral. In order to make a democratic set up of Government a success and to ensure that it works for the full benefit and welfare of the people, the judiciary must consist of people of integrity and high character, apart from being independent and with objective outlook, so that it can work free from any influence direct or indirect from the other wings of the state or from any one else. (see Benson, 1935; Edmond, 1962; White, 1963; Hidayatullah, 1970 and Shalat, 1972).

"It is necessary for the judiciary to consider that they should not allow to be affected by politicians. They must bear in mind that they have taken an oath before occupying the judicial post. such pleasing or placating the politicians may or might establish fame. When a man has devoted his life to serve the cause of justice,
he will not wish his biography. But the administration is primarily concerned with the implementation of public policy, the courts are primarily concerned with the protection of private rights" (see Hidaytullah, 1970).

We have asked the respondents to give their views in the matter. One out of every six of the respondents have stated that there is political interference in the execution of their work. But surprisingly 62.2% of the respondents have simply evaded response.

**TABLE 5.18**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Can't say</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>6</td>
<td>8</td>
<td>23</td>
<td>37</td>
</tr>
<tr>
<td>Percentage</td>
<td>16.2</td>
<td>21.6</td>
<td>62.2</td>
<td>100</td>
</tr>
</tbody>
</table>

**EXERCISING DISCRETION**

George, (1959) stated in regard to sentencing system in United States of America, that it is unique among the world’s legal system. Without being subjected
to any review of his determination, a single judge may decide absolutely the minimum period of time a convicted offender must remain in prison.

"It is known that many fields of law, variations are found in sentencing tendencies among the courts and among the judges, and these variations cannot be fully explained by dissimilarities in the nature of the case. In most of the cases the judges use their discretion while sentencing." (see Glendon, 1963).

**Table 5.19:** Showing the responses of the registrars to 'Do you exercise discretion in determining severity of punishment?'

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>27</td>
<td>9</td>
<td>36</td>
</tr>
<tr>
<td>Percentage</td>
<td>75.0</td>
<td>25.0</td>
<td>100</td>
</tr>
</tbody>
</table>

**Impression about long-term offenders**

It is a human tendency to form an impression about others when they have personal contact with them. If a magistrate forms a bad impression about an offender before the case is opened it will be reflected in sentencing.
On this score the magistrates were asked to offer their responses. It has been noted that the magistrates have varied opinions about the life-termers. Though the legal statutes do not spell a minimum punishment, yet, if the magistrate forms a good impression about a case the offender is likely to be considered for a lesser term of sentence. More than half (59.4%) of the magistrates remained unresponsive. It appears that 18.9% of the magistrates are well aware that punishment has no deterrent affect on the long-term offenders and they would turn recidivists. As many as 9.1% of the magistrates stated that life-term sentence easily the purpose of rehabilitation, it may also be noted that 9.1% of the respondents say that life-term sentences are awarded based on the nature of crime. More aptly 5.4% state that life-term sentences are awarded depending on the merit of cases (see Table 5.20).

| Table 5.20: Showing the Responses of 44 Respondents to "What do you impression about the Life-Termers?"
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Depends on case of crime</td>
<td>Nature of crime</td>
<td>Become repeaters/</td>
<td>It is Cant</td>
</tr>
<tr>
<td>Frequency</td>
<td></td>
<td>deterrent</td>
<td>say</td>
</tr>
<tr>
<td></td>
<td></td>
<td>effect is</td>
<td>Serve say</td>
</tr>
<tr>
<td></td>
<td></td>
<td>negligible</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>23</td>
<td>33</td>
<td>75</td>
</tr>
<tr>
<td>Percentage</td>
<td>5.4</td>
<td>6.1</td>
<td>18.9</td>
</tr>
<tr>
<td></td>
<td>9.1</td>
<td>59.4</td>
<td>100</td>
</tr>
</tbody>
</table>
TABLE 5.21: SHOWING THE OPINION OF THE RESPONDENTS TO 'DO YOU AGREE PUNISHMENT ON THE BASIS OF GRAVITY OF OFFENCE?'

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>33</td>
<td>4</td>
<td>37</td>
</tr>
<tr>
<td>Percentage</td>
<td>89.2</td>
<td>10.8</td>
<td>100</td>
</tr>
</tbody>
</table>

PRIOR CRIMINAL RECORD

Carney, (1977) states "many individuals think of sentencing only in a punishment context, mainly because of the punishment philosophy that predominates our judicial system ". The previous conduct and history of the offenders while awarding punishment may turn out to be of significance. Depending upon the reports of the experts to some extent the future conduct may also be predicted (see Pilati, 1983).

This aspect has been taken up with the respondents. They were asked: 'Would you take into account previous offence record and probabilities of offender's conduct in future for awarding life-term sentence?' They
say that (22.2%) they take into consideration the
previous offence of the offender while awarding
life-term sentences. However, 5.6% say that they do
not do so. Observably majority of the magistrates
have not responded.

**YOUNGER OFFENDERS**

A differential approach is followed while
awarding punishment to younger people. This fact
needs to be checked with the respondents. Notably 78.4% of the respondents do
show some leniency while awarding punishment to young people. On the other hand about 21.6% of them do not
show any leniency. However, the age of the respondents,
length of service, and experience do not show any signifi-
cant association with the variable.

**PERSONALITY OF AN OFFENDER**

"It is not surprising that attractive and
socially successful have an advantage in our courts
of law, as well as on our streets" (See Honnhein, (1955); Michael & Reid (1978). After all justice should be
impartial and it should not be influenced by accused person's social status, appearance and personality. With this in view the study focuses attention on finding out whether the magistrates take into account the personality of the offender in awarding life-term sentence? It may be found from the Table.

<table>
<thead>
<tr>
<th></th>
<th>None of the cases</th>
<th>Some of the cases</th>
<th>Most of the cases</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency</td>
<td>21</td>
<td>12</td>
<td>3</td>
<td>36</td>
</tr>
<tr>
<td>Percentage</td>
<td>58.3</td>
<td>33.3</td>
<td>8.3</td>
<td>100</td>
</tr>
</tbody>
</table>

above that 58.3% of the respondents do not consider the personality of the offenders while sentencing for longer terms. But one third of the respondents consider in some cases and one out of every twelve magistrates do so in most of the cases. This shows a trend that the persons who are socially and economically well get longer sentences.
"The more pathological he is judged to be, the more likely that treatment technique will be part of his sentence. This is serious because treatment oriented judges have been found to be more punitive than those working within the crime responsibility framework. More so, women offenders are awarded lesser quantum of punishment than their counterparts" (See Hogarth, 1971).

So we have enquired whether the magistrates differentiate between sexes in awarding longer sentences. In 44.4% of the cases they differentiate between sexes even though the responsibility for the offence is equal in the cases. It indicates that female offenders are more likely to get longer sentences. Women offenders are treated with greater leniency than males and that they are brought into court only when their crime is considered serious. They further stated females being the weaker sex need there is a need to be dealt with leniently.
OPINION ABOUT PROBATION SYSTEM

That Courts are not using probation has been the impression of most of the people. Keve (1974) says "when our society eventually comes close to being truly civilised, one of the most salient indices of probation progress will be its rejection of punishment as an instrument of criminal justice ".

It would however be justifiable to award probation instead of imprisonment in the general interest. It would be agreed that sometimes even in eligible cases the magistrates for their own reasons do not award probation.

To sum up, looking to the personal attributes of the respondents we find they are in active phase of life. They are mostly from the Hindu community. Their average salary comes to about 1498 rupees per month. They are educationally well qualified. But in the area of training that they have seen little. Quite a few of the magistrates were practising lawyers before taking up the post. Most of the magistrates

Contd.....268.
stress on deterrence. They seem to lack enthusiasm so far as adopting correctional approach in sentencing is concerned. They are however, aware of the harmful implication of life-term sentences. At time, they have to put up with the political interference as well. Most of the magistrates paid visit to jail but none of them wish to listen and understand the problems of the long-term offenders in prison.

They are cognisant of the fact that it is only the helpless who come to be punished for long duration. While deciding a case they do exercise their discretion. A large number of magistrates form an impression about the offenders before awarding short-term sentences as they know that the punishment has no deterrent effect on the life-term offenders. The magistrates who have sufficient professional competence to their credit consider the gravity of offence for awarding life-term sentences.

A vast majority of the magistrates take into consideration of the prior criminal record of the
offenders for awarding short sentences. Notably
eight out of every ten magistrates award life-term
sentences to young offenders. Most of the magistrates
do not consider the social enquiry report before
awarding long-term sentences. Female offenders
are generally given short sentences. They so often
award short-term sentences if the offender has committed
an offence without any premeditation. A large number
of the magistrates usually award short-term sentences
if the accused committed an offence under the influence
of liquor.

Sometimes even in eligible cases the magistrates
for their own reasons do not consider a case for probation
because they feel that the probation system is not well
developed in our country.

It may be remarked that a majority of the
magistrates feel that they award long-term sentences
for protection of society. Social enquiry report is
called for only in a very few cases. In fact, in
the course of our enquiry it has come to our notice
that no such report has been considered for awarding
short-term sentences by the respondents.