CHAPTER – III

CRIME CONTROL MECHANISM AND LAW ENFORCEMENT

The matter of crime control mechanism and law enforcement embraces within its ambit a number of facets to be dealt with. First, before going any step further it is to be known what is crime, various definitions of crime and various theories in relation to crime and the concept of crime. The study has to be undergone in relationship with law and society and also with criminal administration system or criminal justice system and its administration for crime control along with the various instrumentalities engaged for the purpose.

Having dealt with various definitions of crime put forth by eminent jurists, criminologists, sociologists etc. and analysed them in the preceding chapter wherein a glimpse was also taken on the various theories of crime and causation of crime, it is now tried to see at the beginning of this chapter what is law and for that matter what is criminal law, so that it could be studied as to what constitutes enforcement of laws.

The Constitution of India in Article 13 (3) reads- “In this article, unless the context otherwise requires - (a) ‘law’ includes any ordinance, order, bye laws, rule, regulation, notification, custom or usage having in the territory of India the force of law; and (b)”law in force” includes
laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be taken in operation either at all or in particular areas”.

Again in Article 245(2) in Explanation (20) reads - “The term law as used in Art.245 and 246 refers to both matters of principle and policy as well as subsidiary matters and matters of detail (In re, Art 143, Constitution of India AIR 1951 SC 332). On a true construction of Article 245 and 246 and the lists in the Schedule, legislation on delegating legislative powers is not a law. Art.245 (2) 21 says - “The court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication\(^1\).

As the present study deals with crime control mechanism and law enforcement, the laws here to be looked into are the criminal laws. Specifically for this study, the periphery is limited to The Code of Criminal Procedure, 1973, The Indian Penal Code, 1860 and The Indian Evidence Act, 1872 along with reference to the Constitution of India.

The Parliament of India may make laws in accordance with Article 245(1) which reads as - “Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a state may make laws for the whole or any part of the state”. Again the subject matter of laws

made by Parliament and state legislatures are enumerated in Art.246, which reads- "(1)Notwithstanding anything contained in clause (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in the seventh schedule (in this Constitution referred to as the Union List) (2)Notwithstanding anything contained in clause (3), Parliament, and, subject to clause (1), the legislature of any state also, have power to make laws with respect to any of the matters enumerated in list III in the seventh schedule(in this Constitution referred to as the concurrent list), (3) subject to clause (1) and (2), the legislature of any state has exclusive power to make laws for such state or any part thereof with respect to any of the matters enumerated in List II in the seventh schedule (in this constitution referred to as the State list). Article 249 of the Constitution of India also empowers the Parliament to legislate with respect to a matter in the state list in the National interest.

The governments of the present day society tend to objectify the code of criminal law and identify the dispensation of criminal justice with the enforcement of the criminal law and its procedure. The criminal law aims at survival - value of human society and its basic tenets stress upon individual behaviour norms that foster social intercourse and deter mutual annihilation.

Criminal law originated with the need of civilized society to be able to peaceably cohabit. A bird's eye view of the various theories of origin and development of criminal law is needed to have a clear

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2 P.D.Sharma, Police and Criminal Justice Administration in India
understanding of the nature of crime. The theories with regard to criminal law are -

(i) The Civil Wrong Theory,
(ii) Social Wrong Theory,
(iii) Moral Wrong Theory, and
(iv) Group Conflict Theory

in a broadly seen view.

(I) CIVIL WRONG THEORY

The civil wrong theory regards criminal law as originating in torts or wrongs to individuals. According to this theory, all wrongs produced efforts at self redress in the injured parties and were therefore treated as injurious to particular individuals and later, the wrongs came to be regarded as harmful to society at large. Consequently, the group took over charge of the treatment in its own hand. Of course, some crimes did originate in torts, namely, deceit, nuisance, false imprisonment, defamation etc. for which compensation (futurum) was secured from the wrongdoer. However, this theory is inadequate as a universal explanation of criminal law, as it assumes priority of the individual over the group, which is not true in all cases. There are wrongs like treason, sedition etc. that have been regarded since early days as direct wrongs to the state.
(II) SOCIAL WRONG THEORY

This theory postulates that criminal law originated as a rational process of unified society. Thus, when wrongs occur, society makes regulations in order to prevent repetition of such wrongs. This theory is again partially true. It certainly covers serious offences like murder, robbery etc. and explains how laws are made, but fails to explain how criminal law has developed in the course of time.

(III) MORAL WRONG THEORY

This theory says that criminal law originated in and is a crystallization of mores, tradition and the like. Customs, after persisting for a long time, achieved an ethical foundation. Violation of such customs produced antagonistic reactions of the groups that were expressed in the form of criminal law with penal sanctions. This is true in respect of conventional crimes, such as offences against person, property, reputation and the like. However, it does not explain many social and economic crimes that deal with the regulations of offences relating to evasion of taxes, licensing, hoarding of essential commodities etc.

(IV) THE GROUP CONFLICT THEORY

This theory holds that criminal law developed in the conflict of rival groups in order to protect each other's interests. Thus, through
criminal law, the powerful group forces the state to prohibit the conduct when they feel it may endanger their position. This theory may explain offences relating to property interests, but fails to explain other categories of offences, viz., offences against the state and public tranquility³.

After having taken a look at the theories of origin and development of criminal law it will be pertinent to have a look at the concept of criminal law from the 12 century onwards.

EARLY PERIOD

In the 12th and 13th century, treason, rape, blasphemy etc. were enlisted as crimes but not murder. The injured party could avenge the wrongs by private vengeance and self redress, legal remedy was only optional. The wrong doer had to give compensation, called 'BOT' and after payment of 'BOT' he was considered not to have committed the crime. The law had no means to enforce payment of 'BOT', but only could declare the wrongdoer 'out law'. There were certain offences for which the wrong-doer had to pay fine to the king called 'wrte'. There were certain offences in which the wrong doer also had to face punishment. Such offences were punishable with mutilation, death, or forfeiture of property to the King. House breaking, harbouring the outlaws, refusing to serve the army and breach of peace etc. were some 'botless' offences entailing compulsory punishment.

³ K.D. Gaur, Criminal Law and Criminology
EARLY MIDDLE PERIOD

It was seen that during the early period i.e. 10th and 12th century there was a system of ordeal by the fire or water for establishing guilt or innocence. It was a popular belief that there was some supernatural force maintaining relationship of the wronged and the wrong-doer. Continuing from the early period and overlapping it from 12th to 17th century, after the influencing period of religion, there was a radical change in society and brought about the emergence of criminology as an independent branch of knowledge.

MIDDLE PERIOD

During the 18th century, there came a period of reorientation particularly in Italy and France. The study of crime started on a scientific basis. It was established that none else but the criminal himself could be attributed with criminal responsibility for the crime and other external agency has nothing to do with the commission of crimes. Some crimes were deleted from the list of crimes and new ones added. Criminal law serves as the barometer to measure the social standard of a particular country at a particular time. Recent legislations like legalising abortion and abolishing of capital punishment in many countries are some of the aspects that reflect the changing concept of crime and criminal law and these are being termed humanitarian approaches.
MODERN PERIOD

Crimes have increased enormously during the last century and not particular to any single country. Social conditions of a particular country may be responsible for the reason of increase or decrease of crime and which is why perhaps the western countries record much more incidence of crime than that of India. Control of the family over wards, respect for morality and religion are some of the factors restraining commission of crimes. These factors are relatively lesser in western countries and hence the increased rate of crimes. With the economic development, desire for wealth increases along with longing for other luxuries of life which are not possible within the available resources at hand. People indulge in criminal acts to meet their desires. The present day criminological concepts look at crime, its causation etc. with a multiple factor approach and so are the criminal laws evolved from time to time.

Having looked at the criminological concepts and criminal laws during the periods starting from the 12th century, it will not be out of place to see how the criminal laws in India developed through the ages.

CRIMINAL LAWS OF ANCIENT INDIA

The germ of criminal jurisprudence came into existence in India at the time of Manu\(^4\). He gave a comprehensive code which contains not only the ordinances relating to law, but is a complete digest of the

\(^4\) Sengupta, Evolution of Ancient Law
then prevailing religion, philosophy and customs practised by the people. Manu has recognised assault, battery, theft, robbery, false evidence, slander, libel, criminal breach of trust, adultery, gambling, and homicide, as crimes. These are the principal offences against persons and property that occupy a prominent place in the Indian Penal Code also. The king used either to dispense justice himself with the help of counsellors, or appoint judges and assessors for the administration of justice. The king protected his subjects and in return owed allegiance and paid him revenue. If a criminal was fined, the fine went to the king's treasury and was not given as compensation to the injured.

These precepts are excellent, but, however, the substantive criminal jurisprudence of Manu is not free from bias. According to him, the gravity of offence varies with the caste and creed of the criminal and so does the sentence. The protections given to Brahmins are paramount and they were placed above all. During the period, there was no clear distinction between private and public wrongs. Murder and other homicides were treated as private wrongs with the right to claim compensation. A distinction, however, was drawn between casual offenders and hardened criminals. Again, he made provisions for exemptions from criminal liability, where the act was done, without criminal intention, or by mistake of fact, or by consent or was the result of accident, much on the line provided in Chapter IV of Indian Penal Code. The right of private defence was fully developed. It, therefore,

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8 Manu, Institutes of Hindu law, Chapter VIII
will not amount to mis-statement to say that modern Indian criminal law has its roots in the ancient laws.

**MOHAMMEDAN CRIMINAL LAW**

After the ancient criminal law, mohammedan criminal law was developed. The muslim legal system had its origin in the Koran, which is said to have been revealed by God to the prophet Mohammed. In muslim law, the concept of sin, crime, religion moral and social obligations is blended in the concept of duty, which varied according to the relative importance of the subject matter. The administration of criminal justice was entrusted in the hands of the Kazis. The punishment varied according to the nature of the crime. Broadly speaking, punishment was four fold, namely, 'Kisa' or retaliation; 'Diyut' or blood money; 'Hadd' or fixed punishment; and 'Tazir' or Syasa, discretionary or exemplary punishment\(^6\). However, the notion of Kazis about crime were not fixed, and differed according to the purse and power of the culprits. As a result, there was no uniformity in the administration of criminal justice during the muslim rule in India, and it was in the most chaotic state.

When the British came to India, muslim system of administration of criminal law was in vogue. There arose much difficulty in the administration of justice and to tide over these fresh laws were enacted.

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\(^6\) R.C.Nigam, Principles of Criminal Law, Vol.1.1965
DEVELOPMENT OF MODERN CRIMINAL LAW IN INDIA

Vasco da Gama, a subject of Portugal, first discovered the passage to India around Cape of Good Hope. Portuguese, then began to carry on trade with India. They were followed by the Dutch. Subsequently, the English came on the scene and began to carry on trade with India. In 1600 A.D. Queen Elizabeth granted a charter by which the East India Company was formed. It also gave the company right to make laws. In 1609 James I renewed the Charter and in 1661 Charles II also gave similar powers. The Charter of 1668 transferred Bombay to East India Company and directed that the proceedings in courts were to be like those that were established in England. The Courts of judicature established in 1672 sat once a month for its general sessions and petty offences were adjourned to ‘Petty sessions’, the courts inflicted the punishment of slavery.

In 1683 Charles II granted a further Charter for establishing a court of judicature at each place as the company decided. In 1687 another Charter was granted by which Mayor and Corporation were established at Fort St.George, Madras. By these Charters Englishmen who came to India were entrusted with administration of civil and criminal justice. Arbitrariness crept in and strange charges were framed and strange, hitherto unheard of, punishments were inflicted. In 1726 upon representation of the court of Directors, Mayor’s courts were established for proper administration of justice, but lack of knowledge made it futile. In 1753, another Charter was passed and Mayors were not allowed to sit in suits between Indians and no interested person
could sit as judge and no English law was applicable to Indians. In 1765, Robert Clive could obtain grant of Diwani from the Moghul emperors. The grant empowered holding of Diwani courts and Nizamat over Bengal, Orissa, Bihar. In 1772 Warren Hastings took control of criminal justice administration. A Fauzdar Adalut was established in each district for trial of criminal offences. European subjects had no connection in these courts, Kazi or Mufti sat in these courts to expound law and decide criminal guilt and to decide how to go about. In addition, a Sadar Nizamat Adalut was also established. The administration of criminal justice remained with the Nawabs, therefore, mohammedan criminal law remained in force. In the rest of the country, administration of justice was in the hands of Zamindars. In Bengal and Madras, Mohammedan criminal law was in force. In Bombay, Hindu criminal law applied to the Hindus. The Vyavahara Mayukha was the chief authority of Hindu law.

In 1773, the Regulating Act was passed affecting administration of criminal justice. A Governor General was appointed under this act, to be assisted by four councillors. Supreme court of judicature was established at Fort Williams. This court took cognizance of all matters. Appeals from this court lay to the King-in-council. The Charter laying the foundation of Supreme Court was drafted in March, 1774 and remained so until establishment of the High court under this act in 1861.

In 1781, an amending act was passed to remedy defects of the Regulating act, laying down defined powers of the Governor General -
in -council to constitute provincial courts. In 1793, Governor General Lord Cornwallis consolidated and repealed certain previous provisions.

At a later stage, in 1833, Mr. Macaulay, moved the House of Commons to codify criminal law in India and bring about uniformity. The year 1833 is a landmark year in the history of criminal law of India. The Charter of 1833 introduced a single legislature for Hindus and Mohammedans alike. Accordingly, the 1st Law Commission was formed in 1834. Mr. Macaulay (afterwards Lord) was the president and McLeod, Anderson and Milet were commissioners of the Commission. The principle followed was - “uniformity when you can have it; diversity when you must have it, in all cases, certainty”. In preparing the Penal Code they drew from the English laws, the Indian laws, Livingstone’s Louisiana code and the Code Napoleon. A draft code was submitted to the Governor General-in-Council in October 1837. On April 26, 1845 another commission was established to revise the code and it submitted its report in two parts, one in 1846 and the other in 1847. Subsequently, it was revised by Bethune and Peacock, who were members of the Governor General-in-Council. It was presented to the legislative council in 1856 and was passed on October 6, 1860. It superseded all previous Rules and Regulations and orders of criminal law in India and provided a uniform criminal law for all the people of the then British India irrespective of caste, creed or religion. Credit goes to Lord Macaulay and his colleagues for the firmly laid foundation of Indian criminal law and they did the excellent pioneering work. The
Indian Penal Code has withstood the test of more than a century and still largely meets the needs of the present day society.\textsuperscript{7}

This is however not to say that Indian Penal Code is a modern code in every sense and requires little change to meet the aspirations of contemporary society. With the emphasis of penology having shifted from punitive deterrence to reformation and correction the code has had to undergo transformation. The Santhanam Committee on Prevention of crime felt, the Indian Penal Code, though comprehensive, did not fully meet the requirements of the Society. However, hitherto uncovered fields have been tried to be covered by piecemeal legislation from time to time. Many other laws have also been enacted. But multiplicity of laws, like multiplicity of charges, is highly misleading and adds to difficulties of common man, accused, and perhaps lawyers and courts. So, it is high time that the bulk of all the penal laws are codified in simple language at one place\textsuperscript{8}.

The criminal laws in India have been codified in the Penal Code and in the Criminal Procedure Code, the former code deals specifically with offences and states what matters will afford an excuse or a defence to a charge of an offence, the Penal Code is the substantive law and the Criminal Procedure Code the adjective law. Section 5 of the latter code says- “all offences under the Indian Penal Code shall be investigated,

\textsuperscript{7} Ratanlal and Dhirajlal, The Indian Penal Code 20th Edn by Justice M. Hidayatulla and R. Deb

enquired into, tried and otherwise dealt with according to the provisions hereinafter contained”.

The provisions under the Indian Penal Code can be broadly classified into two categories, namely, (i) General Principles and (ii) specific offences. General principles relate to the basic principles of criminal law, criminal liability and provisions relating to general exceptions from criminal liability. These are:

(i) Introduction-Chapter I
(ii) General Explanation-Chapter II
(iii) Punishments-Chapter III
(iv) General exceptions-Chapter IV
(v) Abetment-Chapter V
(vi) Criminal conspiracy-Chapter VA
(vii) Attempts to commit offences-Chapter XXIII

Specific offences in the code may be classified into six major categories as below:

(1) Offences against the state, army, navy, and air force-Chapter VI & VII;
(2) Offences against public tranquility etc.-Chapter VIII, IX, IX A, X, XI, XII, XIII, XIV, XV & XIX;
(3) Offences affecting human body -Chapter XVI;
(4) Offences against property, documents and property marks corporeal or uncorporeal -Chapter XVII & XVIII;
(5) Offences relating to marriage and cruelty by husband or relatives of husband- Chapter XX & XX-A;
(6) Offences relating to defamation, criminal intimidation, insult and annoyance-Chapter XXI & XXII.

Besides the Indian Penal Code, 1860 and the Criminal Procedure Code, 1973, the most important law in respect of criminology is the Law of Evidence, which is enacted in the form of the Indian Evidence Act, 1872.

LAW OF EVIDENCE

The law of evidence consists of rules - statutory or otherwise, which regulate the acceptance or rejection of that information to a legal tribunal which will justify a conclusion or judgment upon the matter in issue before it. Sir Stephen named the great artery of law which defines rights, duties and liabilities as the substantive, and the next in importance by which the substantive law is applied to particular case, as the law of procedure or the adjective law. The law of evidence is adjective law as distinguished from substantive law, that is why it has been held that the law of evidence, which governs the courts, is the adjective law.

Sir Stephen defines “law of evidence is that part of the law of procedure, which, with a view to ascertaining individual rights and liabilities in particular cases, decides :(1) what facts may, and what may

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10 Sir James Fitzjames Stephen, Digest of the Law of Evidence
The relevancy of facts; (2) The proof of facts; (3) The production of proof of relevant facts.

For if it is assumed that a fact is known to be relevant, and its existence is duly proved, the court is in a position to go on to say how it affects the existence, nature and extent of the right or liability, the ascertainment of which is the ultimate object of the enquiry, and this is all that the court has to do.

Historically looked at, the origin of Indian Evidence Act may be dated at 1855. In 1855, Sir Lawrence Peel introduced a Bill for improvement of the law of evidence, which were lying in fragmentary enactments, which was carried by James Colvile and found place in the statute book as Act II of 1855. This Act, though totally devoid of arrangement was skilfully worded, and contained many valuable provisions, which applied to all courts in British India. The first Civil procedure code was passed as Act VIII of 1859 and in 1861 the first Criminal Procedure code found place in the statute book. Act XV of 1869 provided facilities for obtaining the evidence and appearance in court of prisoners, and for service of process upon them.
The Commissioners appointed in England to prepare a body of substantive laws for India, framed a draft code, which in October 1868 was introduced by Sir Henry Summer Maine and referred to a select committee, as a Bill to define and amend the law of evidence. This Bill was published and circulated and found to be unsuitable for India by some persons in authority. A new Bill was therefore prepared by Sir James Fitzjames Stephen, the worthy successor of Sir Henry Maine, which was printed, circulated and very freely criticised. Sir James accordingly recast it, and it was ultimately passed as Act I of 1872.

Having come to know of the various laws that are of relevance in dealing with crime, there arises the need to see some justification for creation of a criminal justice system and these may be viewed as follows:

(a) the violators of public morality need to be punished, because public morals provide the cement which keeps the society in a minimal state to togetherness and civilised conduct,

(b) common civilians need to be protected against unjustified and avoidable risks to their persons and property because in all societies there are some diseased individuals, who do not permit the streets to be safe,

(c) then, the possibility of private vendetta being always there, the victims or the aggrieved persons need a public redress of their grievances and this has to be provided under an objective system of law and its coercive enforcement,
(d) if offenders go unpunished, there remains scope of recurrence. Criminal law tries to deter these offenders,

(e) the human aspect of criminality seeks the solution of rehabilitation and converting offenders into law abiding citizens - this is a problem facing the criminal justice system,

(f) the State or the government is the custodian of public morality and criminal justice agencies to maintain norms through law enforcement.

Criminal justice system operates in accordance with specific criminal statutes and seek to control crime through the various mechanisms and through various agencies and instrumentalities.

A valid criminal statute must conform to certain constitutional and legal requirements like :

(1) The offence has to be defined and penalty awardable in clear and unambiguous terms,

(2) The criminal law has to be interpreted strictly against the accused, or in favour of the defendant as a general rule to ensure strict enforceability,

(3) The criminal law represents the will of the legislature and must ultimately be effectuated. There has to be provided some effectiveness to deter any political oneupmanship in order for maintenance of order in society,
The prescribing power, also known as police power of the law is the intrinsic power of the state in its capacity as protector of health, morals and public welfare of citizens.

Criminal laws also classify criminal offences; some methods of classification have much consequential effect in the administration of criminal justice. The criterion of seriousness as method of classification of crimes as measured by length and rigour of punishment is a significant one.

Notwithstanding the relativity of gravity, a criminal offence in a civilized society represents some act or omission, prescribed by law and punishable by fine, imprisonment, death, forfeiture of office or some other suitable penalty. So, under 'gravity' category also, crimes may be sub-classified as infractions, violations, misdemeanour and felonies.

Penologists have classified offences in terms of the victims also. Offences against people are like homicide, assault, rape, robbery etc. Offences against property are lacerny, arson, forgery etc. Offences against the dignity of the state are like tax evasion, bribery etc. Offences against public morality and 'victimless crimes' are two other varieties of crimes.

It is indeed a Herculean task to classify crime, but a beginning may be made by classifying them into two broad categories - as 'consensus crimes' and 'conflict crimes'. Consensus crimes are
considered to be those crimes which are generally acclaimed to be wrong universally for successive generations, which are Mala in Se, or wrong per se. Offences like murder, dacoity, robbery, rape burglary, theft etc. are of this category (may also be termed as “garden variety crimes”). The conflict crimes often referred to as Mala prohibita offences or wrongs by prohibition as proscribed and punished by a statute are said to exist where attitudes are related to status group membership. Included in this category are malicious mischief, vagrancy, and creating a public disturbance, chemical offences, alcohol and narcotics offences, possessory offences (firearms, explosive substances etc.), political crimes like treason, sedition, sabotage, espionage, subversion and conspiracy etc.

Another system of classifying crime follows the system of Malum in se versus Malum prohibitum crimes. Offences may also be offences of mental culpability and offences of strict liability. Mala in se crimes are bad in themselves in their very nature and are like murder, rape, theft etc. Malum prohibitum offences are bad merely because the statutes prohibit them.

The Indian Penal Code (Act 45 of 1860) included crimes of various categories under various heads:

In Chapter V (Secs. 107 to 120) it speaks about Abetment; Chapter V A (Ss 120 A, 120 B) deals with criminal conspiracy; Chapter VI (Ss 121 to 130) enumerates offences against the state; Chapter VII (Ss.131 to 140) deals with offences relating to the Army, Navy and Air
Force; Chapter VIII (ss.141 to 160) deals with offences against public tranquility; Chapter IX [Ss161 to 171(ss.161 to 165 A omitted)] says about offences by or relating to public servants; Chapter IX A talks of offences relating to elections; Chapter X (Ss.172 to 190) speaks of contempt of lawful authority of public servants; Chapter XI (Ss 191 to 229) speaks of false evidence and offences against public servants; Chapter XII (Ss230 to 263 A) deals with offences relating to coin and government stamps; Chapter XIII (Ss. 264 to 267) deals with offences relating to weights and measures; Chapter XIV (Ss. 268 to 294 A) deals with offences affecting public health, safety, convenience; Chapter XV (Ss.295 to 298) deals with offences relating to religion; Chapter XVI (Ss.299 to 377) talks of offences affecting the human body; Chapter XVII (Ss.378 to 462) deals with offences against property; Chapter XVIII (Ss.463 to 489 E) deals with offences relating to documents and to property marks; Chapter XIX (Ss.490 to 492) speaks on criminal breach of contract of service; Chapter XX (Ss.493 to 498) deals with offences relating to marriage; Chapter XXA (Ss.498 A) deals with cruelty by husband or relatives of husband; Chapter XXI (Ss 499 to 502) deals with defamation; Chapter XXII (Ss 503 to 510) speaks on criminal intimidation, insult, annoyance; Chapter XXIII (Sec 511) speaks on attempts to commit offence.

In reality, the concept of justice in human history through the ages has been moving round the definition of the term 'due'. Plato's notion of duty is implicit in the doctrine of ethical man and his 'expanded socio-ethical organism' called the state. The Romans'
concept developed as an adjunct to the theory of ‘jus naturale’ and ‘jus jentium’. The entire fabric of Anglo-Saxon jurisprudence from which emanates the notion of the “Rule of law”, has developed around the concept of ‘liberty loving rational man’, whom the authority of the state should not harass and still less, punish, unless proved guilty.. “The natural rights of man” of John Locke is at the centre stage of democratic set ups and rest upon the theory of Justice to serve the end of dignity of individual. To protect, ensure and defend the life of person against assailant and murderers has been regarded as criminal justice. To guarantee and enhance freedom and equality is the ‘rule of law’. The convention of Rule of law, as a part of democratic credo established that nobody can be punished unless proved guilty. Naturally, the institutions of police, bar, bench and the jails have been created to sort out the innocent, so that no one innocent is allowed to go to the gallows, let 99 guilty persons out of 100 be acquitted. As a check and balance, procedures and systems like bail, parole, prosecution, trial, witness, evidence etc. have been devised to avert any miscarriage of justice. The institution of bar emerged as the defender of the peoples’ life, liberty and property. The police in the west was designed as ‘citizen police’ and limb of law rather than executive arm of the state. The judiciary with the cooperation of the police and the bar has been given the role to defend law, protect rights and ensure justice. Therefore it is seen from the above that crime control mechanism comprises the criminal laws, for that matter substantive criminal law, Police, Lawyers, Courts, Judges, Prisons etc. for an endeavour to reduce or keep crime

under tolerable control, if not possible to be curbed in totality which is, of course, a very absurd proposition in the vastly expanding global population bringing with it unpredictable human psyche born as a result of a broad dimension of activities.

With the crime control mechanism at hand, law enforcement is carried out by these organs in specified manner within the framework laid down by the criminal laws. Criminal law and its administration has to follow certain set principles laid down by the substantive law, for example in the Constitution of India, the Criminal Procedure Code, 1973, The Indian Penal Code, 1860 and the Indian Evidence Act 1872 etc.

CRIMINAL LIABILITY

For gearing the machinery of crime control mechanism and law enforcement, it is the law currently used to identify the institutions of social control that attempts to prevent crime and disorder and preserve the peace and that attempts to protect life, property, and personal liberty of the individual. It is a time-honoured proposition that the existence of a crime requires two essential elements. One is external, consisting of an act or omission prohibited by criminal law. The other is internal and is generally referred to as criminal intent\(^2\). Before any criminal sanction can be imposed upon one’s behaviour, there must exist these indispensable elements. The operation of criminal law requires little explanation in clear cases. Someone who deliberately kills or rapes

\(^2\) Robert W. Ferguson and Allen H. Stokke, Guilty Knowledge or Intent, or mens rea, Holbrook Press Inc.
another is liable to be prosecuted, convicted and sentenced. Criminal liability is the strongest formal condemnation that society can inflict, and it may also result in a sentence which amounts to a severe deprivation of the liberties of the offender.

The chief concern of the criminal law is serious anti social behaviour. When we refer to criminal behaviour we are to consider what is criminal liability. The contour of criminal liability may be considered under three headings: (a) The range of offences;(b) The scope of criminal liability; and (c) The Conditions of liability.¹³

The range of offences are in respect of violation of:

(1) The person, including the offences of causing death and wounding, sexual offences, certain public order offences, offences relating to safety standards at work and in sports stadium, offences relating to fire arms and other weapons, and serious road traffic offences.

(2) General public interests, including offences against state security, offences against public decency, crime of breach of trust, offences against administration of justice, and various offences connected with public obligations such as payment of taxes.

(3) The environment and the conditions of life, including the various pollution offences, offences connected with health and purity.

¹³ Andrew Ashworth, Principles of Criminal Law, Clarendon Press, Oxford
standards, and minor offences of public order and public
nuisance; and

(4) Property interests, from crimes of damage and offences of theft and deception, to offences of harassment of tenants and crimes of entering residential premises.

As incidence and record of crimes that could be gathered from police records, as undermentioned, the scope of the study in respect of crimes under Indian Penal Code are limited to the available records. Moreover, the data that could be gathered from the Courts of the Executive Magistrates under the Criminal Procedure Code under Secs 97, 133, 107, 133, 144, 145, 146 etc. will only be projected. The data in respect of offences which have been received from the police records are as under:

Murder
Kidnapping
Riot
Arson
Dacoity
Robbery
Burglary
Theft
Extortion
Cheating
Fraud
Dealing in Explosive Substances
Narcotics offences
Excise Offences
Rape
Cruelty towards women.

After having looked into the range of criminal liability, we have to turn to the scope of criminal liability. A question is raised of the circumstances in which a person who does not cause such crimes or harms as mentioned herein, nevertheless, be held criminally liable. In legal terms, the question has two dimensions; Inchoate liability and Criminal complicity. More generally, there are the inchoate offences of attempting to commit a crime (attempted murder), conspiring with one or more other people to commit crime (e.g. conspiring to commit robbery) and inciting another to commit a crime. The doctrine of criminal complicity is designed to ensure the conviction of a person who, without actually committing the full offence himself, plays a significant part in an offence committed by another. A person may be convicted of aiding and abetting another to commit a crime, or counselling or procuring the commission of a crime by another.\footnote{Andrew Ashworth, Principles of Criminal Law, Clarendon Press, Oxford}

Attempting to commit an offence and the punishments therefor are dealt in sec.511 of the Indian Penal Code.

Abetment in general is dealt with from sec 107 to 120 of the Indian Penal Code, 1860 and criminal conspiracy has been dealt with in
secs 120A and 120 B of IPC. Section 34 of the same code deals with acts done by several persons in furtherance of common intention.

Now, the conditions to be fulfilled before an individual is convicted of an offence vary from one crime to another. There are many crimes which require only minimal fault or no fault at all. These are usually termed offences of strict liability. The traditional offences which are penalised by law are said to require mens rea. Beyond the mens rea requirement, which may differ in its precise form from crime to crime, there is a range of possible defences to criminal liability, so that even people who intentionally inflict harms may be acquitted if they acted in self defence, while insane, under duress and so on. General exceptions accorded to criminal liability has been enumerated in secs 76 to 106 of the Indian Penal Code and punishments have been laid down from Sec. 53 to Sec 75.

The Indian Penal Code provides for exemptions from criminal liability. In the modern administration of criminal law, the accused is allowed to raise the plea of exceptions either as excusable or justifiable to obviate the punishment and to be treated as non-guilty because of non-existence of mens rea. The exemptions as classified in Chapter IV of the Indian Penal Code are as under:

1. Mistake of Fact; i.e. where one feels bound by law so to do, or believing himself justified in law to do so (Sec.76 IPC),

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15 Andrew Ashworth, Principles of Criminal Law, Clarendon Press, Oxford
16 Indian Penal Code, 1860, Act 45 of 1860
2. Judicial Acts with their ramifications and extensions (Sec.77, 78, 79 IPC)
3. Accident in doing a lawful act (sec.80 IPC)
4. Acts preventing big harms through small harms without criminal intent (Sec.81)
5. Non age Doli incapax (Sec.82 IPC, child below 7 years)
6. Immaturity of understanding because of unsoundness of mind, or intoxication against one’s will or knowledge or idiocy (Sec.83, 84, 85, 86, 87 IPC)
7. Acts done by consent or done in good faith for the benefit of the person without consent (Sec.88 to 92 IPC)
8. Communication made in good faith (sec.93 IPC)
9. Acts to which a person is compelled by threats (Sec.94 IPC)
10. Acts causing trifling harm (sec.95 IPC)

Exemptions are also granted in the Indian Penal Code on the grounds of Right of Private Defence. Private Defence is the defence offered by the code to the accused in that he need not run away, on the other hand he would be perfectly justified in law if he delivers a counter attack on his assailant, provided always the injury which he inflicts in self defence is not out of proportion for the injury with which he was threatened\(^17\). The scope and extent of private defence has been enumerated in various sections from 96 to 106 IPC and this is a valuable right\(^18\). Section 99 IPC speaks of the acts against which there

\(^{17}\) Gottipulla V. State, AIR 1970 SC 1079
\(^{18}\) Mohd. Khan V. State 1972 Cr. LJ
is no Right of Private Defence and the extent to which the right may be exercised.

In considering the question whether the accused exceeds the Right of Private Defence, the Court has to consider the part played by the accused person, gravity of the offence committed and the nature of the attack made by them.\(^{19}\)

The Right of Private Defence of a person and property has to be exercised subject to the following restrictions:

(i) It is not available if there is sufficient time for recourse to public authorities,

(ii) More harm than is necessary should be caused in the exercise of the right,

(iii) There must be reasonable apprehension of death or grievous hurt to the person or damage to the property concerned.\(^{20}\)

Moreover, there is no Right of Private Defence against unarmed and unoffending person.\(^{21}\)

It is well settled that a plea of Right of Private Defence would be available to the accused even though the plea has not been taken by the accused provided the materials on record would justify such a plea.\(^{22}\)

\(^{19}\) State V. Jinappa 1994 Supp. I SCC 178

\(^{20}\) AIR 1976 SC 1674

\(^{21}\) Gurbachan Singh V. State of Haryana AIR 1974 SC 496.

\(^{22}\) Kasam Abdullah Hafiz V. State AIR 1998 SC 1451
After having had some idea as to the exemptions from criminal liability, it is also to be seen that in order to bring in criminal liability, certain elements of crimes, which are necessary to be viewed for endowing criminal liability, have been considered under the laws as under:

(1) Act; (2) Intent; (3) Concurrence of Act and Intent; (4) Causation; (5) Corpus Delicti; (6) Attempts; (7) Conspiracy (Robert W. Ferguson and Allen H. Stokke, Concept of Criminal Law, Holbrook Press Inc).

Criminal guilt would attach to a man for violation of criminal law. The Latin maxim, Actus non-facit reum, nisi mens sit rea, signifies that there can be no crime without a guilty mind. However, it must be provided that an act, forbidden by law, has been caused by conduct and that the conduct was accompanied by a legally blameworthy attitude of mind.

An act is defined as “an event subject to the control of the will”. For the purpose of fixing criminal liability, an act may include commission or omission as well (Sec.32 IPC), an act may be analysed as consisting of three parts:

(a) Its origin in some mental or bodily activity or passivity of the doer, that is, a willed movement or omission;

(b) Its circumstances; and

(c) Its consequences

\[23\] Monard and Kadish, Criminal Law and Its Process, 1962

\[24\] Monard and Kadish, Criminal Law and Its Process, 1962
To constitute a crime there must always be a result brought about by human conduct which the law prohibits. An event is distinguishable from the conduct that produces the result. Only those acts that the law has chosen to forbid are crimes.

Mens rea is generally taken to mean blameworthy mental condition. There are two tests devised to determine mens rea, the first is whether the act in question is voluntary and second, whether the accused had foresight of the consequences of his conduct. To appreciate the meaning of mens rea, a clear conception of the words likes of which connote requirement of mental element, i.e. intention, motive, recklessness, knowledge, negligence etc. is required.

Intention means a purpose or desire to bring about a contemplated result or foresight that certain consequences will follow from the conduct of the person. Intention may be general or specific or transferred. An additional mental requirement over and above an intent to commit the deed that constitutes the crime may be spoken as a specific mental element. For example, Lacerny, in common law, is defined as the trespassory taking and carrying away of personal property of another with intent to steal. But intentionally taking away of property owned by another is not lacerny if the actor intended to return such property at a later date.

Transferred intent may be where the defendant shoots or strikes at A, intending to wound or kill him, and unforeseeably hits B instead.

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26 Jerome Hall, General Principles of Criminal Law, 1960
Intention must also be distinguished from motive. Criminal law, however, takes into account only a man’s intention and not his motive, absence of motive may be a factor in consideration of the guilt of the accused. Intention is an operation of the will directing an overt act, while motive is the feeling that prompts the operation of the will. Motive is something which prompts a man to form an intention.

There is a clear distinction between intention and knowledge also; knowledge is awareness of the consequences of an act, though the man did not intend to bring about that consequence. Knowledge is again distinguishable from ‘reason to believe’. A person is supposed to know a thing where there is a direct appeal to his senses, whereas reason to believe means sufficient cause to believe a thing, but not otherwise (Sec.26, IPC).

Again, recklessness is the state of mind of a person who foresees the possible consequences of his conduct but acts without any intention or desire to bring them about. If A throws a stone over a crowd, without caring whether it would injure someone, and the stone falls on the head of one of the persons in the crowd, A is responsible for causing injury recklessly.

Negligence is used to denote want of care and precaution, which a reasonable man would have taken under particular circumstances of a

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26 Basdeo V. State of Pepsu, AIR 1956 SC 448
27 R.C. Nigam, Law of Crimes in India, 1965
case. Indian Penal Code, however, fixes criminal liability on the ground of negligence in a few cases only (Sec.304 A, 337, 338, 279, 282 - 287, 289 IPC). Negligence must be distinguished from neglect. Neglect, unlike negligence does not indicate a specific attitude of mind, but states a matter of fact, which may be the result of either intentional or negligent act.

In speaking on all these aspects in the Indian Penal Code, mens rea has not been mentioned, but the doctrine has been incorporated by using the words as intentionally, knowingly, voluntarily, fraudulently, dishonestly, etc. depending on the gravity of the offence. In Chapter IV of the Code (Indian Penal Code, 1860) relating to general exceptions, the concept of mens rea has been imported.

The Supreme Court of India has reiterated that unless a statute either clearly or by necessary implication, rules out mens rea as constituent part of a crime, a person should not be guilty of an offence, if he does not have a guilty mind.

Exclusion of mens rea forms crimes of strict liability.

EXCLUSION OF MENS REA

By express provision of law

By necessary implication

Object of the statute

Subject matter to be dealt with

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28 Blyth V. Birmingham Waterworks Company, 1856
29 State of Gujrat V.D.P.Pandey, AIR 1971 SC 866
In offences relating to food and drugs, weights and measures, public nuisance, libel, contempt of court, violation of municipal laws and regulations, which are not criminal but quasi-criminal in nature and are prohibited in public interest are called Strict liability or Absolute liability offences. The jurists have preferred to call Strict liability offences as offences relating to economic laws or administrative regulations instead of penal offences\(^{30}\).

The object of the Strict liability / Absolute liability regulations is not to punish the vicious, but to put pressure upon the person to discharge their duties properly in the interest of public and to say that the harm caused must be absolutely liable to be compensated\(^{31}\).

Being aware as to what constitutes criminal liability and what are the extents of exceptions that are available to avoid criminal liability, it becomes necessary to know as to how the law enforcement machinery is geared up to lessen, if not rid, the society from crime situations. The crime control mechanism has been established by various laws made by the legislators and also the courts to a great extent, when legislated statutes do not speak in eloquence. Setting in motion the various mechanisms is the primary function of the law enforcement segment. Laws have clearly demarcated the lines and limits within which the various mechanisms of crime control have to function. All the instrumentalities have to do is exercise the functions within the

\(^{30}\) Jeromb Hall, General Principles of Criminal Law, 1960

\(^{31}\) M.C.Mehta V. Union of India AIR 1987 SC 1086
specified jurisdiction towards control of crime in whatever manner is prescribed by the laws.

Crime control is of utmost importance for peaceful habitation of the world population, even though, in this study the area is taken to be Guwahati, the capital city of Assam, India. Crime control in the real sense of the term means enforcement of laws and administration of criminal justice.

Criminal justice administration machinery is geared up with the information received by the police, which is one of the most important organ of the law enforcement set up. Immediately follows investigation, spot verification, study arrest, detention, prosecution, framing charges, gathering evidence, committing to trial, trial, sentence, acquittal or conviction, appeals or revisional approach, imprisonment or release and after release effect.

In administering criminal justice, various organs are engaged in the process of law enforcement. These are being discussed in the Chapter under the head - LAW ENFORCEMENT. In the process of law enforcement there are various ramifications and these are to be discussed simultaneously so as to have a clear conception of the various centrifugal forces at work to hinder or weaken or even strengthen the process of law enforcement.
Now, after having had some idea of the crime control mechanism, endeavour will now be made in the next chapter to look at the various facets and ramifications in respect of law enforcement.

**LAW ENFORCEMENT**

In a democratic set up there always exist the system of ‘Rule of Law’ which means that all the activities in the society is governed by set rules and every single person in that given society is subordinate to the law established by the appropriate authority by proper application of the procedures. Law enforcement is an honourable occupation that serves a vital need of society. In the process of law enforcement, there are quite a large number of stages that are to be passed through. Whenever the matter of law enforcement comes to the mind, concomitantly comes the name of the organisation of police. Police is the most vital organ of the law enforcement machinery.

**THE POLICE**

The word ‘police’ is derived from the Greek word ‘politisia’, or its latin equivalent, ‘politia’. The latin word ‘politia’ stands for state of administration. But the word ‘police’ today is generally used to indicate the body of civil servants, whose duties are preservation of order, prevention and detection of crime and enforcement of law. Earnst Fround defined police power as “the power of promoting public welfare by restraining and regulating the use of property and liberty”.

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32 Earnst Fround, The Police Power, Public Policy and Constitutional Right
Police is the most prominent instrumentality of law enforcement and crime control. The average citizen thinks of the police as an organisation primarily concerned with prevention of crime and catching the criminal. When a citizen sees a policeman in the street corner, he feels himself more secure. Most police work, however, begins only after the crime occurs and reported. The traditional function of the police was meant to maintain order in urban neighbourhood. People, however, turn to police for help with the growing concern for criminal situations. Extraneous political interferences inhibit police efficacy considerably. David H. Bailey, in this context expresses, "In India today, a dual system of criminal justice has grown up - the one of law, the other of politics. With respect at least to the police, decisions made by police officials about the application of law are frequently subject to partisan review or direction by elected representatives. Thus, autonomy of police officials in specific and routine application of law has been severely curtailed. This is equally true of law and order situations. People accused of crime have grown into the habit of appealing to the political figures for remission from sanction of law. Police officers throughout the country have grown accustomed to calculating the likely political effect of any enforcement action they contemplate. Fearing for their careers, and specially their postings, they become anxious and cynical. But everywhere, officers are expected to be held personally accountable by politicians even more than by superior officers for enforcement actions taken in the course of duty. Altogether, then, the Rule of Law in modern India, the frame upon
which justice hangs, has been undermined by the rule of politics. Supervision in the name of democracy has eroded the foundations upon which impartiality depends in a criminal justice system.”

The Shah Commission also in the 3rd final report categorically observed that “If the basic unity and territorial integrity of the country is to be emphasized at the political level, it is imperative to ensure that the officials at the decision making levels are protected and immunised from threats or pressures, so that they can function in a manner in which they are governed by one single consideration - the promotion of public well being and the upholding of the fundamentals of the Constitution and the Rule of Law.”

Lord Macaulay, who drafted the Indian Penal Code, 1860, also believed in the efficacy of law in improving people and their character. He wrote, “When a good system of law and police are established, when justice is administered cheaply and firmly, when idle technicalities and unreasonable rules of evidence no longer obstruct the search for truth, a great change for better may be expected, which in turn shall produce a great effect on traditional character.

“Police”, says Jeremy Bentham, “is in general a system of precaution either for the prevention of crime or of calamities”. A certain amount of power must be made over to the police, and it is one of the most difficult and delicate duties for the legislature of any country to
determine the nature and extent of such powers and the safeguards by which these could be surrounded\textsuperscript{33}.

If law represents the collective conscience of the society, the policeman, its principal law enforcing agent ought to be the staunchest protagonist, defender and keeper of that conscience\textsuperscript{34}. For, how else can he derive his moral authority to enforce law! A policeman is the axis on which the Rule of Law rests and rotates. Without him, society would be a conglomeration of divergent and infighting groups in which development of human personality would become impossible.

Criminal investigation is a segment of police operation closely aligned with the apprehension process by which the police search for and arrest criminal offenders. Investigation begins immediately upon notification of a suspected crime and ends either when the desired results have been obtained or when the case is closed for lack of evidence. The apprehension process as mentioned above is as follows: After a crime is reported, discovered or detected, the Police Officers respond and a search is conducted for finding the perpetrators of the crime. Throughout the search, suspects appear and are questioned. In a successful search, sufficient evidence to support a charge is assembled and a suspect is arrested\textsuperscript{35}.

\textsuperscript{33} H.A.D. Phillips, Preventive Jurisdiction, Law Qrty Review, Vol.3
\textsuperscript{34} R. Deb, Police and Law Enforcement, S.C. Sarkar & Sons Pvt. Ltd
\textsuperscript{35} Kamal Saini, Police Investigations, Procedural Dimensions and Methods, Deep & Deep Publications, New Delhi
In the early stages of social and political development, society tended to rule on draconian punishments like eye for an eye, tooth for a tooth, rather than on any effective police organisation. Neighbours kept vigil on the other neighbours and village elders and it was not difficult to identify a criminal committing a heinous crime. ‘Raja’, the king was the protector of the people, the officials included a General and a Village Headman, but their exact functions were not known. Incidentally, dogs were appeared to have been used to run after thieves in Vedic times. The Valmiki Ramayana furnishes glimpse of policemen on patrol, security guards and spies. Manusmriti also provides much information as to the duties of the King. In the midst of two, three or five villages, he was to place a central part of guards and another in the midst of a hundred villages. Provision was there for appointment of a high officer in each city with ample powers of restraint and coercion. The village Headman was mainly mentioned as a collector of revenue from villagers. The Brihaspatimitra (300 - 500 A.D) states that, ”When there was trouble from robbers, each house was to send an armed able bodied man”. When local forces were inadequate, police and military were sent by the higher authorities. In towns the administrator was in charge of ‘Purapals’ to preserve law and order by means of police, secret agents and troops. Katyayanasmriti (400 - 600 A.D) says about officers appointed to arrest thieves. Naradasmriti fixes responsibility on the public to trace stolen goods,

36 Kane P.V., History of Dharmaashtra, Vol III, 1946
37 Valmiki Ramayana, IV, PP -15-24
38 The Ordinances Of Manu, Translated from Sanskrit, Completed and edited by Edward Hopkins
39 A.S.Altekar, State and Government in Ancient India, 3rd Edn, 1958
wherein is seen the semblance of public police\textsuperscript{40}. Sukrantisara mentions
the Pratihara, a Sudra, as the guards at the gate of the village wall. There was not laid down any proper procedure for investigation of
offences.

In Kautilya’s Arthashastra officer with the designation of Nagarika - in later days known as Kotwals are known to have existed\textsuperscript{41}. There were also other officers to carry out police duties.

From Arthasashtra and Reports of Megasthenes it is known that in town areas, police assumed great significance with a place second
only to the Collector General. Concept of visiting judges came into
vogue with the impact of Buddhism and there developed a concept of
surprise check giving rise to a moral and religious tone\textsuperscript{42}. Complaints
were received by the city Magistrates and held inquisitions.

In Ancient India the basis of police administration was the
separation of rural and urban wings. Judiciary was easily accessible
with no provision for too many appeals\textsuperscript{43}.

Then the Pathan conquerors brought with them a concept of
police that existed in their land in the reign of Haroon-Ul-Rashid. The
law infact remained the choice of the Kazi. Sher Shah Suri organised
the government and introduced a new system of Regulatory police.

\textsuperscript{40} Surendranath Sen, Administrative System of Marathas, 2nd Edn, 1925
\textsuperscript{41} Kautilya Arthasashtra, Translated by Dr.R.Shamasasy, 4th Edn, 1951
\textsuperscript{42} Trilok Nath, The Indian Police, A Case for New Image, Sterling Publishers
During the Moghul period, however, - even in Akbarnama compiled by Akbar's Councillor Abul Fazl Allami (one portion of Ain-E-Akbari) - direct reference to police administration is scarce. In criminal cases, justice was delivered by the Qazi, and the Mir A'dl was to carry out the findings. In the towns police function rested with the kotwals.

During the reign of Shah Jahan, the police system was so strict in all things and, in particular, with reference to road safety, that there never arose any necessity to execute a man for having committed theft.

The Marathas evolved a system of Panchayat and Kotwal.

Neither in ancient India nor in the medieval India a set procedure for police investigation was laid down. Use of third degree method by police can, however, be traced from the time of Kautilya's Arthasashtra and still is very much in vogue, although much efforts have been made for eradication.

The British period saw the emergence of a centralised police force based on provinces aided by the armed component of the same force. At the time of passing the Charter Act, 1833 there was a dichotomy in administration of justice. This Act laid down a body of law ought to be established in India applicable to all classes, Europeans as well as Indians. In pursuance, in 1834 an Indian Law Commission

44 Jadunath Sarkar, Mughal Administration
45 Francois Bernier, Travels in The Mogul Empire
was established with Macaulay—who had become the legal member of the Governor General’s Council—as its President and moving spirit.  

In 1853, the second Indian Law Commission established in London was charged with the duty of examining the recommendations of the earlier Commission regarding judicial procedures, as well as considering measures for amalgamation of the Supreme and Sadr Courts in each Presidency, in order to avoid the embarrassment which a diversity of procedures threw in the way of an appellate jurisdiction. There had been no systematically laid down procedure in the existing laws, although the Criminal Procedure matter had been slightly improved by the Supreme Court Act (Act XVI of 1852) in the Presidency towns. The Law Commission drafted the Criminal Procedure Code with little regard to arrangements and without a general plan. It came into force with the commencement of the Indian Penal Code in 1862. It had been amended a number of times with the most drastic amendment in 1973. Police and its powers are enumerated in the Criminal Procedure Code, 1973 in Chapter XII. The Law Commission presented its 41st report with recommendations for drastic amendment in 1969 and on that line the amendments were effectuated after the recommendations were considered by the government under the following aspects:

(i) An accused should be tried in a fair manner as per the principles of Natural Justice;

46 The Cambridge History Of India, VI

47 Fendall Currie, The India Code of Criminal Procedure, XXV
(ii) The police procedure should be simple ensuring fair deal and justice to the down trodden of the country;

(iii) Delayed investigation and delayed trial which defeat the very purpose of justice should be avoided.

Most of the recommendations were incorporated in the Criminal Procedure Code which came into effect from 1973.

The police is given the statutory right to carry on investigation before prosecution is launched. The courts are not empowered either under sec.401 or under sec.482 (Criminal procedure Code, 1973) to interfere with its rights. In the law enforcement machinery judiciary and police are to function in tandem. The function of the police and judiciary are complementary and not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. Except in cases like Habeas Corpus, the courts function begins when a charge is preferred before it and not until then.

The report filed under the provisions of sec.154 of Criminal Procedure Code, 1973, is called the first information report (F.I.R) which is recorded on the information of the informant and it sets the

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48 State of West Bengal V. S.N.Basak AIR 1963 SC 447; A.K.Roy V. State of West Bengal AIR 1962 Cal.135

49 State of West Bengal V. S.N.Basak
criminal law in motion. It forms the basis of investigation\textsuperscript{50}. However, the receipt and record of information is not an essential condition to set the criminal law enforcement investigation in motion. Sec. 154 (of the Criminal Procedure Code, 1973) has a three fold objective in view. First, it keeps the District Magistrate and the Superintendent of Police informed; secondly, the material on which investigation commenced is made available to the Judicial Magistrate, through the copy of the F.I.R.\textsuperscript{51} and moreover, thirdly, it is a safeguard against forgetfulness and embellishment\textsuperscript{52}.

The F.I.R. is to be filed without delay. Delay without explanation is viewed with suspicion\textsuperscript{53}. Delay of 3 days without any explanation is fatal to the case\textsuperscript{54}. Delay is, however, a circumstance which puts the court on its guard\textsuperscript{55}. Where delay in filing the FIR in a rape case has taken place because of the honour of the family was involved, court was satisfied with the explanation\textsuperscript{56}. The delay was properly explained in the rape case where the father of the girl was awaited after the incident who after his arrival at home consulted the village Sarpanch and filed the report next day only due to the distance of the police station and dark night\textsuperscript{57}. Delay was well explained where father of the girl hearing the suicide news of the daughter rushed to hospital where

\textsuperscript{50} Joseph Apren V. State of Kerala. (1973) 3 SCC 114
\textsuperscript{51} Joseph Apren V. State of Kerala. (1973) 3 SCC 114
\textsuperscript{52} Nazir Ahmed, AIR 1945 PC 18
\textsuperscript{53} Ramji Surja and Another V. State of Maharashtra, AIR 1983 SC 814
\textsuperscript{54} Satbir V. State of Uttar Pradesh, AIR 1982 SC 1216
\textsuperscript{55} Uttam Chand V. State of J & K, KLJ 1990
\textsuperscript{56} Harpal Singh V. State of Haryana, AIR 1981 SC 361
\textsuperscript{57} Prithvi Chand V. State of H.P. AIR 1989 SC 702
the deceased was taken, stayed there throughout the night and the next
day till body was handed over and thereafter filed the report\textsuperscript{58}. Though
the recording of the First Information Report and information to the
police is expected to be at the earliest to avoid any embellishment,
improvement, false implication, concoction, afterthought or coloured
vision, yet if the delay is satisfactorily explained then it had got no
effect\textsuperscript{59}. The matter of delay has been dealt with in an elaborate manner
so that it is ensured that law enforcement is viewed in its proper
perspective taking into consideration all relevant aspects.

Law enforcement envisages investigation by the police at the
very first instance. A cognizable offence can be investigated by the
police on the order of a Magistrate; once such order is received, the
police officer will exercise all the powers as exercised in cognizable
offence except to make an arrest without warrant (Sec.155
Cr.P.C.1973). There are certain cases when during investigation it was
discovered that in addition to cognizable offence, non-cognizable
offences were also committed and the question arose whether
investigation can proceed without Magistrate’s order, it was suggested
that investigation can proceed without a magistrate’s order in such
cases\textsuperscript{60}. Similar recommendations were made by the 41st Commission

\textsuperscript{58} Gurbachan Singh AIR 1990 SC 209
\textsuperscript{59} Dhobi Yadav and Another v. State of Bihar 1990(I) Crimes 28
\textsuperscript{60} Law Commission of India, 37th Report, Para 415
When an information of a non-cognizable offence is received by a police officer, it shall be briefly but intelligently recorded in the station diary (Daily Diary), shall be signed, sealed or marked by the person making it on both foil and counterfoil and all particulars required by Sec.41 of the Police Act (Act II of 1983) shall also be noted. The copy of the entry shall be signed and sealed with the police station seal by the recording officer and handed over to the informant, who will be referred to the Magistrate for filing a complaint before the Magistrate. The Magistrate may take action on his own and initiate a criminal proceeding or he may direct the police to investigate the case. A police officer who refuses to write report on the Daily Diary or enters a fabricated report is liable to punishment and departmentally liable to be dismissed from service for such an offence.

The police have a statutory right to investigate the cognizable offences under Sec.156 of the Cr.P.C.1973 without requiring any authority from judicial officers. Neither the High Court nor the Magistrate can interfere with the statutory rights by any exercise of the inherent powers of the Court under Secs 401 and 482 of Cr.P.C. The powers of the police officers are not subject to control of the Magistrate and cannot be stopped by a Magesterial enquiry.

Section 157 Cr.P.C. provides for procedure where cognizable offence is suspected. It imposes certain duties upon the officer - in -

82 The Code Of Criminal Procedure, 1989(J&K State)
83 Nazir Ahmed AIR 1945 P.C.18
Charge of a police station and any interference by the government with these statutory duties is illegal\textsuperscript{65}. The police acquires the power to investigate as soon as he receives the report under section 154 of Cr.P.C. of a cognizable offence\textsuperscript{66}. The police report is to be routed through the superior officer so that the latter may be kept in touch with the position of the crime, secondly, they may give instructions as to how best to conduct the investigation (Sec.158 Cr.P.C.).

The power to direct investigation which is conferred by the Cr.P.C. upon a Magistrate is limited to specific contingency of the report under the proviso to section 157\textsuperscript{67}, being one of the refusal by the police to investigate\textsuperscript{68}. It cannot be used when a police reports that it has taken up the investigation (Sec.159 Cr.P.C.).

A defect or illegality in investigation, however serious, had no direct bearing on the competence of or the procedure relating to cognizance of trial. Any irregularity committed in investigation is curable under section 465 of the Cr.P.C.\textsuperscript{69} The police report submitted by the investigating officer has to pass through judicial scrutiny of a Magistrate at the stage of taking cognizance. Although accused person has no right to be heard at this stage, in case the accused person has any grouse against the investigating officer or with the method of investigation, he can bring to the notice of the Magistrate his grievances.

\textsuperscript{65} Jag Engineering V. State of West Bengal(1972) 72 CWN
\textsuperscript{66} Kantilal V. State AIR 1970 Guj 218
\textsuperscript{67} Pancham V. State AIR 1967 Pat 416
\textsuperscript{68} Sharma V. Bipin AIR 1970 SC 786
\textsuperscript{69} Public Prosecutor V. Hatam Bhai AIR 1969 AP 99
which can be looked into by the Magistrate\textsuperscript{70}. In a case, the police acted in a partisan manner to convert the offence from Sec.302 IPC to 304 IPC within hours of registration of the case without waiting for post-mortem report as the deceased had died in police custody due to police torture. The case was further converted to Sec.323/34 IPC pending of a Writ petition. It was held that police acted in a partisan manner to shield the real culprit. It is necessary in the interest of justice to have fresh investigation made through an independent authority so that truth be ascertained\textsuperscript{71}.

Once investigation is completed and charge sheet filed, ordinarily it is not for the court to reopen investigation. However, for delivering complete justice and instill confidence in the public mind reinvestigation by Central Bureau Of Investigation (CBI) was ordered\textsuperscript{72}.

Investigation in a case should be without any delay, inordinate delay violates Fundamental Rights of speedy trial under Art.21 of the Constitution of India\textsuperscript{73}.

It is the discretion of the police officer under Sec.54 of the Code of Cr.P.C. to arrest a person suspected of a crime or may watch his movements by compelling him to remain as witness without arresting

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\textsuperscript{70} State of Bihar and Another V.Shri P.P.Sharma AIR 1991 SC 1260 \\
\textsuperscript{71} Kashmiri Devi V.Delhi Administration and Another, Cr.LJ 1988 SC 188; R.S.Sadhi V. State of U.P. and Others AIR 1994 SC 38 \\
\textsuperscript{72} Punjab & Haryana High Court Bar Association, Chandigarh through its Secretary V.State of Punjab & Others AIR 1994 SC 1023 \\
\textsuperscript{73} Surya Narayan and others V.State of Bihar AIR 1987 Pat 219
\end{flushleft}
him. The object of investigation is to extract unvarnished truth, misconception of facts, lies and garbled versions. The object of investigation has never been to secure conviction by any means. The practice of 'third degree' still prevailing with some police officers for extracting clues and confessions from suspects by torturing his body, tormenting his mind is most dangerous and often hampers than help in the discovery of truth. Jurisprudence does not approve of this as volition and violence cannot co-exist.

An investigating officer can summon any person to attend the investigation by issuing a written order and shall endorse on the copy of the order in form 149 (Police Manual) to be retained by the person so summoned, with the date and time of his arrival etc. No avoidable trouble should be given to any person from whom enquiries are made and no person shall be unnecessarily detained. (As soon as the FIR is lodged, a copy is to be immediately despatched to the Magistrate so as to be able to control the investigation and if necessary to issue directions under Sec.159 Cr.P.C.).

Under Sec.160 of Cr.P.C.1973 investigating police officer may require the attendance of witness before him. It aims at securing attendance of persons who could supply vital information in respect of commission of an offence and would be examined as witness in the trial.

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74 Jamana, AIR 1974 SC 1822
75 State V.Kedamath AIR 1960.122 Punjab.
Section 161 Cr.P.C. empowers an investigating officer to examine orally any person acquainted with the facts and circumstances of the case. The person is bound to answer unless these tend to incriminate himself. Investigator may reduce the answer to writing the statements of the witness.

Sec.162(1) of the Cr.P.C. lays down that statements to police officers are not to be signed to protect the accused both against overzealous police officer and untruthful witness. Section 163 of the Code (Cr.P.C) lays down that all sorts of oppression and trickery in regard to obtaining confession are to be avoided as mentioned in Sec.24 of the Indian Evidence Act, 1872. Section 164 Cr.P.C. deals with confessions made before the Judicial Magistrate. Magistrate must conform to the instructions laid down in this section. Sec. 165 Cr.P.C. authorises the officer-in-charge of the police station conducting the investigation to conduct search at any place within the jurisdiction of the police station. He can also authorise a subordinate in writing to conduct the search. All the precautionary measures under section 100 of the Code (Cr.P.C.1973) are to be the followed.

Sec.166 of the Cr.P.C. provides that in cases where officer-in-charge of a police station or an investigating officer not below the rank of sub-inspector stands in need of making a search within the limits of another police station, such a police officer can require the officer-in-charge of that other police station to conduct search in his jurisdiction.

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76 Jamana AIR 1974 SC 1822
77 Kishore Chand V. State of Himachal Pradesh AIR 1990 SC 2140
and in circumstances of exigency he can conduct the search by himself if destruction or concealment of evidence is feared for delay.

Sec. 167 Cr.P.C. provides for remand. It has been laid down that in offences punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, accused can be remanded upto 90 days including 15 days police remand and in other cases, period of remand will be upto 60 days including 15 days of police remand 78.

Section 168 Cr.P.C. provides that when a police officer makes an investigation, he must report the result of the investigation to the officer-in-charge of police station. If he concurs, the result of investigation is sent to supervisory police officer for his approval. In case he differs, he can reinvestigate or get it reinvestigated till he agrees. Section 169 of the same Code empowers the officer-in-charge of the police station or the investigating officer to release the accused if the evidence is deficient. Under sec. 169 when a final report is submitted by police, the Magistrate is bound by this report. He can, however, come to a different conclusion 79. Section 170 contemplates that if the officer-in-charge of the police station is satisfied that there is sufficient evidence against the accused, the accused shall be forwarded to the magistrate competent to take cognizance of case and a police report under section 173 Cr.P.C. be also forwarded 80.

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78 Central Bureau of Investigation V. Anupam J. Kulkami, 1992 Cr.LJ 2768 SC
79 Param Hansh Singh, 1988 Cr.LJ NOC 16 (All)
80 Govinda, 21 Cr.LJ 769
Sec. 171 lays down that no complainant or witness should be subjected to unnecessary restraint except recusant complainant or witness who may be forwarded in custody to magistrate who may detain him in custody for executing the bond for appearance in the court or till the hearing of the case is completed. Evidence of witnesses subjected to unnecessary restraint may not be accepted as voluntary\textsuperscript{81}.

Section 172 Cr.P.C. lays down the procedure for maintaining the case diary by the investigating officer. The investigating officer has to enter all the proceedings pertaining to the case in the proper register. He has to mention the time of all relevant proceedings, the time of beginning and closing of investigation. The object is to enable the court to check the method of investigation\textsuperscript{82}. The scheme of this section is explained by Supreme court in\textsuperscript{83} Mukund V. Union of India.

Section 173 Cr.P.C. enjoins upon the investigating officer to complete the investigation without unnecessary delay. It lays down the condition of filing a charge sheet (challan) in the court of law. As soon as the investigation is completed it is sent to the supervisory officer for perusal and his comments. If he approves, the case is filed in the court of law, if he differs he issues the instructions to officer-in-charge of police station to that effect. The magistrate will review the facts independently and see whether the acts alleged constitute crime and whether the evidence and the circumstances justify putting the accused

\textsuperscript{81} Bajrangi, 4 CWN, 49
\textsuperscript{82} State of Bihar V. B.P. Sharma 1991, Cr.LJ 1428 SC
\textsuperscript{83} Mukund V. Union of India, (1989)Supp.I SCC 622; AIR 1989 SC 144
on trial. FIR and investigation are liable to be quashed where on the alleged fact, no offence is made\textsuperscript{84}.

Section 174 of the Cr.P.C. lays down the procedure to conduct the inquests by police in case of deaths under suspicious circumstances or unnatural death. To conduct the inquest under this section corpse must be available\textsuperscript{85}. After ascertaining the cause of death the action is taken by the police accordingly. If the death is due to the natural reasons or under unsuspicious circumstances, e.g. due to natural calamities, due to accidental fall from a place without anybody’s fault etc., the inquest report is completed, signed by the investigating officer and other persons present there as concur therein and forwarded to the District Magistrate or Sub-Divisional Magistrate. After ascertaining the incidence of death, the body of the deceased is got post-mortemed\textsuperscript{86}. If some offence is made out, the case is registered in the police station accordingly and the investigation is conducted as per the recipe suggested in the preceding sections of the Code.

Section 175 of the Code, in proprio vigore, empowers the police officer conducting the inquest under section 174 Cr.P.C. to summon the witness who are acquainted with the facts of the case. Every person so summoned will be bound to answer such questions pertaining to the case other than which incriminate him. Magistrate cannot issue any

\textsuperscript{84} Basistha Narayan Misra V. State of West Bengal 1993 Cr.LJ, Cal
\textsuperscript{85} Gul Hassan, 9 Cr.LJ.105
\textsuperscript{86} Kodali Purnachandra AIR 1975 SC 1925
process compelling anyone to give evidence in police investigation (Jogendra 124 C 320).

Section 176 Cr.P.C. enjoins the process for the enquiry to be conducted by an empowered magistrate (to hold inquests) into the cause of death of a person who died in police custody. The magistrate so conducting an enquiry has power to disinter the body which has already been interred. A magistrate holding an inquest can record a confession by any person about the crime. Such confession is admissible.

Law enforcement calls for a very effective police system. Without effective policing, a society is doomed to anarchy. Police officers must be carefully selected persons of great integrity, talent and trained ability. Some of the primary and basic duties to be performed by police are:

(1) Patrol and observation,
(2) Prevention and repression of unlawful activities,
(3) Attendance at public gatherings to ensure law and order,
(4) Providing public safety service,
(5) Inspection on patrol,
(6) Answering calls for service and assistance,
(7) Reporting disruption of utilities,
(8) Providing information services,
(9) Identification and arrest of law violators,

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87 Venkataramana, AIR 1945 M 64
(10) Developing contacts with good people,
(11) Providing crime prevention advice to people,
(12) Recruitment and development of informants,
(13) Protection of crime scenes,
(14) Collection and preservation of evidence,
(15) Public and community relations,
(16) Investigation of crimes and accidents,
(17) Preparing reports,
(18) Testifying in courts.  

In discharging the duties enjoined upon a police officer, there are a number of steps that are to be followed in conducting the investigation commencing from receipt of information like:

(1) The initial step includes rushing to the place of occurrence without any loss of time,

(2) Interviews and interrogations of suspects or any person in the vicinity to construct a clear picture of the happening,

(3) Apprehension of offenders including arrest and summoning witnesses to arrive at the truth of the matter through the statements of persons who might be aware of the facts and circumstances of the case,

(4) Evidence Collection; (a) Where was the crime committed, (b) when it was committed, (c) what were the means, (d) who committed the crime, (e) why was the crime committed,

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89 Thomas F. Adams, Protective and Preventive Services of Patrol, Law Enforcement: An Introduction to The Police Role in The Community, Prentice Hall Publication
(5) Laboratory functions like forensic, medico-legal examinations etc.,

(6) Legal aspects as regards the provisions of law that were violated etc.,

(7) Presentation of evidence and prosecution in a court of law, if necessary.

In performing the duties enjoined upon the police, it has to be on strict vigil against any violation of human rights, which matter has assumed great significance of late. For preserving law and order in society, policemen are required\(^{90}\). Without the constant vigilance and directing hand of the policeman, men would degenerate into animal and society without the policeman’s guiding influence, man would not be able to conquer the animal in him and society would not prosper as a corporate body. Individual dignity is very essential for the validity of society but the human rights can be ensured only by (1) viable society and (2) the basis of society must be democratic principles.

The topic of human rights is of universal concern that cuts across major ideological, political and cultural boundaries. The imperfection and frailty of human nature is the justification for the laws of social control. They do not reject liberty but only regulate it to keep it on trail of the social justice\(^{91}\).

\(^{90}\) B.N.Mullick, A philosophy for the Police, Allied Publishers, Bombay

\(^{91}\) K. Subba Rao, Social Justice & Law, National Publishing House, N.Delhi
The concern for the phenomenon of police misconduct or misuse of power by the police has been common in every country. Police misconduct may be of the following kind:

1. **VIOLATION OF POLICE PROCEDURE**
   
   (a) like extortion of money by unscrupulous station house officers,
   
   (b) illegal detention;

2. **VIOLATION OF CRIMINAL LAW**

   (a) fabrication of false case,
   
   (b) refusal to register case;

3. **ILLEGAL USE OF FORCE**

   (a) standing on the bare body with heeled boots,
   
   (b) beating with canes on the bare soles of feet,
   
   (c) rolling a heavy stick on the skins with a policeman sitting on it,
   
   (d) making the victim couch for hours in ‘Z’ position,
   
   (e) beating on spine,
   
   (f) slapping with cupped hands on both ears until victim bleeds and loses consciousness,
   
   (g) beating with rifle butt,
   
   (h) inserting live electric wires into body crevices,
   
   (i) forcibly laying nude on the slabs,
   
   (j) burning with lighted cigarettes and, candle flames,
   
   (k) denying food, water and sleep,
stripping the victim, blackening face and parading him in public,
suspending the victim by his wrists,
hanging him as 'aeroplane' victim's hands are tied behind the back with a long rope, the end hauled over a pulley, leaving the victim dangling in midair, swinging.

In order to deal with such violations of human rights many international covenants on human rights have been adopted in relation to police functions -

A. UNIVERSAL DECLARATION OF HUMAN RIGHTS was adopted by the United Nations general assembly at Paris on December, 10, 1947, as a common standard for achievement for all peoples and all nations;

B. THE 5TH amendment to the Constitution of USA in 1791 incorporated the due process law;

C. ARTICLE XXXI of the 1946 Constitution of Japan provides that... "no other criminal penalty be imposed except according to procedure established by law. Article XXXIV also envisages the presence of a counsel.

In the constitution of India, Article 20(I) says "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence". In the same Article there is protection against double jeopardy. Article 21 says that no person shall be deprived of his life and personal liberty except
according to procedure established by law. Article 22 also affords protection against arrest and detention in certain cases.

In order to preserve and protect human rights in accordance with the international standard, national and state human rights commissions have been established in India and their reports and guidelines have been started to be issued, but much has remained to be done in this regard to educate the police on these aspects. In enforcing law, police has to function within the various provisions of law, lest there would occur violation of human rights. The investigative process must be in conformity with the basic tenets set forth, for the purpose before prosecution of a case in a court of law.

THE JUDICIARY

After completion of investigation and arriving at an inference, police presents the case in a court of law. Criminal Courts are constituted in accordance with the provisions of Section 6 of The Code of Criminal Procedure, 1973. The section reads as follows:

"Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every state, the following classes of criminal courts, namely:-

(I) Courts of Session
(II) Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan magistrates;

92 Aparna Srivastava, Role of Police in a Changing Society, A.P.H.Publishing Corporation; New Delhi
(III) Judicial Magistrates of the second class; and
(IV) Executive Magistrates

In instituting a case in any such court there are requisite provisions that are to be observed with utmost care. Conditions requisite for initiation of a proceeding are enumerated as under in chapter XIV of the Cr.P.C. under sections 190-199:

(i) Cognizance of offence by Magistrate (Sec.190)
(ii) Transfer on application of the accused (Sec.191)
(iii) Making over cases to Magistrate (Sec.192)
(iv) Cognizance of offence by court of Sessions (Sec.193)
(v) Additional and Assistant Sessions judge to try cases made over to them (Sec.194)
(vi) Prosecution for contempt of lawful authority of public servant for offences against public justice and for offences relating to documents given in evidence (Sec.195)
(vii) Prosecution for offences against the state and for criminal conspiracy to commit such offence (Sec.196)
(viii) Prosecution of judges and public servants (Sec.197)
(ix) Prosecution for offences against marriage (Sec.198)
(x) Prosecution for offences under section 498-A of the Indian Penal Code (Sec.198-A)
(xi) Prosecution for defamation (Sec.199).

Proceedings for any offences are to be initiated in the appropriate courts, jurisdiction of which are defined by statute. Power of courts by which offences are triable are enumerated in Section 26 of The Code of
Criminal Procedure, 1973. Any offence under the Indian Penal Code (Act 45 of 1860) may be tried by the High Court or the Court of Sessions or any other court by which such offence is shown in the First Schedule to be triable. Jurisdiction of a court is conferred by statute (J.Lakar, 46 Cr.LJ.339) and so consent of parties or want of objection cannot give jurisdiction.

The First Schedule of the Cr.P.C. enumerates the offences under various sections of Indian Penal Code along with punishment to be meted out and the nature of offences whether cognizable or non-cognizable, bailable or non-bailable and by what court triable. In this study data in respect of a number of offences included in chapter XVI - Offences affecting the Human body, Chapter XVII-Offences against property, Chapter XX-offences relating to marriage and chapter XX-A - of cruelty by husband or relatives of husband, offences of violation of human rights etc. could have been gathered from various sources like police records, court records, prison records, Human rights commission records etc and are shown in various tabular forms in a subsequent chapter.

Administration of criminal justice and law enforcement is based on control of crime even through award of punishment of different sorts by sentences pronounced by the courts in accordance with the provisions of law. Section 28 and 29 of the Code of Criminal Procedure speak about the sentences the High Courts, Session courts and courts of magistrates can pass.

93 Chandra, A 1942, (50)] or want of objection (Ram Udit, 33 Cr.LJ, 511
A High Court may pass any sentence authorised by law, a Sessions judge or Addl. Sessions judge may pass any sentence authorised by law but any sentence of death shall be subject to confirmation by the High Courts. An Assistant Sessions judge may pass any sentence authorised by law except a sentence of death or imprisonment for life or of imprisonment for a term exceeding ten years (Sec.28 Cr.P.C.). The court of a Chief judicial magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years [sec.29(1) Cr.P.C.]. A first class magistrate may pass a sentence of imprisonment for a term not exceeding three years and fine not exceeding five thousand rupees or both [Sec. 29(2)Cr.P.C]. Second class magistrate may pass sentence of imprisonment for a term not exceeding one year or fine not exceeding one thousand rupees or both [Sec.29(3) Cr.P.C.]. The court of chief metropolitan magistrate shall have the power of the court of a chief judicial magistrate and that of a metropolitan magistrate, the power of the court of a magistrate of the first class [Sec.29(4) Cr.P.C.]. The power of sentencing by the executive magistrates have not been enshrined in the code (Cr.P.C.), framing of charges have been, however, enshrined in sec.228 of Cr.P.C.1973.

An appellate court can pass only a sentence that could have been imposed by the trial court. It cannot impose a sentence which if (the
appellate court) could have imposed as a trial court. Where the appellant is convicted under Sec.307 of Indian Penal Code and sentenced to imprisonment for a term of 5 years rigorous imprisonment, appeal would lie to the sessions judge and not to the High court.

The question of sentence is always difficult and in many cases a delicate matter for the courts. The theory of punishment is based upon (a) the protection of the public; (b) prevention of crime (to prevent a particular person from repeating the act or omission and to prevent other persons from committing it); (c) reformation of the offender and (d) corporal suffering for the crime committed. The determination of what should be the proper sentence depends on the particular facts of each case and no two cases are exactly similar.

Punishments and sentences for the offenders are contained in about more than two hundred Indian Acts. But the nature of the offences and punishments that are envisaged in the Indian criminal justice system are to be found in the Indian Penal Code (Act XLV of 1860) in section 53. It provides for the following forms of punishments:

First, Death;
Secondly, imprisonment for life;
Thirdly, deleted;
Fourthly, imprisonment which may be either simple or rigorous;

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94 Jagat V. State of M.P. (1986) 2 SCR 322
85 Chunnu V. State of U.P. (1990) Cr. LJ 1057 (All)
86 Sarkar on Criminal Procedure, 7th Edn. P.C. Sarkar, India Law House, New Delhi
Fifthly, forfeiture of property; and
Sixthly, Fine.

The sentence of transportation for life was next to death in order of gravity which was abolished in 1955⁹⁷, transportation has been substituted for life imprisonment. Another punishment - penal servitude - which meant keeping of an offender in confinement and compelling him to labour. This form of punishment which was meant for Europeans and Americans and could not be awarded to Indians, was abolished in 1949⁹⁸.

The sentence of death stands at the forefront in the category of punishments. The question whether the state has a right to take away life was upheld, by the Supreme court in the positive, the validity of death sentence as punishment for murder⁹⁹. But the sentence should be awarded in rarest of rare cases¹⁰⁰. However, under sec.303, the Indian Penal Code there was no choice with the court except to award death sentence and it was held by the Supreme Court that mandatory death sentence violates Article 14 and 21 of the Constitution of India and was struck down¹⁰¹. The sentence of death can be executed only when it is confirmed by the High court¹⁰².

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⁹⁷ Cr.Law Amending Act No.XXXVI of 1955
⁹⁸ Criminal Law (Removal of Racial Discrimination) Act, 1949
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¹⁰⁰ Bachan Singh V.State of Punjab, AIR 1980 SC 398
¹⁰¹ Machi Singh V.State of Punjab, AIR 1983 SC 957
¹⁰² Subhas and Another V. State of U.P.AIR 1976 SC 1924
Imprisonment is the most commonly used form of punishment. In the primitive society imprisonment was either unknown or if known was very rare. It is of very recent origin in the 19th and 20th century and became a major part of punishment\textsuperscript{103}. 

Originally, it was proposed to fix both minimum and maximum sentences but ultimately resolved to fix the maximum, the apportionment of sentence in each case being left to the discretion of the judges\textsuperscript{104}. It became difficult for the sentencing judge to personalise the sentence from the reformative angle. It has been observed that the usual trend of the courts is to award the maximum possible sentence\textsuperscript{105}.

The punishment of forfeiture has almost been obsolete now and at present only under four sections, namely secs.125, 126, 127, 169 IPC there are provisions in respect of specific property of the offender:

Sec.125 — waging war against any Asiatic power in alliance with the Govt. of India;

Sec.126 — committing depredation on territories of power at peace with the Govt. of India;

Sec.127 — receiving property taken by war or depredation mentioned in sec.125 & 126;

Sec.169 — public servants unlawfully buying or bidding for property.

\textsuperscript{103} K.D.Gaur, Criminal Law and Criminology, Deep & Deep Publication, New Delhi

\textsuperscript{104} H.S.Court, Law of India, Vo. I, (1972)

\textsuperscript{105} M.U.Mir, Long-Term Prisoners: Through Judicial Process and Towards Resocialisation: An Empirical Study
The punishment of fine has been specified in a number of offences under the Indian Penal Code and other penal statutes. It stands as an alternative to imprisonment, but sometimes both the sentence of imprisonment and fine may be passed. Fine is like forfeiture of money by way of penalty. The Supreme Court laid down that while imposing fine it was necessary to have regard to the pecuniary position of the offender. The courts are also empowered to award sentence of imprisonment in default of payment of fine (Sec.64 IPC).

Sentencing is the most critical point in the administration of criminal justice. The interest of society and those of the individual offenders are at stake more at this stage than in any other field of criminal justice administration. It lacks efficacy and credibility if it fails to protecting the society by deterring offenders and to reinforcing values in the society. The influence of human equation like personality and ideology of judges is as great as any other human field of judgement. Disparity in judgment not only offends the principle of justice, but it also affects the rehabilitative process of offenders and may create problems like indiscipline and riots inside the prisons. The justice demands like cases to be treated alike. The sentencing should be based on the consideration of the offender’s guilt and personality. Disparity in sentence defeats the modern concept of correctional philosophy and adversely affects crime control. Disparity

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106 Adamfi Umar Dalal V. State AIR 1952 SC 14
in sentence is, however, a global phenomenon, but the developed world has taken various measures in order to avoid it. In India, elaborate system of appeal and revision as well as hearing on the sentence to some extent are helpful in curbing disparity in sentences. Appeal provisions are enshrined in secs. 372-394 and revision provisions are enumerated in secs. 395-405 of the Cr.P.C.

Hearing on sentences has been provided for in Sec.235(2) IPC that if the proceeding is done in accordance with sec.360 (Cr.P.C. Sec.360 - order to release on probation of good conduct or after admonition), the accused has right to be heard on the sentence. The objective of sentence of imprisonment can only be achieved if the period of imprisonment is used to ensure that upon his return to society, the offender is not only willing but is also able to lead a law abiding and self-supporting life. A number of studies support that sentence which is not in accordance with the individual needs of the offenders, hardly reform them.

In order to achieve goals underlying the modern correctional philosophy, the sentence should not be fixed only in accordance with the nature and gravity of the offence but all the circumstances surrounding it should be taken into consideration. The factors like nature of the crime, circumstances under which it has been committed, antecedents, age, family and educational background of the offender are

110 K.D.Gaur, Criminal Law and Criminology, Deep & Deep Publication, New Delhi
112 J.L.Bull, Long Jail Terms and Parole Outcome, Research Report, California
to be considered in order to select a proper sentence. It is also essential that for the selection of a proper sentence a wide range of penalties should be made available to the sentencing court. A proper sentence conceived in the light of the relevant circumstances can be helpful to curb and control crime rate.

Criminal justice system and law enforcement in India has been aided by the law of evidence as enumerated in the Indian Evidence Act, 1872. The most relevant matters in relation to administration of justice, confessions of the accused, statements of the witnesses, search and seizures, burden of proof are some of the aspects which need utmost focus. It needs mention here that in order to convict an accused or to acquit him/her, evidence plays the most vital role and therefore, this needs to be dealt with in this study with some amount of detail.

Under the Indian Evidence Act, no confession made to a police officer can be proved as against a person accused of any offence (Sec.25 of Indian Evidence Act, 1872). Confessions of an accused while in custody of police, unless it be made in the immediate presence of a magistrate shall not be used against the person (Sec.26, Indian Evidence Act, 1872). Section 24 of the Evidence Act says that confessions caused by inducement, threat or promise becomes irrelevant. It is not necessary for the defence to establish conclusively that there was inducement or threat. It is sufficient if the circumstances afford reasonable grounds for believing that there was such an
inducement or threat\textsuperscript{113}. Before any confession can be received in evidence, it must be shown to have been voluntarily made\textsuperscript{114}. It has been repeatedly held that the object of these provisions is to prevent the practice of torture by police for the purpose of extraction of confession from the accused. The manner in which a confession is to be recorded by a magistrate has been enumerated in Sec.164 Cr.P.C.1973. It is a fundamental condition of the admissibility of evidence against any person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice, or hope of advantage, exercised or held out by a person in authority or by oppression\textsuperscript{115}. It was the reliability principle which formed the basis of the law and that this views are further supported by the fact that, if the police discovered some facts as a result of a confession which they had obtained by threat or inducement, then, although evidence of the confession was inadmissible, evidence of the fact discovered was admissible\textsuperscript{116} (Criminal Law Revision Committee, Eleventh Report-Evidence). It is desirable in the interest of community that investigation into crime should not be cramped\textsuperscript{117}. Sir Edmund Cox, commenting on the stigma attached to the police force, even made a fervent appeal to do away with pre-trial confession\textsuperscript{118}. Sir Edmund Burke supposes that confessions are extracted with a view to utilising the same as substitute

\textsuperscript{113} Mohsena V. R, 43 CWN 893;A 1939 C 610; R.V. Thakur, 1943, 1 Cal, 487
\textsuperscript{114} R. V. Warickshall, 1783, 1 Lea CC 263
\textsuperscript{115} David H. Baylay, The Police and Political Development in India, Princeton University Press
\textsuperscript{116} Criminal Law Revision Committee, Eleventh Report-Evidence
\textsuperscript{117} R. V. Voisin 1918, 13 CO.App.Rep.9
\textsuperscript{118} Sir Edmund Cox, Police and Crime in India
for circumstantial evidence. It is not so always and the possibility of an accused who had produced the property or incriminating articles subsequently alleging torture at the hands of police, cannot be ruled out\textsuperscript{119}. Under Sec.27 of the Indian Evidence Act, discovery of any article, object etc. in pursuance of a confession also, is admissible, and it would be dangerous to do away with this provision, because quite often stolen property, weapons of offence, and such other incriminating articles are deposited at places which are known only to the accused. This section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence\textsuperscript{120}.

Section 330 of the Indian Penal Code provides for Penal provisions of imprisonment of either description for a term which may extend to seven years and also fine for voluntarily causing hurt to extract confession etc. or to compel restoration of property. In this view, it would not be in the interest of crime prevention and crime control and also law enforcement alongwith administration of criminal justice to do away with pre-trial confession. In India, it is observed, the lawmakers looked at confessions before the police essentially from the disciplinary viewpoint but in England they have applied the reliability principle.

\textsuperscript{120} Ram Kishan V. State 1955, 1 SCR 903
Under the Criminal Procedure Code, no statement made by any person to a police officer in the course of the investigation of a cognizable offence, shall, if reduced to writing (Sec.161 Cr.P.C), be signed by the person making it, nor shall any record thereof, whether in a police diary or otherwise, be used for any purpose at any enquiry or trial except at the request of the accused. This provision is to ensure that in a criminal prosecution police is not to give evidence, admission of which were either not in fact made, or obtained by improper means.

According to a Law Commission report "The percentage of acquittals in criminal cases has reached a high figure not because of police being unable to produce adequate evidence before the court, but often what happens is that witnesses in court display a tendency to reduce the effectiveness of their evidence by deposing a version different from that given by them in their statement to police"\(^{121}\). In an effort to encourage more stability in testimony, the Law commission recommended that statements made to police should be signed if the witness was literate. However, the attitude of the law has not been softened, and is advantageous towards the accused. The Code of criminal procedure requires that copies of the statement to police should be supplied to the accused before the commencement of the trial.\(^{(Sec.207, 208 Cr.P.C)}\). Such statement shall not be used for any other purpose, except by the accused, and for the purpose of contradicting the witness as provided by Sec.145 of the Evidence Act. It is held that in a statement recorded by police, there is no guarantee

\(^{121}\) Law Commission's XIV report.Vo.II
that they do not contain much more or much less than what the witness has said\textsuperscript{122}.

Since evidence plays a very vital and pivotal role having a direct link with the procedural provisions under sec.293 of the Cr.P.C., the discussion correlates the two aspects after screening out the important relevant provisions under the Indian Evidence Act, 1872 as to:

- Facts which need not be proved,
- Facts judicially noticeable need not be proved,
- Facts which court must take judicial notice,
- Burden of proof,
- On whom burden of proof lies,
- Burden of proving that case of accused comes within exception,
- Courts presumption on existence of certain facts.

Evidence signifies that which demonstrates, makes clear or ascertain the truth of the very fact or point at issue, either on the one side or the other. Evidence is either direct or circumstantial (indirect). Direct evidence is that evidence which proves a fact in issue directly without any reasoning or inferences being drawn on the part of the fact finder. Circumstantial evidence is that evidence which indirectly proves a fact in issue\textsuperscript{123} (Thomas J.Gardiner, Criminal Evidence, West Publishing Co., Minnesota).\textsuperscript{
122}AIR 1933 Mad.372
123 Thomas J.Gardiner, Criminal Evidence, West Publishing Co., Minnesota
from which, either alone or in connection with other facts, a court may, according to the common experience of mankind, reasonably infer the existence or non-existence of another fact which is material to the issue of guilt or innocence of the accused.\textsuperscript{124}

Circumstantial evidence is associated with physical evidences. Circumstantial evidence can establish guilt beyond a reasonable doubt as effectively as the testimony of eye-witnesses, and no higher standard of proof is required in a circumstantial evidence case than in a case proved by testimony of eyewitnesses.\textsuperscript{125} Circumstantial evidence is very often the best. It is evidence of surrounding circumstances, which, by undersigned coincidences, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.\textsuperscript{126} However, where circumstantial evidence alone is relied on to prove any one or more of the essential elements of the crime the evidence must be entirely consistent with any rational hypothesis of defendant's innocence and so convincing as to exclude a reasonable doubt that defendant was innocent of the offence charged.\textsuperscript{127}

Another form of evidence is the corroborative evidence which strengthens, adds weight or credibility. In many instances, corroborative evidence is the evidence which is most important in carrying the burden of persuasion in the minds of the fact finder.

\footnotesize{\textsuperscript{124} Captain Joe H. Munster and Captain Murl A. Larkin, Military Evidence, The Bobbs & Merrill Co. Inc. \\
\textsuperscript{125} U.S. V. Hurt (9 USCMA 735) 27 CMR 3 \\
\textsuperscript{126} R V. Taylor (1928)21 Cr.App.R.P.21 \\
\textsuperscript{127} Ram Das V. State of Maharashtra (1977) 2 SCC 124;1976 SCC (Cri)}}
machinery of modern science is increasingly operated in the investigation of crime with startlingly convincing results and thereby strengthening the edifice of the aspects of circumstantial evidence. Evidence signifies that which demonstrates, makes clear or ascertain the truth of the very fact or point at issue, whether on one side or the other and when court has to form an opinion on a point of foreign law, or of science or art, or as to identifying of handwriting or finger impressions, the opinion upon that point of persons specially skilled in such foreign law, science or art, or in question as to identification of handwriting or finger impressions are relevant facts and such persons are called experts (Sec.45 of the Indian Evidence Act, 1872). Physical evidence (or real evidence, as it is sometimes called) is different from some of the other types of evidence in that physical evidence often speaks for itself. While the testimony of a witness may be inaccurate, exaggerated, or biased, it has been stated by writers that physical evidence cannot lie. Nor may physical evidence be impeached as the testimony of a witness may be impeached. As a general rule, juries and judges like physical evidence because they can usually visually see what has been stated in oral testimony. For these reasons, criminal courts tend to give greater weight to scientific tests and physical evidence which speaks for itself.

The greatest body of scientific evidence is obtained from physical evidence by means of scientific equipment, method or

129 Thomas J.Gardiner, Criminal Evidence, West Publishing
procedures. Like all physical evidence, the primary source of scientific evidence is (a) the crime scene and its immediate vicinity, (b) the person and the clothing of the victim of the suspect, (c) the person and clothing of the victim of the crime. As a rule of evidence it has been stated that it is unsafe to base a conviction solely on expert opinion without substantive corroboration. Relating to English law on expert opinion evidence: (i) the opinion of expert is admissible upon all subjects for which special study or experience is necessary to the formation of an opinion e.g. matters of science, art, medicine, or foreign law\textsuperscript{130}. Whether the witness is competent to give expert opinion is for the judge to decide\textsuperscript{131}, (ii) in matters with respect to which a witness cannot give positive testimony, he may speak as to his opinion or belief e.g. for the identification of persons, things, or handwriting, or in question of physical or mental condition\textsuperscript{132}. The American law of restatement states that an expert witness is one who has knowledge and experience in relation to matters which are not generally within the knowledge of men of common education and experience, and the opinion of such a witness on a state of facts which is within his specialty and which is relevant to an issue properly before the court is ordinarily admissible\textsuperscript{133}.

The expert really means a person who by reason of his training and experience is qualified to express an opinion (Sec.45 of the Indian

\textsuperscript{130} Folkes V. Chadd (1782)3 Dong .K.B. 157
\textsuperscript{131} Bristow V. Sequeville(1850) 5.Exch.275
\textsuperscript{132} Fryer V.Gathercole (1849) 4 Exch.262
\textsuperscript{133} US V. Adkins (5 USCMA 492) 18 CMR 116
Evidence Act, 1872). Such a person can give evidence wherever the subject is one upon which competency to form an opinion can only be acquired by special experience, e.g. science, or art, fingerprint, calligraphy, or foreign law. It is the duty of the trial court to come to a conclusion, on a question of fact, on a consideration of the entire evidence including that of the expert\textsuperscript{134}.

Although the Indian Evidence Act does not speak of ‘trade’, ‘handicraft’, or ‘profession’, there is absolutely no reason to suppose that the Indian legislature intended to make a departure from the English law on the subject, by confining expert opinion to pure science or art. Thus literally construed, like English and American law, the sec.45 of the Evidence Act (the Indian Evidence Act, 1872) would attract into its fold all branches of human knowledge requiring a course of special study, skill or experience and the word ‘expert’ would embrace all persons having special knowledge or experience of a trade, handicraft or profession\textsuperscript{135}. However, the opinion must be deduced from a well recognised professional or scientific principle or discovery, and the thing from which the deduction is made must be sufficiently established to have gained universal acceptance in the particular specialty in which it belongs. However, according to an author, as no formula exist by which laboratory scientists can match patterns and count lines in comparing spent bullets and cartridge casings, the field of firearm identification is therefore primarily a skill and a specialised

\textsuperscript{134} Husseiah V. Yerraiah, (1945) 2 MLJ (Andh) 39 AIR 1954 Andh.Pra.39
\textsuperscript{135} Y. H.Rao and Y.R.Rao, Expert Evidence, Wadhwa & Co
branch of art rather than of science\textsuperscript{136}. In the case of Kalua\textsuperscript{137}, the High court was unable to accept the testimony of the eyewitness. The case, without such testimony, rested on circumstantial evidence in which the conviction for murder was upheld with the observation that there was no ground for distrusting it and no room for thinking that anyone else might have shot the deceased.

Thus due weightage is to be given to the opinion of the experts on forensic science or art of long standing, well trained and experienced persons when the official problem of special kind arises in various aspects of suicide, homicide, wound etc, are encountered by courts for ends of justice as the experts only can throw light on some matters of vital importance about which the statutes or precedents are silent. There is no doubt that science of forensic experimentation can be relied without any risk of error for all practical purposes. It is heartening to note that this view has entrenched itself in India promising a very bright future for forensic science\textsuperscript{138}.

While expert opinion has much weightage in the evidence act, section 114 of the Act provides that courts may also presume existence of certain facts but a presumption can be drawn only from a given set of facts and not from other presumptions. Acting on this principle the Supreme court pronounced that statement of witnesses did not afford

\textsuperscript{136} Thomas J. Gardiner, Criminal Evidence  
\textsuperscript{137} Kalua V. State of U.P. AIR 1958, SC 180  
\textsuperscript{138} Journal of The Indian Academy of Forensic Sciences
any factual foundation for the presumption\textsuperscript{139}. Moreover, Sec.113-B (Indian Evidence Act, 1872) provides for presumption in case of dowry death, but it must be under certain conditions - presumption can be raised only on proof of the following essentials: the question before the court must be whether (i) the accused has committed dowry death of a woman, (ii) the woman was subjected to cruelty or harassment by her husband or relatives, (iii) such cruelty or harassment was soon before her death.

The Indian Evidence Act, 1872 is based on the principle that nobody is guilty until proven guilty and on this principle is based the sec.104 of the Act which enjoins the onus of proving everything essential to the establishment of the charge against the accused upon the prosecution, as every man is presumed to be innocent\textsuperscript{140} and this burden never shifts. Section 126 of the Evidence Act (The Indian Evidence Act, 1872) provides for privileges of professional communication without the client's express consent. The interdict provided in Sec.126 and 127 and the protection of the communication under sec.129 of the Indian Evidence Act are intended to keep the communication confidential\textsuperscript{141}. Another check for defence in a case is the provision of estoppel which estopps a person from denying or withdrawing his previous assertion even if it be to tell the truth (Sec.115 of the Indian Evidence Act, 1872). Estoppel deals with

\textsuperscript{139} Suresh Budharmal Kalani V. State of Maharashtra, AIR 1998 SC 3258
\textsuperscript{140} Haji Mohamed Iqbal Ahmed V. State of Karnataka, 1990 Cr.LJ (NOC)179
\textsuperscript{141} P.R. Ramakrishnan V. Subramma Sashtrigul, A 1988 Ker.18, 22, 1988 Cr.LJ 124
question of fact and not of rights.\footnote{Chaganlal Keshavlal Mehta V. Patet Naradas Haribhai, A 1982 SC 121, 125} Estoppel can always be used as a weapon of defence.\footnote{Indirabai V. Nandkishore, A 1991 SC1055, 1057}

The Evidence Act also puts brake on leading questions. Any leading question suggesting an answer, must not, if objected by the adverse party, be asked except with permission of the court in examination - in - chief and re-examination (Sec. 141, 142 Of the Indian Evidence Act, 1872). However, Sec143(Indian Evidence Act, 1872) provides that a leading question may be asked in cross examination.

In the Evidence Act there is the matter of hearsay evidence. The term hearsay is somewhat ambiguous and misleading and hence used in various senses. Generally, hearsay evidence is inadmissible because such statements are not subjected to cross-examination\footnote{The Berkley Peerage, 4 Camp 414} but in certain cases these may be admissible\footnote{R V. Kearty, 1991 Cr. L R 282 CA}. While in this particular case when raiding the house of the accused on supplying of drugs from home, the police officer noted many personal and telephone callers enquiring about drugs. The law enforcement machinery has to work within the ambit of the various provisions of the Indian Evidence Act so as to meet the ends of justice without any scope for bias or prejudice against any party - the accused or the prosecution.

In the mechanism of law enforcement, punishment occupies a position of significance and the basic purpose of criminal law and
punishment are to do justice according to what is deserved and to deter from crime. Deterrence raises the expected cost of crime, thereby decreasing the net advantage. Thus hope for reducing crime rate lies in decreasing the expected net advantage of committing crime (compared to lawful activities) by increasing the cost through increasing the expected severity of punishment and the probability of suffering them. Punishment must become predictable and a higher apprehension and conviction rate is also needed\textsuperscript{146}.

**LAWYERS**

Lawyers play a very significant role in the process of law enforcement and in carrying forward the process of administration of criminal justice to the ends of justice. The duty of lawyer, both to his client and the legal system is to represent his client zealously within the bounds of the law. Again, the quality of justice depends in large measure on the quality of judges.

Law as a profession has been historically significant to the evolution of democracy in the west. Ever since the Roman days the law experts were regarded as support structure to law courts. The later development of Anglo Saxon jurisprudence envisaged a very close and interdependent relationship between the judge and the persons of law available to the former for assistance.

\textsuperscript{146} Earnest Van den Haag, Could Successful Rehabilitation Reduce the Crime Rate, Journal of Criminal Law and Criminology
With the spread of democracy, the notion of rule of law acquired prominence and knowledgeable man of law was accepted as an essential part of court system. Gradually studies in law developed their respective specialisation and students with law degree took to the profession of law as attorney and barrister at law and the lawyers became professional\textsuperscript{147}.

A legal expert or a lawyer is required on both sides of the case so as to present a battle of arguments, buttressed by evidence to enable the judge to arrive at a judicious decision and in this lawyers need to follow strict ethics and standard\textsuperscript{148}. Lawyers may be termed as an architect of the social structure\textsuperscript{149}.

The lawyers besides being knowledgeable specialist must also be free, independent and available to all on payment of a fee\textsuperscript{150}. The lawyers have the duty to defend nothing but the truth, a concept which has to be value free and ideology insulated\textsuperscript{151}. An accused person being entitled to be presumed innocent until proven guilty, he should be informed of his rights to consult a legal adviser of his choice. Lawyers are classified as prosecuting attorney or defense attorney\textsuperscript{152}.

\begin{footnotesize}
\begin{enumerate}
\item P.D. Sharma, Police and Criminal Justice Administration in India, Uppal Publishing House
\item Macklin Fleming, The Price of Perfect Justice, Basic Books Inc, N.Y
\item Julius Stone, Social Dimensions of Law and Justice, Universal Law Publishing Co.Pvt.Ltd
\item P.D. Sharma, Police and Criminal Justice Administration, Uppal Publishing House, New Delhi
\item Jerome Carlin, Lawyer’s Ethics, Russel Sage, NY
\item Sue Titus Reid, Crime And Criminology, 2nd Edn, Holt, Rinehart and Winston, NY
\end{enumerate}
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The function of the prosecution at all stages of the criminal process is to lay before the court all evidences bearing on the case whether favourable or unfavourable to the accused.

The accusatory philosophy of justice imbued and inspired by liberalism preordained that the government power is a threat to the citizen's liberties and whosoever is presented as a suspect or an accused by the executive arm of the state needs a defence lawyer to prove his innocence. Naturally, an independent attorney available in the free market at competitive prices for expert advice is the citizen's intellectual and legal defence in the impartial law courts which have been viewed and designed as guardians of legal system, safeguarding liberty, law and justice in a free society\(^1\).\(^3\)

Ethics ordains a lawyer to be prepared to frequently to defend persons associated with unpopular causes and minority views which they themselves may be out of sympathy. A lawyer has also been expected to be free without fear of the consequences to press upon the court any argument of law or fact which does not involve a deliberate deception of the court.

Prosecuting attorney must inform the defence attorney timely that might point to the innocence of the defendant consequently reducing punishment. Prosecuting attorney has also discretion to stop

\(^1\)\(^3\) Sydney A. Ash, Police Authority and Rights of The Individual, Arco Publishing Co.Inc.NY
prosecution as some cases may not be tried at all\textsuperscript{154}. It is also not desirable to prosecute all cases. The President’s Crime Commission of USA considered the matter of discretion and suggested establishment of a procedure for discretion in marginal cases. In Cr.P.C.in Sect.321, a public prosecutor of a case is competent to apply for withdrawal of a case\textsuperscript{155}.

There is an obligation of the state to provide adequate legal advice and representation to those who are not able to pay for it.

PRISONS

While talking about crime control, criminal justice system, law enforcement and punishment, the name of the institution of prison comes automatically. In the mechanism of crime control and law enforcement, the institution of prison is also one of the kegs on which the wheels of administration of justice moves. This was inevitable that in a criminal justice system where deterrence was the only aim earlier, the prison system was of harsh terms.

Whether the prison system is a punishment or a chance to be a law abiding citizen is a question very often asked while administering criminal justice. The early penology of ancient India evolving from the great law giver Manu emphasised under the notion of ‘Danda Niti’, which was created as a derivative of Dharma. Reference to crimes and

\textsuperscript{154} Charles D.Breitel, Controls in Criminal Law Enforcement, Chicago University Press
\textsuperscript{155} Sheonandan, A 1983 SC 194
rigorous imprisonment was found in the words of Bana\textsuperscript{156}. There was also provision for the pious man to forgive the offender, and provision for expiation.

Existence of prison system was perceived in the Mauryan period also during the reign of Asoka (269 - 232 B.C.) in the appointment of Dharma Mahamatra to look after prisoners in jails\textsuperscript{157}. In the Medieval period also there existed prisons, but there was hardly any faith left in the power of Dharma or religion to reclaim the offender to social ways of life (Devakar, Mental Health Problems of Life Convicts in U.P.Jails).

During the late medieval period the wrongdoers were subjected to reclusion and even to solitary cellular confinements not only as a punishment alone, but a way of providing condition under which puretants would most likely occur\textsuperscript{158}.

With the passage of time the semblance of reformatory aspect of prison was seen in the report of the All India Committee on Prisons Administration and it was the Indian Jail Committee, 1919, in which Sir Alexander G.Caselew was the Chairman, Jawaharlal Nehru asked the question—"why are punishments given, as society’s or government’s

\textsuperscript{156} Sukla Das, Crime and Punishment in Ancient India, Abhinabha Publication, 1977
\textsuperscript{158} Norman Johnson, The Human Cage in Correctional Institution, Carter, Glissel and Wilkins, J.B.Lipping Cott Co.
revenge, or with the object of reforming\textsuperscript{159}. Dr.W.C.Reckless, while coming to India in 1951, gave some valuable recommendations for correctional administration in India for national as well as state levels\textsuperscript{160}.

With the growing concern for reformative, correctional and rehabilitative measures for criminals, prisons have also become an important unit in the mechanism of crime control and law enforcement.

**CORRECTIONS**

Once a person has been arrested, tried and sentenced, the correctional process begins\textsuperscript{161}. Correction, in its broader sense, means sending the sentenced offender towards reshaping, re-educating and reforming the individual behaviour, attitudes and feelings of anti-social nature to some penal institutions for custody. In penological parlance, it is a process of treatment, reformation and rehabilitation of the offender with a view to converting him into self-respecting law abiding and social responsible citizens of a particular society\textsuperscript{162}.

A person who is once a criminal, need not always be a criminal. As a matter of fact, nobody is a born criminal and criminal behaviour often can be cured by sympathetic understanding and scientific

\textsuperscript{159} J.L.Nehru, Prison Land, appended to Report of the All India Committee on Jail Reforms, 1960-63

\textsuperscript{160} Dr.W.C.Reckless, The Crime Problem, 1956

\textsuperscript{161} Frank Schmalleger, Criminal Justice Today-An Introductory Text for 21st Century, Prentice Hall, Upper Saddle River, New Jersey

treatment. Correctional work means two things mainly- (1) prevention of crime and (2) treatment of offenders\textsuperscript{163} and Correctional administration consists of three broad phases-preventive, curative and rehabilitative\textsuperscript{164}.

The Prisons Act passed in 1894 speaks about the system of prison and its administration and it runs into 62 sections with XII Chapter divisions. In it is defined as to what constitute prison offences and described the punishments; mainly deterrent. With the passage of time the concepts of social welfare came into being to bring about quite some changes in the field of treatment meted out to offenders.

PROBATION

In the field of correctional method of criminal administration, probation has evolved as an alternative to imprisonment especially short time. Section 361 of the Code of Criminal Procedure has made probation a viable method of dealing with offenders than imprisonment. The object of probation is the protection of society by preventing crime through rehabilitation of the offenders in society as its useful member without curbing freedom, subjecting him to unsavoury prison life and depriving him of his social and economic obligations\textsuperscript{165}. It is aimed at reforming the criminal than to punish him. The Probation Act was


\textsuperscript{164} Harishar Swain, Role of Prison Welfare in Social Defence, Orissa Review, Sept.1978

\textsuperscript{165} JackWright and Peter W.Lewis, Modern Criminal Justice, p242
enacted with the purpose to stop the conversion of youthful offenders to obdurate criminal as a result of their association with hardened criminals of mature age in prison (Probation Of Offenders Act, 1958). The scope of the Probation Act is wide and pervasive, except those punishable with death or life imprisonment (Section 18 of Probation Act). The most distinguishing feature of the Probation Act is the provision of placing the released offender under the supervision of a Probation Officer- a sine qua non of the very concept of probation.

The power to grant probation is discretionary, but section 6 of the Probation of Offenders Act lays down an injunction not to impose sentence of imprisonment on offenders below 21 years found guilty of offences not punishable with imprisonment for life. There are, however, certain restrictions in relation to granting of probation under sub-section (1) of section 4 which forbids the court from exercising its power where neither the accused, nor his surety has a fixed place of residence, or regular occupation either within the jurisdiction of the court exercising the power, or at a place where the offender is likely to stay during the period of suspended sentence.

The power of probation under the Probation of Offenders Act can be exercised by any Magistrate, whereas such power under the Criminal Procedure Code, 1973 is restricted to the Judicial Magistrate of the 1st class.

The factors to be considered by courts for granting probation has been pronounced in the case of Ram Narain by the Supreme court as -
"Sentencing generally poses a complex problem, which requires a compromise between the competing views based on reformation, deterrence and retributive theories of punishment. Though a large number of factors fall for consideration in determining the appropriate sentence, the broad object of punishment of an accused found guilty in progressive civilised societies is to impress on the guilty party that commission of crime does not pay and that it is both against his individual interest and also against the larger interest of society to which he belongs. The sentence to be appropriate would, therefore, be neither too harsh nor too lenient\textsuperscript{166}.

In the United States, probation has become the most commonly used form of criminal sentencing and between 30% and 60% of those found guilty are sentenced to some form of probation.

Albeit there arises questions as to the positive impact of the correctional method of probation, this has come to occupy a prominent place in the criminal justice administration system. There is a school of thought that community treatment is more effective than institutionalised treatment proferred to the criminals\textsuperscript{167}.

Prison corrective measures in India entails two more important facets - (i) Parole and (ii) Aftercare of released prisoners.

\textsuperscript{166} Ram Narain Vs. State of UP 1973, 2 SCC 86
PAROLE & AFTERCARE

Parole is a form of conditional release granted to the prisoners after they have served a portion of their sentence, which is also called supervised early release of inmates for correctional confinement. It differs from probation both in purpose and implementation. Whereas probationers generally avoid serving term in prison, offenders who are paroled have already been incarcerated (Don C.Gibbons). Parole is granted by an executive board or the institution itself and probation is granted at the court level without any prison term awarded.

Parole is advantageous both for the person released on parole and the society as a whole. These prisoners can benefit from the guidance of the Parole Officers. The Parole Officers have to be conversant with supervision and they are not to act a policeman to conduct espionage works. They should be friends in need, advisers, who thoroughly understand the individual’s peculiar problems.\(^{168}\)

Despite many advantages, certain precautions need be taken in the application of parole so as to secure good results; unnecessary leniency has to be avoided and close constant surveillance has also to be avoided. Precaution is necessary to avert any application of parole on monetary or political considerations and to apply strictly on good conduct and demonstration of ability to earn an honest living.\(^{169}\) A

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\(^{168}\) Harry Elmer Barnes and Negley K. Teeters, New Horizons in Criminology, Ind Edn. 1966

\(^{169}\) B.K. Bhattachariyya, Prisons, 1958
judicious application of parole is expected to bring about a successful correctional result in respect of the offenders.

In order to fruitfully treat the offenders to lead an honest normal life, it is also necessary to provide aftercare to the released prisoners. It is one of the most effective means of curbing recidivism.

Aftercare is the convalescence of the released prisoners. It is the bridge which can carry him from artificial and restricted environment of institutional custody, from doubts and difficulties, hesitations and handicaps to satisfactory citizenship, settlement and rehabilitation in the free community\textsuperscript{170}. The object of aftercare service is to extend help, guidance, counselling to overcome mental, social and economic difficulties and to help in the removal of social stigma attached because of incarceration. Moreover, its object is to impress upon the individuals to adjust his habits, attitudes and value schemes for appreciation of social obligations and requirements of society. It is also aimed at helping to make smooth physical, mental, social and vocational adjustment to be able to work in community and to help individuals to be able to be self dependent and self reliant which is the ultimate process of social rehabilitation.

Despite the usefulness of aftercare service, there has been a very little progress in this major area of correctional activities in India. Lack of funds, ignorance of the psychological and economic basis of crime and general apathy are considered to be the major hindering factors in

\textsuperscript{170} Govt. of India Model Prison Manual
this area\textsuperscript{171}. Creating consolidated funds for the purpose by creating public charitable trust with effective means to encourage community participation in the aftercare programmes voluntarily in individual capacity or under the umbrella of some NGOs. The voluntary organisations can play a very pivotal role in this path. Many such organisations, in the past and present, have been formed in India, e.g. Discharged Prisoners Aid Society, Uttar Pradesh, U.P.Crime Prevention Society, All India Crime Prevention Society, Madras Discharged Prisoners' Aid Society, Maharashtra State Probation And Aftercare Association\textsuperscript{172}.

There certainly is a need for increasing application of non-punitive, community based treatment of offenders such as probation, parole and aftercare.

In the corrective treatment system of the institutions, some quarters advocate for classification of prisoners. The basic object of the prison administration in the modern times being reformative and rehabilitative in order to resocialise the offender without any danger to society, this needs to be taken into account. Every individual prisoner needs be given separate treatment according to necessity to enable him to lead a normal life.

\textsuperscript{171} N.K.Chakraborty, Institutional Corrections In the Administration of Criminal Justice, Deep & Deep PublicationsPvt.Ltd, New Delhi
\textsuperscript{172} S.P.Srivastava, Public Participation in Social Defence.1981
CLASSIFICATION

Classification refers to the process by which prisoners are assigned to institutions, housing units and treatment programmes are based on their needs and characteristics. It is a method by which diagnosis, the formation of a programme of correction, and the execution of the programme are coordinated in the individual case\textsuperscript{173}.

In India classification of prisoners are made as undertrials, convicts, juveniles, male and female. In most cases, classification is made by the court convicting the offender and that too in majority cases by court clerks\textsuperscript{174}. There is a growing need for classification on the basis of age, sex, social status, nature of crime, antecedents of offenders; the classification committee should be composed of well trained professionals; juveniles should be sent to Remand Homes or Borstals instead of prisons; number of prisons should also be increased. And in this case the term prison is used to mean open air prison.

An open prison is characterised by the absence of material or physical precaution against escape and by a system based on self-discipline and the inmates’ sense of responsibility towards the group in which he lives.

\textsuperscript{173} Cold Well. R, Criminology, The Ronald Press Co. N.Y.

\textsuperscript{174} Chaddha K.K., The Indian Jail- A Contemporary Document, Vikash Publishing House, New Delhi
The Open Peno Correctional Institutions are places for preparing for rehabilitation and pre-release preparation. The XII th Penitentiary Congress, Hague (Netherlands) 1950 and the U.N. Congress, Geneva 1955, gave a scientific thinking to it to describe an Open Peno Correctional Institution in this manner.

In India also the concept of Open Air Prison caught the interest of the concerned people and Uttar Pradesh has remained the pioneer state in social and penological reforms. The first Open Air Prison was instituted by late Dr. Sampurnananda, a great social reformer, thinker and philosopher when he was Home Minister then and there. The perusal of Uttar Pradesh and Uttaranchal Open Air Prisons transpires that these have served a great success in the reformation and rehabilitation of criminals. It is, therefore, believed that establishment of more such open air prisons, in addition to those already established in a number of places, would go a long way towards crime control and law enforcement.

In the matter of correctional system of criminology probation and parole have come to face criticism also. It is argued that probation and parole result in (1) relative lack of punishment, (2) increased risk to the community and (3) increased social cost. However, the advantages derivable from these correctional measures are quite significant. Lower cost, increased employment, reduced risk of criminal socialisation,

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176 K.D. Gaur, Criminal Law & Criminology, Dees & Deep Publication Pvt. Ltd, New Delhi
increased use of community service, increased opportunity for rehabilitation are some of the valuable advantages of probation and parole and other reformational measures that need be reaped for greater social cause towards reduction of crimes and utilisation of the examples of the corrected and rehabilitated offenders for motivation of others.

Law enforcement and crime control with the modern day tilt towards correctional and rehabilitative approach also envisage certain rights afforded to the suspect or accused so that ends of justice never fail and administration of criminal justice carries due meaning. These may be enumerated as : -(a)Right to fair Trial, which includes right to be defended by a lawyer, (b)protection against double jeopardy, and self incrimination, (c)Right to be produced before a magistrate, (d)Right to Bail, (e) right to Legal Aid etc. These have been incorporated in this study as it is felt that the law enforcing agencies and the whole machinery engaged in prevention and control of crime must have the knowledge of everything that is related to crime, arrests, punishments, the existent laws, the rights available to the citizens and also to the criminals so that the investigation may be conducted in proper manner. The knowledge of these will also help in preparing cases properly so that criminals are not spared of the rod.

RIGHT TO FAIR TRIAL

Criminal trials are held in open courts and are fully reported in press if they happen to be of sufficient public importance. The trial is held in presence of the accused. If an accused is absconding, the trial
will not take place unless he has been apprehended. If the accused person is insane, his trial will remain suspended until he is cured. Briefly, no person can be tried on a criminal charge unless that person has the occasion to answer the charge. An accused must be informed of the charge against him at the earliest opportunity and in any case, before the trial starts and has right to be defended by a lawyer (Sec.340 Cr.P.C). If the accused person is in police custody, he must have the opportunity of getting into communication with his counsel for the purpose of preparing his defence.

There is an obligation of the state to provide adequate legal advice and representation to those who are not able to pay for it.

RIGHT TO LEGAL AID

In order to ensure equality of justice as enshrined in the Constitution of India, the strategy has been to provide legal aid in its comprehensive coverage (Processual Justice to The Peoples’ Report of Expert Committee on Legal Aid (Govt. of India, 1973). If the accused person is charged of an offence punishable with death and he has no means to engage a lawyer for him, it is the duty of the state to provide him a lawyer free of charge. Certain Bar Associations have also set up legal aid societies to provide free legal aid to poor accused. Legal Aid has been an instrument of social justice primarily in the administration of criminal justice. Article 14, 21, 22(1) are the relevant provisions in

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177 Dr.B.N.Mani Tripathi, Text Book Of Criminal Law, Indian Penal Code, Central Law Agency
the Constitution of India towards this end. Art 22 provides for providing legal services to an accused person of his choice. Article 38 in Part IV of the Constitution of India ordains the state to promote welfare of the people by securing and protecting a social order in which justice - social, economic and political - shall form the basis of all institutions of national life. The 42nd amendment of the constitution inserted Article 39 A which provides for equal justice and free legal aid.

Section 304 of the Cr.P.C. also speaks of providing free legal service to an accused at the expenses of the state. Section 303, Cr.P.C. has also to be studied together in regard to free legal services. But these two sections differ from Article 22 of the Constitution of India. These provisions do accord due status to the legal aid and provide ample scope for developing legal aid jurisprudence through which human rights culture can be created and social justice can be assured as envisioned by the founding fathers of the Constitution and the essence of the text of the articles are read flexibly - words are not dead wood but embodiment of living ideas\textsuperscript{178}.

The Constituent Assembly of India envisioned judiciary of free India as a true guardian of the Constitution\textsuperscript{179}. Free legal aid to the poor accused is an essential ingredient of any just, reasonable and fair procedure. Legal aid and advice can go a long way in preventing or

\textsuperscript{178} V.K.Krishna Iyer, Of Law and Life, 1979
\textsuperscript{179} Glanville Austin; Indian Constitution, Cornerstone of A Nation, 1976
minimising the wrongful confinement and torture of the poor by taking up their cases suo moto\textsuperscript{180}.

A comprehensive scheme of legal services as envisaged under the Legal Services Authorities Act, 1987 can go a long way towards establishing social justice to the poor if the provisions are implemented in letter and spirit.

**RIGHT TO BAIL**

The right to bail is one of the foremost recognised social defence under criminal laws of any civilised society. There is no specific definition of bail. The Code of Criminal Procedure, the dictionary as well as the law lexicon define bail as security for appearance of prisoner on giving of which the accused is released from jail pending investigation, enquiry, trial or appeal. Webster dictionary defines bail as the process by which a person is released from custody.

The consequences of pre-trial detention are grave. The accused who are presumed innocent until proven guilty are subjected to stress and distress of prison life. Provisions as to bail and bonds are enumerated in chapter XXXIII in Secs 436 - 450 of the Code of Criminal Procedure. Offences that are bailable or non-bailable or cognisable or non-cognisable have been listed in the First Schedule to the Cr.P.C. and bail matters are in consideration of these offences. Bail may be granted by various courts in case of non-bailable offence,

\textsuperscript{180} Joginder Kumar V. State of U.P. 1994 Cr.LJ
bailable offence and even may be released with execution of a bond and sometimes without it also. There is provision of direction for grant of bail to person apprehending arrest (Sec.438 Cr.P.C.). There is no hard and fast rule regarding grant of bail or refusal of grant of bail. But before leave is granted, the pros and cons of the case be examined carefully after hearing both the parties.\textsuperscript{181}

A judge or magistrate by bail procedure, sets at liberty an individual arrested or imprisoned upon receipt of security ensuring the released prisoner’s later appearance in court for trial. Monetary considerations are appended to the procedure to grant of bail and it has been deprecated by the Supreme court\textsuperscript{182}. A committee consisting of judges, lawyers, members of parliament and other legal experts reported that a liberal policy of conditional release without monetary sureties or financial security and release on one’s own recognizance with punishment provided for violation would reform the bail system. To require the poor accused to furnish bail with sureties is to compel him to be in custody and is to unable him in making his defence\textsuperscript{183}.

Sec.436 of the Code of Criminal Procedure says that to grant release on bail of a person arrested without warrant on the allegation of having committed a bailable offence is a matter of right of the person

\textsuperscript{181} J.M.Jain V. Ahmed Sodek Vaid, 1991 Cr.LJ 244 (Bom)
\textsuperscript{182} Maneka Gandhi V.Union of India, AIR 1971 SC 59
\textsuperscript{183} Report of the Expert Committee and Legal Aid Processual Justice to The People, May, 1973
concerned. Such person shall be released on bail bond with or without surety.

Sec. 437 of the Code of Criminal Procedure provides that to release an arrested person who has committed a non-bailable offence is a matter of judicial discretion. But where there are reasonable grounds to believe that such arrestee is guilty of an offence punishable with death or imprisonment for life, the arrestee shall not be released on bail, unless the arrestee is below 16 years of age or is a woman, or is sick, or an infirm. A mere identification during investigation is not sufficient ground for refusal of admission to bail and where there are reasons to believe that he has not committed a non-bailable offence, but there are sufficient reason to believe that further enquiry into his guilt is called for, pending such enquiry, such person shall be released on bail bond or personal bond subject to specific conditions (Sec. 437(3) Cr.P.C.).

Sec. 438 Cr.P.C. empowers the High court or court of sessions to grant bail to a person apprehending arrest on an alleged accusation of a non-bailable offence subject to the conditions under Sec. 437(3) Cr.P.C.

Sec. 436(1) of the Cr.P.C. speaks of bail but the proviso thereof says of bail and bond without surety and here bail is suggestive of with or without surety but bail bond under sec. 436(2) of the code covers own bond. Sec. 437(1) of the code is suggestive that bail is release and emphasis is given on an undertaking to appear when directed and not on sureties. Sec 437(2), however, distinguishes between bail bond and bond without surety. Sec.441 (1) of the Code provides for both i.e. bond
of the accused and the undertaking of the surety and the word bail has been used in a generic sense to cover bond with or without surety. Sec 439 of the Cr.P.C. provides for release of a convicted person in the appellate court on bail or on his own bond pending appeal. Thus an undertrial is worse off than a convict. The Supreme Court’s power of release of a prisoner is very wide and contains no limitation based on sureties (Order 21 Rule 27, Supreme court rules, 1966).

The Code of Criminal Procedure, 1973 has also laid emphasis, while fixing the amount of bail bond, to the due regard to the circumstances of the case and that amount shall not be excessive. In Hussainara Khatoon it was laid down that the unreasonable pre-trial detention without caring for holding trial or to conclude it, is the violation of Article 21 of the Constitution of India of the right to speedy trial.

A person released on bail on a non-bailable offence may be arrested and committed to custody by an order of the High court or the court of sessions or the court granting the bail. These courts have also power to modify the conditions of release and power to cancel bail order in the interest of justice (sec.437, 439 Cr.P.C.).

The Supreme Court in Kashmira Sing bade farewell to the established past practice that a person once found guilty and sentenced to life imprisonment could not be released unless his conviction and

104 Motiram V. State of M.P., 1971 Cr.LJ 1703  
105 Hussainara Khatoon V. State of Bihar AIR1979 SC 1360  
106 Kashmira Sing V. State of Punjab (1977 Cr. LJ 1948;1977 SC 2147)
sentence were set aside. Where special leave to appeal against conviction and sentence has been granted to a life prisoner and there is an inordinate delay in the disposal of such appeal, such life prisoner may be released on bail.

A long period of imprisonment before trial is against all the civilised norms of human liberty and the unreasonable pre-trial detention arouses the human conscience against legal system vis-a-vis judiciary. The prime object of criminal law of civilised society is to maintain law and order and bring offender to book. Unless offence is proved against the offender, he is not to be punished. Thus, punishment follows a verdict of guilt, but should not precede it. Administration of criminal justice, however, requires the presence of the accused for trial and the conclusion of trial, to receive sentence, if found guilty. The Code of Criminal Procedure includes provision for release of an individual accused of an offence on bail or on recognizance with or without surety for his appearance. The entire object of bail is only to ensure that the undertrial does not flee or hide himself from trial. Monetary obligation is not the only deterrent factor, there are many more other socially relevant considerations which deter the accused from running away, or hiding himself from trial and they ought to be taken into consideration in determining the release of the accused187.
Besides the right to bail, rights to be presented before the magistrate and speedy trial are also important rights accrued to a suspect or accused in the administration of criminal justice.

Sec.57 of the Code of Criminal Procedure provides that no police officer can detain a person arrested without warrant in police custody for more than 24 hours (Art.22 (2) of the Constitution of India) exclusive of the time necessary for journey from the place of arrest to the magistrate’s court without an order of a magistrate under sec.167 of Cr.P.C. If investigation could not be completed within 24 hours under sec.57 of the code, the officer-in-charge of the police station or the officer making the investigation not below the rank of sub-inspector, shall forthwith forward the accused along with his remand slip (a copy of the entries in the diary prescribed relating to the case) to the judicial magistrate (Sec.167(1) Cr.P.C.). The magistrate before whom the accused is produced shall not authorise detention of the accused to the police custody for more than 15 days in the whole; and if the magistrate has no jurisdiction to try the case or to commit it for trial, and considers further detention necessary, he may order the accused to be forwarded to a magistrate having jurisdiction (Sec.167(2) Cr.P.C.). When an undertrial prisoner is produced before a magistrate and he has been in detention for 90 days or 60 days as the case may be, the magistrate must, before making an order of further remand to judicial custody, point to the undertrial prisoner that he is entitled to be released on bail (proviso (a) to sub-sec (2) of sec.167, Cr.P.C.1973).
In order to give meaning to the right of speedy trial to the suspect or the accused, Chapter XXXVI of the Code of Criminal Procedure provides for limitation for taking cognizance of an offence by the specified category of courts, and after expiry of the period of limitation no court shall take cognizance of the offence [Sec. 468(1) Cr.P.C.]. The period of limitation for taking cognizance is six months if the offence is punishable with fine only; one year if the offence is punishable with imprisonment for a term not exceeding one year; and three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years [Sec. 468(2) Cr.P.C.].

The period of limitation shall commence from the date of commission of the offence, but when unknown, the first date of knowledge to the person aggrieved or the police officer, whichever is earlier, or where the offender is not known, the date of knowledge of the identity of the offender to the aggrieved or the police whichever is earlier. In computing the period of limitation, the day from which such period is to be computed shall be excluded (Sec. 469 Cr.P.C.). The Code also provides that if any case is triable by a magistrate as a summons case and the investigation is not concluded within a period of six months from the date of arrest of the accused, the magistrate shall make an order stopping further investigation into the offence, unless it is necessary and he is satisfied for special reasons shown to him by the investigating officer and in the interest of justice for continuation of such investigation beyond the period of six months {Sec. 167 (5) and S. 473 Cr.P.C.}. 
RIGHT AGAINST DOUBLE JEOPARDY

Article 20(2) of the Constitution of India guarantees rights against double jeopardy in -"No person shall be prosecuted and punished for the same offence more than once". The principle had however been in existence even before the commencement of the Constitution {Sec.26 of the General Clauses Act and S.403(1) of the Cr.P.C.}, but the same has now been given the form of a constitutional, rather than a mere statutory guarantee. The fifth amendment of the U.S. Constitution provides “Nor shall any person be subject for the same offence to be put twice in jeopardy of life or limb”. In America and in England, the protection is not only against a second punishment but even against the peril in which a person is placed by the second trial for the same offence. In India Art.20(2) may be invoked only when there has been prosecution and punishment in the first instance. If a person has been prosecuted for an offence but acquitted, then he can be prosecuted for the same offence again and punished. A plain reading of the Article 20(2) makes it crystal clear to any person of ordinary prudence that to get the protection and privilege of this concept of guarantee against double jeopardy, both prosecution and punishment shall have to be awarded in the first instance (Reference: Indian Constitutional Law By M.P.Jain, Publisher - N.M. Tripathy Pvt. Ltd., Bombay, 1983). Another limitation read into Art.20(2) is that the former prosecution (which indicates that the proceedings are of a criminal nature) must be before a court of law, or a judicial tribunal required by law to decide matters in controversy judicially on evidence and on oath.
which it must be authorised by law to administer, and not before a tribunal which entertains a departmental or administrative enquiry, even though set up by a statute, but not required to proceed on legal evidence given on oath. A person accused of committing murder was tried and acquitted. The state preferred an appeal against the acquittal. Art.20 (2) would not apply as there was no punishment at the first instance and an appeal against an acquittal was in substance a continuation of the prosecution. Preventive detention is not prosecution and punishment and, therefore, it does not bar prosecution of the person concerned.

RIGHT AGAINST SELF-INCrimINATION

The privilege against self-incrimination is a fundamental canon of common law criminal jurisprudence, the characteristic features of which are that the accused is presumed to be innocent, that it is for the prosecution to establish his guilt, and that the accused need not make any statement against his will. The privilege against self-incrimination enables the maintenance of human privacy and observance of civilised standards in the enforcement of criminal justice. In India Art.20(3) of the Constitution which embodies the privilege against self-incrimination reads- “no person accused of any offence shall be compelled to be a witness against himself”. The privilege applies to ‘testimonial compulsion’, but in M.P.Sharma the supreme court stated that to limit Art.20(3) to its barely literal import would be to rob

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188 Kalawati V. Himachal Pradesh, AIR 1953 SC 131)
189 Ghulam Ahmad V. State, AIR 1954 J&K 59
190 M.P.Sharma V. Satish Chandra AIR 1953 SC 300
the guarantee of its substantial purpose and to miss the substance. Sec. 94(1), Cr.P.C., authorises a court or an officer in charge of a police station to issue a written order to the person having possession of the document to produce the same. The Supreme Court has held in Gujarat V. Shyamlal Mohanlal Choksi\(^{191}\) that under this provision an accused person cannot be asked to produce documents. Art 20(3) comes into operation only when accused is compelled to give evidence against himself. A confession by an accused is recorded under S.164 Cr.P.C., but he later retracts the confession. The Supreme court ruled that the confession must be voluntary. A retracted confession has little probative value but not inadmissible.\(^{192}\) Sec.342 Cr.P.C., permits the courts to question the accused generally after witness for him have been examined. The object of this section is not to build a case against the accused from his answers or non-answers but to test by explanation furnished by him, the truth of the prosecution version. The protection is available to a person accused of an offence. A person cannot claim privilege if at the time he made the statement he was not an accused but became an accused thereafter. The privilege extends not only to the courtroom but even at pre-trial stage if the person concerned can be regarded as an accused.

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\(^{191}\) Gujarat V. Shyamlal Mohanlal Choksi AIR 1965 SC1251.

\(^{192}\) Kalavati V. Himachal Pradesh, AIR 1953 SC131
RIGHT AGAINST ARREST

The Constitution of India ensures four safeguards for a person, who is arrested, viz.: (1) he is not detained in custody without being informed, as soon as may be, of the grounds of his arrest [Art.22(1)]; (2) he shall not be denied the right to consult, and to be defended by, a legal practitioner of his choice [Art.22(1)]; (3) a person arrested and detained in custody is to be produced before the nearest magistrate within a period of twenty-four hours of his arrest excluding the time necessary for the journey from the place of arrest to the magistrate’s court [Art.22(2)]; and (4) no such person is to be detained in custody beyond this period without the authority of a magistrate [Art.22(2)]. These safeguards do not, however, apply to an enemy alien or a person detained under a law of preventive detention [Art.22(3)]. The key words in Art.22(1) & (2) are ‘arrest’ & ‘detention’. These words have been interpreted to mean that the protection applies to such arrests as are affected on an allegation or accusation that the person arrested is suspected to have committed, or is likely to commit, an act of a criminal or quasi-criminal nature, or some activity prejudicial to public interest. These provisions would not therefore apply in case of arrest without a criminal accusation. These provisions provide protection against the act of executive or non-judicial authority. These Articles apply when a person is arrested without, and not under a court warrant. The reason is that warrant ex facie sets out the reasons for the arrest, and the arrested person is to be produced before the court issuing the
warrant. These constitutional safeguards are besides the other provisions in the Criminal Procedure Code.

The law enforcement agencies have to function within the framework of the criminal law of the land as every democratic set us follows the norm of 'Rule of law'.

After having had a glimpse of the machinery of law enforcement and the relevant laws and also the crime control mechanism at work, the data gathered from various sources are tabulated in the next chapter for the purpose of analysing the same to arrive at some deductions based upon them.