CHAPTER I

INTRODUCTION

The seriousness of the social problem relating to crime hardly needs to be described. The general public is always the victim of the crime. The criminal, ordinarily, takes help of some accessories to commit the crime, firearms being the commonest amongst the accessories. The use of firearms in connection with the commission of such crimes has been the subject of great public concern in recent years. Therefore, restrictions and safeguards, in relation to possession of and control over firearms and ammunitions, are of utmost necessity and vital concern in the interest of the state, for maintenance of law and order in general and ensuring public peace and security in particular. That there has been a substantial increase in crime committed with the help of arms is beyond doubt; yet research into this subject has been noticeably sparse. This study has been directed towards producing informations on various problems of use and control of firearms in many aspects including sentencing, trend analysis etc. and towards examining legislation, weighing of official attitudes, and assessment of state policies, in an attempt to establish whether or not they are producing any desirable effects.

In this study, the term "crime" is used to include crimes committed by both adults and juveniles in the same head without showing them separately as preliminary survey shows that involvement
of juveniles relating to firearm crimes is much less compared to adult involvement. Furthermore, "use of firearms" is supposed to have a meaning much broader than the definition of "criminal use of firearms" which is defined as the "use or carrying of a firearm to further the commission of a crime........ whether it was the use of a firearm to commit a robbery at gunpoint, or to resist arrest after the crime". Thus, the term "use" not only refers to the criminal use but it also denotes illegal possession of firearm as well. And so "use" refers to both mala in se (intrinsically wrong) and mala prohibita offences (wrongs as prohibited by statutes) involving firearms.

The main idea of this study is to bring to focus the different aspects of commission of crimes involving firearms in Assam during 1975-85. The study having chosen a local and special matrix will endeavour to study crimes against person, property crimes and also relating to political crimes. Crime under the head dacoity and robbery finds a dominant place relating to property crime and next to murder relating to crimes against persons. However, preliminary survey indicates that lesser number of robbery cases are associated with firearms in comparison to dacoity cases and so the focal point of study relating to crimes against person and property crimes will be dacoity cases in particular and so the statistics will be collated accordingly.
Political offences are those which injure the political organism and sometimes even the administrative order too, generally directed against the constitution of the Government and against sovereignty, which trouble the order established by the fundamental law of the state and disturb the distribution of powers, such as, treason, sedition, mutiny, espionage etc. Acts which aim at overthrowing or modifying the organization of the main organs of the state, or at destroying, weakening or bringing into disrepute one of these authorities, or at exercising illegitimate pressure on the play of their mechanism or on their general direction of the state, or which aim at changing the social conditions created for individuals by the constitution in one or all of its elements, are also political offences. In brief, what distinguishes the political crime from the common crime is the fact that the former only affects the political organization of the state, the proper rights of the state, while the latter exclusively affects rights other than those of the state.\(^{(1)}\) It will be quite interesting to study some of the crimes alleged to be political crimes committed during the period (1975-1985) in Assam and to examine whether those activities actually may be categorized under purely political crimes, or relative political crimes or none at all.\(^{(2)}\)

The work is likely to lead to prove or disprove Vertko's Static and Dynamic Laws of sex and homicide and other mala prohibita offences (Possessory offences) regarding female criminality involving firearms.\(^{(2a)}\) A particular assortment of the
provisions regarding and having nexus to the use of firearms in the three major criminal Acts namely the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 as projected with the Arms Act, 1959 will reflect the profuse interface of criminal jurisprudence as prevalent in India. The main body of the criminal law regulating the use of firearms and ammunition in India is contained in the Arms Act, 1959 which is the primary legislative plank in this field. An in-depth study relating to working of this important legislation will follow highlighting the profiles and pre-emptive activities connected therewith. Criminalistics, which refers to the profession and scientific discipline that undertakes the recognition, identification, individualization, and evaluation of physical evidence by applying the findings of the natural sciences to the law, will be discussed on the basis of case examination and evidentiary aspects relating to firearms in connection with both the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 in the relevant sections of law. The role and status of the firearms expert, also known as ballistics expert, will be examined in a greater detail in the proper perspective attracting the relevant sections of law of the three Major Criminal Acts. Analysis of the data and statistics on the subject and a reformulation of them may also be necessary and so an endeavour will be made towards that end as well. A trend of behaviour of use and also regarding crimes involving firearms may indicate the motive power and operational objectives.
There is a great deal of evidence that current statutes calling for punishment of law-breakers are not administered uniformly or with clarity or certainty. This suggests that the actual reactions to crime are not really reflected in the laws governing the administration of justice. Keeping this in view it may be worthwhile to examine the mandatory minimum sentencing policy which has been found to be a general trend since last few years (amendments made in 1983, 1985 and 1988 of the Arms Act, 1959) to have been incorporated in the primary legislative plank for control of firearms. A "mandatory minimum" sentence law is a statute that requires an offender convicted of a specified crime to be incarcerated, thereby foreclosing probation or any form of suspended sentence; and that requires the imposition of a minimum period of imprisonment, either as a uniform and inflexible statutory provision or as a mandate to the sentencing judge to set a minimum terms. This examination will be linked with the criterion of deterrence-based punishment and its utility relating to firearms offences keeping in view the present trend of illegal use of firearms vis-a-vis yearwise conviction rate of the accuseds. There may be a further scope of study on remission and parole and certain procedural aspects regarding sentencing relating to the Criminal Procedure Code, 1973 which may perhaps be requiring certain modifications and renovations in the relevant provisions of the primary legislation.

The debate over gun control is often a war of statistics,
yet statistics alone cannot answer most important policy questions. However, in order to better comprehension, for sizing up and control of crimes, one needs precise counts of its occurrence. Crime statistics represent the counts of criminal behaviours and criminals. They are typically uniform data on offences and offenders and are derived from records of official criminal justice agencies, from other agencies of control, and from unofficial sources such as surveys of victimization or criminal involvement. Thus the method of data collection is in the form of unobtrusive measures which refer to non-reactive methods of gathering data mainly in the form of physical trace analysis; archival, existing data, and autobiographies; simple observation; disguised observation and simulation of which the first two types are of main concern in this study. Physical trace analysis involves the study of deposits, accretion of matter, and other indirect substances produced by previous human interaction. Much like the archeologist or the crime scene detective, the criminal justice researcher attempts to reconstruct, after the fact, the substance of the phenomenon under investigation. Archival records, memoirs, diaries and historical documents contain much information which can provide a historical overview illuminating the criminological issues. The analysis of available data include not only the analysis of official statistics and records, but also procedures such as content analysis and secondary analysis. Content analysis involves the systematic classification and study of the content of mass media, for example, newspapers, journals and periodicals and the
like and secondary analysis entails the reanalysis of data which previously was gathered for other purposes. These measures are secretive, or nonreactive, means of gathering data. (7)

Furthermore, it may be pointed out, that the design is based on longitudinal studies where data are collected over a period of time. This aids in studying trends, changes in attitudes, patterns of behaviour etc. Thus time series designs are included in the longitudinal studies which involve measuring a single variable at successive points in time scale. In the present work, the single variable may be taken to refer type of firearm. Trend studies simply study different samples of the same general population longitudinally which is also expected to be a major part of this attempt.

Generally, statistics can be classified into two types; descriptive statistics and inferential statistics. Descriptive statistics are intended to summarize or describe data or show relationship between variables. Inferential statistics are intended to enable one to generalize or infer sample findings to larger populations, or to assess the chance probability of certain findings. It is endeavoured to study both types of statistics and to try to achieve a meaningful result.

The official statistics analysed here are mainly from:

(A) the crime branch of the Office of the Inspector General of Police (CID), Guwahati, Assam under the Office of the Director
General of Police, Assam, Guwahati.

(B) The Ballistics Division of the Office of the Director, Forensic Science Laboratory, Assam, Guwahati under the Director General of Police, Assam, Guwahati.

(C) The Office of the Inspector General of Prisons, Assam, Guwahati and


The sources of official statistics cited above are inclusive of the above fora but not limited to the enumerated ones and hence are purely illustrative in nature.

It is also endeavoured to have a comparative study of the official crime statistics of our country with that of a crime-infested society on foreign soil (i.e. The United States of America) which is supposed to be more advanced in its crime statistics formulation and thereby to reformulate and to suggest fresh criteria of innovations and modifications in the crime statistics of India, both in its official as well as unofficial levels.

Unfortunately, one may not have true measure of the "amount" and "distribution" of crime because of certain variety of problems. One such problem is hidden crimes and also the unreported crimes. Furthermore, the statistics represent the nature and extent of crime recognized in the society at a particular time only.
And in the final analysis crime rates have to be understood as political devices and this is the platform for the critical criminologist or radical criminologist to have a difference of opinion from the main-stream criminologist on problem, control and statistics of crime. Whether crime is increasing or decreasing is a question that can never be answered accurately or absolutely without considering the politics of the times, which again is controlled and distributed from various centres of power, especially in a Federal Country as in India. The "institutionalist" position naturally recommends that such statistics can only be used to analyse those (The 'controllers') that they were collected by, and not those (the 'criminals') they were collected of. At any one time- or between any two- the official juristic crime-rate can tell us, admittedly and limitedly, how many people were successfully prosecuted, but the construction of these statistics is such that no acceptable deductions can be made about the "motive" or "intentions" of the accused from them. Thus, the central implication of these conceptual observations is that variations in the official crime-rates are allowable as evidence of "control-waves" but never of "crime-waves". (8)

However, even if crime statistics is associated with such types of problems and shortcomings, many of whom are based on interpretation techniques, nevertheless, it has come to stay as there is, presently, no alternative for probable future prediction of crimes basing on which newer plans and policies are
formulated for crime control. The most important practical benefit resulting from technological advances in computer and communications design is the improvement of law enforcement performance in the prevention and control of crimes. It is to be kept in mind that the degree of effectiveness with which the courts and correctional services function in the administration of criminal justice is entirely dependent upon the police success in the solution of crimes. The march of time in the services by the Indian police is the march towards professionalization as police administration recognizes the dimension of its problems and moves forward in a scientific approach to their solution. So, national and provincial computerised data banks in our country, from which information can be retrieved instantly, will perhaps provide the most rational and political device for the authoritarian control of the population.
Foot notes to Chapter I


2. infra Chapter III

2(a) The Static law reads as follows:

In countries of high frequency of crimes against life the participation of women in these crimes is small; and vice versa; in countries of low frequency of crimes against life the participation of women in these crimes is perceptibly larger than in countries of high frequency of crimes against life.

The Dynamic law reads:

If the frequency of crimes against life in a country tends to increase, the increase primarily affects the number of male criminals; and vice versa: if the frequency of crimes against life in a certain country is on the decline, the decline primarily affects the number of male criminals.

3. infra Chapter IV
4. infra Chapter V
5. infra Chapter VI
6. The Arms Act, 1959
