6. Empirical Evaluation of Administration of Criminal Justice System in Goa

It is submitted that this thesis involves a comparison between the Inquisitorial and Adversarial Systems of Enquiry into criminal wrongs, it was felt appropriate to have a Survey Conducted to determine the opinions of Legal Experts, and specially those who have gone through the Portuguese colonial era and the free and Democratic Liberated Goa: In Consultation with the Guide, a questionnaire was prepared and circulated to leading Advocates, Retired Judges and Legal Academicians for their opinion and assessment\(^1\).

In the questionnaire opinion was sought on the following basic questions;

1) Which system is better, Inquisitorial or Adversarial.

2) The opinion of the experts on the functioning of the Criminal Courts during the Portuguese period.

3) The role of Public Prosecutor.

4) Protection of witnesses.

5) Procedures before these Courts.

6) The Relevance of Precedents and other matters before the Criminal Courts.

\(^1\) A copy of the questionnaire circulated is given as Annexure “I” and included in the thesis.
7) The Role of the Police Department in Investigation of Criminal Cases.

8) A comparison with the Indian and Portuguese procedural system for achieving justice.

Not many persons are with us today who have had experience of practising and also experiencing the application of Portuguese Law as applied in Goa as well as under the Indian democratic system. Fortunately, this scholar had the privilege to call upon two great personalities, one is Mr. Justice Eurico Silva and the other is Senior Advocate Manohar Usgaocar. They showed their greatness and love for academics by permitting this scholar to discuss with them issues involving the application of Portuguese Criminal Law and also the application of Indian Criminal Law in Goa.

This scholar is extremely grateful to them and others for the interest they have shown and ideas they have expressed during the different sittings pertaining to the questionnaire. It would now be appropriate to discuss the views of these eminent persons in the context of issues identified earlier. Advocate Vasco Fereira too was very kind and helpful.

We may now take the issues separately for discussion.
6.1. Preference between Inquisitorial and Adversarial System

Senior Advocate Manohar Usgaocar who has been practicing Law for more than fifty years has seen the functioning of the Criminal Justice System during the last decade of the Portuguese rule and there after the transformation into the Indian Legal System. According to him he is in full agreement with Justice P. B. Sawant, former Judge of Supreme Court of India, in the opinion expressed by his Lordship that the rigors of the Adversary system followed in India, continuing Common Law System have to be given a go-by and a blending of Inquisitorial System of the Continent, which was in force in Goa Law has become necessary.

These views were brought forth by Advocate Usgaocar in an article written in 1989. Thus Advocate Usgaocar is firmly of the view that that Inquisitorial system where the Judge plays an active role to get to the truth of the matter is far better than the Adversarial System where the Judge merely sits as an Umpire.

According to Advocate Usgaocar, the common law lawyers have an aversion to the Inquisitorial System and to support it, he gives illustration quoting Bryan A. Garner, who says, “Accusatorial, denoting the common law system of Criminal procedure, may be contrasted with the civil law term Inquisitorial which describes ‘a system of Criminal Justice … in which the truth is revealed

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2 Refer Question ‘A’ – 2 of the qAnnexure - I.
by an inquiry into the facts conducted by the Judge’ [CDL = Concise Law Dictionary].

Despite its neutral sense in civil law, common law writers frequently use inquisitorial, as contrasted with accusatorial, in pejorative senses”. He has said emphatically that it was not with public interest to transfer the investigating agency of “Ministerio-Publico” of the Continental Law to the Police Department. In his view the Inquisitorial System really delivered results.

On this issue Justice Eurico Silva felt that the Portuguese System did produce results in terms of convictions. For petty offences, the judge dealt the matter quickly only on the basis of oral evidence but in case of major offences, investigation of the Crime was done by special police trained under the supervision of the Magistrate.

The head of Police Investigations was of the rank of the judge of High Court. Both the above gentlemen had one thing in mind and that is a criminal should not go unpunished. According to them the Continental System ensured proper investigations under the supervision of the judges and this itself was a great deterrence to avoid doing Criminal Act. They found this missing in the India System.

Advocate Vasco Fereira who has been a renowned practitioner of Criminal Law, also gave his views. In his opinion, the Inquisitorial System is a better system because criminal cases were decided quickly. He also gives an opinion
in favour of Combined Courts, that is Courts having Civil and Criminal Jurisdiction.

6.2. Functioning of the Criminal Courts during Portuguese Period\textsuperscript{5}

According to Advocate Usgaocar there is some times a misconception that under the Portuguese system it is for the accused to prove his innocence. He opines that this is not the correct understanding of the Law. According to him, it is always the prosecution which has to prove the charge against the accused failing which the accused will be discharged or acquitted.

To support this, he cites Art. 174 of the Portuguese Penal Code which states that, the confession of the accused unaccompanied by any other proof is not sufficient to frame any charge against the accused. The duty of the Criminal Court here is to direct the production of all available evidence, to find the truth and to investigate all the data available whether the confession is true or not.

Advocate Usgaocar is also of the opinion that the Judges who presided over the Criminal Courts were highly experienced persons in the field of investigation of Criminal Cases and also judging such cases. This helped in providing a very high rate of conviction, since the cases were well investigated and relevant evidence was brought on record.

\textsuperscript{5} Refer Question A – 1 of the Annexure – I.
Justice Eurico Silva stresses more on effective investigation. Every case after due investigation was sent by the Delegado who was investigating to the Concerned Judge. The Judge would go through the entire case and sent back to the Delegado to complete the loopholes and re-submit the proposal. According to him this helped in fixing the Criminal regarding the Commission of the Crime. There was no fixed time period for investigation. However the Criminal Court Judges were very strict in imparting punishment which helped in bringing credibility to the Criminal Law System.

According to Advocate Vasco Fereira there should be no distinction between Civil and Criminal Courts. Any Judge should be able to decide both Civil as well as Criminal matters. This he felt was essential for efficient disposal of cases.

6.3. The Role of Public Prosecutor\(^6\)

From the opinion given by all the three experts Justice Eurico Silva, Advocate Manohar Usgaocar and Advocate Vasco Fereira, the position of the Prosecutor was most important. He should have had a degree in Law called Licenciado for appointment as Prosecutor. According to them there was no distinction between a Prosecutor and a Judge. Sometimes the Prosecutor became a Judge and other times a Judge became a Prosecutor. This shows a strong link between

\(^6\) Refer Question A – 3 of the Annexure – I.
the criminal process and decision making. There was also the necessity to appoint honest and upright persons as Prosecutors.

6.4. Protection of Witnesses

Under the Indian System of Law witnesses play a very important role. The fate of the Criminal Case ultimately depends upon what witnesses say in the Courts but looking at the Portuguese Law one finds that no such importance is given to witnesses, since the matter is documented at investigation stage itself. Advocate Vasco Fereira expresses his opinion that there was no protection to witnesses under Portuguese Law and even there was no witness box in the Courts. The faith of the Judge in the Prosecutor was such that he would believe him and whatever he had submitted, he would accept it. This aspect has been fully supported by Justice Eurico Silva and he confirms that there is no need to have a provision to protect the witnesses.

6.5. Procedures before the Portuguese Criminal Courts

The Criminal Proceedings before the Court were very brief. Much of the work was already completed by the Prosecutor. Matters which were correctional or which were of the accusational nature were disposed of in a summary way. The experts have informed that regulations dealing with Bail were freely to be provided to the accused but in cases against Human beings or the State, or in

7 Refer Questions A – 4 of the Annexure – I.

8 Refer Questions A – 5, 6, 7 of the Annexure – I.
case of Sodemy, Counterfeit Currency, Death, Robbery, etc. Bail was not to be
granted. The Criminal cases by accusation were disposed off by General
Chamber which examined witnesses and disposed off in a quick manner. In the
serious cases, special procedure were laid down which was subjected to the
detailed investigation.

According to Advocate Manohar Usgaocar the courts were working in three
ladders:

i) The Court of first Instance, which is known as Trial Court under
the English System.

ii) The High Court called the Relacao and finally.

iii) The Supreme Court in Lisbon.

The system of filing appeal with higher courts was different. From the Trial
Court, the Memorandum of Appeal was to be presented within Eight days to
the Trial Court itself from the date of communication of the Judgment. The
Judge could admit the appeal and at the same time he would pass orders
granting stay or refusing stay. Thereafter the appellant would submit the
grounds of appeal with synopsis and conclusions within twenty days and next
twenty days the respondent would file his counter. Thereafter the proceedings
would be sent to the appellate court. Appeal would proceed in the same original
proceedings and after the file was remitted to the appellate court, there was no
oral hearing but judgment would be passed by Division Bench of three Judges. The procedure of delivery of Judgment was done in following manner.

One Judge would be the relater. He would deliver his opinion in writing. Then the file would be sent to another Judge who expresses his opinion in writing either concurring or differing. Then it would go to the third judge. The Court of Relacao Constituted of five Judges so that no decision would be rendered without a minimum of three judges out of five agreeing with one opinion.

6.6. The Relevance of Precedents and other matters before the Criminal Courts

Advocate Usgaocar gives a very detailed account of the relevance of Precedent in the Criminal Courts. According to him the views of Commentators who were professors and members of teaching faculty, had greater value than the Courts. The system of precedent was not applicable and even a Trial Court Judge could distinguish and differ from a decision given by the High Court that is the Court of Relacao or the Supreme Court. There was only one solitary exception in the event of their being a Diversions between Two Benches of the same Court then the full Court would take a final decision and this was known as “Assento” and had the force of Law.

The other experts have opined that books and other reference materials were available in the Courts for reference. This indicates that the Government took

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9 Refer Question A – 8 of the Annexure – I.
the responsibility of making the Law available to the practitioners as well as to
the litigants. The Judges too would have easy reference to decide the cases
from the material available in the Court itself. When compared with the Indian
System one finds that the Judges find it very difficult to find the Law as
material will not be easily available. They have to depend more on the Legal
Profession for getting reference material. In this respect the Courts in Goa were
at an advantage.

6.7. The Police Department and Criminal Courts in Goa

The Police Department is expected to be a very efficient arm of the Criminal
Justice System. The experts interviewed were of the opinion that the Police
Department in Goa worked very efficiently, especially with regard to the
investigation of crime there was a separate cell of the Police Department which
was controlled by the Prosecutor and the Judiciary.

This was because the investigation of crime had to be carefully monitored to
ensure that the criminals do not escape under political or social pressures. This
process would create a greater efficiency on the part of the Police Department
and also would increase the faith of the people in the Criminal Justice System.
If an Investigation was conducted honestly the esteem of the Police in the eyes
of the Public would also increase hence the Police Department in Goa did play

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10 Refer Questions A – 10, 11, 12, 13, 14 of the Annexure – I.
a very effective role in the whole process of recording a crime, investigation and punishing the criminal.

In free India such a system has been introduced in investigating violation of Human Rights. The National Human Rights Commission and the State Human Rights Commissions do have Police Cells functioning under them for investigation of Human Rights Violation and submitting the same before the respective commissions. Probably, this was done keeping in mind the Goa experience.

6.8. A comparison with the Indian and Portuguese Procedural System for achieving Justice

The following persons have responded to the Questionnaire submitted to them. Advocate Ramchandra Ramani, Advocate Narahari Keni, Advocate Joe Antao, Advocate Menino Teles and Eminent Academician, Dr. Marian Pinheiro. The first four persons mentioned above are Senior Advocates practicing law in different parts in Goa. While the last mentioned is the Principal of V. M. Salgaocar Law College, Panaji, Miramar, Goa and former Dean of the Faculty of Law, Goa University.

All of them have responded positively to the functioning of Criminal Law in Goa after Liberation. They have also kept in mind the issues of conflict

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11 In this para a brief comparison is made by way of introduction to the issues identified in Part – B of the Annexure – I.
between the former Portuguese Law and the present Indian Law while giving their opinions. We have already discussed the responses given by Justice Eurico Silva, Sr. Advocate Manohar Usgaocar and Advocate Vasco Fereira regarding their views on the functioning of the Portuguese System in Goa. They have also contributed their views regarding the functioning of Indian Law in Goa after the Liberation of Goa.

We will discuss the opinions of the above experts under the following issues.

1. Increase or Decrease of Crimes in Goa after Liberation

According to Advocate Narahari Keni there has been an increase in Criminal Cases specially pertaining to Theft, Murder, Physical Assault and Motor Accident offences.

According to Advocate Joe Antao there is an increase in Criminal Cases and he feels this is because of the following reasons:

   i) Administration of Criminal Justice is ineffective.

   ii) There is political interference with police investigation.

   iii) The investigating machinery is incompetent

   iv) When persons are acquitted, they are encouraged to commit more crimes.

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12 Refer Question B – 1 of the Annexure – I.
According to Advocate Ramchandra Ramani there is an increase of Criminal Cases after Goa’s Liberation is because most of the Criminal cases end up in acquittals. The reason for this:

i) Investigating agencies are not properly trained or equipped.

ii) Delay in Proceedings.

iii) Rampant Corruption.

iv) Political interference with Police Machinery.

According to Dr. Marian Pinheiro, there is an increase in Criminal Cases reported in the recent past.

According to Justice Eurico Silva the reasons for the increase in Crimes is as follows:

i) There is disrespect for authority.

ii) Interference by Politicians in Police Investigation of crimes.

iii) The Society itself is not taking a serious note of these issues.

According to Advocate Menino Teles, there has been a great population increase in Goa and along with that increase in corruption and Criminal activities. Hence, there is possibility of increase in crimes and criminal behaviours.
2. Are Criminal Courts today more or less efficient than the Criminal Courts during the Portuguese Period  

According to Dr. Marian Pinheiro the efficiency of the Criminal Courts is much lower today than expected or desirable. He has no opinion about the Criminal Courts during the Portuguese period. Advocate Ramani has no opinion on this aspect.

Advocate Keni, under present system too many facilities are made available to accused person. There are many acquittals and that has affected the functioning of the Criminal Courts.

Advocate Antao feels that the Prosecution witnesses turn hostile because of influence of Money, Lack of Security to them and threats they have to face.

According to Justice Eurico Silva there is total Lack of Accountability on the part of all concerned. He feels there must be strict inspection by superior courts and promotion of Judges must be done on the basis of merit. There must be proper regulation for promotion, transfer and fresh appointment.

3. Making Criminal Justice System more efficient

On this issue Justice Eurico Silva opines that:

i) Punishment must be strict.

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13 Refer Question B – 2 of the Annexure – I.

14 Refer Question B – 3 of the Annexure – I.
ii) Right to Bail must be regulated.

iii) Powers be given to Judges to Punish Persons.

iv) There should be accountability of Judges.

According to him being a Judge is a mission and not a profession.

Dr. Pinheiro feels that:

i) There should be a proper time limit fixed for every trial.

ii) The investigating official must be made liable and punished in the same trial if conviction is not possible because of faulty investigation.

According to Advocate Ramani:

i) There must be independent autonomous body constituted to investigate Crimes.

ii) Delays in prosecution should be avoided.

iii) Only efficient persons must be involved in investigation procedure.

Advocate Keni has no opinion on this issue.

Advocate Antao opine that

i) Independence to be given to the Police Department and they should be allowed to work without interference.
ii) Police officials must be better trained.

Advocate Menino feels that it takes a very long time to complete Criminal trials. The Murder cases take three to four years. It is his opinion that the case should be taken up the day after the charge sheet is filed and within a maximum period of six months the trial should be completed.

4. *Impressions on Provisions of Criminal Law*\(^{15}\)

According to Justice Eurico Silva everything should be done to protect the dignity of the Courts and the Judges should use their discretion so as to command respect. He finds the Indian Evidence Act is too Technical and Criminal Procedure Code must limit the number of adjournments.

According to Dr. Pinheiro:

i) Punishment must be made more severe.

ii) The Public Prosecutor should guide the case from the beginning to the end.

iii) Procedure must be made more simple.

iv) Where there is no conviction, explanation must be called for from the investigating and presenting officer.

\(^{15}\) Refer Question B – 4 of the Annexure – I
According to Advocate Ramani:

i) The Indian Evidence Act requires further Amendments.

ii) The Criminal Procedure Code must be so amended to face the challenge of terrorism, Cyber Crimes and Economic Offences.

iii) The Indian Penal Code must also require to make up to date to cover Kidnapping, Gang rapes, Highway Robberies, etc.

According to Advocate Keni:

i) There is too much leeway given to the accused and defendant and not the Plaintiff and Complainant.

ii) There is less chance of success in case of Complainant or Plaintiff and more chance of success if you are defendant or accused.

According to Advocate Antao; He is of the opinion that Legislation are very good but their implementation must be done very strictly.

According to Advocate Teles; The Indian Penal Code is more than hundred years old. Looking at today’s conditions the amount of compensation to be payable to the affected should be increased. Also the fine that is charged should be increased considerably. He proposes amendment to Sec 324 and Sec 325 of the Indian Penal Code so that the law is made more stringent. Further the
Police Department should not be carried away by what the press or the Media says. They should make honest investigation so that the real culprit is punished.

5. **Equipment of the Judges to decide Criminal matters**\(^{16}\)

According to Justice Eurico Silva much would depend upon the legal education received by the Judges.

Dr. Marian Pinheiro feels that Judges are not properly equipped. They should be made answerable for delay in completion of proceedings.

According to Advocate Ramani; It is difficult for Judges to decide effectively in view of lax investigation and the witnesses turning hostile.

According to Advocate Keni; The Judges are well equipped to decide criminal matters.

According to Advocate Antao; He is fully satisfied with the Judiciary in Goa.

Advocate Menino Teles is of the opinion that the judges should know the Law well, be very cool and patiently hear the Advocate. They are quite competent to Judge Criminal matters.

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\(^{16}\) Refer Question B – 5 of the Annexure – I.
6. *Powers of the Prosecutor*\(^{17}\)

Justice Eurico Silva states that the Prosecutor is the representative of the State. He feels the role of Prosecutor should be only for conducting the Prosecution. The matter of Evidence should be left to the Court.

Dr. Marian Pinheiro is of the contrary opinion. He feels more powers should be given to the Prosecutor and he should guide the process of investigation.

Advocate Ramani feels that the Prosecutor is the Officer of the Court and must act independently in the interest of Justice. His job is to present the facts correctly.

According to Advocate Keni the Prosecutor need not be given more powers. The present Powers sufficient to investigate the matter thoroughly. So also Advocate Antao feels that the present powers are sufficient.

Advocate Usgaocar is in favour of giving more powers to the Prosecution as under the Continental System.

Advocate Teles; The job of the defense Advocate as well as the Prosecutor is to assist the Court in finding out the truth. The Prosecutor honestly must place all the facts before the Court and the defense lawyer has to do all he can to free the defendant.

\(^{17}\) Refer Question B – 6 of the Annexure – I.
7. **Police Department and Criminal Investigation**¹⁸

According to Justice Eurico Silva the Police Department is not conducting investigation efficiently. The Department is not functioning honestly and with integration. He is not in favour of accepting confession made to a Police Officer.

Advocate Usgaocar is highly concerned about discovery of weapons under Sec 27 of the Evidence Act. He feels a lot of mischief is done by the Police under this Section. He is not in favour of accepting confession made to a Police Officer.

Dr. Pinheiro is of the opinion that the Police should undergo specialized training in Criminal investigation. He also feels that Confession made to a Police Officer should be admissible as evidence but not as conclusive evidence of the guilt.

Advocate Ramani also feels that the Police are not properly trained for this type of job. He feels that there should be an autonomous institution to conduct investigation. He is not in favour of accepting confession made to Police Officer.

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¹⁸ Refer Question B – 7 of the Annexure – I.
According to Advocate Keni much is required to be done to tone up the investigation process. He is against accepting confession made before Police Officer.

According to Advocate Antao; He is not satisfied with the way the Criminal Investigation are conducted. He suggests better training to the Investigating Officers. He is against accepting Confession before Police Officer.

According to Advocate Teles Police Officers are creating false evidence and create false witnesses. He is not in favour of confessions made to Police Officers be accepted.

8. Hostile Witnesses

Justice Eurico Silva feels that this issue revolves around the moral integrity of the witness.

According to Dr. Pinheiro the witness must be properly protected. Further the statement given by the witness at the investigation stage should be treated as binding.

Advocate Ramani also feels that the witness should be properly protected.

According to Advocate Keni the real question is to bring before the Court real offenders.

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19 Refer Question B – 8 of the Annexure – I.
Advocate Antao also request for proper security and the Police are helpless when witnesses are purchased.

Advocate Teles; Feels that witnesses become hostile if there is some relationship with the accused or because of money power or there are artificial witnesses.

9. **Sentencing Policy of the Courts**

Justice Eurico Silva is of the opinion that the courts are following proper sentencing policy. However in case of Rash and Negligent Driving and incase of Rape cases more stringent punishment should be given.

Dr. Pinheiro feels that the sentencing policy of the Courts is not appropriate. The sentencing is based on 19th century Legislation and the system of punishment must be changed.

According to Ramani there should be equity in granting punishment. This means all similar offenders must be given similar punishment.

Advocate Keni feels that the sentencing policy of the court is appropriate.

Advocate Antao is of the opinion that the Court should follow Deterrent theory of Punishment.

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20 Refer Question B – 9 of the Annexure – I.
Advocate Teles recommends that fine amount should be increased in all the cases.

10. Role of High Courts and Supreme Court\(^2\)

Justice Eurico Silva is highly satisfied with the role played by the higher courts in India.

Dr. Pinheiro is of the opinion that the High Courts should play more effective role and pass appropriate strictures against erring officials.

Advocate Ramani is also satisfied with the role played by the higher Judiciary.

Advocate Usgaocar, Advocate Antao and Advocate Keni have expressed no opinion.

Advocate Teles is of the opinion that it is the duty of the Higher Courts to verify facts and issues. Then only they can play an effective role in rendering Criminal Justice.

11. Grant of Pardon\(^2\)

Justice Eurico Silva and Advocate Usgaocar feel that the right to Pardon should be continued in the Constitution.

\(^{21}\) Refer Question B – 10 of the Annexure – I.

\(^{22}\) Refer Question B – 11 of the Annexure – I.
According the Dr. Pinheiro this right should be exercised for justifiable reasons only.

Advocate Ramani and Advocate Antao agrees that this right should exist but Advocate Keni disagrees. He feels such right can be misused by political persons.

Advocate Teles submits that all the power should vest with the Judiciary and not with the executive.

12. Precedent in Criminal Law

According to Justice Eurico Silva one should distinguish on facts. By blindly following precedent one may hamper the healthy development of the Law.

Advocate Usgaocar is in full agreement that precedent be applicable in Criminal matters.

Dr. Pinheiro also agrees that precedents should be followed since it helps the Judiciary to maintain uniformity and consistency.

Advocate Ramani, Advocate Keni, Advocate Antao all agree that the precedent is important aspect of legal system and should be followed.

Advocate Teles feels that, it is better if the Courts go by the Principle of the case rather than the precedent. He recommends the application of facts and the circumstances of the particular case.

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23 Refer Question B – 12 of the Annexure – I.
Along with other Advocates, Advocate Teles is for a strong democratic setup and every Criminal Court must be a custodian for implementing human rights enshrined in the constitution of India, as well as in Universal Declaration of Human Rights as proposed by the United Nations. 24

From the above opinions given by experts practicing law or teaching law or who have been in the Judiciary, one can come to different conclusions, which will be done in the later chapters. While considering issues in Part A dealing with the Portuguese System, we thought it relevant to take only Eight issues which have a bearing on legal system and Criminal Justice System in Goa for the future. However, in discussing issues in Part B we have considered all the issues so that one can discuss opinions which will be useful for the future development of the Law. One of the objectives and hypothesis being worked out in this thesis is to suggest measures to bring down crime rate in Goa to zero level. In this direction any suggestion made would be welcome 25.

We will now proceed to the next chapter which deals with the pre-emptive action to be taken by the Government and concerned to bring down the crime rate.

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24 Refer to United Nations Declaration on Human Rights, 1948.
25 See Chapter VIII dealing with conclusions and suggestions.