8. CONCLUSIONS AND SUGGESTIONS

The State of Goa, as we have already said is an area on the surface of the earth which is blessed by nature. It has an unbroken coastline with lovely beaches and packed with greenery specially created by towering coconut palms and a variety of lush green trees. In such a place, one expects there should be peace and tranquility. The people of Goa have lived in communal harmony and in a state of brotherhood for many centuries.

It has common culture, common language and highly appreciative value system. In such a place there should not be any scope for crime and disturbance of public tranquility. In this thesis this scholar has tried to go deep into the problems of crime occurrence and Administration of Criminal Justice in Goa. Both, during the pre-liberation period, when Goa was a colony of Portugal for four hundred and fifty years and post-liberation period, when Goa became part of India and has experienced the values of Democracy and Freedom.

In the Chapter that has preceded, the scholar has discussed the short comings which if properly identified and rectified, it won’t be long before Goa becomes a State with Zero Crime Occurrence. In view of Goa being attracted to the whole world as a place for holidays, enjoyment and recreation, it has become essential for the Government of Goa to take urgent steps to tone up the Criminal Justice System in Goa. To achieve the Goal and in view of the research conducted in pursuance of this thesis, the following conclusions are attempted for converting them into plans of action.
8.1. Criminal Justice System in Goa:

With the liberation of Goa the Indian Laws dealing with the Administration of Criminal Justice like Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act were made applicable to the territory of Goa. It is amazing to see that the replaced Indian System was readily and willingly accepted and the Advocates and the Judges very comfortably applied the Indian Law.

As has been explained, the Portuguese System was a mixed attempt of giving powers to the Judiciary to also investigate into Criminal Behavior and for this elaborate machinery was created. This Inquisitorial System had its advantages and inspite of it the Adversarial System as practiced in India came to be easily accepted as a replacement of the Portuguese System. Both in the Portuguese as well as the Indian System, highly qualified and experienced persons were appointed as Judges.

The trials were conducted very seriously and evidence was adduced by the way of proof so that the person who was convicted knew why he was being convicted. Hence the first conclusion we can draw is that Goa had a fine and a very serious system for delivery of Criminal Justice. As stated by Dr. Carmo D’Souza¹, “The Legal History of Goa during 16\(^{th}\) and 17\(^{th}\) centuries assumes international dimensions as Laws attempted to regulate Trade, Commerce and Navigation in Indian Ocean …. The Portuguese believed in the right and duty

¹ Dr. Carmo D’Souza, Legal System in Goa, Vol. I, Judicial Institutions, Pg 5.
on the part of their sovereign to Administer Justice in Goa. As such Administration of Justice was the business of the King of Portugal right from 1510”, from this we can conclude that though Goa was colony of Portugal, the question of maintaining Law and Order was given the highest priority. In this respect we can see no difference between the Portuguese and the British attitudes so far as maintenance of the Criminal Justice System was concerned.

8.2. Benefits of applying the European Pattern for purpose of investigation

Portugal being highly influenced by the Roman Law, just as most of the countries in Europe, thought it fit to apply the Inquisitorial System for investigating into Crimes. This system had the advantage of the Judiciary Supervising over the investigation process. Under the British / Indian System the State takes up the duty to apprehend the person who is guilty and put him on trial and punish him if he is found guilty. Here the accused is presumed to be innocent and the burden is on the prosecution to prove beyond the reasonable doubt that the accused is guilty.

The accused also enjoys the right to silence and cannot be compelled to reply. The aim of Criminal Justice System is to punish the guilty and protect the innocent. In the Adversarial System truth is supposed to immerge from the respective versions of the facts presented by the Prosecution and the Defense before a neutral Judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused.
According to Justice V. S. Malimath Committee Report the system is heavily loaded in favour of the accused and is insensitive to the victims plight and right\(^2\). On the other hand in Inquisitorial System, the accused is presumed to be innocent and it is the responsibility of the Judge to discover the truth\(^3\).

The standard of proof required is the inner satisfaction or conviction of the Judge and not proof beyond reasonable doubt as in the Adversarial System\(^4\). The Malimath Committee points out that, “another important feature of the Inquisitorial System is that, in respect of serious and complex offences investigation is done under the Supervision of an Independent Judicial officer - the Judge of Instructions, who for the purpose of discovering truth collects evidence for and against the accused …. the accused does not get a fair opportunity of testing the evidence tendered against him which is one of the essential requirements of a fair trial”\(^5\), ultimately the Committee concludes that fairness of trial is better assured in the Adversarial System\(^6\).

The Scholar has discussed this issue with very senior advocates who have had the opportunity of practicing Law both under the Inquisitorial as well as the Adversarial Systems. They are unanimous of the view that the Inquisitorial System prevailing under the Portuguese Law was highly efficient, under this


\(^3\) *Id* at 2.6, Pg 25.

\(^4\) *Id* at Para 2.7.

\(^5\) *Id* at Paras 2.8 and 2.9

\(^6\) *Id* at Para 2.11.
system they felt that the trial took very less time and the rate of conviction was higher as well as the respectability for the system was much greater\(^7\).

These experienced Advocates and Judges have further felt that the test of an efficient Criminal Justice System depends upon honest investigation and conviction. The Indian System, they feel, does not come up to their expectations because investigation is done only by the Police Department which was not properly trained for this type of work as well as there are greater chances of corruption, nepotism and other issues playing a bigger role thereby derailing the whole Criminal Justice System.

On the issue of the adoption of the Investigative System, we feel that some aspects of Inquisitorial System should be incorporated in the Indian Law. Specially, with regard to heinous Crimes like Murder, Mass Murder, Grievous hurt, Dacoity, Robbery, Mass Rape, etc. there must be investigation done under Judicial Supervision. The Malimath Committee Report admits\(^8\) in its recommendations that. “The Inquisitorial System is certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in high rate of conviction. The Committee on balance felt that a fair trial and in particular, fairness to the accused are better protected in the Adversarial System. However, the Committee felt that some of the good features of the

\(^7\) Refer Chapter VI of this thesis.

\(^8\) Malimath Committee Report, supra note 2 at 265.
Inquisitorial System can be adopted to strengthen the Adversarial System and to make it more effective.

This includes the duty of the Court to search for truth, to assign a pro-active role to the Judges to give directions to the investigating officers and Prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on Justice to the victim”. We suggest that the recommendations made by the Malimath Committee in this regard⁹ may be tried and experimented in the State of Goa since it already had a tradition and experience of Inquisitorial System being applied for centuries. This will help in expediting the Criminal Trials as well as ensuring that those who commit crimes do not escape by taking advantage of the loop holes in the procedures.

8.3. Sentencing Patterns

We can draw from the research work done is the question of sentencing for offences committed, we have discussed this aspect in detail in Chapter IV of this thesis¹⁰. Under the Indian System of Law a Judge exercises wide discretion given the statutory limits and there are no guidelines laid down to regulate the discretion of the Judge. This leads to a lot of differences and also discrimination because one Judge will give severe Punishment for the same offence committed. Such attitudes creates doubt in the minds of the people

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⁹ *Id* at 266 to 267.
¹⁰ See Chapter IV of this thesis.
regarding the application of Criminal Law. In the opinion Survey conducted by this scholar\textsuperscript{11}, a number of persons have suggested that there should be severe punishment given by the Judges.

The question of fine should be radically increased and the quantum of punishment by way of imprisonment be increased so that people are dissuaded from Committing Crimes. The High Courts should be given powers to review the sufficiency of punishments given by the lower Courts to ensure that there is due respect shown by the Judges to the sentencing process.

In this regard we would like to suggest that the High Court of Bombay which has jurisdiction over Goa state may be given powers to review sentences given in major offences, which have already been identified above, to ensure proper sentencing procedures. A Criminal should not get away with light Punishment by influencing the Judiciary. It is only the High Court which can exercise its appropriate Jurisdiction to ensure that the correct sentence is passed keeping in mind the seriousness of the offence.

Similarly under the Probation of Offenders Act, the Court should exercise the Jurisdiction to ensure that the provisions of this Act are properly implemented. We have already seen in Chapter IV how the Supreme Court has intervened in number of cases to ensure that provisions of the Act are correctly carried out.

\textsuperscript{11} See Chapter VI of this thesis
8.4. Increase in Criminal Behaviour

The fourth conclusion we have arrived at that there is definitely a steep rise in the number of crimes committed in Goa following Liberation from the Statistics available regarding crimes committed in Goa before liberation\textsuperscript{12} shows that a minimum of murders and offences regarding grievous hurt were committed.

No doubt there were large number of thefts but that was limited to the theft of coconuts and other fruits. When we compare this with statistics after Goa’s Liberation and specially in the last ten to fifteen years, we find that the crime rate has increased considerably. But then we have also shown that with the introduction of Democracy, Liberty and Freedom, there has been a surge of developmental activities which have given rise to economic inequality consequently leading to increase of crimes.

Compared with all the developing states this is but a natural phenomenon but when we compare the crime rate in Goa with the National Crime Rate, we find that it is quite high and is higher than Maharashtra and Karnataka which are the neighbouring states. This is inspite of the fact that Goa State has less population and Territorial Jurisdiction compared to these states. This is alarming and the Government of Goa is required to have new policy Guidelines for determining the causes e.g. the serial killer Mahanand Naik has now

\textsuperscript{12} Chapter V of this thesis.
confessed to have committed sixteen murders of women in a very similar fashion.

He used to lure them promising to get married, taking them to secluded places and removing all their gold and strangling them with their duppatta and disposing of their dead bodies. In a period of three to four years he had fooled and killed all these women and their could be more, with the Government being clueless regarding the Commission of the Crimes. It was only accidentally he was arrested and the truth came out from him thereafter\textsuperscript{13}. The killer has been now nicknamed as “Duppatta Killer”.

It is unfortunate that so many murders have gone unnoticed with the Governmental Investigating Machinery failing to perform its duties. Such crimes are a result of a new urge in the people to become rich quickly and on the part of women to find a husband at any risk or cost. This is a dangerous trend and unless there is vigilance on the part of the Government and the Public, it will be difficult to prevent the occurrence of such crimes.

It is suggested that the Goa Government should set up an autonomous investigating machinery as suggested by the Legal Practitioners who were interviewed by this scholar and as reported in Chapter VI of this thesis. The experts unanimously feel that the Police cannot act independently and they are influenced by politicians, gang leaders, etc. Hence they have suggested and we fully support the setting up of Independent and Autonomous body to

\textsuperscript{13} Times of India, Wednesday, May 20\textsuperscript{th}, 2009, Goa Edition.
investigate all crimes and submit their report to the concerned Judge for taking appropriate action. As already suggested above, the Judge should have further discretion to conduct further investigation in special and severe offences.

8.5. Training and Orientation to concerned:

What we have arrived at after conducting research on this topic is that, there is lack of training and appropriate orientation at all levels of Criminal Justice Administration. The importance of continuous training in any system of Governance cannot be underestimated. In Chapter VI we have seen most of the person who have given their opinion have said that there is a total lack of training of investigating officers for properly detecting crimes. Crime investigation is a special type of work which requires expertise, competence and above all absolute honesty.

There have been exceptionally brilliant Police Officers but they are rare. What is required is all concerned in the investigation process must be adequately trained Justice V. S. Malimath Committee report informs us there are three central detective training schools, at Kolkata, Chandigarh and Hyderabad. It is absolutely necessary that one such central training school be located in Goa State in view of the importance of Goa in National and International sphere as a tourist centre. This school should also include courses in Forensic Science. The importance of training for Crime investigation has been highlighted by the

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14 Malimath Committee Report, supra note 2 at Para 7.15, Pg 101.
Malimath Committee. The Committee is of the view that adequate number of training institutions should be set up by the State Governments as also by the Central Government for initial training.

This suggestion of the Committee if properly implemented will help in proper detection of crimes and bringing the culprits to book.

Judges dealing with Criminal proceedings required to undergo orientation courses regularly so that they are up to date with the latest types of crimes committed with the newest technology used by Criminals. They must develop an investigative mind and ensure that all steps are taken to see that major offences, fully investigated before the accused is let-off. We are not sure about in-service training being given to Judges in Goa but earlier it is done, it is better in the interest of Administration of Justice.

It is the duty of the High Court to ensure that the Judges of the Lower Courts function in a free and confident manner. For this, regular meeting with the Judges of the Lower Courts by the Administrative Judge and giving them suitable guidance and advise, will greatly help in the proper functioning of the Lower Judiciary. All allegations made against the Judges in the Media either Press or Electronic, must be properly investigated by the High Court. This will help in building the public image of the Judiciary.

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15 Id at 7.15.2.
8.6. Making Goa a Model State:

In Chapter VII the scholar has visualized certain areas for Governmental action. The areas identified are those highly connected with the developmental process of Goa and also linked to the future of Goa. In order to achieve all around progress, Goa must reduce the crime rate to zero level. In achieving this target, the burden is mainly on the government. The other segments of the society like N.G.O.’s, the media and other social groups have a key role to play in ensuring that the target is achieved.

Tourist from all over India and also from all over the world flock to Goa for the reasons already mentioned in Chapter I\textsuperscript{16}. But to sustain this, Governmental agencies must go all out to keep drugs and drug trafficking out of Goa and also to ensure that Alcoholism does not destroy the health of the inhabitants. The Forest of Goa must be protected and its beaches secured. The establishment of “Dhrusti” life guards on Goa beaches to save people from drowning is a welcome measure introduced since last one year.

The Educational Institutions must include in their syllabi the dangers involved in smoking, consumption of Drugs and Alcohol. All these three are related to and connected with Tourism Trade. The Education Department must have a programme to build the character of the children and encourage them to take to sports and other physical exercises. These suggestions are made to ensure a proper educational build up to prevent future adverse effects on the young

\textsuperscript{16} See Chapter 1 of the thesis.
generations. The rights of the Ramponkars must be protected and so also the Rights of Migrants. The Migrants have come to Goa from different States of India and are helping with process of its development. Their interest and the interest of their children must be protected.

We wish to state that if these and other recommendations made in Chapter VII of this thesis are properly implemented, Goa will be an Ideal and Model State in India in so far as bringing down the Crime Rate is concerned.

8.7. Maintaining the Cultural Ethos of Goa:

This conclusion deals with the maintenance of the separate identify of Goa and its cultural ethos. Goa is the only state in India which had an opinion poll conducted to decide whether it would like to merge with another state or maintain its separate identity. Goans decided by 55 – 45 majority to stay as a separate unit17. This means the Goans had voted for separate identity as well as maintenance of their separate culture.

To do this, the Government must ensure that the rights of all concerned are preserved and protected. This will also help in creating an atmosphere of peace and mutual co-operation which will help reduce the crime rate. In pursuance of this, and for greater efficiency, Goa must have its own High Court with its own people as Judges. This will help understand Goas peculiar problems and prevent occurrence of disputes and differences. Just as the Konkan Railway has

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17 The Opinion Poll was conducted in January 1967 under the Goa Daman and Diu (opinion poll) Act, 1966.
helped bring the Konkan people together, such institutions which will integrate the Konkani speaking people will help in greater progress as well as creating bonds of friendship.

8.8. Need for an Institution of Comparative Law in Goa:

This Conclusion deals with the proposal to create an institute of Comparative Law in Goa. We have already mentioned in Chapter I that Goa is an arena where conflicting Jurisprudential theories have come into play. From centuries of the Portuguese Rule, Goa experienced the application of Civil and Criminal Law as applied and practiced in European countries, much influenced by the Roman Law and the Codes.

One can find advantages and disadvantages in that system. We have also seen in Chapter VI all those who practiced Law during the Portuguese era thought that, that system was better than the Common Law System. In a way, after Liberation, the Indian System was rather forced on the people of Goa and also the people of Pondicherry where the French system had prevailed. The people of Goa have now accepted the total application of Indian Laws.

But it will be in the best interest of the growth of the Law to systematically study the effect of the European System as well as the Indian System on the Institutions as well as on the people of Goa. To do this we feel there must be an Institute of Comparative Law maintained by the Union Government to research of these continuing problems arising in Civil and Criminal Laws. Additionally even the problem arising in Pondicherry could be studied because of the
common background of the European System of Laws and their conflict with Common Law / Indian Systems of Law. One may ask why such a recommendation is being made.

We wish to reiterate the recommendations in Justice V. S. Malimath Committee Report on Reforms of Criminal Justice System that “the Inquisitorial System is certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in a high rate of Conviction” \(^{18}\). We have repeated this citation only to support our suggestion that an institute of Comparative Law, if created by the Central Government, would help in the future development of the Legal System in places like Goa which have experienced different Systems of Law.

The above conclusions and suggestion are made keeping in mind the fast rate of development and progress taking place in Goa and the great future it has in projecting Indian image to the thousands who come to its shore. It is commonly accepted that “small is beautiful” \(^{19}\). In population and territory, Goa is a small State but it has the potential to be the best governed and the most beautiful State in India.

\(^{18}\) Id at 265.

\(^{19}\) Schumacher, E.F., *Small is Beautiful*. 