

R. Thilagaraj

Rule of Law, democracy, development, and human rights are dependent on the degree of success that the governments are able to achieve on the criminal justice front. The objectives of the criminal justice are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with law, punishment and rehabilitation of those adjudged guilty of committing of crimes, and generally protection of life and property against crime and criminality. It is considered the primary obligation of the state under the constitution of India.

The principal formal agencies of criminal justice are police, judiciary, and corrections. Under the Constitution of India, Police and Prison Administration are the State subjects. But, the Supreme Court at Federal level and High Courts at state level administer the judiciary in the entire country. Though police and prisons are state subjects, the organizational structure, administration, and functioning of all the agencies of criminal justice are as per the federal laws such as Indian penal code, Criminal Procedure Code, Indian Evidence Act, Police Act, and Prison Act. This paper explains the structure and functioning of various agencies of Criminal Justice System.

R. Thilagaraj, Ph.D. (✉)
Department of Criminology, University of Madras,
Chennai, 600 005, Tamil Nadu, India
e-mail: rthilagaraj@gmail.com

13.1 Role of the Federal Government and Its Police Force

There is no independent department of police at the federal level. But the Federal government performs numerous police functions. The Federal Parliament has paramount jurisdiction over the Central and the Concurrent subjects. There can be no doubt that police and law and order are state subjects. In spite of it, many quasi-police subjects are from the federal government. For example, the administration of the subjects or items like the Central Bureau of intelligence and investigation, Preventive Detention, Arms, Ammunitions, Explosives, Extradition, Passports, and a host of similar or corresponding subjects is the sole responsibility of the Central Government. The Federal Government has also the power to amend the basic Police Acts, like the Indian Police Act, 1861; the Indian Penal Code, 1860; the Code of Criminal Procedure, 1861; the Code of Civil Procedure, 1859; and the Indian Evidence Act. These are all binding on the State Governments. Thus, the constitutionally created flexible situation and the organization and administration of police (Sethi 1983) in the states are brought under the purview of the Central Government under special circumstances (Gautam 1993).

13.2 Central Bureau of Investigation

The Central Bureau of Investigation (CBI) was created in 1963 at the federal level. It was established to undertake thorough investigation of important cases having interstate jurisdiction and international ramifications. The bureau initiates its own investigation but the State Government can also borrow its services in the field of prevention and detection of crime, if and when required (Raghavan 1989). CBI is headed by Director General of Police (DGP) assisted by Regional Directors. Recently many sensational cases have been investigated by CBI.

13.3 Central Intelligence Bureau

The collection and assessment of political and other useful intelligence relevant to the security of the entire country are the primary function of Central Intelligence Bureau (CIB). The bureau primarily coordinates the activities of special branches of criminal investigation departments of the states (Nehad 1992). The CIB has its headquarters in all the capital cities and important towns of the country and its officials have a sophisticated network of information feedbacks about individual and organization. The intelligence collected by the headquarters is screened, filtered, and verified independently as well as through state departments of criminal investigation.

13.4 Central Reserve Police Force

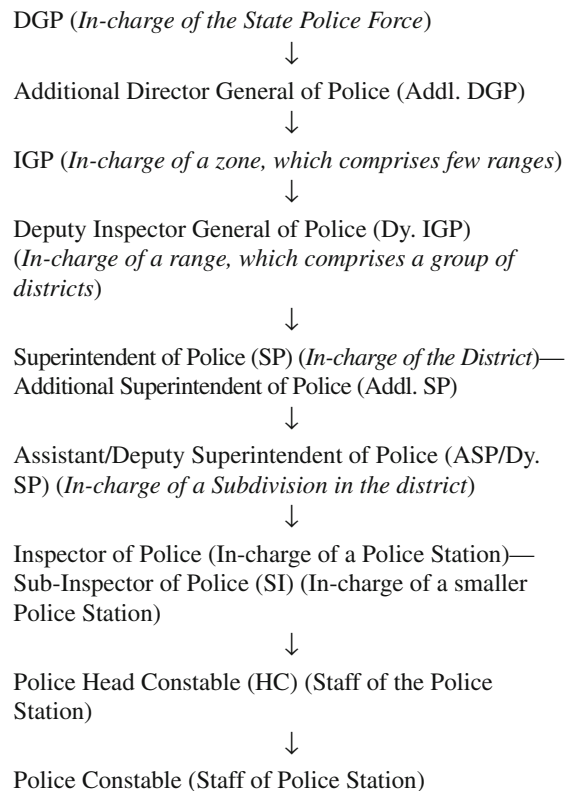
The Central Reserve Police was established at Neemuch, M.P., in the year 1939. As a strong arm of the federal government, it was constituted under the Central Reserve Police Bill 1949 as one of the armed forces for the purpose of maintaining internal security and it is used during the period of crises with its establishments all over the country. The force also was conferred with certain powers under Cr. P.C. in matters related with suppression of internal disturbances and res-

toration of order. At present the force comprises 1.20 lakhs men distributed over 93 battalions and many more ancillary institutions. The role of the force is varied and facing multiplicity of problems. Sometimes it deals with insurgents and extremists and also handles sensitive law-and-order situations (Krishna 1980).

13.5 Structure of the State Police

The State Police under the head of DGP consists of Commissionerate, Zones, Ranges, and Districts headed by Commissioner of Police, Inspector General of Police (IGP), Deputy Inspector General of Police (Dy. IGP), and Superintendent of Police, respectively.

13.6 The Field Establishment of the Police Force



It shall be lawful for any Police Officer to lay any information before a Magistrate and to apply for a summons, warrant, search warrant, or such

other legal provisions, as may be by Law issued against any person committing an offence. The police station is the basic structure and primary administrative unit of the police administration (Diaz 1976). The responsibility of maintenance of law and order, patrolling, and prevention of crime in a particular given jurisdiction rests on the police station. Normally the personnel of a rural police station consists of one Sub-Inspector of Police as Station House Officer and under him one Head Constable and ten Constables. The cities and other urban areas have special problems like slums, traffic, industrial disputes, and organized crimes, threats of terrorists and VIP visits to handle these issues specific police wings are also there (Sen 1986).

13.7 Functions of Police

The Federal criminal law, namely, Indian Penal Code, defines various types of crimes and prescribes punishment for each crime. Similarly the Criminal Procedure Code contains elaborate details about the procedure to be followed by the Police Officer in every investigation, inquiry, and trial, for every offence under the Indian Penal Code or under any other law (Kelkar 1998). The main responsibility of the Police is maintenance of law and order, patrolling, prevention of crime, and investigation in a particular given jurisdiction (Saha 1990).

Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence: proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filling the charge-

sheet. Investigation ends in a police report to the magistrate (Krishna 1994).

Two major issues in Indian Police system frequently raised are violence in the custody and undue political intervention in the police administration. In a number of judgments by high courts and also by the Supreme Court it has been spelt out clearly that every policeman must know that it is not permissible for police personnel to inflict even the slightest physical harm to anyone except in his own self-defense (Sunil Batra vs. Delhi Administration, 1980). Law places him on par with other citizens in that regard and he is entitled to use only that much physical force which is reasonably necessary to thwart any assault on him in the exercise of his right of self-defense. The National Human Rights has also many times intervened against this custodial violence. Despite all these interventions still there are reports on custodial violence and deaths in police custody.

13.8 Police Abuse of Power and Corruption

The subordinate echelons of the police are often known to extort money at every step which is a common feature all over India with only a few good exceptions. At the same time the tasks which are the liability of the police are quite often neglected outright and performance occurs only at a price which affects the public image of the organization; the gross result is rampant corruption and abuse of human rights. They are desperately depended on and pampered by the politicians in all states and the central government and have carved out good prospects for themselves in the shape of a bloated cadre with copious sinecures for their advancement in quick steps thanks to politicians (Ganguly, 2009). The *Transparency International*, the Berlin-based NGO, has rated India as the 95th most corrupt country among 183 countries in the world in its year 2011 corruption perception index.

The most important elements of police corruption are misuse of authority and misuse of personal attainment. One of the main causes for this is that the police officials have ceased to act

as professionals and are politicized to a great extent. They are manipulated by political leaders, who have misused the power of appointments and transfers to patronize weak or corrupt officers for their own selfish purposes at the cost of public interest. The main areas for their interference are appointments, transfers, rewards, and punishments. General police corruption includes bribery or exchange of money or something of value between the police and the wrongdoer. Other police crimes may range from brutality, fake encounters, sexual harassment, and custodial crimes to illicit use of weapons.

Open instances of corruption by the lower ranks of the police, who are in direct contact with the public, have wider implications on the image of the police and the police–public relations. The police personnel, especially the Constables, harass and extort money from the people many times a day. In most of the places there is a deal of understanding between the street vendors and the police about the “Mamool amount” (bribe) to be paid to the police. According to the grapevine in the police circles, money extracted from these people also reaches the higher levels. The increasing nexus between police personnel at various levels and mafia operators is another disturbing trend in most of the cities like Mumbai, Delhi, Kolkata, Lucknow, Ghaziabad, Hyderabad, etc. These mafia syndicates bribe the police and the organized crimes such as periodic extortion and

kidnapping for ransom committed by them go undetected. Delay is attributed to be one of the main causes of corruption. The Santhanam Committee report (1964) noted that administrative delays are one of the major causes of corruption and quite often, delay is deliberately contrived so as to obtain some kind of illegal gratification. “Speed money” is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licenses, permits, etc.

13.9 Crime in India

The incidence of cognizable crimes in the country during the decade 2000–2010 reveals that as many as 6,750,748 cognizable crimes were reported in the country during 2010 comprising 22.25 lakh cases under the IPC and 45.26 lakh cases under the SLL. The ratio of IPC to SLL crimes varied from 1:1.72 in 2006 to 1:2.03 in 2010. In terms of percentage, 67% of total cases (IPC+SLL) during 2010 were accounted for by Special Acts and Local Laws and the rest of the cases (33%) by the Indian Penal Code. The rate of total crimes (IPC+SLL) was 569.3 in 2010 showing an increase of 24.9% over 2006 and a decrease by 0.3% over 2009. The table below gives the latest statistics of the IPC and SLL crimes occurred during 2010.

13.10 Crime Statistics

S. no.	Crime heads	Cases reported	% To total IPC crimes	Rate of crime	Charge-sheeting rate	Conviction rate
<i>(A) Violent crimes</i>						
1	Murder	33,335	1.5	2.8	84.2	36.7
2	Attempt to commit murder	29,421	1.3	2.5	89.9	29.9
3	C.H. not amounting murder	3,782	0.2	0.3	84.9	38.9
4	Rape	22,172	1.0	1.9	94.5	26.6
5	Kidnapping and abduction	38,440	1.7	3.2	72.4	27.7
6	Dacoity	4,358	0.2	0.4	76.4	21.9
7	Preparation and assembly for dacoity	2,615	0.1	0.2	95.5	25.9

(continued)

(continued)

S. no.	Crime heads	Cases reported	% To total IPC crimes	Rate of crime	Charge-sheeting rate	Conviction rate
8	Robbery	23,393	1.1	2.0	70.6	28.3
9	Riots	67,571	3.0	5.7	90.9	21.7
10	Arson	8,508	0.4	0.7	68.1	19.3
	Total violent crimes	241,986	10.9	20.4	84.6	27.7
<i>(B) Crime against women (IPC + SLL)</i>						
1	Kidnapping and abduction of women and girls	29,795	1.3	2.5	74.2	28.1
2	Molestation	40,613	1.8	3.4	96.7	29.7
3	Sexual harassment	9,961	0.4	0.8	86.7	52.0
4	Cruelty by husband and relatives	94,041	4.2	7.9	94.2	19.1
5	Importation of girls	36	0.0	0.0	90.6	20.0
	Total crime against women (IPC + SLL)	213,585	9.6	18.0	92.0	27.8
<i>(C) Economic crimes</i>						
1	Criminal breach of trust	16,678	0.7	1.4	70.2	32.7
2	Cheating	78,999	3.6	6.7	72.1	29.2
3	Counterfeiting	2,589	0.1	0.2	42.7	37.9
	Total economic crimes	98,266	4.4	8.3	70.6	30.3
<i>(D) Property crimes</i>						
1	Burglary	90,179	4.1	7.6	43.4	34.5
2	Theft	330,312	14.8	27.9	37.7	37.5
	Total property crimes	420,491	18.9	35.5	38.9	36.7
<i>(E) Crime against SCs</i>						
	Total crime against SCs	32,712	1.5	2.8	90.7	35.0
<i>(F) Crime against STs</i>						
	Total crime against STs	5,885	0.3	0.5	96.0	25.0
<i>(G) Crime against children</i>						
	Total crime against children	26,694	1.2	2.3	83.9	34.6
<i>(H) Cognizable crimes under IPC</i>						
	Total cognizable crimes under IPC	2,224,831		187.6	79.1	40.7
<i>(I) Cognizable crimes under SLL</i>						
	Total cognizable crimes under SLL	4,525,917		381.7	94.7	91.7
<i>(J) Cognizable crimes under IPC + SLL</i>						
	Total cognizable crimes under IPC + SLL	6,750,748		569.3	89.8	81.3

Source: Crime in India, 2010, National Crime Records Bureau.

A total of 2,224,831 IPC crimes were reported in the country during the year 2010 against 2,121,345 in 2009 recording an increase of 4.9% in 2010. The share of IPC crimes to total cognizable crimes in percentage terms increased from 36.3% in 2005 to 36.8% in 2006. The IPC Crime rate has increased by 6.2% during the decade 2000–2010 from 176.7 in 2000 to 187.6 in 2010. A total number of 241,986 violent crimes were reported in the country accounting for 10.4% of the total IPC crimes during the year 2010. Puducherry (352.3), Kerala (424.1), Chandigarh (299.8), Madhya Pradesh (297.2) and Delhi (279.8) and 13 more States/UTs have reported much higher crime rates as compared to the National average of 187.6 which is higher than National average of 181.4 in 2009.

Puducherry (352.3), Kerala (424.1), Chandigarh (299.8), Madhya Pradesh (297.2), and Delhi (279.8) and 13 more states/UTs have reported much higher crime rates as compared to the National average of 187.6 which is higher than National average of 181.4 in 2009. The table below shows the latest crime statistics as recorded by the National Crime Records Bureau.

The property crimes have the highest share of 36.7% among the IPC crimes followed by crimes against scheduled castes (SC) with a share of 35% and crimes against children with a share of 34.6% among the IPC crimes.

13.11 The Role of Judiciary

The Indian Judicial System has the Supreme Court of India at its helm, which at present is located in the capital city of Delhi, without any benches in any part of the nation, and is presided by the Chief Justice of India.

The Supreme Court of India has many Benches for the litigation, and this apex court is not only the final court of permissible appeal but also deals with interstate matters, and matters comprising more than one state, and the matters between the Union Government and any one or more states, as the matters on its original side. The largest bench of the Supreme Court of India is called the Constitution Bench and comprises 5 or 7 judges, depending on the importance attached of the matters before it, as well as the work load of the court. The apex court comprises only various benches comprising the Divisional benches of 2 and 3 judges, and the Full benches of 3 or 5 judges. The Appeals to this court are allowed from the High Court, only after the matter is deemed to be important enough on the point of law or on the subject of the constitution of the nation, and is certified as such by the relevant High Court.

Every State has a High Court, which works under the direct guidance and supervision of the Supreme Court of India, and is the uppermost court in that state. The High Courts are also termed as the courts of equity, and can be approached in writs not only for violation of fun-

damental rights under the provisions of the Indian constitution but also for any other rights of the Constitution, and it has powers to supervise over all its subordinate courts in the state. In fact, when apparently there is no effective remedy available to a person in equity, in justice, he or she can always move to the High Court in an appropriate writ.

Below the High court, there are subordinate criminal courts under its supervision in each district. They are court of sessions and court of judicial magistrates. These courts conduct trials in all matters related to all types of offenders. However, only the session's court has the power to pass the sentence of death. Every district is headed by the Chief Judicial Magistrate who heads over the other Judicial Magistrates, these courts being primary criminal courts, where every offender is first produced after arrest by the police.

Administration of criminal justice is carried through these Magistrate-Courts and Session's Courts. The Court at the lowest level is called Judicial Magistrate of the second class. This court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding 3 years or with fine up to 10,000 rupees. The assistant session's judge is competent to impose punishments up to 10 years imprisonment and any fine. The session's judge can impose any punishment authorized by law: but the sentence of death passed by him should be subject to the confirmation by the high court.

13.12 Function of Court

The high court may empower magistrates of first class to try certain offences in a summary way. Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars

of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Trial is the judicial adjudication of a person's guilt or innocence. Under the Criminal Procedure Code (Cr.P.C.), criminal trials have been categorized into three divisions having different procedures, called warrant, summons, and summary trials. A warrant case relates to offences punishable with death, imprisonment for life, or imprisonment for a term exceeding two years.

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding 2 years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice," to the accused when the person appears in pursuance to the summons.

13.13 Public Prosecution

In India there is a public prosecution system to prosecute the offenders. The Cr.P.C. provides for the appointment of public prosecutors in the High courts and District Courts. They are officials assisting the criminal courts by placing before the courts all the relevant aspects of the case. The public prosecutor acts in accordance with the directions of the judge (Thilagaraj and Varadharajan 2000). The control of the trial is in the hands of the trial judge of the criminal court. Investigation is the prerogative of the Police and the Public Prosecutor is believed to represent the public interest (Chandrasekharan 2008). He is supposed to lead evidence favorable to the accused for the benefit of the court.

13.14 Death Penalty

In India, over a 100 years, the mode of death penalty has remained the same. Section 368 (1) of the Code of Criminal Procedure, 1898, provides as

follows: "When any person is sentenced to death, the death sentence shall direct that he be hanged by the neck till he is dead." This provision has been retained in Section 354 (5) of Cr.P.C. of 1973. The Supreme Court of India ruled in 1983 that the death penalty should be imposed only in "the rarest of rare cases." Capital crimes are murder, gang robbery with murder, abetting the suicide of a child or an insane person, waging war against the nation, and abetting mutiny by a member of the armed forces. According to *Amnesty International 2012*, for the seventh consecutive year India did not carry out any executions, but at least 110 new death sentences were imposed in 2011, bringing the total number of people believed to be under sentence of death at the end of 2011 to between 400 and 500.

Several mercy petitions were rejected by the President in 2011. However, executions in those cases were suspended by courts to allow for the consideration of separate legal challenges on the delay in the decision of the mercy petitions, and the constitutionality of the prolonged stay on death row. On 16 June 2011, the Mumbai High Court found that the mandatory imposition of the death penalty under Section 31-A of the *Narcotic Drugs and Psychotropic Substances Act, 1985*, violated Article 21 of the Constitution of India, and ruled that it be changed to give judges a discretionary choice of punishment. Following the judgment, engaging in the production, manufacture, possession, transportation, import into India, export from India, or transshipment of narcotic drugs as well as financing, directly or indirectly, any of these activities are offences that are punishable by death at the discretion of the judge. In December 2011, the Indian Parliament approved legislation making acts of terrorism aimed at sabotaging oil and gas pipelines punishable by death, in cases where the act of sabotage is likely to cause death of any other person.

13.15 Lok Adalats

Lok Adalats which are voluntary agencies are monitored by the State Legal Aid and Advice Boards. They have proved to be a successful

alternative forum for resolving of disputes through the conciliatory method.

The Legal Services Authorities Act, 1987, provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State, and District levels. These authorities will have their own funds. Further, Lok Adalats which are at present informal agencies will acquire statutory status. Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute. It also provides that in respect of cases decided at a Lok Adalat, the court fee paid by the parties will be refunded.

13.16 Alternate Dispute Resolution

ADR has emerged in India in the middle nineties due to the inordinate delay in disposal of cases resulting in docket explosion. In the place of Restorative Justice in other countries, India has Alternate Dispute Resolution. The privatization and structural adjustment policies in Post India legal system resulted in our thinking to find out ways and means to explore the quick and inexpensive ways to resolve the disputes without each and every case subjecting to the full Court processes. The Arbitration and Conciliation Act of 1996 explains various forms of Alternate Dispute Resolution.

The most commonly known methods are mediation, conciliation, and arbitration. These methods have been widely used not only to resolve disputes in commercial cases but also in a number of other noncommercial cases as well. Various disputes arise every day. ADR methods are the non-litigative dispute resolution strategies for resolving the disputes outside the court premises. Lok Adalat is one of the ADRs. It is one of the strategies for early settlement of disputes, particularly in personal injury compensation. Legal aid programme was provided in the year 1980 by the committee for implementation of Legal Aid Schemes (CLIAS) in holding Lok Adalatas for settlement of disputes through conciliation. It has become popular for pre-litigation settlement and the decision of Lok

Adalat became enforceable after the endorsement of the concerned court.

13.17 Correctional Administration in India

In India over one million criminal cases are reported every year. Each annual incidence of crime in the country necessitates the existence of a huge network of prisons and other institutions of correctional administration. In India the number of prison inmates per million of population is one of the lowest in the world. There are a total of 1,393 prisons of different categories and sizes, with an authorized inmate capacity of 320,450.

13.18 Prison Statistics in India

Total number of jails in the country: 1,393

Types of jails	Strength
Central jails	123
District jails	322
Sub jails	836
Women jails	18
Open jails	44
Borstal schools	21
Special jails	26
Other jails	3

Source: Crime in India, 2010, National Crime Records Bureau.

Total capacity of jails in the country: 320,450

Types of jails	Capacity
Central jails	138,737 (43.3%)
District jails	118,388 (36.9%)
Sub-jails	47,499 (14.8%)
Women jails	3,600 (1.1%)
Open jails	3,451 (1.1%)
Borstal schools	2,240 (0.7%)
Special jails	6,037 (1.9%)
Other jails	323 (0.1%)

Source: Crime in India, 2010, National Crime Records Bureau.

Total number of jail inmates as on 31.12.2010: 368,998

Male: 353,961 (95.9%)	Female: 15,037 (4.1%)
-----------------------	-----------------------

13.19 Occupancy Rate

Year	Occupancy rate
2008	129.2%
2009	122.8%
2010	115.1%
Convicts	Occupancy rate
Male	125,789 (34.1% of total inmates)
Female	4,632 (3.7% of total convicts)
Under trials	Occupancy rate
Male	229,846 (95.7% of total under trials)
Female	10,252 (4.3% of total under trials)

Source: Crime in India, 2010, National Crime Records Bureau.

One notable feature of the prison population in India is the large number of under-trial prisoners (240,098). This large number of under-trial prisoners has led to overcrowding in most of the prisons (Shankardass 2000). This is a cause of great concern, of which the Federal Government too has taken note of and has decided to provide financial assistance to the States to modernize their existing prisons and build new prisons to overcome the problem. This overcrowding of prisons has taken place despite the fact that bail is comparatively easy to obtain in the country.

13.20 Types of Prisons

The reception and classification of prisoners in India is a long drawn process. At the time of admission, the prisoners are examined by Prison Officers to verify their personal identify as written in the Prison warrants issued by the Courts. Thereafter, arrangements are made for safekeeping of their personal belongings. This is followed by a thorough personal search, which is conducted in a decent manner with due care of privacy and human dignity. Thereafter, the prisoners are sent to the Reception Ward where they are examined by a Medical Officer, within 24 h of admission. The Medical Officer is required to record a detailed report in writing on a medical sheet and weightment chart of the prisoner. The

prisoners are kept in the Reception Ward for 3–6 months before being moved to the main Prison Wards. During this period, prisoners are keenly observed by the correctional staff and their hobbies, areas of interest, likes and dislikes, personal characteristics, and family background are studied and compiled. This compilation is called case-work.

On the basis of their personal, socio-economic, socio-cultural antecedents of prisoners, as ascertained in the Reception Ward, the prisoners are classified and the nature of segregation are on the basis of the physical and mental health, age group, sex etc. to different wards. Juvenile delinquents are kept in Juvenile Homes exclusively meant for them (Nitai 2002).

All the Central and District Prisons have whole-time or part-time physicians in Prison Hospitals which have both outdoor and indoor facilities. The medical staffs thoroughly undertake medical examination of all prisoners periodically. They also carry out inspection of food, sanitation, and hygiene and other amenities being provided to the prisoners. Apart from regular vocational training in various trades and occupations, and the educational training schedules, correctional institutions in India have also started a large number of programmes to improve the personality and mindset of the prisoners. These are programmes on anger management, social skills training, counseling against drug and substance abuse, Yoga, Transcendental Meditation, and Vipasana. Many prisons in India have tried these new approaches and have found the same to be extremely effective in changing attitudes of prisoners.

It is encouraging to note that the rate of relapse in crime is very low in India as compared to other developed countries like the UK. The extent of recidivism in India is not more than 10% while in the UK, it is more than 72% (Walmsley 2008). In 2010, the share of recidivists among all offenders has decreased to 8.2% as compared to 9% in 2009 (Crime in India 2010). Absence of recidivism shows the nature of impact of treatment programmes running in prisons for the reformation and rehabilitation of prisoners. A number of alter care programmes for released prisoners are being run by the government with the help of non-governmental organisations (NGOs) which

are acting as a bridge between the prisoners and the community (Trivedi 1987). These services are offered to the prisoners on their release to reintegrate in the main stem of social life. The Prison Departments are also providing tool kits of trades to released prisoners to achieve self-employment.

13.21 Modernization of Prisons

It has been mentioned earlier that, though prisons are primarily the concern of the respective State Governments, the federal Government has come up with the offer of substantial help to improve the conditions in prisons. The federal government proposes to spend 18,000 million rupees on improving the conditions in prisons which include construction of new prisons, expansion and renovation of existing prisons, construction of houses for prison personnel, and construction of new prisons and improving the sanitation and water supply in prisons (Chauhan and Srivastava 2011). Out of this total outlay, the States are expected to contribute 25% from their own fiscal resources.

13.22 Women in Detention

The National Committee on Women Prisoners (1987) has thoroughly examined the conditions of women in prisons. It has pointed out that there should be respect for gender dignity and concern for women in all correctional institutions and personnel in the Criminal Justice System. The police, prison, correctional, and judicial personnel involved in the handling of women are especially trained to ensure this and their knowledge is updated in laws and procedures applicable to women. Taking into account the special role of women in family life and social development and the vulnerability of girls, the current policy of the Criminal Justice System is to avoid the arrest and detention of women to the extent possible. In cases where women are taken into custody, all provisions regarding protection of their person and rights are scrupulously adhered to. At no stage, a woman arrestee is left unguarded by a

police woman or other women authorized by the Government. Whenever, women are detained or kept in custody, in addition to basic amenity and privacy, the prison administration makes every effort to provide the essentials for meeting the women special needs. Welfare of children is a relevant consideration in the sentencing and disposition of women and every effort is made to ensure that the children enjoy protection from the detrimental effect of their mothers' arrest and incarceration. Earlier, women prisoners were mostly given vocational training in sewing and knitting. Now, efforts are being made to give them options of other vocations and activities. They are paid minimum standard wages laid down in the Prison Manuals for their work.

While, it has not been possible to set up separate prison for women in every State of the country, there are 12 exclusive prisons for women with an inmate capacity of 2010. Wherever separate prisons for women do not exist, the prisons have separate wards for them which are guarded by female correctional personnel.

13.23 Open Air Prisons

To counter the problem of overcrowding in the prison, open air prison has been established in a majority of states in India and it has been successful in most of the states. An initiative launched in the country in 1960, open prisons are assigned to convicts who have served part of their sentence and displayed good conduct. There are 22 open prisons in India (Report on Jail Reforms 1983). It is an initiative to reform the prisoners; open prisons give them freedom to move around freely during the day and earn a living in accordance with their skill set. In some of the states, the convicts are allotted a house where he or she can keep his family with him or her.

13.24 Probation

Probation is an alternative to imprisonment. Community-based treatment of offenders is widely used in India under the Probation of

Offenders Act 1958. Young offenders and offenders who have not committed serious offences are released on probation based on their pre-sentence investigation report of the probation officer. The probation officer plays a major role in reforming the offender in the community with the support of family members of the offender, his or her employer, NGOs, and other stakeholders. However the judiciary has an inimical attitude towards probation and hence the number of probationers has been declining in the past years (Chakrabarthi 1999).

13.25 Parole

Parole is release of an offender from prison before the termination of his or her sentence based on the good behavior he or she maintained in the prison. It is aimed at reduction of the period of incarceration. In India, parole is a conditional supervision of sentence for a short duration to enable the prisoners to attend to certain problems. However, in par with parole in other developed countries, there is a provision for premature release of offenders in the Criminal Procedure Code.

13.26 Juvenile Justice in India

The Juvenile Justice (Care and Protection of Children) Act, 2000, takes into consideration (1) provisions of the Indian Constitution; (2) UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); (3) UN Convention on the Right of the Child, 1989; and (4) United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990.

Juvenile Justice (Care and Protection of Children) Act, 2000, is a major step forward in terms of being a progressive and proactive legislation for the care, protection, treatment, and rehabilitation of “children in need of care and protection” and “juveniles in conflict with law.” It is a comprehensive legislation for justice to the children in the situation of abuse, exploitation, and social maladjustment.

The framework of the reenacted law provides for “Juvenile Justice Boards” in place of earlier Juvenile Courts and “Child Welfare Committees” in place of Juvenile Welfare Boards. These are the legal bodies, called Competent Authorities, for trial or proceedings of “Juveniles in Conflict with Law” and “Children in Need of Care and Protection,” respectively. The Act provides for the multiple roles of social workers and voluntary organizations at various levels. Besides, the Act has highly innovative provisions for the social reintegration of these children through the integrated institutional and noninstitutional care systems of adoption, foster care, and sponsorship programmes (Thilagaraj 1988).

13.27 Lacunas of Juvenile Justice System

Study of juvenile justice systems shows that children committing crimes, as well as others taken charge of in order to prevent the commission of crimes, are not being given the promised care. Special police units for juveniles or special training to police for dealing with neglected and delinquent juveniles are an exception. Juvenile courts and juvenile welfare boards have not been constituted in each district and their powers are exercised by specified magistrates without any special training in child psychology or child welfare. A majority of children are unhappy in the institutions and the casework services are inadequate in terms of diagnosis, counseling, and planning of rehabilitation. The main socialization agents, the caretakers, are the lowest paid, least qualified and at times even ill-informed about the needs of the institutionalized children (Weiner 1991). Very few aftercare service are available. Despite a statutory provision to the contrary, children are not always released on bail, even in case ofailable offences, by some juvenile courts. The various organs of the JJS are malfunctioning primarily because the system is an ill-coordinated one. Each of its three main components—law enforcement, adjudication, and correction—frequently operates haphazardly with little knowledge of what other segments are doing. The piecemeal

and fragmented measures taken for the care and the welfare of delinquent and neglected juveniles are bound to malfunction in the absence of a holistic approach to the problem of juvenile social maladjustment.

13.28 Judicial Review and Criminal Justice Administration

Never before in its history was criminal justice administration in India subjected to such a critical review by the Highest Court in the country as in the last few decades. Discarding its erstwhile “hands off doctrine towards prisons,” the Supreme Court of India came strongly in favor of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In *Sunil Batra vs. Delhi Administration and Others* (1980), Mr Justice V.R. Krishna Iyer pronounced: “prisoners have enforceable liberties, devalued may be but not demonetized; and under our basic scheme. Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy.” Again in *Sunil Batra vs. Delhi Administration* (1979), the Court asked and affirmed: “Are prisoner’s persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent.” These and several other judicial pronouncements have set into motion a series of prison reforms all over the country.

For the undue arrest and harassment by the police there had been a number of cases in the Supreme Court. The Supreme Court had laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of Police on one hand and protection of Human Rights of citizens from oppression and injustice at the hands of the Law Enforcement Agencies on the other hand.

The Supreme Court and High Courts in India have of late evolved the practice of awarding

compensatory remedies not only in terms of monetary but also in terms of other appropriate relief and remedies to victims of crime. Bhopal Union Carbide Gas tragedy victims are examples of relief and remedies forged by the Apex Court. In the case of Abuse of Power by police, the Supreme Court ordered for victim compensation by state and restitution by the alleged police officer. In another case, the High Court has held that the Criminal Justice System is not penal code alone, and that it is restitutive justice too.

13.29 Conclusion

The criminal Justice system is, at present, a complex of different agencies working at cross purposes. The delivery of justice is delayed and, at times, leads to miscarriage of the legal process. The current status of the Criminal Justice system throws many challenges to the government. But the Indian criminal justice system suffers from serious underfunding and understaffing, and continues to be extremely slow. As in every democratic civilized society, this system is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly, and legally. More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding of appropriate punishments to the convicted to meet the ends of justice, and prevention of recidivism.

Some of the recent developments that have taken place during the last few years in the judicial delivery system to seek redress and accord justice to the poor are worth mentioning. The importance of these developments to the delivery system of justice cannot be ignored. They have revolutionized our judicial jurisprudence and will go a long way in giving relief to the large masses and the common man. Efforts of the superior courts of the country to provide new contents to criminal justice have also resulted in paradigm shifts in prison reforms, treatment of under-trials, and rehabilitation of victims.

References

- Chakrabarthy, N.K. (1999). *Institutional Corrections in the Administration of Criminal Justice*. New Delhi: Deep & Deep Publications Pvt. Ltd.
- Chandrasekharan, K. N. (2008). *Public prosecution in India*. In Paper presented at the 4th Asian Human Rights Consultation on the Asian Charter of Rule of Law in Hong Kong.
- Chauhan, B., & Srivastava, M. (2011). *Change and Challenges for Indian Prison Administration, The Indian Police Journal*, Vol, LV111 (1). Jan-Mar, 2011. Pg 69–86.
- Diaz, S. M. (1976). *New Dimensions to the police role and functions in India*. Hyderabad: National Police, Academy.
- Ganguly, T. K. (2009). *A discourse on corruption in India*. New Delhi: Alp Books Publications.
- Gautam, D. N. (1993). *The Indian police: A study in fundamentals*. New Delhi: Mittal Publications.
- Kelkar, R. V. (1998). *Lectures on criminal procedure*. Lucknow: Eastern Book Company.
- Krishna Iyer, V. R. (1980). *Justice and beyond*. New Delhi: Deep & Deep Publications.
- Krishne Mohan, M. (1994). *Indian police: Roles and challenges*. New Delhi: Gyan Publishing House.
- Nehad, A. (1992). *Police and policing in India*. New Delhi: Common Wealth Publishers.
- Nitai, R.C. (2002). *Indian prison laws and correction of prisoners*. New Delhi: Deep & Deep Publications Pvt. Ltd.
- Raghavan, R. K. (1989). *Indian police: Problems, planning and perspectives*. New Delhi: Manohar Publication.
- Saha, B. P. (1990). *Indian police: Legacy and quest for formative role*. Delhi: Konark Publishers Private Limited.
- Sen, S. (1986). *Police Today*. New Delhi: Ashish Publishing House.
- Sethi, R. B. (1983). *The police acts*. Allahabad: Law Book Co.
- Shankardass, R. D. (2000). *Punishment and the prison: Indian and international perspectives*. New Delhi: Sage Publications.
- Thilagaraj, R. (1988). “Role of police, juvenile court and correctional institutions in the Implementation of Juvenile Justice Act 1986”, *Journal of the Madras University*, Vol. LX. pg no 44–48.
- Thilagaraj, R., & Varadharajan, D. (2000). “Probation: Approach of the Indian Judiciary” *The year book of legal studies* (Vol. 23). Chennai: Directorate of Legal Studies.
- Trivedi, B. V. (1987). *Prison administration in India*. New Delhi: Uppal Publishing House.
- Walmsley, R. (2008). *World prison population list*. London: Kings College.
- Weiner, M. (1991). *The Child and the State in India: Child Labour and Education Policy in Comparative Perspective*. Princeton: Princeton University Press.