

**REPORT OF THE COMMITTEE
ON
DRAFT NATIONAL POLICY ON CRIMINAL JUSTICE**



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**Ministry of Home Affairs
Government of India**

JULY, 2007

DRAFT NATIONAL POLICY ON CRIMINAL JUSTICE

Report of the Committee
appointed by Ministry of Home Affairs
Government of India

July, 2007

Prof (Dr.) N. R. Madhava Menon
Chairman

Committee to Draft a National
Policy on Criminal Justice
(Ministry of Home Affairs)

New Delhi, 31st July, 2007

Dear Shri Shivraj Patil Ji,

I am pleased to present to you a Draft of a National Policy Paper on Criminal Justice, prepared by the Committee constituted for the purpose, under my chairmanship, vide MHA notification No. 12/30/2006-Judl.Cell dated 3rd May 2006. On behalf of the Committee, I wish to thank you not only for the opportunity given to us to serve in a national endeavour of great public importance, but also for the constant guidance you liberally gave in our work.

The Committee held detailed deliberations on complex issues involved, in as many as 16 of its own meetings as well as consultations with the functionaries of the Criminal Justice System and others in five regional meetings held at Bangalore, Bhopal, Kolkata, Pune and New Delhi. In-depth interactions were held with experienced senior members of the police, the legal profession, the judiciary, the prison and correctional services, the media, the academia, the scientific community and representatives of various civil society groups (list is placed in the Annexure to the Report).

Various Ministries and Departments of the Government of India sent their representatives to interact with us, followed up by their written comments on our tentative draft. The Home Ministry's website where we had put the draft, elicited responses not only from several quarters within the country but also from quite a few individuals of Indian origin settled abroad. You had also very kindly circulated the draft to the Chief Ministers of the States and the Hon'ble Members of Parliament in the Consultative Committee of the Ministry of Home Affairs. We got the benefit of comments – written and orally expressed in meetings – from several of them. All this went into revision of the text of the draft at least three times before it could be finalized in the present form. Of course, there would still be scope for improvement. However, we feel that the document would be a good start in a long journey of constructing a system which will provide a reasonable level of freedom from crime to the citizens of our country.

The terms of reference of the Committee were comprehensive and complex which made divergence of opinion inevitable. The Committee has attempted to avoid extreme

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positions with a view to building up some degree of consensus on various elements of the National Policy. The need is to strike a balance between the demands of security on the one hand and the constitutional guarantees of liberty and freedom on the other. In this regard, the commitment in the Preamble of the Indian Constitution to secure the unity and integrity of the country, while ensuring the dignity of the individual, provided the philosophy underlying the Draft Policy Paper.

In the final analysis, a policy is as good as its implementation and the attitude of those who are involved in it. In the case of criminal justice, the machinery involved in its implementation is huge, diverse and dispersed under different governments across this vast country. The people want security irrespective of which level of government or what agency of government provides it. This requires the personnel of the criminal justice system at all levels to imbibe the philosophy and pursue the goals with some degree of accountability and humanism. This is easier said than done, but is the essence of good governance under democracy and rule of law.

We do hope that the enclosed Draft Policy Paper would prove useful to the Government in evolving a healthy, robust and dynamic policy to deal with the changing nature of crime and to provide a faster, fairer and inexpensive system of justice in criminal matters. Order and Justice are essential for peace and prosperity. Our country is fast moving on the path of economic development; let the criminal justice system render the necessary climate for development and be equitable and fair to all sections of our society.

Once again, let me place on record, on behalf of the Committee, our profound gratitude to you for the confidence reposed in us and guidance rendered in accomplishing our task. We are thankful to the officers and staff of the Department of Justice led by the Joint Secretary (Judicial) for the secretarial support and organizational assistance extended to us during the last one year.

With kind regards,

Yours sincerely,



[Prof. (Dr.) N.R. Madhava Menon]

Shri Shivraj V. Patil
Hon'ble Home Minister
Government of India
New Delhi.

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BACKGROUND AND INTRODUCTION

1.1 APPOINTMENT AND COMPOSITION OF THE COMMITTEE

The Committee on Criminal Justice Reforms constituted by the Government of India recommended (2003) that “Government come out with a clear and coherent policy statement on all major issues of criminal justice”. The Ministry of Home Affairs, Government of India accordingly appointed a Committee in May, 2006 for the purpose of drafting a Policy Paper on the subject under the Chairmanship of Prof. (Dr.) N.R. Madhava Menon, former Director of the National Law University at Bangalore and Kolkata and Director of the National Judicial Academy, Bhopal. Shri Anil Chowdhry, a former Secretary (Internal Security) to Government of India and Shri Mohan Dayal Rijhwani, a senior member of the Bombay Bar were the members of the Committee. Shri Kamal Kumar, former Director of the National Police Academy was also inducted as a member of the Committee, after his retirement.

The Joint Secretary (Judicial), Ministry of Home Affairs acted as the Convenor. Officers and staff of the Judicial Division of MHA extended the secretarial support to the Committee.

1.2 OBJECTS AND TERMS OF REFERENCE

1.2.1 The mandate of the Committee was to draft a National Policy Paper on Criminal Justice, keeping in mind the prevalent criminal laws, orders and judgments of various courts, contemporary socio-cultural values and the need to have a “justice delivery system which is faster, fairer, uncomplicated and inexpensive”. The object apparently is to prepare a policy instrument to be able to respond to the continuing challenge of crime and violence in society, sometimes even threatening national security and unity and integrity of the country.

1.2.2 India is one among the few countries in the developing world which has attempted to articulate a national policy on criminal justice which would seek to set standards not only on use of legislation to secure freedom from crime but also in limiting the exercise of state power in the interest of rule of law and of human rights. The challenge is to secure the right balance between freedom and security in constructing the National Policy and in ensuring compliance on the part of the multiple players including the State Governments which are

primarily looking after criminal law and administration.

1.3 MEETINGS AND CONSULTATIONS

1.3.1 The Committee, during its overall tenure of just over an year, met on sixteen occasions and had a few zonal consultations with a cross-section of the stakeholders of the criminal justice system. In this regard, the support extended by the National Judicial Academy, Bhopal, the School of Criminal Justice and Administration of the National University of Juridical Sciences, Kolkata, the National Academy of Legal Studies and Research University, Hyderabad, Symbiosis College of Law, Pune, the LJNI National Institute of Criminology and Forensic Science, New Delhi, the Centre for Development Studies, Trivandrum and the Indian Space Research Organization, Bangalore deserve to be specially mentioned.

1.3.2 A tentative draft paper prepared to elicit views from a cross-section of the public was put on the Home Ministry's website which received a good deal of response from the public and the media. The Draft Policy thus evolved was then organized in terms of the mandate of the Committee and the concerns expressed by the different stakeholders. The Draft was then sent by the Hon'ble Home Minister to the Parliamentary Consultative Committee of Parliament for the Ministry of Home Affairs as well as to the key Ministries/Departments of the Central and the State Governments for eliciting responses for possible revision even before finalization of the Policy Paper.

A significant event which guided the revision of the Policy Paper was a series of three Consultative Committee meetings of Hon'ble Members of Parliament convened by the Hon'ble Home Minister, exclusively to discuss the Draft. The Committee was immensely benefited by the observations and comments given orally and in writing by the Parliamentarians.

Another meeting to discuss the Draft was convened at the instance of the Hon'ble Home Minister in which, besides the Hon'ble Union Law Minister, several law officers including the Attorney General, Solicitor General and the Law Secretary actively participated. The guidance received at the highest level from all concerned enabled the Committee to revise the Draft Policy several times during the finalization.

1.4 NEED FOR A NATIONAL POLICY ON CRIMINAL JUSTICE

1.4.1 India, in the new millennium, is on a path of unprecedented developments on all fronts. The economy is assuming strength to eradicate poverty and to improve the quality of life of the average citizen. Technology is bringing in greater efficiency, transparency and the people's participation in governance. Naturally, law and order generally and criminal justice in particular, have become the focus of attention of not only the governments and the people

within the country but also of the international community seeking to develop relations with the country.

1.4.2 A critical look at the existing legal architecture and enforcement apparatus is an imperative necessity in order to plan the future arrangements, howsoever difficult it may appear in the current social and political situation. The Administrative Reforms Commission and the Commission on Centre-State Relations appointed by the Government of India are also deliberating, inter alia, on issues of public order and management of terrorism and organized crime threatening national security. It is, therefore, hoped that despite differences in political ideologies and administrative jurisdictions, governments both at the Centre and in the States would appreciate the need for joint and separate efforts in giving a fair trial to the proposed National Policy on Criminal Justice.

1.4.3 The Draft Policy Paper is an articulation of issues, concerns and strategies for designing the road ahead. Being a policy document and not a legislation as such, it does not stipulate specific course of action in every case. Action plans would depend on a number of factors such as infrastructure, resources, priorities and the preparedness of stakeholders to undertake the reform across the criminal justice system. However, the need to reckon "criminal justice" in planning and governance is acknowledged today more than ever before. Governance today is to be organized by multiple players at the Central, State and local levels according to the Indian Constitutional scheme and this requires planning and co-ordination at the cutting edge levels as well. Criminal Justice is a measure of civility in a society and the way it is managed by the state determines the character and performance of the state and its governance system.

1.5 CITIZENS' PERCEPTIONS OF CRIMINAL JUSTICE AND POLICY CHANGES

1.5.1 It is trite to say that justice should not only be done but seen to have been done. Public perception of any system of governance is shaped by a number of factors, the most important of which is the degree of security of life and property provided by the system. Of course, no government can guarantee total elimination of crime as criminality is part of human nature. However, every government is expected to convey the message that crime does not pay and criminals howsoever highly placed in society will be apprehended and punished according to law and the procedures.

Today, a section of people seem to believe that crime is a "low-risk, high-profit business" because the chances of apprehension, prosecution and punishment are remote. At least, this is what the rate of conviction in serious offences apparently indicates. Such a feeling erodes the confidence of the law-abiding citizen in the system and persuades him to take the law into his hands when victimized. Rule of law and public order are a casualty in the process.

1.5.2 An equally disturbing perception of the people is about the role the money and influence play in criminal justice administration. In common man's perception, there are two standards of justice in the country, one for the rich and powerful and the other for the poor and under-privileged sections. It is said that corruption has taken such deep roots in the system that even an FIR will not be registered if the victim is poor and the offender happens to be a rich or an influential person! Depending on political affiliations or the money offered, investigations will either be delayed or distorted to ensure failure of the case right from the beginning. Witnesses are threatened or bought over with impunity. Rich offenders would have the best counsel to defend them whereas the poor will have mediocre lawyers poorly paid by the legal aid scheme, who sometimes compromise the interests of the client by accepting illegal gratification from the opposite side. Money would decide whether one gets bail or not and whether one can approach the appellate courts as often as needed. If a sizeable section of the people have such a perception of criminal judicial processes today, can it be dismissed as a total myth?

1.5.3 Even in courts, people say that the poor stand at a disadvantage and equal justice under law is denied to them. The inordinate delay in the conduct of trials, the casual approach in granting adjournments, the humiliating manner in which witnesses are treated, total lack of sympathy to the predicament of the victim, and the corruption at different levels of the system give an impression that the system discriminates against the less fortunate citizens and one has to have either money or influence to get justice out of it. Media reports often reiterate such a perception with interactive comments from even the officials involved in the administration of justice.

1.5.4 In a society where half the population is neither rich nor educated, the existence of a high degree of popular dissatisfaction with criminal justice is dangerous in the long run to democracy and unity and integrity of the nation. Women, children, dalits, tribals, minority groups and disabled persons are the worst sufferers in the situation even as the system has a constitutional obligation to respond to their grievances.

1.5.5 Of late, based on media reports and findings of some of the inquiry commissions, public gather the assumption that the nexus between crime and corruption arises from political parties' collection of funds from criminal syndicates and the underworld mafia groups. These criminal elements, in turn, seek protection from their political masters who then influence the investigation and prosecution agencies. People even assume that many criminals have infiltrated into the law enforcement apparatus of the government and control its operations under a cloud of legality and patronage.

1.5.6 The Committee received several such 'complaints' from a cross section of the people and felt that, howsoever unfounded or exaggerated some of these perceptions may be, they need to be stated at the beginning of the policy document because the need for policy arises as a response to the grievances of the people for whom the system exists. The effort of the Committee has been to find proper policy responses to the public outcry against criminal law and its administration, keeping in mind the institutional and infrastructural constraints including Centre-State relations on criminal justice under the Constitution.

CRIMINAL JUSTICE : CONCEPT AND CONCERNS

2.1 MEANING AND SCOPE

To be able to comprehend the scope of the policy statement, it is necessary to define the concept of criminal justice and explain its concerns. Criminal Justice means the criminal law, the criminal procedure, the institutions of enforcement of the criminal law and the personnel involved in administering the system. Its objects 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 the law, punishment and rehabilitation of those adjudged guilty of committing crimes and generally protecting life and property against crime and criminality. It is considered the primary obligation of the state. 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. Even national security is now-a-days increasingly getting linked to the maintenance of internal security. Given its so critical importance for social defence and national integrity, the need for a coherent, co-ordinated, long-term policy on criminal justice is obvious and urgent.

Crime control and criminal justice management are the products of a fair, efficient and effective criminal justice system as above defined. Insofar as criminal justice system is itself the product of multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal state system (education, family, media etc.), it is important that each of these sub-systems also accomplishes a desirable degree of efficiency and effectiveness in supporting the mission of freedom from crime. It is here that the role and relevance of a National Policy on Criminal Justice becomes significant.

A well-conceived policy also gives a systems' perspective to criminal justice administration and a management orientation capable of monitoring, evaluation and correction.

2.2 THREE LEGS OF CRIMINAL JUSTICE

For purposes of analysis, it is important to remember that the functioning of each

of the constituent sub-systems (the police, the prosecution, the courts, and the prisons and correctional services) is governed by three independent elements, namely (a) the laws (substantive and procedural), (b) the institutional structures set up to enforce and administer the laws, in each sector, and (c) the quality of personnel who are entrusted with the job of administering the institutions.

Criminal law and procedures being in the Concurrent List (Items 1 and 2 of List III of the Seventh Schedule), of the Constitution, there are many different sets of laws, administered by as many different States/Union Territories with little scope for the Union Government to intervene in ordinary circumstances. The Union Government seems to have obligations in this regard, but not commensurate powers. For example, while national security is clearly the obligation of the Union Government, internal security which is intimately related to the former is not ordinarily within its control. Under Article 355, while it is the duty of the Union “to protect every State against external aggression and internal disturbance”, there is no corresponding power except the emergency power under Article 356 and to a limited extent, under Articles 256 and 257, to seek compliance of national standards by State Governments. The Constitutional scheme has to be honoured while pursuing policy goals of common concern. This is a challenge for a national policy on criminal justice.

2.3 ROLE AND FUNCTION OF NATIONAL POLICY

It is the function of a national policy to set standards for uniformity of procedures and practice, monitor compliance and co-ordinate functioning, to achieve the desired degree of efficiency and fairness in crime control and management of criminal justice in the country as a whole.

In whatever way perceived, criminal justice today requires careful planning, management, research and reform which necessitate a holistic approach and a national perspective. It should be possible for a National Policy to give proper direction to every segment of the criminal justice system at every level in all the States and Union Territories.

It is indeed challenging to construct a comprehensive policy in the context of the existing constitutional structure and other limitations. Nevertheless, a national policy seems imperative for both internal security, public order and for redeeming the confidence of the people in the system.

ELEMENTS OF A NATIONAL POLICY

3.1 CONTENT OF POLICY ON CRIMINAL JUSTICE

The key elements of a national policy on criminal justice may, thus, include:

- (a) the role of the Central and State Governments, given the scheme of the Constitution in respect of law and policy making as well as their implementation;
- (b) the imperatives of human rights protection and the obligations of the state under the Constitution and international human rights instruments;
- (c) the changing nature of crime and its management in the context of developments in technology, market economy and globalization on the one hand, and the shifting trends in the modern warfare strategies with ‘proxy wars’ increasingly substituting the conventional wars on the borders, on the other;
- (d) the implications of terrorism and organized crime which raise issues of national security;
- (e) the relative neglect of victims in the criminal justice system;
- (f) the lack of adequate data and systematic planning for better co-ordination, increased efficiency and performance evaluation of the system;
- (g) the special needs of weaker sections of the people in policy making and allocation of resources for the system;
- (h) the need for diversion, settlement and alternate ways of dealing with crime;
- (i) the question of deterrence and effectiveness of punishments;
- (j) institutional reforms in the police, prosecution, courts and the correctional services; and
- (k) the role of media, civil society, and NGOs in prevention of crime and treatment of offenders etc.

Each of the above elements may comprehend policy choices touching upon the law, the institutions and procedures of the system thus making the policy drafting exercise complex, difficult and controversial.

3.2 IMPORTANCE OF A POLICY STATEMENT

An important aspect which makes a national policy relevant as well as significant is that crime and violence do not differentiate between political parties, interest groups or governments. In fact, crime today renders the stability of the state itself at stake. After the terrorist attacks against some western nations, terrorism and organized crime have become the *numero uno* issue in international politics, foreign relations, investment and development debates and national security arrangements. In some countries, laws have been changed drastically, projecting crime control as the immediate goal of the state. India, which is one of the worst victims of terrorist violence, is still showing a great deal of patience in the hope that wisdom will prevail and violence will abate. Some persons see this as indicative of a soft state syndrome. Some others do not want the power balance between the States and the Centre in the matter of criminal justice changed under any circumstances. Still others see it as a game to further empower the state while taking away the hard won civil liberties of citizens. In constructing a national policy on criminal justice in this context, one has to keep the constitutional balance and the ground realities in mind and keep a long term view of good governance under rule of law in a plural society.

3.3 LAW ENFORCEMENT UNDER FEDERAL SYSTEM

In the existing federal system of governance in the country, acceptability of a common criminal justice policy by the Central as well as State Governments is necessary if it is to be functional and effective in a multiple system of enforcement with divergent perspectives and varying degrees of law enforcement capacities. This makes the policy maker to look for the common denominators in the choice of standards and the set of principles that go into the policy statement. This is a difficult task. Nevertheless, emerging challenges of crime and criminality and their adverse implications on nation's security make the exercise not only worthwhile but also essential.

The "crime control model" of criminal justice may appear more appropriate in terrorist situations now prevailing in some parts of the country; yet it may not be easy to make drastic changes in the "due process model" currently institutionalized in our system of criminal justice administration. Similarly, despite the widespread perception that some aspects of the adversarial systems deserve to be moderated by inquisitorial approaches, it may not be easily acceptable in a liberal democracy such as ours. Nonetheless, proper balance

has to be achieved between security and liberty in the interest of safeguarding democracy itself against the onslaught of forces of anarchy and disorder.

The Indian Constitution mentions two core values of the Indian nation in its Preamble itself, namely, 'security of state' and 'dignity of individual'. The challenge before the nation is to draw an efficacious balance between the two. Making a national level policy for criminal justice is, in this context, a complex and delicate task in which leaders of the political establishment may have to take bold initiatives and make moderate compromises in the matter of powers and functions, rights and obligations in the delivery of security services.

3.4 WHAT DO CITIZENS SEEK FROM CRIMINAL JUSTICE SYSTEM?

The point to be noted in organizing criminal justice is that citizens want security at any cost. They do not want a criminal justice regime in which the state overprotects some and leaves the rest to their fate under a system which consistently fails to fulfill its basic obligations. People want the state to provide security with least interference with liberty, not discriminating citizens on the basis of religion, caste, gender or status. They do not care whether the security apparatus is controlled by the local government, state government or the central government or all of them together.

Citizens who command greater resources have already been approaching private agencies to protect themselves. An increasing number are approaching the courts for seeking directions to the government for providing police protection against criminal elements. Large number of meetings at the level of Chief Ministers, Home Ministers, Chief Secretaries and DGPs, held periodically in the past, have yielded very little result in re-orienting the system to deliver the desired results. An ex-police officer approached the Supreme Court for directions to the States in the matter of police reforms and the Court has now given specific directions which are reportedly under varying stages of implementation.

The draft national policy hereinafter given takes into consideration the above facts and perceptions.

A PREAMBLE REFLECTING OBJECTS

Whereas it is the primary responsibility of the state to provide security of life, liberty and property by invoking criminal sanctions wherever necessary,

Whereas the Indian Constitution provides a three-tier system for governance under which several aspects of criminal justice policy and administration are divided between the Union and the States, maintaining a fine balance between security of state and public order,

Whereas the secular, democratic, pluralistic character of society warrants a model of crime management that accommodates the basic rights of all, particularly of minorities and weaker sections, and provides to all “equal justice under law”,

Whereas the challenges of technological developments, terrorist violence and organized crime have put heavy demands on the state apparatus, compelling policy reform including unity of effort to fight new patterns of crime,

Whereas the different segments of the criminal justice system have not been able to optimally perform because of the lack of planning and inability to provide inter-segment co-ordination,

Whereas the emerging crime scenario seriously threatens national security and economic development, warranting a joint strategy between the Union and the States on the basis of clear principles, objectives, and priorities,

Whereas perceptions on corruption in public life generally and abuse of influence and money power in criminal enforcement system in particular, are constantly eroding the confidence of the people in the justice system in place,

And Whereas several expert committees have recommended comprehensive reforms in criminal justice policies and administration,

It is, therefore, now felt necessary for the Union Government to come out with a national policy paper identifying the key elements of a modern criminal justice administration

and providing the blue print for a coherent, co-ordinated crime control and management scheme, consistent with constitutional provisions and which is efficient and effective to face the challenges of crime in contemporary times.

This National Policy is, therefore, evolved in consultation with all stakeholders and promulgated to inform and illuminate thought and action of all those involved in the management of crime and security on behalf of the state.

APPROACHES IN CRIMINAL LAW REFORM

5.1 DE-CRIMINALIZATION, DIVERSION AND SETTLEMENT

5.1.1 There is a universal tendency to put down all types of anti-social conduct with the use of criminal sanctions without examining the use of possible alternative means of social control and without studying the impact of such a step on the status of criminal justice in the country. There is a view that the police is not the appropriate agency to enforce social welfare-oriented laws which often gives rise to opportunities for corruption and harassment of innocent persons. Action in damages may remedy the injury and civil disabilities can mostly deter persons from such conduct.

The Supreme Court has recently called for judicial impact studies before initiating legislation and desired to make provision for implementational costs on a meaningful, scientific basis. Such a step might make the legislatures to look for alternatives to punishment on the basis of enforcement costs and beneficial returns.

There is an increasing demand among behavioural scientists and others to de-criminalize some of the existing offences. For instance, some sections want to repeal offences under the prohibition laws while others are seeking to de-criminalize 'offences' such as beggary, some of the offences against marriage, etc. Keeping in mind the need to adopt the principle of decriminalization and use of non-criminal strategies to control conduct in marginal areas of deviance, it is for the lawmakers to decide which of the existing offences should be so changed and when. Furthermore, there is a need to carry a 'sun-set' clause in new legislations under which the life of a law is limited to a fixed period unless extended by the legislature. In short, it is time to adopt de-criminalization as a part of national policy and seek advice of expert bodies like the Law Commission of India and of the implementation agencies in the departments concerned in this regard, periodically.

5.1.2 Another related idea is the policy of diversion or treatment of a set of the so-called criminal conduct through machinery available outside the formal criminal justice system. For example, violations of customs, excise and income tax laws, children in conflict with the law etc. are primarily dealt with institutions and procedures set up under such special

laws. It should be the policy of the government to identify more such laws and divert their enforcement from the ordinary criminal processes to specialized forums endowed with quasi-judicial authority. Many of them could easily admit of settlement of disputes through Alternate Dispute Resolution (ADR) mechanisms now available under the procedural codes of the country.

5.1.3 On the lines of the present policy for plea-bargained settlement through restitutive justice in respect of criminal cases punishable upto seven years' imprisonment, it is only proper to set a time limit or limitation period for the conduct of trial proceedings in such cases, after which the case should be deemed to have been abated, if not settled or withdrawn. In fact, the legislature may prescribe in the enactment itself the type of cases as also the circumstances in which such a result would follow. To allow criminal cases less serious in nature to continue clogging the system for want of evidence or other reasons hardly contributes to the purpose and effectiveness of criminal justice. Therefore, the policy should extend statutory sanction to get select categories of offences abated or withdrawn after the prescribed period. Of course, parties aggrieved can have civil remedies for injuries suffered. In other words, after a lapse of, say, two years, minor offences which are unable to be proceeded with and which do not have a serious impact on society or public interest may be allowed to be pursued only as private complaints in the criminal justice system keeping the option with the state to revive it if and when necessary in future in public interest.

5.2 A VICTIM ORIENTATION TO CRIMINAL JUSTICE

5.2.1 There is justifiable criticism that the present criminal justice system is totally centred around the accused, ignoring the victim for whom the system purportedly exists and is supposedly operating. The United Nations has also acknowledged this indifference to victims of crime and called upon Member-States to amend their laws, giving special rights to victims to participate in criminal proceedings and to claim compensation irrespective of the outcome of the criminal case.

The Committee on Criminal Justice Reforms recommended (2003) empowering of the victims of serious offences with the right to implead themselves as a party, right to be represented by counsel, right to produce independent evidence and cross-examine witnesses with leave of the court, right to be heard in the matter of bail, right to continue with the case if the prosecution sought withdrawal, and the right to advance arguments and to prefer an appeal against an adverse order. There may also be need for victim protection schemes in certain situations. The state should also ensure rehabilitation of hapless victims of crime and violence.

5.2.2 The case for a nation-wide victim compensation scheme and compensation fund has been acknowledged for a long time. It is clearly an obligation of the state both under international and national laws. The Criminal Procedure Code (Amendment) Bill, 2006 which is now under consideration of the Parliament does stipulate the state governments to establish a Victim Compensation Fund and authorize the legal services authority to administer the compensation scheme. It will be a step in the right direction. Much more, however, requires to be done to compensate the victims of crime promptly and satisfactorily, particularly in respect of victims of rape, communal violence, terrorism and other heinous crimes. The policy needs to be pursued and expanded with the intervention and support of the Union Government.

There have been special legislations like the SC/ST (Prevention of Atrocities) Act, Civil Rights Protection Act, Domestic Violence Act, Immoral Traffic (Prevention) Act etc. under which victims have been given special rights and privileges which signifies the legislatures' concern for victims of crime. This policy also needs to be given a comprehensive and progressive push to restore the balance which the system badly needs.

5.2.3 Given the increasing incidence of crime in contemporary times, it is difficult to estimate the financial costs involved to compensate victims of all types of crimes. As such, the National Policy should aim at a phased programme of victim compensation under which victims of violent crimes may be compensated to begin with. In the second phase, it may be extended to property offences and so forth. The principles for determining the quantum of compensation may be borrowed from the law of torts with suitable modifications. In appropriate cases, the compensation amount with interest can be realized from the offenders themselves and remitted to the State Compensation Fund. The fine amounts realized may also be directed to be paid into the Compensation Fund.

There is also scope for imposing a security cess on large industrial houses and high security establishments in order to mobilize resources for enriching the Victim Compensation Fund. A part of the legal aid budget can also be legitimately diverted to the Victim Compensation Fund as the nature of services is similar in both schemes.

5.3. MULTIPLE CODES BASED ON RE-CLASSIFIED CRIMES

5.3.1 Keeping in mind the three yardsticks of efficiency, effectiveness and fairness for reform, the legislations on crime and criminal procedure need to be re-organized with a view to re-classifying crimes for purposes of more efficient management of the system. There are obviously several ways of doing it. One such approach is re-classification based on the most appropriate way of processing each group of cases keeping in mind the demands of

due process guarantees and efficient use of available resources. Under this approach, there could possibly be a four-fold classification of all offences now covered by the Indian Penal Code, special and local laws:

5.3.2 **Social Welfare Offences Code (SWOC):** The object in SWOC is more of reparation and restitution rather than punishment, prevention rather than retribution. Naturally, arrest and detention are unnecessary in such cases (except when violence is involved) and compensation and community service can better meet the ends of justice rather than incarceration. Minor marriage offences which are more of civil in nature can well be part of social welfare offences. Prohibition offences, vagrancy, minor environment offences, campus indiscipline etc. are possible instances to be brought under this Code. The enforcement of these laws may be entrusted to agencies other than the regular police. The method of settlement can be more conciliatory than adversarial and a lot of civil society participation is possible for better management of these offences in a cost-efficient and human rights-friendly manner. Under the scheme of decentralized administration, these are cases fit to be entrusted to Gramen Nyayalayas, Lok Adalats and local bodies to manage locally and expeditiously.

5.3.3 **Correctional Offences Code (COC):** A second group of offences which are more serious than the social welfare offences and which may need police intervention may be brought under another legislation to be called Correctional Offences Code (COC). This would include offences punishable upto three years of imprisonment and/or fine. They are usually not accompanied by violence against the person and are, in most cases, liable to fine, probation and related correctional action. Arrest and detention may be allowed ordinarily only with a warrant in such cases and all of them are open to settlement through Lok Adalats, Plea Bargaining and other alternative methods avoiding trials.

In cases under SWOC and COC, it is possible under the existing system to allow modifications in evidentiary procedures through rebuttable presumptions, shifting of burden and less rigorous standards of proof. They can be treated as summons cases with provision for summary trials. They are more of the nature of civil justice, and can be dealt with largely by compensatory remedies and, in extreme cases with imprisonment.

5.3.4 **Penal Code (PC):** The third set of offences, to be included in the Penal Code, would comprise of grave offences punishable with imprisonment beyond three years and with death. Naturally, they deserve careful and quick processing under expert supervision, offering minimum scope for human rights violations. They are the offences where the maximum energy, time and resources of the state are to be spent keeping in mind the need

for efficiency, effectiveness and fairness. There has to be greater accountability in these cases as they create public alarm and insecurity.

5.3.5 Economic Offences Code (EOC): Finally, an Economic Offences Code may also be created for select offences from the Indian Penal Code and other relevant economic laws which pose threat to the economic security and health of the country. They might require multi-disciplinary, inter-state and transnational investigation and demand necessary evidentiary modifications to bring the guilty to book.

5.3.6 The above four-fold scheme of re-organizing criminal law and procedure is a desirable policy goal for better management of the crime scenario in future. It will be prudent to incorporate in each of these codes, the rules of procedure, the nature of trial and evidence, the types of disposal and punishment etc. The idea is to have a self-contained code of law and procedure for each of the four distinct sets of offences, based on the gravity of the offences involved and the degree of flexibility the system can afford under the constitutional scheme.

5.4 A FEDERAL/JOINT SECTOR IN CRIMINAL JUSTICE

5.4.1 The case for an all India agency under the Central Government for effectively tackling certain types of transnational, terrorist and organized crimes has been made out by several expert committees in the past and also mooted in Chief Ministers' Conferences in the last several years. Due to opposition from some State Governments, the move could not fructify so far though its necessity is clearly felt from time to time. While one view is that the Centre has sufficient power to legislate on the subject in view of its implications for national security which is the Centre's responsibility, another view argues that the Centre can legislate only if the States agree to it.

5.4.2 Undoubtedly, the challenge of terrorism and certain types of organized crimes is far too complex and beyond the existing capacity of the law enforcement apparatus of most Indian States. It demands a multi-professional agency with a network beyond the borders of the country. In view of developments in technology and globalization, the crime scenario is changing fast and the response time is crucial for results. India cannot afford to leave it to individual States within the Union to tackle the menace and some sort of joint mechanism – centrally activated and controlled – seems to be an absolute necessity. The constitutional division of powers, however interpreted, cannot come in the way when the nation's security is in peril and prudence will dictate planning the policies accordingly.

It should be the policy in future to carve out specific jurisdictions of crimes affecting national security to be designated as federal offences in respect of which a Central agency should be independently able to undertake investigation as well as measures of prevention and control, indeed with the support and co-operation of the State machinery concerned. The Constitution would not be, and ought not to be, an impediment to such an approach.

It is significant to recall the following observations of the Supreme Court in its judgment in *Prakash Singh & Ors v. Union of India & Ors* in Writ Petition No. 310 of 1996)

“..... threats emanating from international terrorism or organized crimes like drug trafficking, money laundering, smuggling of weapons from across the borders, counterfeiting of currency or the activities of mafia groups with transnational links aim at destabilizing the country and subverting the economy and thereby weakening its defence”.

To consider whether they could be treated as legitimately falling within the scope of Entry-1 of the Union List in the Seventh Schedule of the Constitution of India, the Supreme Court desired the Central Government as well as certain other expert bodies to submit their views, after examination to the Court within a stipulated period.

Further, the Supreme Court, in its judgment on the *Illegal Migrants (Determination by Tribunals) Act, 1983*, made certain observations which emphasize the linkages between internal security and defence which obligate the Union Government to intervene even if the matter is part of the State List. Article 355 enjoins the Centre to act in such cases of internal disturbance which have the potential to harm national security.

Defence of the country in the context of the shifting trends in warfare strategies in the modern times, in which proxy wars, using terrorism and organized crime as tools of warfare, are increasingly substituting the conventional wars, can no more be viewed from the point of view of external aggression only. It is “aggression” organized internally through elements inimical to national interests. As such, there is a strong case to treat central action against such aggression as part of action taken in defence of the country. It is on this reasoning that the National Criminal Justice Policy should conceive legislative provisions on federal crime and the need for a federal agency to enforce it.

5.5 PUNISHMENTS AND SENTENCING

5.5.1 Given the limited options in the choice of punishments now available in the

statutes and the inadequate deterrence in the sentence often imposed, there has to be some serious rethinking on the philosophy, justification and impact of sentencing in criminal justice administration. The quantum of fines were prescribed more than a century ago. Imprisonment in practice is reduced to a much shorter period through a variety of practices even when it is for life. Equality in sentencing is not pursued vigorously and there is no serious attempt yet to standardize the sentencing norms and procedures. The objects of punishment are not served in many cases as a result of such incoherent sentencing practices.

5.5.2 What are the policy choices in the matter of punishments and determination of its quantum to achieve the goals of criminal justice? Can community service be made an effective punishment and how is it to be organized? How to make probation a dominant part of disposition in criminal cases? How to achieve equality and fairness in sentencing? These and many related questions are not even raised in India seriously with the result the system seems to be functioning as an end in itself.

There has to be a radical change in the law and practice of sentencing if punishment should serve the cause of criminal justice. A set of sentencing guidelines may be statutorily evolved to make the system consistent and purposeful. Fixing mandatory minimum sentences may not be a worthwhile solution. More importantly, the policy should be to increase the choices in punishment and make the other functionaries of the system (like probation service and correctional administration) to have a voice in the sentencing process and administration.

In short, sentences and sentencing require urgent attention of policy planners if criminal justice is to retain its credibility in the public mind.

5.5.3 A national policy on sentencing shall seek to address the following issues:

- (i) The need for criminal law to offer more alternatives in the matter of punishments instead of limiting the option merely to fines and imprisonment.
- (ii) In respect of the quantum of punishments, the need for constant review to ensure that it meets the ends of justice and disparity is reduced in similar situations.
- (iii) A policy to avoid short-term imprisonments and to prevent overcrowding of jails and other custodial institutions, to be rigorously pursued at all levels.

- (iv) The need for specific sentencing guidelines to be evolved in respect of each punishment.
- (v) Also the need for an institutional machinery involving correctional experts for fixing proper punishment.

5.6 A TECHNOLOGY ORIENTATION TO CRIMINAL JUSTICE ADMINISTRATION

Elsewhere in the policy paper, the role of science and technology in criminal justice is dealt with in detail. It is still necessary to declare that no future policy can be meaningful without science and technology informing every criminal policy and influencing the strategies and structures designed for its enforcement. It is easier said than done. The prevailing administrative culture, to some extent, inhibits its adoption; the rules and procedures evolved in a bygone era are interpreted in such a way that technological interventions are perceived to be violative of individual rights and, therefore, legally unsustainable.

In the absence of a clear-cut policy on scientific investigation and proof, criminal proceedings continue in old fashioned ways, causing enormous delays and costs and occasional miscarriage of justice. Therefore, a shift in approach to reforms in criminal law and procedure is urgently needed. It is not a one step reform; it is a process which should penetrate law reform as well as law enforcement reform. This would require a commitment to revamp the criminal justice machinery with science and technology support over a period of time and a policy to organize it by setting up appropriate institutions, by evolving suitable personnel and training policies and by removing barriers in the existing legal infrastructure for the transition to be smooth and effective. In short, a science and technology orientation to criminal justice administration is the need of the hour and it cannot wait any longer without causing serious damage to the ability of the state to offer security and stability.

5.7 MANAGEMENT APPROACH TO CRIME AND JUSTICE

Every system is designed with certain capabilities and any indiscriminate overload will not only overheat and distort the outcomes but also may collapse beyond repair the system itself. Hence the need for intelligent planning and management reform in all its segments (police, prosecution, courts and corrections) as well as in totality without which co-ordination is impossible even with policy changes. Good management practices will minimize wastage of resources, enhance accountability and optimize co-ordination for better results.

Management approach will demand not only professionalism from its personnel, but also induction of the best of technology and continuous monitoring and corrective action. This may require a single communication network for the entire country not only among police stations and other enforcement agencies but also with the courts and correctional institutions. In this regard, it will also be desirable to consider a single high-tech, Integrated Criminal Justice Complex in every district headquarters which may be a multi-storied structure, devoting the ground floor for the police station including a video-installed interrogation room; the first floor for the police lock-ups/sub-jail and the Magistrate's Court; the second floor for the prosecutor's office, witness rooms, crime laboratories and the legal aid services; the third floor for the Sessions Court and the fourth for the administrative offices etc. Once it is put on high-tech category, administrative costs will be considerably reduced, efficiency increased and abuse and corruption minimized. The Central Government should take steps to evolve such an efficient model of an integrated criminal justice complex and not only recommend it to the States but subsidize its construction if it is undertaken within the plan period. The concept has reportedly been implemented in Hong Kong successfully.

POLICY ISSUES IN CRIMINAL JUSTICE ADMINISTRATION

6

Popular dissatisfaction with criminal justice arises not so much on account of the substantive criminal law, as the ways in which the law is administered by the police, the prosecution, the defence lawyers, the courts and the prison/correctional services. It is here that violations of human rights occur and authorities often escape without accountability, causing dismay to seekers of justice. Again, delay and corruption distort the processes tending to make the system oppressive and exploitative particularly against the weaker sections of society. Violence, corruption and abuse of power result in alienation of the people while the system tends to operate as an end in itself. A symbiotic relationship sometimes develops between the criminal elements and a section of those who are in charge of enforcing the law, creating an unhealthy situation for rule of law and security of the common people. While it is difficult to generalise, it will not be far from truth to say that at least in some parts of the country the criminal justice system is often perceived to be dangerously close to a virtual breakdown.

The average citizen in our country, given the prevailing levels of education, is not able to appreciate the constitutional niceties of the 'Union List' and the 'State List' and law and order being a State subject. For him, it is the prime responsibility of the state as a whole to protect life, liberty and property. As such, the public dissatisfaction with the criminal justice system impacts the image and perception of performance of the Central and State governments equally.

Changing the processes of administration and enforcement is more a function of training and supervision of personnel, rather than of policy and reform. Nevertheless, there are policy premises on which procedures have been designed and, with passage of time, some of these premises might themselves have become irrelevant or obstructive for the system to deliver the intended results. For example, the adversarial processes of criminal adjudication developed as a reaction to the 'Star Chamber' practices of medieval England might have outlived their utility in some respects now because of changes in society, technology and systems of governance. The report of the Committee on Criminal Justice Reforms (2003) has adverted to this question and recommended some changes in criminal procedure including adjudication in courts. Despite some opposition, the Government did amend the Criminal

Procedure Code thrice to incorporate some of these changes suggested by the Committee and the Law Commission of India. What is important is the emergence of political will to interrogate some of the policy assumptions in criminal justice administration and to change legislative policies at least incrementally to respond to the public criticism against criminal justice administration.

In this context, the National Policy on Criminal Justice should continue to address the issues identified as causes of popular dissatisfaction with criminal justice administration and examine the institutions and procedures from the point of view of cost, benefit, responsiveness and accountability.

6.1 CRIMINAL JUSTICE AND THE SEARCH FOR TRUTH

6.1.1 It is neither the adversarial nor the inquisitorial models of fact determination that the criminal justice administration represents today; rather it has to be a pragmatic, fair search for truth which may share characteristics of one or the other models traditionally followed in the sub-continent. If it is played entirely on the adversarial model, it tends to favour the accused unfairly to the detriment of the victim and often jeopardizes the larger social good. The judge in the Indian Court is not supposed to be a passive, helpless observer, but an active participant in the proceedings with a view to ensuring fairness and letting the truth emerge in the process (illustrative of this proposition is Section 165 of Evidence Act and Sections 176(3), 311 and 313 of the Criminal Procedure Code).

6.1.2 Laws of Procedure and Evidence have to reiterate the principle – however difficult it is in practice – that pursuit of ‘truth’ is indeed the prime function of criminal proceedings. A Preamble to this effect needs to be incorporated in the Criminal Procedure Code and the Evidence Act, lest procedures are practiced as an end in themselves irrespective of the consequence to the justice system. The object is not to stifle procedures nor to compromise them to the advantage of one party or the other; the object is to remind everyone that procedures are intended to be fair to both sides while not letting it defeat the ends of justice itself.

The training of personnel of the system should emphasize this dimension of criminal proceedings and encourage them to invoke wherever needed such provisions of procedural law which authorize them to intervene towards that end.

6.1.3 Section 482 of Cr.P.C. speaks of inherent power of the High Court to make such orders as may be necessary to give effect to the provisions of the Code or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Fourteenth

Report of the Law Commission (1958) and the Committee on Criminal Justice Reforms (2003) have recommended the conferment of similar powers at least on the Sessions Courts to strengthen the efforts of the courts to reach at the truth of the charge in order to do justice. Of course, there are limits and limitations in this regard and they may be stipulated to circumscribe the discretion of trial courts. In any case, empowering criminal courts to be active players in the search for truth, subject to the constitutional guarantees, will help the system advance the goals of criminal justice.

6.1.4 There is a view advanced by several committees on criminal justice that modification of the principle of ‘right to silence’ will not necessarily be unconstitutional in all circumstances. A renowned constitutional lawyer recently stated: “In many terrorism-related offences, the right of the accused to remain silent during the trial is often a refuge and an escape for the guilty who refuse to assist the court. This is all wrong. The right must give way, but only at the discretion of the trial court in the larger interests of society.... Knowing the true facts, they must tell the court what they know. Adverse inferences to be drawn from their failure to give evidence (which the Malimath Committee recommended) may not be enough because this might well be in conflict with the principle of presumption of innocence; there must be a positive obligation imposed by law on such accused persons to assist the court in the discovery of the truth, and if so required by the court, to give evidence on their own behalf.... We need to enact such a law now; a law that would not transgress but further the purposes of criminal justice. Such a law would not be a disproportionate response to the growing menace of global terrorism”.

Though the intention is not to take away any of the existing rights and privileges of persons accused of crime, such rights need to be balanced against the society’s overall interest in prevention of crimes and citizen’s obligation to assist criminal justice. There are examples in Indian law where legislatures have allowed raising of adverse inferences and shifting the burden of proof to the accused in certain circumstances. Other countries following Common Law system also have introduced similar provisions in their laws particularly after terrorism and organized crime shook nations everywhere.

The National Policy on Criminal Justice will have to restore a balance between the constitutional rights of accused persons, the rights of victims of crime and the security of public at large. While the policy should not excessively empower the police because of possibility of abuse, it should not hesitate to enable the Courts to draw out the facts and make the right conclusions in appropriate cases.

6.2 STANDARD OF PROOF IN CRIMINAL CASES : NEED FOR RE-STATEMENT

There is no provision in the Indian Evidence Act prescribing a particular standard of proof for criminal cases. What is important according to Section 3 of the Evidence Act is to prove a fact to the extent that it is the “belief of the court that the fact exists or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, act upon the supposition that it exists”.

The concept of “proof beyond reasonable doubt” is an axiom evolved by judges following Anglo-American jurisprudence which was clear in the minds of judges and lawyers. The said concept has, however, been blunted by the passage of time. The judges and lawyers are seen to be interpreting it by different yardsticks. In the present day, the understanding and application of the axiom “proof beyond reasonable doubt” is taken to mean “beyond doubt”, or “beyond any doubt”, or “beyond any shadow of doubt”. It is, however, the need of the time that the said axiom may be clarified by the legislature in a terse, clear and precise language and if desired, illustrated by examples from time-honoured cases decided by the courts in England and India.

6.3 PROMOTING PROFESSIONALISM IN POLICE WORK

Criminal Justice System demands higher standards of professionalism from its actors, particularly the police whose work usually marks the beginning of the criminal justice process. Further, in the entire process, it is the investigation of crimes which requires much greater degree of professionalism, expertise, monitoring and supervision. Investigation, however, is a comparatively neglected area of police work at present. Promoting professionalism would require earmarking of dedicated staff for crime investigation wings in all the urban police stations as well as those in crime-prone rural areas. Personnel to be posted in these wings should be selected on the basis of their aptitude for crime investigation, professional competence and integrity. Their investigation and technical skills should be upgraded from time to time. They should not be diverted to any other police duty excepting under extreme emergencies. There are several other areas of reform needed for promoting professionalism in police functioning, starting from the long overdue empowerment of the primary ranks (namely, Constables and Head Constables) in the civil police, to streamlining the procedures for recruitment in the civil as well as the armed police and so forth.

The recommendations of the National Police Commission, the Committee on Criminal Justice Reforms, the Ribeiro Committee, the Padmanabhaiah Committee and the Soli Sorabjee Committee on Model Police Act in this regard require urgent and progressive

implementation. The National Policy on Criminal Justice does not need to repeat the wholesome recommendations for police reform made by these Expert Committees which are now mandated by the Supreme Court also in a recent judgment (Prakash Singh & Ors v. Union of India, 2006).

While advocating policy reform in police law and administration on the lines of the Supreme Court directions, the National Policy would seek introduction of the relatively successful Police Commissionerate system for urban policing as also a well-organized, community-involved rural policing structure. On-line registration of complaints should be the goal for every police station and non-registration of FIRs should be severely dealt with. Police stations should be designed and equipped to become people-friendly. Systems should be put in place for eliminating corruption, expediting investigation, responding to citizens’ complaints and punishing guilty policemen in a prompt, transparent way.

Improvement in the service and working conditions of personnel to make them attractive for the right kind of human material to join the police service, and insulation of the police apparatus from extraneous influences in professional work, are other areas calling for urgent reform. The National Policy should strongly advocate the same and ensure its compliance by State Governments at all times.

6.4 RESTRICTING ARRESTS AND LIBERALIZING BAIL

6.4.1 Given the fact that a large number of arrests being made today are perceived as “unnecessary” (as stated even by the National Police Commission) and given the fact that arrests lead to abuse of powers and violation of human rights, it is important to restrict arrests perhaps with warrant only. The procedure for arrest prescribed by the Supreme Court (in D.K.Basu case) is to be strictly followed and violations are to be taken very seriously by superior officers themselves. Accountability is to be fixed on individuals and punishments for violations are to be publicly notified periodically. The Cr.P.C. (Amendment) Act, 2006 has incorporated many steps and guidelines to regulate arrest including what is called “Notice of Appearance”, as a substitute to arrest. Also, the manner of arrest of females, elderly, disabled etc. have to be regulated in order to make the law more humane and civilized.

6.4.2 Bail, being a legal right, has to be liberally granted unless it is shown that it will be prejudicial to the search for truth or to the administration of justice. The policy on arrest, remand and bail, therefore, has to reflect the systems’ commitment to human rights and concern for minimal interference with liberty except when the statute authorizes otherwise. Custodial violence should be looked upon very seriously and dealt with severely and with promptitude with a view to eliminating this malaise from the system.

The law of anticipatory bail also needs re-statement in the light of the Supreme Court's interpretations to ensure that it does not defeat the cause of justice and does not discriminate in favour of the rich. The National Policy should consolidate and reiterate the standards on arrest, interrogation, detention and bail which are articulated in a large body of decisional law of superior courts. But constant monitoring and supervision of this vexed issue in criminal justice administration is necessary in order to ensure that police powers are not allowed to harass the citizens, bringing bad name to the whole system.

6.5 POLICY ON CONFESSIONS AND STATEMENTS TO POLICE

The Committee on Criminal Justice Reforms (2003) and the Second Administrative Reforms Commission (2007) have recommended that the statements made to the police, including confessions be audio/video recorded and made admissible in evidence subject to the condition, that the accused was informed of his right to consult a lawyer before making the statement. It was also recommended that such statements be got signed by the maker and used both to contradict as well as to corroborate the maker of the statement. This is a principle which requires serious consideration in situations where the crime is committed in secrecy and eye-witnesses are not available or where circumstances do establish that it is well within the knowledge of the accused how the crime was committed. It is open to the court to decide on the value to be ascribed to such statements in the context of the other evidence available in the case. To block out such evidence totally from the purview of the Court on the ground that whatever is given to the police is not admissible is neither logical nor prudent particularly when there are technological and procedural guarantees now available to ensure the voluntary character of such statements. Such technology should expeditiously be introduced. After all, the statements voluntarily given at the scene of the crime or at the earliest point of time by those who are privy to the event are more reliable particularly when there is no reason on record to disbelieve such statements.

The policy of distrust of the police requires change. Early recorded statements would help the administration of justice if essential steps are taken to ensure its voluntariness, accuracy and integrity. The 'best evidence' policy would also demand changes in procedure which increase the utilization of early statements in evidence by the prosecution as well as the defence.

6.6 ELECTRONIC SURVEILLANCE AND USE OF SCIENTIFIC EVIDENCE

Given the secrecy under which terrorist etc. crimes are perpetrated, it may be necessary to authorize the police to mount electronic surveillance in the interest of detection and prevention of such organized crimes. Of course, it is the prospect of abuse which ordinarily

restrains the legislature from clothing the police with such powers. Nevertheless, it should be possible to allow such surveillance under conditions which can be monitored and corrected, if and when it is prone to abuse, without transgression of the citizen's right to privacy. Science and technology have provided tools and techniques which are less invasive, more efficient and cost-effective in the long run.

The Evidence Act may need to be amended to make scientific evidence, particularly those which have assumed universal acceptability because of accuracy and reliability, admissible as substantive evidence leaving it to the Court to determine its probative value in individual cases. Much of scientific evidence today is treated as no more than mere opinion evidence. Evidence based on DNA Fingerprinting is widely accepted elsewhere as conclusive evidence to prove facts on identity and there is a clear need to legislate on the point. Similarly, computer-based evidence has to be given legislative support to prove facts of transactions.

6.7 PROSECUTION TO BE PROFESSIONALIZED AND MADE ACCOUNTABLE

Prosecutors are officers of court whose duty is to assist the court in the search for truth in order to administer justice. If the prosecutors are not competent or are corrupt, administration of justice will suffer to the detriment of interests of victims and the society at large. Hence the selection, training and supervision of personnel of the prosecution wing are important which today is a much neglected field. Therefore, the policy in respect of the prosecution system has to change towards greater professionalism and accountability. A series of recommendations in this regard have been made by several expert committees in the past and the Law Commission of India which warrant immediate attention. Recognizing the right of victims to implead themselves in the prosecution in select situations is a step which will go a long way to save the system from total collapse.

How should the Directorate of Prosecution be organized and administered for the required synergy to be achieved in criminal justice administration? Should the prosecution be accountable to the High Court on the administrative side? Can prosecutors be selected along with the civil judges through the same process? How can the co-ordination between the investigation and prosecution wings be achieved after the separation of the executive from the judiciary? How can efficient prosecutors be retained in service in the context of tremendous opportunities now becoming available in private practice? The National Policy has to find proper responses to these questions for developing the prosecution service efficiently. The Policy needs to recognize the importance of inducting competent, well-trained, well-paid prosecutors at all levels under an independent Directorate, preferably under the control of the Board of Criminal

Justice, to ensure professional efficiency, accountability and fairness in the administration of justice.

6.8 ROLE OF DEFENCE LAWYERS IN CRIMINAL PROCEEDINGS

The right to be defended by a lawyer of one's choice is a constitutional guarantee. How can this be ensured in the case of indigent accused and victims? The present system of state-sponsored legal aid is inadequate to provide effective and quality service to indigent litigants. There is need for reform in the organization and delivery of legal services which should aim at competitive quality and high standards of professional accountability.

A Public Defender System can perhaps be developed to make legal services available to poor victims of crime particularly when victim's rights are statutorily recognized. Like public prosecution service, public defender service could also be part of the state responsibility. It will help make criminal justice fair to both sides promoting the Constitutional promise of equal justice under law.

What is the scope of responsibility of the legal profession generally and of a defence lawyer in particular in criminal cases? Are the remedies available to the court against lawyers abusing the processes of court or corrupting the system adequate and efficient? Should there be a special code of conduct for prosecuting and defending lawyers, given the objects of criminal proceedings? Does the Advocates Act require an amendment to subject the defence lawyers to greater accountability in avoidance of delays and miscarriage of justice in criminal cases? These are issues which the Bar Councils need to consider and come up with standards of conduct to ensure professional responsibility in criminal proceedings. Seeking adjournments on one pretext or another, boycott of courts, corrupting the court staff, inducing witnesses to turn hostile etc. are practices indulged in by some lawyers with relative impunity. It has already brought the system into disrepute. There is need for setting up independent monitoring bodies including judges and members of the public to correct unethical practices of a section of the bar putting the system into disrepute. There is a clearly need for amending the Advocates Act to accommodate the concerns in this regard.

6.9 COURTS, JUDGES AND TRIAL PROCEDURES

If speedy trial is a constitutional guarantee in criminal cases, what are the remedies open to the citizen to enforce this right? What are the policies which the judiciary should follow in order to improve the efficiency of the criminal judicial process in the light of the weaknesses revealed in cases involving political heavy-weights or other influential accused? Sometimes, it is alleged that the State itself develops cold feet in prosecuting the cases? Equal protection of the law being a fundamental right, criminal justice has to evolve

mechanisms under which the rich and powerful should not be able to derive undue advantage to the detriment of the poor people dragged into the system. An activist legal services programme should be able to ensure that the disabilities imposed on weaker sections under an adversarial process do not deny the poor equal justice under law. This would demand "social context judging" in litigation involving the poor and under-privileged sections. In criminal proceedings, this assumes critical importance in view of the promises under the Constitution for equality and social justice.

In the above context, it is to be considered whether cases punishable up to three years or less be tried summarily according to the procedure prescribed under Sections 262 to 264 of the Criminal Procedure Code? Should all Judicial Magistrates First Class be empowered to try cases through summary procedure instead of limiting it only to specially empowered Magistrates? It is necessary for the courts to evolve standards in dealing with less serious offences more expeditiously so that time and resources are deployed more efficiently and effectively on serious offences to achieve fairer results. Apart from fixing time limits for completing different stages of trial proceedings, the judiciary has to evolve an effective monitoring and supervision mechanism capable of re-allocation of cases, fast-tracking select cases and fixing accountability for deviation from norms. The requirement of day-to-day hearing has to be enforced for which adjournments have to be controlled and dockets better managed with the help of IT tools. There have to be some priorities and strategies set by the judiciary itself if speed and continuity in trial of offences are to be ensured.

Equally important for efficiency and effectiveness of the judicial process is the necessity to provide for the minimum support services including infrastructure required for the trial courts. The obligations in this regard have to be shared between the Central and the State Governments according to mutually acceptable norms instead of the conventional argument that criminal justice is the responsibility of States.

Finally, in the light of the October 2006 judgment of the Supreme Court in *Jasbir Singh v. State of Punjab* {SLP (CrI) 3604 of 2004}, the independence of subordinate judges has to be ensured even against interference from the High Courts. The control over subordinate courts, stipulated under Article 235, needs to be clarified in order to ensure that the object of such 'control', as clarified by the Supreme Court, is to ensure independence of subordinate judges and not to instill "fear" of the High Court in them tending to interfere with their freedom of action.

Constitution of an all-India Judicial Service, is also imperative necessity for which early steps should be taken.

6.10 TREATMENT OF WITNESSES AND WITNESS PROTECTION SCHEMES

The treatment generally meted out to witnesses (including complainants) in criminal cases at police stations and in criminal courts is possibly the single most important factor contributing to alienation of the common masses against the criminal justice system. A common complaint is that witnesses are not only treated shabbily by the system but are also not protected when threatened by the accused or others on his behalf. As large numbers of cases are posted on the same day, witnesses are summoned repeatedly and are seldom paid allowances in time. Due facilities for victims and witnesses have to be provided in criminal courts and they have to be treated with appropriate courtesy. There is a need for a witness protection law on the lines of the recommendations of the Law Commission.

Expert witnesses are busy persons and court procedures need to be modified to accommodate them. Evidence through affidavits, through video-conferencing, etc. have to be institutionalized in the system.

Witnesses knowingly or willingly giving false evidence shall be tried summarily and punished by the court in which false evidence is given. The law is already amended to control the menace and the courts should now invoke the provisions as and when required to send the right message for deterring conduct amounting to perjury and falsification of evidence after taking oath to tell the truth.

6.11 PRISON AND CORRECTIONAL ADMINISTRATION

Criminal justice system often gets a bad name because of the bitter experiences people have with custodial institutions including the so-called correctional and rehabilitation centres. Prisons are mostly overcrowded and are notorious for corruption and mal-administration. Unlike prisons in many other countries, majority of inmates in the Indian jails are under-trial prisoners who could not secure their freedom due to denial of bail or non-fulfilment of conditions of bail. Another large section of prisoners are those sentenced to short terms of imprisonment in whose cases correction or rehabilitation has little application. The system of classification as it exists is more on paper than in practice in many institutions.

Of course, at the instance of the Supreme Court and several expert committees appointed from time to time, a series of organizational and administrative reforms have been introduced in many prisons making life somewhat more tolerable and human rights

friendly. The policy of appointing Visiting Committees headed by the District Judge for Jails, and institutionalizing a fair and transparent grievance redressal system for prisons and correctional centres has to be pursued to make them conform to minimum standards prescribed.

The living and working conditions of prison staff have to be upgraded substantially for professionalisation of prison and correctional services.

For women in custodial centres, certain special privileges have to be provided, based on their special needs. The recommendations of Justice Krishna Iyer Committee, appointed by the Central Government in 1979, relating to custodial justice to women, require immediate implementation. Children living with their mothers in prisons have to get their basic rights protected for which the Supreme Court in 2006 has given some directions which also have to become an integral part of the Jail Manuals.

Probation and parole, intelligently and imaginatively administered, can considerably ease the ills of the prison system and promote prospects for rehabilitation and re-integration of convicts. However, the norms in this regard have to be standardized and strictly followed, lest it should provide yet another opportunity for corruption and abuse of power.

Finally, there is a lot of scope for institutionalizing open jails and its variants. If properly administered, in conjunction with large public works projects, many existing problems in prisons can be resolved to a large extent. If corrective labour becomes part of sentencing options, open jails can possibly help in its administration and supervision.

The National Policy should aim at reducing prison population and enhancing standards of prison discipline and administration with a view to making it serve a social purpose and helping to reduce opportunities for corruption and abuse of power. The same approach should be extended to other custodial and correctional institutions so that as far as possible, correction and rehabilitation are accomplished through non-institutionalized methods.

6.12 TRAINING FOR PROFESSIONALISM AND ACCOUNTABILITY

6.12.1 Criminal procedure and administration, in the final analysis, depend on the personnel of the system who primarily are the police officials, the prosecutors, the trial judges and the prison/correctional staff. The quality of their services depends a great deal on the initial training imparted to them when inducted into the system and the quality of continuing training and education the system offers thereafter. Thanks to the efforts of the Central and

the State Governments, some very good training academies have come up for the police and the judiciary in some of the states, in the recent past. However, many more such institutions have to come up across the country, and the National Policy on Criminal Justice should lay stress on the same as also on accreditation of these training academies, with a view to improving the quality of training offered by them and co-ordinating their programmes for a purposeful end. Training institutions may be brought under the Bureau of Criminal Justice and their entire budget may be met by the Central Government. Ordinarily, the budget of these institutions should be not less than two per cent of the budget of the concerned Department. For achieving co-ordination and efficiency, inter-departmental training for various components of Criminal Justice System may be encouraged as a matter of policy.

6.12.2 There must be an objective, scientific and transparent system of performance evaluation at the organizational level as well as at the individual level. Training should be linked to individual needs and performance evaluation appropriately related to career advancement. It would help improve the performance levels and accountability if systems of performance evaluation, training and education assume the status they deserve, particularly in the police and the judiciary. And this is true not only at lower and middle levels of the organizations but also at the top levels of leadership and authority.

Training Academies should assume the character and dimensions of Universities with a broader, multi-disciplinary curriculum intended to interrogate existing practices. For this purpose, they should have independent existence outside the department concerned. The practice of posting officers not doing well enough in service to training institutions should end and persons known for professionalism, integrity and learning should be in the faculties of these Academies. To ensure that the best available persons are attracted to the training academies, additional weightage may be given to those posted in the training faculty for accelerated career progression in addition to monetary and other incentives. If training cannot inspire, motivate and help change attitudes, it is of little value for reform. The National Policy should emphasize the importance that education and training must have in the scheme of reform of criminal justice administration.

CRIME, JUSTICE AND ADVANCEMENTS IN SCIENCE AND TECHNOLOGY

7

Rapid advances in various fields of science & technology provide an opportunity in fighting crime more efficiently on the one hand, and throw up newer and more complex challenges for the criminal justice system, on the other. While advancements in science and technology, particularly in the fields of information and communication technologies, have decisively shaped administration in different spheres during the last decade and more, it is surprising that the criminal justice system has by and large kept itself insulated from the science and technology revolution! However, the manner in which modern-day criminals make use of science and technology in perpetrating their criminal activities with relative impunity has compelled re-thinking on the part of the criminal justice establishment to seek the help of the scientific community to come to the help of the police, prosecutors and the courts. The criminal procedure, rules of evidence, and the institutional infrastructure designed more than a century ago, are now found inadequate to meet the demands of the scientific age. The absence of a national policy in criminal justice administration in this regard, is felt to be a serious drawback.

7.1 TWO-FOLD INTERFACE OF CRIMINAL JUSTICE AND TECHNOLOGY

7.1.1 The interface between criminal justice and science & technology raises two areas of concern, namely, how the enormous resources of science and technology can be used to solve the problems and challenges of crime on the one hand, and what criminal justice system needs to do to protect the country's scientific assets in land, air, space, cyber space and the seas, on the other. The National Policy on Criminal Justice has to address both the issues keeping in mind the changes taking place in the scientific world and India's commitment to peace, progress and human rights.

7.1.2 What are the problems in criminal justice administration that science and technology can help solve in the short and long terms and what kind of infrastructural and institutional reforms are necessary to make that happen? What kind of technological devices and systems need to be developed and how best they can be integrated with the crime control arrangements now in place?

Within the criminal justice system, the potential for immediate improvement is perhaps more in police work than in other segments. Thus, science and technology can help reduce the time and cost overruns of police response to calls from the public. Delays and uncertainties in the investigation process can be reduced with the aid of modern information-communication

technology systems and scientific procedures. Science and technology can provide the capability and help the police to scale up its operations. However, the initial investment on equipment and personnel will be high and it may have to be spread over a few years based on needs and priorities. There is a strong case for the police being equipped with the latest technology-based equipment to achieve better mobility, communications, audio visual aids and other scientific support systems to improve its professional efficiency. This can help improve capabilities of the police in apprehension of criminals, curtail unnecessary arrests, reduce response time, avoid use of third degree methods in detection and interrogation, improve prospects of proof through scientific evidence and enhance standards of preventive policing in a human rights-friendly manner. Towards this end, it should be possible throughout the country to reach the police through a single, toll-free telephone number with a simple operational procedure. A ground computer-aided command and control system should be developed to streamline police operations. The Central Government should sponsor and provide the funds needed, to mount such arrangements throughout the country in a phased manner.

Electronic media, including popular radio frequencies, should be available to the police for effectively building up police-community relations in the areas of crime prevention and detection, traffic control and security.

7.2 FORENSIC LABORATORIES TO BE EQUIPPED AND MANAGED EFFECTIVELY

7.2.1 The association of forensic laboratories with criminal justice, however, inadequate has been there for over 150 years. Yet, for a variety of historical and administrative reasons, it has not yielded impressive results in crime control in the country. Laboratories earlier were mostly doing chemical analysis, fingerprint comparison and document verification. After Independence, a network of national, regional, state and mobile forensic laboratories came up, giving improved support to the criminal justice system at least in the investigation of serious crimes. Nevertheless, the system has suffered from lack of resources, compartmentalized approaches and divided control between the Centre and the States. In the recent past, some high-tech tools such as DNA fingerprinting, cyber forensics, narco-analysis, brain mapping et al have been introduced in select laboratories.

There is urgent need for integrated, planned and co-ordinated development of the forensic capabilities of those institutions if they were to make a difference with quality and quantity of criminal investigations and crime control strategies in the country. This would require heavy investment over a period of time and effective organizational and administrative arrangements between the central and the state governments. Towards this end, these geographically separated laboratories have to be electronically networked so that knowledge generation is not only real-time but also would be in the nature of value addition. Criminal justice in the changed scenario demands it and the country with its growing economy deserves it. The National Policy should make it imperative for the governments to commit adequate resources and to provide an effective legal-administrative framework to make this happen in

the network of crime laboratories. The Forensic Science Laboratory network should be declared a scientific organization even when attached with the Home Departments, in order to ensure conducive scientific environment as also to attract and retain scientists of good calibre and integrity.

The importance of crime scene management is not yet an integral part of the police culture. Both in training and operations, close co-ordination is necessary between forensic science and the police for which there are effective models available here and there in the country. The value of scientific evidence should not be lost because of faulty handling of samples and inability to prove their authenticity because of inefficient custody. Towards this end, a trained cadre of Crime Scene Technicians (CST) should be developed in cities and towns who would always accompany the investigating police officer to the scene of crime.

7.2.2 It is heartening to learn that the Ministry of Science and Technology of the Union Government, under an autonomous body of the Ministry called TIFAC (Technology Information, Forecasting and Advisory Council), has launched a number of products and services to create a synergy between science and technology and the criminal-judicial processes. In addition, through another initiative called REACH (Relevance and Excellence in Achieving New Heights in Educational Institutions), TIFAC has set up a large chain of networked TIFAC CORES (Centres of Relevance and Excellence), across the country in various user (industry) driven focused areas, for meeting user requirements of manpower. This initiative could be harnessed to address specialized manpower requirements in forensic science and technology. These initiatives need to be strengthened and institutionalized with active support from the Home and Justice Ministries. There is need for policy initiatives in this regard with a view to bringing the forensic science at the centre of criminal investigation in a cost-effective manner with efficiency and accountability guaranteed in the process

7.2.3 Training, accreditation, standard setting, professionalism and research and development of forensic science should receive adequate attention in the policy framework. Strict rules of procedure for application of forensic science in the investigation of notified crimes should be evolved and followed by the police everywhere. Greater probative value has to be given to scientific evidence for which evidentiary rules have to be modified. An empowered committee should monitor the transition so that at least by 2010, the country would have crime laboratories comparable to the best in the world, working in close collaboration with the police in the investigation of organized crimes and terrorist violence. The Union Government should sponsor a 'Science and Technology Mission for Effective Criminal Justice' to create the synergy and produce the results in reasonable time in addition to taking full advantage of initiatives such as those in Ministry of S&T stated earlier. The Central Government should meet the entire cost for the Mission for a stipulated period.

7.2.4 The Evidence Act may need to be amended to make scientific evidence admissible as 'substantive evidence' rather than 'opinion evidence' and establish its probative value, depending on the sophistication of the concerned scientific discipline. For instance, a legislation

to validate DNA evidence is urgently needed. Similarly, computer-based evidence has to be provided legislative support. Scientific techniques and procedures used, have to be validated by appropriate agencies and professionally recommended for acceptance as evidence.

7.2.5 This network of laboratories should cater to not only traditional forensic science requirements but also to the overall S & T needs of the criminal justice system, to raise their level of capability and sophistication. This network of laboratories should have institutionalized tie ups/networking with other scientific organizations and advanced laboratories of national scientific organizations. There should be well-set procedures and practices of exchanges of opinion as well as skills between the two. This chain of laboratories must support the following requirements:-

- (a) Handle standard forensic functions, including DNA fingerprinting, cyber forensic analysis etc.
- (b) Provide “on the field/in-situ” technical support to other enforcement agencies in detection/control of illegal activities involving scientific products and items e.g. chemical agents, biological agents, WMD-related products, services and components etc.
- (c) Extending an effective interface with advanced scientific laboratories for quick and effective service when called for.

It is absolutely essential that the standards of quality, secrecy and security are maintained at the very highest levels in this network of forensic laboratories. This would call for:-

- (a) An effective, independent, internal quality control and quality assurance system as well as a system of accreditation, designed to enforce strict norms (at all levels – scenes of crime, laboratories and during the process of handling, and transportation of scientific samples).
- (b) A system of internal as well as third-party audits of the performance and procedures. The third party audit agency should report to a totally neutral external agency.

7.3 SECURITY OF SCIENTIFIC ASSETS AND CRIMINAL JUSTICE

7.3.1 Another significant aspect of national policy relates to the role of criminal justice in the protection of our scientific assets including intellectual property rights on scientific accomplishments, safety systems of the environment and security of vital strategic installations.

7.3.2 How should criminal law relate to activities prejudicial to national interests in the high seas and in outer space? Over a million citizens of India are reportedly employed as seamen in merchant vessels mostly registered in foreign countries. Cases of missing seamen are often reported against which the existing Indian legal system appears to be helpless. The victims are at the mercy of authorities of the flagship country. Extra-territorial application of

Indian criminal laws is largely confined to Indian vessels in foreign waters. How does Indian Criminal Justice System address the crime issues which are linked to international relations so as to protect Indian citizens as well as our assets in high seas. A proactive, futuristic approach is required in this regard for which the Shipping, Ocean Development and External Affairs Ministries have to co-ordinate with the Home Ministry at policy planning level.

7.3.3 Space law is presently considered part of international law and is governed by a series of international conventions and treaties providing for peaceful use of outer space by all countries. India has acquired enormous capabilities in the scientific exploration of outer space and has today its vital national interests to protect. The National Policy on Criminal Justice cannot ignore this issue or leave it to powerful international forces who shape policies in this sphere in utter disregard of interests of developing countries. Developed countries have made their own national laws in respect of the use of outer space, designed to protect their interests by appropriating jurisdiction in cases of conflict. India’s approach so far has been to merely adopt UN-sponsored conventions. Looked at from national security perspectives, these treaties are inadequate to protect national interests in these high technology areas.

7.3.4 Given the advances in scientific capabilities in outer space, India may have to enact its own national laws defining outer space; identifying permissible and prohibited activities in space by individuals, other States and private commercial interests; regulating launching and operation of satellites and other space vehicles; and establishing legal regimes supportive of the country’s existing and potential assets in space. Principles of liability, in conformity with emerging international practices, have to be incorporated in the domestic law as some countries have already done. The 1973 “Convention on Liability for Damage caused by Space Objects” is the starting point for developing a legal framework in this regard. It is difficult to separate civil and criminal liability in this sphere unless the nature of activity causing injury is delineated and its implications assessed. It would be useful to look comprehensively at India’s concerns and interest with regard to outer space, with the help of a committee of specialists constituted for this purpose.

7.3.5 An area fast developing and on which legislation has emerged in recent times is regulation of cyber space and information technology. Several security-related issues are interspersed with the digital revolution where developed countries have already established their domination. The Information Technology Act, 2000 does incorporate many provisions imposing civil and criminal liability for misuse of IT and interfering with electronic communication. However, what is provided in the IT Act is just the beginning of a highly complex legal regime which is slowly unfolding in respect of cyber space. Meanwhile issues of national security remain seriously challenged because of vulnerability from hackers and fraudsters operating from the secrecy of their hideouts. For instance, the Google-posted satellite images on the Internet of vital defence installations in India are a matter of grave security concern against which little can be done under the existing law because of complex questions of not only technology but also jurisdiction and enforceability of sanctions. Use of cyber space to plan and execute terrorist activities should naturally be a crime. Given the size and levels of transactions now

being operated through cyber space, it becomes imperative that the justice system generally and criminal justice in particular keep on developing appropriate tools and mechanisms to police the cyber space as well as safeguard our national interests in this field. A standing committee of scientists to advise the government in this area shall be in order.

7.3.6 The Information Technology Act, 2000 was enacted to enable systems to change over to the new technology for greater efficiency and productivity, mainly in the areas of e-commerce and e-governance. The Parliament did envisage possible misuse and criminalized certain conduct in cyber space and provided for empowered regulators to deal with them administratively and, in extreme cases, for criminal processes to take over. However, with technological changes, the type of violations have increased manifold and the IT Act provisions have proved inadequate to address them. Furthermore, certain protected systems involving national security got exposed to increasing threats from criminals and terrorists. In this context, criminal justice policy needs to adopt some bold steps to protect our vital systems and to enable the criminal justice system to cope with the threats of cyber criminals. The elements of that policy, inter alia, may include:-

- (a) Provision for a mechanism which can change and update the law relating to ICT in a fast track process, as prevalent in certain countries like USA, Australia, Singapore, etc.
- (b) Organization of cyber misconduct which needs to be criminalized (and is increasing day by day with changes in technology) outside the IT Act, in appropriate criminal codes, stipulating the procedure to be followed and punishments to be given under different types of cyber crimes.
- (c) Criminal law to empower enforcement agencies with suitable preventive powers for intervention and suitable action, in respect of cyber crime.
- (d) Entrustment of the entire enforcement system related to cyber crime to technology-trained special police, special prosecutors and special judges.

7.4 REGULATION OF SCIENTIFIC MISCONDUCT

7.4.1 A related problem which sooner or later will invite intervention of the criminal justice system is in respect of data piracy, plagiarism and manipulation by the members of the scientific community themselves and determination of standards of scientific misconduct.

7.4.2 Clinical trials on unsuspecting public without taking required precautions or misuse of advanced medical technology do warrant strong state interventions with criminal sanctions.

7.4.3 There is an urgent need to synergise the criminal justice system with the use of science and technology tools for enhancing efficiency of detection, investigation and proof. The entire cognitive science is on the verge of explosive changes with great potential for social defence and the criminal justice policy needs to acknowledge this development in cognitive sciences.

7.5 BIOLOGICAL RESOURCES, ECOLOGY AND CRIMINAL JUSTICE

Conserving biodiversity is basic to survival and well-being of the large population in India. With half the total land under agriculture, and approximately 23 per cent under forests, the protection of diverse habitats poses formidable challenge. The Indian Forest Act, 1927, Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 provide for the legal framework to manage the bio-resources. The Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms/ Genetically-Engineered Organisms or Cells, 1989, framed under the Environment Protection Act, 1986 also provide for stringent standards and penalties for violations. These Rules regulate the research and development, trials and commercial release of transgenic and/ or genetically modified notified products. There are penal provisions in the Act and Rules which warrant constant review and development with progress in bio-technology. Similarly, offences are created for protection of wild life under the WPA, 1972 with provisions for imprisonment for violations. A Wildlife Crime Control Bureau is created to monitor and process wildlife crimes with State authorities and prevent illegal trade in wildlife produce. These laws need to be enforced vigorously if India's rich bio-diversity is to be preserved and bio-piracy to be controlled.

Several provisions of international Conventions which India has ratified, in the field of misuse of bio-technology demand invoking criminal sanctions to prohibit production and stockpiling of biological or toxic weapons. The Weapons of Mass Destruction (Prohibition of Unlawful Activities) Act, 2005 regulates dual use nuclear or chemical weapon materials and technologies. It is intended to prevent non-state actors including terrorists from acquiring weapons of mass destruction and their delivery systems. Persons unlawfully acquiring, developing or transporting a biological or chemical weapon or their means of delivery is punishable with imprisonment which may extend to life and fine. There are several other offences created under the Act which are punishable with long term imprisonment and heavy fines. Where an offence under the Act is committed by a company every person in charge of, and responsible to, the company for conduct of business of the company as well as the company are deemed to be guilty of the offence. The scope of this Act should cover not only non-state actors but other states as well.

Given the horrendous consequences that bio-terrorism can inflict in a heavily populated country like India, it is important that the law is enforced with promptness and professionalism. However, the enforcement interestingly is entrusted to half a dozen Ministries/Departments of the Government of India excluding the nodal Ministry of Home Affairs. A robust national authority with its own enforcement apparatus to prosecute offenders is the need of the hour. It must have representation from all the key ministries, specialist organizations and a team of experts to work with the police for prompt and effective enforcement. As the matter involves natural security it is a fit subject to be brought into the proposed Federal Offenders Code.

8.1 RIGHT TO EQUALITY AND AFFIRMATIVE ACTION VIS-À-VIS CRIMINAL JUSTICE

8.1.1 Given the social inequalities and discriminatory practices prevalent in the Indian Society, the Constitution has enabled the state to make special provisions for women and children [Article 15(3)]. The Constitution itself has abolished “untouchability” and made its practice a crime (Article 17). Similarly, exploitative practices are prohibited (Articles 23 and 24) and are made punishable offences. The Directive Principles in Part IV of the Constitution also command the state to adopt policies which secure a social order which provide equal justice under law ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In pursuance of these constitutional mandates, the Parliament and the State legislatures have enacted innumerable laws from time to time invoking criminal sanctions and introducing special agencies and procedures, wherever found necessary, to protect the interests of scheduled castes, scheduled tribes, children, women, disabled persons and other weaker sections of society.

8.1.2 Acknowledging the disabilities and emphasizing the need for equal protection of the laws to the weaker sections, certain provisions of criminal procedure and evidence have been modified; police and courts are given additional powers; and punishments have been made stringent, sometimes with mandatory minimum sentences. In some cases, even separate institutions have been set up to conduct proceedings in respect of these laws. It is important that criminal justice administration takes special care to advance the constitutional mandate and the legislative objectives in order to ensure that weaker sections are not denied their due in the criminal judicial processes. This transformation is not fully reflected in the attitudes and practices of criminal justice functionaries despite a series of decisions of the highest court and circulars and directions from superior authorities. Training has got to do a great deal to change the mindsets. It is the function of the National Policy to remind the functionaries that the Constitution expects of them a change in their attitudes and approaches and demands accountability for results.

8.2 CRIMINAL JUSTICE AND CHILDREN

8.2.1 Children constitute one-fourth of India’s population. If adolescent youth under 25 are also included they might as well form a majority, who naturally can claim proportionate share in the country’s legal-administrative resources including criminal justice administration. Criminal Justice has acknowledged this obligation and devised a system appropriate to deliver justice to the child. The National Policy on Criminal Justice has to reflect the special status assigned to children and progressively endeavour to make it a child-friendly system.

8.2.2 Apart from provisions relating to criminal liability of children in the Indian Penal Code, the Parliament has enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 and a variety of special laws directed to protect the rights of neglected children and children in conflict with the law. The ordinary criminal justice institutions and procedures are supposed to be inapplicable to children in conflict with the law. The U.N. Convention on the Rights of the Child (UNCRC) is the guiding instrument for implementing all rights for children up to the age of 18 years. A National Charter for Children has been adopted by the Government of India in 2004 and a National Plan of Action for Children in 2005. In both these policy instruments, there are special provisions in respect of the rights of the Girl Child, Adolescents (boys and girls in the age group of 13 to 18 years) and Children with Disability. Clear objectives and detailed strategies are stipulated in the National Charter to implement the provisions of the Juvenile Justice Act relating to children in conflict with law as well as children in need of care and protection. The Criminal Justice Policy should endeavour to get these provisions implemented at all levels giving children their due so far as delivery of justice is concerned.

Juvenile Police Units in every district, creation of juvenile institutions for care and protection of children and total prohibition against lodging children in prisons, ensuring convergence of all services and programmes to deal with children in conflict with law, special interventions for children of commercial sex workers and children of prisoners, model centres of rehabilitation are all commitments which the state has undertaken in pursuance of the Constitutional obligations. However, in the Criminal Justice System now in place in most of the States, these steps still remain distant dreams. The National Policy on Criminal Justice must ensure that the machinery is in place, the standards are maintained, monitoring and accountability established and children do receive the benefits of special procedures and treatment promised to them under the laws.

8.2.3 There is a view that the Juvenile Justice Act must be split into two legislations, one dealing with children in conflict with the law and the other dealing with children’s protection and welfare. There is also a view that in respect of “adolescents in conflict with

law”, the treatment and procedures should be different from those to be prescribed for children below 12 years. It is important that issues receive legislative attention in order to yield better results in the matter of juvenile justice.

8.2.4 Another issue which calls for immediate attention of all concerned is the incidence of violence against children which has assumed alarming proportions in some parts of the country. Child prostitution, child trafficking, child pornography, child marriage and child labour are despicable practices as is the problem of missing children, which are on the increase, and the criminal justice system is proving inadequate to the tasks and challenges. There is violence and abuse of children within the criminal justice system itself. There is need for regional and international collaboration among justice systems of countries in the region and beyond to advance the cause of justice to the trafficked and exploited children. Preventive and rehabilitative strategies need to be strengthened in association with related government agencies and non-government organizations. The criminal justice agencies need to have duly sensitized, and trained personnel, adequate resources and support systems needed to ensure minimum standards of procedure to ensure accountability and avoidance of delays while dealing with children.

8.3 CRIMINAL JUSTICE AND WOMEN

8.3.1 Unlike children, there is no separate parallel system in the administration of justice for women in conflict with the law. Nevertheless, to enable women to enjoy equal justice under law, there are national and international legal instruments by virtue of which separate standards and procedures are set in the matter of arrest, search, detention, interrogation and trial of women. Legal and judicial institutions are expected to be responsive while dealing with cases involving women, taking note of their special needs. The National Policy on Criminal Justice should emphasize and reiterate these aspects of gender justice and gear the system accordingly.

8.3.2 Trafficking in women and girls, domestic violence against women, female foeticide, sexual harassment at work places, sexual violence like rape and molestation have been criminalized and action plans have been formulated to provide equal justice for women through special procedures and targeted resources. Yet, in the implementation of these laws, there have been serious lapses which have been brought out by various committees and commissions which enquired into them. The courts have attempted to fill in the gaps but without much success.

8.3.3 Prompt and professional investigation of offences against women is an imperative necessity. In camera proceedings in the trial of sexual offences are to be encouraged. Mention of the identity of victims of rape has to be scrupulously avoided in the report

of the proceedings. There has to be a change in the judicial approach at the trial level in dealing with offences against women if the legislative benefits were to reach them fully. As the Committee on Criminal Justice Reform recommended (2003), the investigation and trial of rape cases should be done with utmost expedition and with a high degree of sensitivity. Legal aid services have to have pro-active programmes to address the special needs of women under the criminal justice system. Medical and psychiatric counseling, interim reliefs aimed at rehabilitation and monetary compensation to defend oneself in adversities have to be integrated with the legal aid services made available to women involved in criminal proceedings. The Krishna Iyer Committee’s recommendation (1978) for evolving an integrated policy for custodial and rehabilitative justice to women should be integrated into the criminal justice system.

8.4 CRIMINAL JUSTICE INVOLVING DALITS AND TRIBALS

8.4.1 One of the distinguishing features of the Indian Constitution is the concern it shows to Dalits and Tribals. It should be the objective of criminal justice to inform and influence all its institutions, procedures and personnel with the constitutional values on social justice. The protection of law is needed most by the deprived and under-privileged classes including Dalits and Tribals. The fact that Constitution itself took the step of abolishing untouchability and declaring continuance of discriminatory practices in this regard as criminal, should make the functionaries of the criminal justice system adopt differential standards when they deal with legislations like the Protection of Civil Rights Act and the SC/ST (Prevention of Atrocities) Act. The fact of occasional abuse of the law is not a justifiable excuse to go soft on enforcement or to interpret the law against the interests of the targeted beneficiaries. There must be time limit for disposal of cases of atrocities and the policy of investigation and prosecution of such cases should be under constant review by the authorities.

8.4.2 It is important for enforcement agencies and the judiciary to sensitize their personnel, allocate adequate resources and give priority in the matter of cases involving Dalits and Tribals. Legal aid schemes have to adopt imaginative strategies including a public defender system in this regard. Legal Aid personnel should be persons familiar with tribal language and customs.

8.4.3 The National Policy on Criminal Justice should incorporate the demands of special provisions contained in the Fifth and Sixth Schedules to the Constitution to ensure that Scheduled Tribes enjoy the privileges and protections extended to them by the Constitution even where issues of administration of justice are involved. Despite the directive to separate Executive from Judiciary, there is an express reservation in its application to Scheduled Areas. Criminal Justice has to accommodate this Constitutional mandate with understanding and appreciation.

8.5 CRIMINAL JUSTICE AND PERSONS WITH DISABILITIES

8.5.1 Elderly persons and persons with physical and mental disabilities have become soft targets for criminal elements. They are even victimized in their own homes by those who are supposed to protect their rights and entitlements. The criminal justice system is not yet geared to respond to the challenges involved to be able to offer equal justice under law to those disabled persons.

The Disabilities Act, the Mental Health Act and selected provisions in the Criminal Procedure Code and Personal Laws do offer some relief yet there are formidable problems in accessing justice on their behalf at police stations, criminal courts and administrative offices. The Supreme Court has reportedly advised all the courts to give priority to cases (both civil and criminal) involving senior citizens, which is a welcome step.

8.5.2 We need disaggregated statistical data which are not readily available, to assess the magnitude and complexity of the problem involving the disabled vis-à-vis criminal justice processes, to suggest appropriate measures for policy changes in this regard. Meanwhile, prompt response from enforcement agencies and expeditious disposal at every stage of the criminal judicial process, which is a sine qua non for reaching justice to these citizens with disabilities, must be ensured.

8.5.3 After the enactment of the Mental Health Act, a number of institutional and procedural reforms were expected to have been put in place in the administration of criminal justice vis-à-vis the people with mental and psychological disabilities. A series of Supreme Court directions on the treatment of persons of unsound mind involved in criminal proceedings and on the conditions of mental asylums are yet to be implemented for ensuring justice to such persons. Special steps are required for women and girls in view of their vulnerability when they are not in command of their mental faculties.

8.5.4 It is important to emphasize training and continuing education for criminal justice personnel to adopt disabled-friendly practices and attitudes in the working of the system. The administration should itself not become exploitative, abusive and violent. Technology should be maximally invoked in getting the system work to the benefit of disabled persons. Fast track courts should be entrusted with cases involving the disabled.

8.6 CRIMINAL JUSTICE POLICY AND PROTECTION OF MINORITIES

8.6.1 The Indian Constitution and several international human rights instruments specifically provide for the protection of religious and ethnic minorities. Given the large

number of ethnic and religious denominations which make the Indian demographic scene, it is imperative that criminal justice policy takes cognizance of the need to uphold constitutional values of secularism, humanism and common brotherhood. It is important to have a fair representation of all sections of the community and more particularly minority groups in the law enforcement apparatus at the local, state and national levels. Even more important is to ensure that each and every member of the police force is trained and motivated to imbibe constitutional and human rights values to such a degree as to maintain impartiality and fairness in law enforcement. Avoidance of communal bias in conflicts involving different communities is significant for criminal justice, to maintain harmony and peace. This is a function of recruitment, training, supervision and accountability which the system must reflect in its norms and procedures.

8.6.2 It is desirable to evolve a 'Best Practices Code' to be followed in difficult situations involving communal conflicts, to give minorities the confidence in the system in place. Special Prosecutors and Special Courts with specially trained staff may be entrusted to conduct criminal proceedings in the cases of violence against minorities and similar vulnerable groups.

8.6.3 Criminal justice in relation to large-scale and prolonged communal conflicts requires special attention. It cannot be left entirely to States particularly when it is a prolonged one in view of its possible impact in neighbouring States. The Joint Sector of Law Enforcement suggested earlier may have to be entrusted with the job under a co-ordinated scheme for which a central legislation may be appropriate. As minorities are victimized more often in such cases, the matter has to be handled with promptness and sensitivity by well-trained police personnel. Immediate rehabilitation must be part of the criminal judicial process for which the courts should have special powers and remedies.

8.7 SPECIAL MONITORING CELL IN THE DEPARTMENT OF CRIMINAL JUSTICE

Given the magnitude of problems and helplessness of weaker sections involved in criminal proceedings, the National Policy ought to adopt a pro-active approach in the implementation of the laws concerning weaker sections in their application at the grass-roots level. The legal aid services and social welfare programmes have to be integrated with the criminal justice processes to ensure that those belonging to weaker sections are not denied their legitimate rights and entitlements for whatever reason. There must be greater transparency and accountability in the system in this regard. It should be possible to make special allocation of Central resources and to assign trained personnel for maintaining the quality of services to persons with disabilities and victims of communal conflicts.

For giving due importance to the rights and privileges of weaker sections in criminal justice administration, it is necessary to have special monitoring cell in the proposed Board of Criminal Justice. The Cell should collect statistics relevant to evaluate the programmes and assess the need of resources and of policy changes necessary to implement the National Policy to the advantage of weaker sections while administering the criminal justice system of the country.

NEW SECTORS OF CONCERN IN CRIMINAL JUSTICE

9

9.1 CRIMINAL JUSTICE AND COMMUNAL CONFLICTS

9.1.1 The challenge of management of crime in a plural society prone to communal conflicts, encouraged by religious extremism, international fundamentalist movements and cross-border infiltration, is indeed real and complex. A large-scale awareness-building and training programme has to be undertaken in every organization, particularly the police, to keep the system sensitive and responsive to competing demands. Community participation in policing and crime prevention is essential and this has to be adopted on a continuing basis in urban as well as rural areas.

9.1.2 The provisions of the Penal Code and Election laws in respect of prevention of exploitation of communal sentiments or incitement of violence must be strengthened. Preventive strategies with the people's participation need to be institutionalized. The punishment for such offences should be deterrent. It should be possible to make political parties and civil society organizations criminally responsible for perpetrating or instigating communal conflicts. Special provisions on management of communal conflicts may be incorporated in police manuals and local body legislations. Training on the subject should be made an essential component in all curricula for the police, judiciary and the correctional personnel. It is desirable to have a separate central legislation with a built-in mechanism to control communal violence and to prevent its spreading whenever it happens. A statutory scheme of reparation to victims of violence should be in place with Central funding. An order of the National Human Rights Commission (April-May, 2002) contains a number of policy instruments in the matter of access to justice and reparation to victims of communal violence. These need to be adopted.

9.2 CRIMINAL JUSTICE AND ECONOMIC SECURITY

9.2.1 The nature and dimensions of economic offences have undergone tremendous changes with changes in the nature of socio-economic content of property and developments in information and communication technology. Cyber crime is emerging as a serious threat what with all its potential for serious banking, financial and security frauds in proportions

unknown in the past. With the economy getting more and more complex and globalized, economic crimes are bound to become complex and transnational. The regulatory agencies now being put in place for different sectors of the economy cannot substitute the criminal justice system. The problem of prosecuting erring corporations becomes difficult because criminal liability against corporations for offences punishable with death or imprisonment is not easy to administer. The experience of the Bhopal Gas Leak Disaster reveals the weaknesses of a system designed for an earlier era. The doctrine of unjust enrichment which the Supreme Court invoked in the *Mafatlal Case* (1997) should be adopted as a policy. Accordingly, the illegal wealth amassed through criminal activities should be confiscated even during the pendency of the criminal justice process. The Law Commission has also recommended such an approach.

9.2.2 A large number of Central laws, besides the Penal Code, currently exist to prevent and take care of economic offences and they are being enforced by diverse agencies with their own enforcement apparatus, procedures and sanctions. Long ago, the Santhanam Committee on Corruption (1964) had recommended that these disparate laws should be made part of a separate section of the Penal Code in order to effectively deal with them by the criminal justice agencies. The need is felt today more than ever before. An independent Serious Economic Offences Code is the need of the hour if the nation's economic security is to be ensured.

9.2.3 It is not within the competence of the ordinary civil police to detect and investigate such crimes which requires advanced expertise in multiple disciplines and capacity to probe trans-national transactions on a continuing basis through stock market, banking, insurance and security deals. Several countries have set up high profile Serious Frauds Offices under a criminal justice legislation to deal with major economic offences. As the investigation, prosecution and trial of serious frauds demand special expertise and modified rules of evidence, it is better to have a Serious Frauds Bureau, created under an independent Central legislation for specified offences. The Bureau should be manned by trained professionals from all the required disciplines as also investigation experts, and should have a well-designed mechanism to co-ordinate enforcement.

9.2.4 Another serious emerging threat, which has so far not received due attention of law makers in our country, is the likely offensive of cyber attacks by terrorists and other organized international criminal gangs or other inimical force, on our national critical infrastructure. Sectors contributing the critical infrastructure would include space, atomic energy, defence, banking and financial services, civil aviation, railways, telecommunications and information technology. There is as yet neither an agency nor a plan in place to police

(defend, safeguard and detect) the gateways of cyber space being utilized by the critical infrastructure sectors. The Committee, therefore, recommends preparing a white paper on the dimensions of this threat and the mechanisms of effectively countering it.

9.3 CORRUPTION AND CRIMINAL JUSTICE

9.3.1 Corruption and delays are two serious problems discerned in our criminal justice system and despite several attempts both have defied satisfactory solution. In the recent past, legislative interventions have opened up new vistas to reduce delays. Technology solutions and new management techniques are being introduced providing hope for the future. The trend needs to be sustained to yield results.

Meanwhile, some drastic measures are called for to deal with corruption in the system. The recently-drafted Model Police Act has some welcome provisions in this regard. The recommendations of the Law Commission of India to deal with the issue more effectively, warrant attention. Confiscation and forfeiture of assets pending trial is recommended in extreme cases, given the linkage between corruption on the one hand and terrorism and anti-national activities on the other. Corruption is largely responsible for delays in the system. In this regard, the requirement of prior sanction to initiate action against corrupt public servants is unacceptable and has been struck down by the Supreme Court. Yet, it is retained in practice. The National Policy should find alternative methods to protect bonafide action of honest officials.

9.3.2 There is need for one or more Criminal Justice Ombudsman in each State to receive complaints of corruption of serious nature in the administration of criminal justice and to process them expeditiously through appropriate agencies so that miscarriage of justice is avoided and impunity is not enjoyed by anyone however affluent or influential he or she be. A policy to let whistle blowers expose corruption is very much needed despite the difficulties involved. The Law Commission recommendations in this regard need to be adopted with suitable changes.

9.3.3 Investigation and prosecution of corruption cases involving national security or likely to compromise the standing of constitutional institutions need to be undertaken by a truly independent and professional body enjoying a status comparable to the Election Commission or the Comptroller & Auditor General of India. The Central Bureau of Investigation is not independent enough for the job nor has the jurisdiction, resources or personnel required for the purpose. Therefore, the need for an independent national enforcement agency with the necessary authority and resources to undertake investigation of corruption in high places and other offences referred to it, in a truly professional manner, with accountability

only to the law and the courts. Unlike the CBI, it should have freedom to investigate cases across the nation and a budget not dependent on executive fiat. It should have a permanent cadre of officials. Its head should be a collegial body of three officers appointed for a fixed term through a process that is transparent, independent and inspiring confidence in the public.

Unless serious cases of corruption are dealt with an iron hand irrespective of party affiliations, their impact on governance generally and criminal justice in particular is going to be very serious. All efforts in the past to reform the election finances and to break the nexus between politics and crime have not yielded results and people have started believing that they have to live with it. The National Policy should give some hope in this regard by mounting an investigation-prosecution system which inspires confidence.

Simultaneously, it is necessary to put in place a more transparent and effective method of dealing with corruption in the judiciary. The proposed Judges' Inquiry Bill hopefully will provide for the machinery for the purpose. In addition, all judges should be required to make public disclosure of their assets annually to a Judicial Ombudsman which may be a three-member body of retired Chief Justices, Election Commissioners or Comptroller and Auditor Generals appointed by the President of India in consultation with the Chief Justice of India. The Judicial Ombudsman can be associated with the body created under the Judicial Inquiry Bill for disciplining erring judges.

9.4 MEDIA INVOLVEMENT IN CRIMINAL JUSTICE ADMINISTRATION

9.4.1 Media is an important instrument for information and accountability. Investigative journalism has often exposed corruption and helped to maintain rule of law. As such, media is an ally of the judiciary in safeguarding human rights and upholding rule of law.

However, some recent developments in the media – both print and electronic – largely prompted by commercial objectives in a competitive environment, have raised some concerns for the administration of justice and protection of human rights of persons involved in criminal investigation and trial. Matters sub judice, when discussed in the media, need to follow some restraint if the credibility and fairness of judicial institutions and of administration of justice were to be preserved. Public perceptions are created by the media and confusion is created in the minds of the people when unpopular decisions are rendered by courts.

9.4.2 Criticising judgments and criticising judges are two different things which lose their distinction in the midst of media-generated perceptions which are taken as evidence

by the lay public, leading them to suspect the actions of those involved in administration of justice. The Law Commission has made some proposals to amend the law to strike a balance between the freedom of press (right to know) and the interests of fair justice. When the media acts for commercial gain and mounts campaigns selectively on issues under adjudication, there is a danger of not only subversion of justice but also of discrediting constitutional institutions which, inter alia, depend for their effectiveness on the people's faith and trust.

9.4.3 Constitutional legality or otherwise of "sting operations" undertaken by some sections of media and their impact on criminal justice process also needs to be regulated, preferably by self-imposed codes of conduct and best practices codes. There is need for evolving consolidated guidelines on regulating media freedom in the spirit of Article 19 to restore the balance between the peoples' right to know and the requirements of administration of justice.

9.5 CRIMINAL JUSTICE AND CIVIL SOCIETY

9.5.1 Civil society has an important role to play in crime prevention and law enforcement. Criminal laws increasingly adopt provisions accommodating the people's participation in the administration of justice. Apart from prevention of crimes and assistance in investigation and trial, the amended criminal procedure code encourages settlement of criminal cases through compounding and plea bargaining. In the matter of juvenile delinquency, the participation of civil society organizations is critical for justice to children and protection of society. Similarly, in cases of what are called social welfare offences, enforcement agencies can do very little without the involvement of the neighbourhood community, school, family etc.

Taking note of the importance of civil society in criminal justice administration, future legislation should find ways and means to accommodate and facilitate public participation. The concepts of honorary policemen, honorary probation officers, justices of peace and assessors to assist courts, need to be invoked more and more if criminal justice is to succeed in future.

9.5.2 Today, the people are increasingly alienated from the system because of bureaucratic apathy, corruption, delays and humiliation. Law enforcement agencies, by themselves, are unlikely to succeed in enlisting public support in law enforcement work in the prevailing circumstances. As such, legislative provisions may be needed to make it possible and functional. Of course, vigilantism is to be prevented which can be done by incorporating appropriate provisions in the legislation itself. A Law Enforcement Assistance Squad

involving senior citizens and trained youth in different wards can help, if properly coordinated and streamlined with clear guidelines. Even in criminal justice reform, these bodies can be of help to the state apparatus.

9.5.3 In due course, decentralized system of criminal justice has to be put in place as part of Panchayat Raj administration. Some routine aspects of criminal justice would naturally be vested in local bodies. Grameen Nyayalayas or equivalent bodies will be involved in resolving criminal disputes locally and in managing law enforcement of the locality. The policies of criminal justice administration should, therefore, aim towards a decentralized, localized system except for dealing with serious and complex crimes.

9.6 CRIMINAL JUSTICE AND INTERNATIONAL LEGAL ORDER

9.6.1 Globalization inevitably influences legal developments including criminal justice administration. It happens in several ways which need to be acknowledged in policy development in the control and management of crime.

9.6.2 Firstly, there are international treaties to which India is a signatory which put obligations on the country's legal system including enforcement through criminal sanctions. Secondly, international law may set minimum standards in law enforcement and criminal justice administration, which need to be progressively adopted by domestic agencies in improving the quality, accessibility and accountability of the system. Thirdly, there may be agreement for regional and international co-operation for effective enforcement of criminal laws of each other country. Finally, with the establishment of the International Criminal Court, municipal courts have an added responsibility to be effective and prompt, lest there should arise demands for bringing culprits to justice through the ICC.

9.6.3 India is already a beneficiary of international co-operation in matters of in detection and prevention of crimes and apprehension of fugitives. The level of co-operation is likely to increase with the spread of terrorism and organized crimes which have transnational ramifications. However, much of the existing co-operation has been obtained on the basis of ad-hoc requests on a case-to-case basis. It is desirable to legislatively strengthen such co-operation not only at the level of prevention, detection and investigation but also in prosecution and trial. In view of increasing trends of globalization of crime, the need of the hour is to have formal treaties and agreements with as many countries as possible, for ensuring effective mutual legislative and executive co-operation, mutual judicial co-operation, mutual law enforcement co-operation, mutual legal assistance and extradition on bilateral or multi-lateral basis.

9.6.4 Further, India is a signatory to a number of international instruments, conventions and treaties. Adherence to them is mandatory and is largely dealt with at the diplomatic level. However, to make these instruments more effectively serve the country's interests, there is need to establish and strengthen enforcement level contacts with different countries, particularly those in the neighbourhood with whom we have to deal more frequently. There is also need to more actively involve the enforcement agencies in this process, right from the time of negotiating and drafting of these instruments.

9.6.5 Policing the cyber space to track cyber criminals and to find technological solutions to problems of evidence warrant increased co-operation among nations and their enforcement systems. Given the continuing changes in information and communication technologies and the legal framework regulating e-commerce, it is important that a Special Cell under the Union Home Ministry, staffed by trained technical and law enforcement personnel, is established for this task. Economic crimes in future will involve complex transactions, legitimate and illegitimate, difficult to decipher by the ordinary police. It requires high technology, superior training, adequate resources and legal authority to intervene quickly, across jurisdictions. Hence the importance of a central enforcement agency and a federal (joint) criminal code.

10

PLANNED DEVELOPMENT FOR FREEDOM FROM CRIME

10.1 A NATIONAL STRATEGY TO REDUCE CRIME

10.1.1 Crime is a threat to freedom and democracy. Reducing crime is an imperative necessity for stability, security and development. Crime cannot be totally eliminated. What a society with an effective system of governance can hope to achieve is to reduce the incidence of crime to reasonable limits, and to manage the detection and punishment of crimes in an efficient manner, in order to maintain rule of law. A national strategy in this regard with clear goals, and concerted effort supported by adequate resources, is thus imperative.

10.1.2 There is a perception that the system in place has failed to deliver and is likely to collapse if something drastic is not done now. The system is drifting on its own with little benefit to society. According to this view, a new system is to be devised and put in place to control crime. A slightly different view, holds that the system is good in its fundamentals and what is needed is augmenting its resources and setting priorities to make the system deliver. It is said that the present predicament is a sign of system-overload and lack of effective management with clear priorities and adequate resources.

There is no doubt that better management approaches with professionalism can always improve, even if gradually, the existing performance of any system. Some major problems with criminal justice are non-availability of essential information, reasonable resources to support performance and total lack of a co-ordinated approach among diverse institutions looking after different components of the system. In fact, experts argue that criminal justice is not a functioning "system" as its disparate components are in conflict between themselves and there is no serious effort at co-ordination at any level.

10.1.3 Bureau of Criminal Justice Statistics and Research (BCJSR)

Be that as it may, a system needs to be evolved with a national strategy for effective performance and clear standards of accountability. The first necessary step is to have a mechanism for gathering reliable data on the functioning of each component of the system and the causes for non-performance. The proposed Board of Criminal Justice at the Union level should have a Research and Monitoring Division to be called the Bureau of Criminal

Justice Statistics and Research (BCJSR), to collect and collate information on a regular basis, to experiment with new ideas through pilot projects and to undertake performance evaluation of the system, and to recommend timely steps for changes in the system at different levels. The Bureau of Criminal Justice Statistics and Research will continuously make available the processed, disaggregated data not only related to crime, police, prosecution, courts and prisons but also on the management of crime at different stages in the criminal proceedings. Unless there is steady supply of reliable data, no meaningful planning and development is possible.

10.1.4 Public Participation to Become Central Strategy in Criminal Justice

The second necessary strategy is to focus on crime control and crime prevention. The system should give due weight to preventive strategies, the performance of which should be measurable through appropriate indicators. At least one fifth of budgetary resources available to the system should be allocated for prevention of crime. The emphasis here should be on community participation in reducing opportunities to commit crime and enhancing integrity in public services including criminal justice institutions. The National Policy would recommend the involvement of all public-spirited senior citizens of proven integrity, to be institutionally involved in a Law Enforcement Assistance Organization with statutory functions in prevention of crime, investigation assistance, treatment of offenders and involvement in confidence building mechanisms between the public and criminal justice institutions.

Introducing measures to enhance public participation in certain sectors of criminal justice is a strategy for socializing a system which depends on public support and participation. Given the vast number of youth in India's population, the National Policy on Criminal Justice has to necessarily focus on youth for any degree of success. A programme of education for responsible citizenship should be developed and integrated with school education. The proposed Board of Criminal Justice should administer the programme in association with the Ministry of Human Resource Development and Panchayat Raj institutions and local bodies, NGOs and senior citizens.

10.1.5 Delay Reduction and Settlement to become Mainstream Techniques of Management

The third strategy involves management aimed at delay reduction and efficiency. There is scope for policy initiatives in management strategy. A well-organized training regime

with programmes – joint as well as separate – is a pre-requisite for effective management of all components of the system. A performance-based reward and punishment system will enhance accountability. The use of Plea Bargaining strategies now introduced in the amended Cr. P.C. should also facilitate reduction of delays and arrears in the system.

10.1.6 The Central Government should have Priority Grants, Discretionary Grants and Formula Grants (Programme-based) to be given to those State Governments which show better results in performance and management. The proposed Board of Criminal Justice should recommend grants, prescribe standards for funds allocation and utilization and act as an over-sight body through transparent, objective norms and procedures. There must be a proper system to provide insurance cover to criminal justice functionaries against loss of life and limb in due discharge of their duty. Based on proper impact assessment, new criminal legislations should invariably provide for budgetary support to implement them.

A related strategy is to generate a national commitment for crime control through education and co-operation of professional bodies and civil society groups. Education for crime prevention and law enforcement assistance should start from the school level and continue through higher education.

10.1.7 There must be a co-ordinated effort to set national minimum standards for each segment of the criminal justice machinery and to evolve objective and measurable performance indicators to evaluate performance in an acceptable manner.

10.2 A STANDING COMMISSION ON CRIMINAL JUSTICE

Given the pace of changes in society, any system, however effective, will prove to be inadequate to the new demands and challenges. Crime is too serious a matter to be left to ad hoc responses of State governments, not always adequately informed and responsive to security issues. As such, it is to be considered whether a National Commission on Crime should be set up to regularly look at the criminal justice system and to recommend policy changes and institutional reforms.

In the context of unprecedented changes occurring within and outside the country, it is neither possible nor practical to declare policies for long periods. Furthermore, articulation of policies has to be on the basis of past experience and the desirable attributes of a good criminal justice system. Therefore, the national policy should aim at strengthening the policy development capabilities of the Union and the State Governments in the matter

of criminal justice by not only constituting a separate Board of Criminal Justice for the purpose but also appointing a Standing Commission on Criminal Justice. At the State level, the State Security Commission provided for in the recently-drafted Model Police Act may fulfill the need for continuous monitoring and development of crime management and social defence.

The Commission at the Centre should initially be concerned with monitoring the system, gathering information and building up a criminal justice data-base at the Centre, to be shared with the States for evaluation and development. The Commission should review the functioning of the criminal justice system, duly identifying its weaknesses in the context of the changing crime scenario and recommend policy changes in legislation and administration.

10.3 BOARD OF CRIMINAL JUSTICE AT THE CENTRE AND IN THE STATES

10.3.1 How does one assess the performance of criminal justice? What are the core attributes of an efficient criminal justice system? Given the imperatives of a federal polity under which criminal justice is the function of constituent state governments, how does a national policy get implemented effectively? These and related questions often come up in any attempt to reform criminal justice. These questions cannot be answered without deep and comparative study based on empirical data and realistic appraisal of ground realities. Today, apart from the 'Crime in India' Reports, annually published by the Government of India, there is no source of reliable information. There is a dark figure of crime and a large area of ignorance prevailing in the management of crime by different States and the Centre. Even the figures of expenditure on criminal justice are not readily available. Hence, the need for a separate agency of Criminal Justice under the Union Government and in all State Governments.

As things stand, we have various ministries and departments of the Central and the State governments guiding the different segments of the criminal justice system like the police, prosecution, judiciary, and prison/correctional services. There is however, no agency or department looking holistically at the entire criminal justice management, either at the Central or State level. The result is compartmentalization and fragmentation of the system, with a tendency on the part of each sub-system to blame the other. Therefore, the need for a Board of Criminal Justice to review, monitor and drive the entire system to make the delivery of justice to the average citizen more speedy and efficient.

10.3.2 Crime is becoming too complex to be tackled by conventional institutions and procedures. Criminal justice system should be efficient, effective, transparent and fair. Efficiency refers to the utilization of resources in a cost-effective manner to achieve the goals set by the law and the Constitution. Effectiveness is related to public perception of liberty and security ensured by the system in which observance of the requirements of law is as important as the accomplishment of the goals of crime prevention and punishment of the guilty. Finally, fairness is the most important attribute of justice and rule of law. It includes impartiality, equal protection of the laws and sensitivity to the rights of weaker sections of society. Efficiency, effectiveness and fairness are naturally the products of the way the laws and procedures are interpreted and applied by the main players of the system, namely, the police, the prosecutors, the defence lawyers, the judges and the correctional/prison staff. In the absence of an all-India pattern for these different players of the system, there is bound to be distortions and shortcomings which dilute the standards of administration of criminal justice in the country as a whole. Hence, the need for periodical reviews at the national level, particularly also because of the trans-national nature of organized crime.

10.3.3 The Board of Criminal Justice can be located in the Ministry of Home Affairs with an independent secretary and technical staff to support its operations. It is to be the nodal agency for co-ordination with all related agencies within the Government and outside including at the international level. It should have the operational freedom to function effectively and the authority to deal with the police on the one hand and the judiciary on the other. The Board is to have the Home Minister as Chairman, a retired Judge of the Supreme Court or High Court as the Vice-Chairman and three professional experts – one drawn from the legal profession, one from the medical or educational profession and one a retired Director General of Police. The Board has to have a statutory status and functions identified earlier. It must have a fixed tenure of five years with members not eligible for a second term.

10.4 CRIMINAL JUSTICE AS PART OF PLANNING AND DEVELOPMENT

10.4.1 Admittedly, without public order and safety, socio-economic development is not possible. Crime is a deterrent to investment and growth. At the same time, economic growth may generate some amount of crime as well. Containing crime and facilitating growth with justice is the function of criminal justice planning and administration. Urban development involves security planning in a variety of ways. Conflict resolution is integral to all programmes of human development and economic planning. Thus conceived, the police and the judiciary should necessarily form essential components of Development

Planning. It is surprising how it has escaped the attention of planners for so long. While police modernization did receive some attention, the judicial infra-structure is over a hundred years old and the people have to wait for long to access justice. The social and developmental cost of such a situation can be too heavy for the nation. While administration of justice generally deserves to become a part of development process, criminal justice does require priority in this regard as it involves the lives and liberty of people and the unity of the nation. The National Policy on Criminal Justice should canvass appropriate corrections in planning for development and make good the historical neglect this sector has suffered during the last over 50 years or more.

10.4.2 The National Policy should recommend that the Planning Commission make immediate block grants available to the State Governments to provide modern infrastructure to the criminal justice establishments in the country. This must be followed up by performance-based development assistance, according to agreed criteria, to the police, prosecution, judiciary, and the prisons and correctional services, as also for legal aid and victim compensation. Each sector of criminal justice system should be obliged to prepare strategic plans, followed up by annual plans, for improvement of their services with a view to making criminal justice speedier, cheaper and accessible. Legal awareness particularly of criminal law and procedures must receive priority in the National Legal Literacy Mission. Police and judicial reform must receive immediate attention of all concerned.

10.5 BRINGING IN E-GOVERNANCE IN CRIMINAL JUSTICE SYSTEM

10.5.1 The criminal justice delivery system needs to take full advantage of information and communication technology to streamline its processes to make the delivery of justice cheap and accessible to the common people.

10.5.2 The load of work on the criminal justice system, in general, and its sub-systems like the police, courts and the prisons in particular, is so large that it simply cannot cope with the pressure without effective use of the ICT tools in automating all its processes, duly building up capacity of all the stake holders to efficiently and effectively use the system and ensuring delivery of justice within reasonable time frame.

10.5.3 The National e-Governance programme already envisages computerization of the judiciary and part of the police, prison, treasury and the transport administrations. There is also a programme for providing internet connectivity to all parts of the country through State Wide Area Network (SWAN) projects. However, to take full advantage of

the advances in ICT, it is imperative that all the sub-systems of the criminal justice system, throughout the country, are fully computerized simultaneously and within a reasonable period of time and appropriate gateways established among the sub-systems to facilitate seamless exchange and sharing of data between them. Therefore, the Central Government may consider formulating and implementing e-Governance projects for computerization of the entire police in the country as well as prosecution, prisons, hospitals, transport, treasuries, registration, land records in a 'Mission Mode'. Also, to ensure that the process of computerization of all those sub-systems is compatible, a co-ordination mechanism of all these need to be created, preferably in the Ministry of Home Affairs, Government of India.

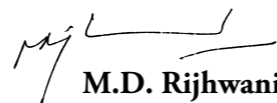
10.5.4 All This will bring in substantial efficiency in the entire criminal justice system. The enforcement of the laws and delivery of justice, within a reasonable period of time and at affordable costs, could then become a reality for the common people of our country.



Prof. (Dr.) N.R. Madhava Menon
Chairman



Anil Chowdhry
Member



M.D. Rijhwani
Member



Kamal Kumar
Member

SUMMARY OF THE REPORT

01. THE MANDATE

The Committee, appointed in May 2006, was asked to draft a National Policy Paper on Criminal Justice, keeping in mind the prevailing law and practices, socio-cultural values and the changing nature of crime, with a view to making the justice delivery system faster, fairer, uncomplicated and inexpensive.

02. WHAT AILS THE CRIMINAL JUSTICE SYSTEM : PUBLIC PERCEPTIONS

There is widespread dissatisfaction with the way crimes are investigated, and criminals prosecuted by our existing Criminal Justice System which, in public perception, affords little protection to life and property and renders criminality as a "low risk, high profit business". The apparent reasons for popular dissatisfaction with the system are :

- (i) Even after prolonged and costly procedures, not even one-fourth of cases end in conviction.
- (ii) Money and influence play a significant role resulting in double standards – the rich often get away lightly and the poor are put to suffering and discrimination.
- (iii) Delays defeat justice and the offenders go unpunished; witnesses are threatened and have no protection.
- (iv) Victims are totally ignored in the system and get no relief for the injuries or losses suffered. Even registration of their complaints often becomes difficult without money or influence.
- (v) An unholy nexus is perceived to prevail between criminal syndicates, politicians and the law enforcement officials, affecting criminal proceedings and the rule of law.
- (vi) Corruption has taken a heavy toll of the system

03. WHAT CITIZENS SEEK FROM CRIMINAL JUSTICE ?

Citizens seek basic security of their life, liberty and property without discrimination based on status or influence, and demand equal justice under law. In the process of enforcing the law, people do not want too much interference with their freedom and liberty from state agencies. They do not care whether criminal justice is administered by the Central Government, State Government, Local Government or all of them put together. People want efficiency and accountability from the system and zero-tolerance against corruption.

04. BROAD APPROACHES IN POLICY DEVELOPMENT

The Policy Paper attempts to respond to the popular complaints through three broad approaches, namely

- Criminal law reform, both in substantive as well as procedural laws
- Institutional reforms of Police, Prosecution, Courts, Prisons etc.
- Qualitative improvement in Personnel and Management of the Criminal Justice System

Besides, the Policy Paper also adverts to certain special areas of concern emanating out of changes in socio-economic conditions, technological developments as well as globalization.

05. CRIMINAL LAW REFORM

5.1 **De-criminalization, Diversion and Settlement:** De-criminalization of “marginal” offences, which can as well be tackled through civil or administrative procedures, by a continuous process of review and revision, is an urgently needed reform. Further, Legislatures should look for possible use of diversion to non-criminal strategies, for settlement of injuries of civil nature. Criminal sanctions should be reserved only as the last option in social ordering. Settlement without trial (compounding and plea bargaining) should assume mainstream status in criminal proceedings and laws should be developed accordingly.

5.2 **A Victim Orientation to Criminal Justice:** It shall be the policy of criminal justice to focus on the victim of crime as much as the accused, thus restoring a balance in criminal procedure between the offender, victim and society. Apart from recognizing the right of the victims to implead themselves in criminal judicial proceedings, a speedy and effective scheme of compensation to victims of at least serious crimes to begin with, should be implemented,

irrespective of the outcome of such proceedings. For this, a Victim Compensation Fund has to be instituted, to be administered through the Legal Services Authorities.

5.3 **Multiple Criminal Codes Based on Rational Classification:** Crimes need to be classified and organized into four distinct and comprehensive CODES, on the basis of gravity of the injury and the appropriateness of the response needed to deal effectively with the same. The four-fold scheme would include a SOCIAL WELFARE OFFENCES CODE (SWOC) for offences which are civil in nature and where the object should be more of reparation and restitution rather than punishment and retribution. Naturally, arrest and detention are unnecessary in such cases (except when violence is involved) and compensation and community service can better meet the ends of justice rather than incarceration of the offenders. Minor marriage offences, prohibition offences, vagrancy, minor indiscipline in campuses and work places etc. can well be brought under this Code. It is also possible to entrust enforcement of these laws to agencies other than the police. The method of settlement can be more conciliatory than adversarial and a lot of public participation is possible for better management of these offences in a cost-efficient and human rights-friendly manner. Under the scheme of decentralized administration, these are cases fit to be entrusted to Grameen Nyayalayas and local bodies to manage locally.

A second group of offences – more serious than the social welfare offences and which may need police intervention – may be brought under another code, to be called the CORRECTIONAL OFFENCES CODE (COC). This would include offences punishable upto three years of imprisonment and/or fine. They are usually not accompanied by violence and are, in most cases, liable to fine, probation and short-term imprisonment only. Arrest and detention may be allowed in such cases, ordinarily only with a warrant and all of them could be open to settlement through Lok Adalats, Plea Bargaining and other alternative ways, avoiding prolonged trials. For cases under SWOC and COC, it is possible to allow modifications in evidentiary procedures through rebuttable presumptions, shifting of burden and less rigorous standards of proof. They can be treated as summons cases with provision for summary trials.

The third set of offences, to be included in the PENAL CODE (PC), are graver offences punishable with imprisonment beyond three years and, in rarest of rare cases, even with death. These are cases which deserve careful and quick processing under expert supervision, ensuring all the human rights protections guaranteed by the Constitution and the laws, and where the maximum energy, time and resources of the state are to be spent keeping in mind the need for speed, fairness and inexpensiveness. There has to be greater accountability from enforcement agencies in these cases as they create public alarm and insecurity.

Finally, an ECONOMIC OFFENCES CODE (EOC) needs to be created for select offences from the Indian Penal Code and other relevant economic laws including offences which pose a potential threat to the economic security and health of the country. They might require multi-disciplinary, inter-state and transnational investigation and demand evidentiary modifications to bring the guilty to book.

The four-fold scheme of re-organizing criminal law and procedure as above is a desirable policy goal for better management of the crime scenario in future. It will be prudent to incorporate in each of these codes, the respective rules of procedure, the nature of trial and evidence, the types of punishment etc. The idea is to have a self-contained code of law and procedure for each of the four distinct set of offences, based on the gravity of the offences involved and the degree of flexibility the system can afford under the constitutional scheme.

5.4 A Joint Sector in Criminal Justice: Despite constitutional difficulties if any, it has become necessary for the Union to be now more actively involved in the fight against crimes, such as terrorism, communal violence and organized crime, which impinge on security of state. This calls for a joint sector organization of Central and State Governments to deal with select crimes threatening the security of the nation or having inter-state ramifications, which require ability to deploy all the resources needed. The National Policy should identify all such crimes affecting the unity and integrity of the country and create a united national agency to undertake prevention, investigation and prosecution of such crimes with the support and co-operation of the State machinery concerned.

5.5 Increased Punishment Choices and Alternatives: There has to be a substantial increase in the range and variety of punishments to provide for more choices in sentencing. The quantum of punishment, particularly of fine, require revision given the contemporary value of money and the impact of inflation. Disparities in sentencing need to be reduced by evolving appropriate statutory guidelines in respect of each type of punishment, which should be periodically revised at the instance of the proposed Board of Criminal Justice. It is also desirable to have a Sentencing Board of three judges including the trial judge, for determining punishments in select offences punishable with life imprisonment or death, to ensure objectivity. The Sentencing Board will also help the objective application of the “rarest of rare” doctrine in death sentence.

The policy of fixing mandatory minimum sentences is to be discontinued as it does not serve any social purpose in actual practice.

Probation is to be invoked more often, particularly where short-term imprisonment is to be awarded. Corrective labour under supervision and the open jail system are to become

part of sentencing alternatives. Remission of term of imprisonment and parole have to be regulated strictly according to statutorily prescribed norms and procedures.

5.6 Criminal Trial to be a Search for Truth: Criminal proceedings have to be an organized, systematic search for truth. Procedures should not be practiced or interpreted in such a way as to interfere with the search for truth. Criminal courts at the level of sessions judges should have inherent powers to give such orders for securing the ends of justice as are available to High Courts under Section 482 of the Criminal Procedure Code.

Without diluting the constitutional rights of every person accused of crime, the law should place positive obligations on accused persons to assist the court in the discovery of truth. Every citizen including those suspected of having committed crime have an obligation to assist administration of justice. This can be done by more liberal use of rebuttable presumptions and shifting the burden of proof in appropriate cases.

5.7 Evidence and Proof: The axiom of “proof beyond reasonable doubt” seems to have got blunted with the passage of time and requires to be clarified by the legislature to avoid different approaches in the hands of different judges. With the adoption of different sets of Criminal Codes for offences of varying gravity, the standard of proof naturally may vary and it is only appropriate that each code restates the principles of evidence and proof applicable to the offences under that code.

5.8 Police Reform and Criminal Investigation: Criminal justice system demands greater professionalism and accountability from its actors. This would require dedicated, well-trained staff for crime investigation with adequate infrastructural support and functional freedom.

On-line registration of FIR in every police station should be the goal. Non-registration of complaints should be considered a criminal misconduct, to be severely dealt with.

The norms, standards and procedures relating to arrest decreed in D.K. Basu case and now incorporated in the Criminal Law Amendment Act should be scrupulously followed by every police officer. Superior officers should also be made severally and jointly accountable if officers working under them violate the norms. The proposal to invoke “notice of appearance” as a substitute to arrest is to become a normal practice in police work.

Custodial violence should be looked upon with utmost severity and quick, transparent remedies should be available for victims of such violence.

Statements made to the police should be audio/video recorded and made admissible in evidence provided the accused has had the benefit of consulting his lawyer.

Also, the directions of the Supreme Court on police reform require immediate implementation by all State Governments.

5.9 **Prosecution Reform:** Prosecution continues to be the weakest link of the criminal justice system. Selection, training, service conditions and supervision of the prosecutors demand urgent attention to enhance the quality of prosecution and to achieve the synergy between investigation and prosecution essential for effective criminal justice administration. An independent Directorate of Prosecution accountable to the Courts need to be set up, under the control of the proposed Board of Criminal Justice, with a well-trained, well-paid cadre of prosecutors for delivery of quality justice.

5.10 **Role of Defence Lawyers:** Defence lawyers too have a responsibility for the proper functioning of the system. There is need for drawing up a separate Code of Ethics for lawyers, in this regard, to be jointly enforced by the Bar Councils and the Criminal Courts.

5.11 **Legal Aid in Criminal Proceeding:** Criminal legal aid has to be modernized with multiple services needed for the victim as well as the accused. Legal Aid is not to be limited to merely providing a lawyer to indigent accused. The State has to organize psychiatric, medical and rehabilitative services under Legal Aid. Victim compensation should also be the responsibility of the Legal Services Authority.

5.12 **Criminal Courts to Ensure Speedy and Human Rights-friendly Procedures:** Criminal Courts have the obligation to render speedy justice. For this, they have to speed up the processes through more effective management of dockets and proceedings. Day to day trial has also to be restored. Government should provide better resources and infrastructure to criminal courts to help them speed up trial procedures. Use of technology should be able to achieve the objects less expensively.

A modern Criminal Court Complex with single window services has to come up initially in at least the district headquarters. It will have a police station and interrogation room on the ground floor; police lock-ups/sub-jail, and magistrate's courts on the first floor; prosecutors' offices, legal aid services, witnesses rooms etc. on the second floor; sessions court in the third floor and the administrative office on the fourth floor.

Special schemes should be drawn up for protection of witnesses/victim in appropriate cases.

5.13 **Prison and Correctional Services:** Under-trial prisoners should be kept in separate institutions. Prisons should not be overcrowded. By liberal use of bail and probation and avoiding short-term imprisonment, the prison population can be kept to reasonable limits.

The living and service conditions of prison staff should be improved and strict measures taken to stop corruption in custodial institutions.

Women and children accompanying them should have special facilities in prisons. The policy on custodial justice for women recommended by the Expert Committee as early as 1979 should be implemented fully.

A fair, transparent system of grievance redressal should be in place in all prisons and other custodial centres.

Remission of sentence and granting of parole should be rationalized according to standard norms and procedures and administered under judicial supervision.

5.14 **Training for Professionalism:** Training and continuing education of all criminal justice personnel including judges is the key to improving quality, fairness and efficiency of the system. Each segment of criminal justice should progressively upgrade its training capabilities and allot up to 2 per cent of its total budget towards training on modern lines. Inter-sectoral training is also necessary at middle and higher levels to achieve co-ordination. A transparent, objective system of performance evaluation should be put in place and career progression linked to it.

06. CRIMINAL JUSTICE AND WEAKER SECTIONS

In the spirit of the affirmative action policies of the Constitution, criminal justice administration should adopt pro-active policies and procedures for protecting the weaker sections of the society including women and children. In fact, children are supposed to be treated differently by the criminal justice system in a manner conducive to the U.N. Convention on the Rights of the Child. Since children constitute over 40% of India's population, criminal justice should adopt clear policies and allocate adequate resources focusing on the child and the youth. The Juvenile Justice Act, 2000 is to be enforced in the spirit of this approach. There is need to have two separate legislations, one dealing with juvenile delinquency (child in conflict with law) and the other on child in need of care and protection (neglected and exploited children). Violence against children should receive prompt intervention from the criminal justice system and the victims treated with due care and concern. Missing and trafficked children should be a subject of special focus in criminal justice administration.

Because of several disabilities which women as a class suffer in society, gender justice demands special provisions in criminal proceedings. Several special laws have affirmative action provisions in this regard. These need strengthening and their implementation needs

to be given due importance in the system. In camera proceedings, imaginative and prompt legal aid services including counseling and rehabilitation, and priority consideration of cases involving women, are necessary to make the system responsive to the needs of women and girls.

The Protection of Civil Rights Act and the SC/ST (Prevention of Atrocities) Act warrant a new mind set and a pro-active approach from the enforcement machinery. These and related laws designed to give protection and equal justice to the disadvantaged sections of society require special attention of judicial officers involved. Legal aid services also have to be developed to suit the requirements of SC/ST persons.

The beneficial provisions of the law relating to disabled persons including the elderly and the mentally unsound persons should get full recognition throughout criminal proceedings and the judicial officers should ensure its full compliance.

The Board of Criminal Justice should have full and separate data on the impact of criminal justice on each category of “weaker sections”. A special Monitoring Cell in the Board should be directly responsible to promote the full implementation of the beneficial provisions of criminal law and procedure for these sections of people. There must be greater accountability in the system in this regard.

The Criminal justice system in India has special responsibilities to promote communal harmony and prevent communal conflicts causing untold suffering to innocent persons including women, children and minorities. Besides vigorously enforcing the penal provisions of the law in this regard, the system should ensure that victims of communal violence are provided prompt and adequate compensation and rehabilitation. There is need for a comprehensive law on the subject to, inter alia, educate the public before hand and to deter communal elements from exploiting the situation.

07. A SERIOUS FRAUD OFFICE FOR ECONOMIC CRIMES

Globalization, market economy and spread of new technologies have tended to facilitate serious economic frauds with relative ease, making it difficult for criminal justice to bring the offenders to book. There is a case for revamping the law on financial transactions and developing new institutional arrangements under co-ordinated central control to deal with serious economic crimes. An independent, multi-disciplinary Serious Fraud Unit staffed by technical as well as investigation experts needs to be set up with adequate powers and resources to respond promptly and effectively to such crimes. A white paper in this regard

is necessary to identify the nature, extent and implications of this threat to the economic security of the country and to mount the responses accordingly.

08. CORRUPTION – A SERIOUS THREAT TO JUSTICE

Corruption in criminal justice distorts its processes and delays delivery of justice. Technology can help solve the problem partly. An Ombudsman for Criminal Justice can also correct the system to some extent. In addition, a fair and transparent Complaints Redressal System has to be put in place immediately in the police, judiciary and the prisons services. The Right to Information Act should be fully applied to all segments of the criminal justice system. Action taken against corrupt officials should be widely publicized to redeem public confidence in the system.

Investigation and prosecution of corruption cases involving national security or likely to compromise the standing of constitutional institutions need to be undertaken by a truly independent and professional body enjoying a status comparable to the Election Commission or the Comptroller & Auditor General of India. The Central Bureau of Investigation is not independent enough for the job nor has the jurisdiction, resources or personnel required for the purpose. Therefore, the need for an independent national law enforcement agency with the necessary authority and resources to undertake investigations of corruption in high places and other offences referred to it in a truly professional manner with accountability only to the law and the courts. Unlike the CBI, it should have the freedom to investigate cases across the nation and a budget not dependent on executive fiat. It should also have a permanent cadre of officials. Its head should be a collegial body of three officers appointed for a fixed term through a process that is transparent, independent and inspiring confidence in the public.

Unless serious cases of corruption are dealt with an iron hand, irrespective of party affiliations, their impact on governance generally and criminal justice in particular is going to be very serious. All efforts in the past to reform the election finances and to break the nexus between politics and crime have not yielded the desired results and the people have started believing that they will have to live with it. The National Policy should give some hope in this regard by mounting an investigation-prosecution system which inspires confidence.

Simultaneously, it is necessary to put in place a more transparent and effective method of dealing with corruption in the judiciary. The proposed Judges’ Inquiry Bill hopefully will provide for the machinery for the purpose. In addition, all judges should

be required to make public disclosure of their assets annually to a Judicial Ombudsman which may be a three-member body of retired Chief Justices, Election Commissioners or Comptroller and Auditor Generals, appointed by the President of India in consultation with the Chief Justice of India. The Judicial Ombudsman can be associated with the body created under the Judicial Inquiry Bill for disciplining erring judges.

09. MEDIA AND CRIMINAL JUSTICE

Media plays an important role in achieving the objects of criminal justice. However, the role and responsibilities of the media in this regard have to be streamlined and standardized lest it should interfere in the administration of justice and violate the fundamental rights of the people involved. The Law Commission's recommendations in this regard should first be considered by the Press Council and media bodies and declared in the form of a Code of Ethics. In appropriate cases, these guidelines should be enforced through criminal sanctions, if necessary.

10. PUBLIC PARTICIPATION IN CRIMINAL JUSTICE ADMINISTRATION

No system of criminal justice can function effectively without public support and participation. Both in prevention and prosecution, the system should provide more and more opportunities for public participation. A Law Enforcement Assistance Programme in criminal proceedings, to be managed jointly by the Police and NGOs, is a desirable reform. There is need to evolve a 'Best Practices Manual' on community policing. Honorary probation officers and justices of peace should be inducted in different jurisdictions, depending on resources, need and interest. A citizenship education programme for youth, who constitute 40% of India's population, should be mounted to seek their assistance in maintaining order and assisting law enforcement. Similarly, in every city, a large number of senior citizens are available to assist the government agencies in prevention of crime and administration of justice. This is a great resource which the Government should mobilize for social defence.

The principle of decentralization is a constitutionally mandated directive in governance which should apply to criminal justice administration. The time for Grameen Nyayalayas, which are talked about, has come. Limited criminal jurisdiction to settle disputes locally must be part of the function of Grameen Nyayalayas.

11. CRIMINAL JUSTICE AND INTERNATIONAL LAW

Several treaties and conventions to which India is a signatory have led to standard setting in different aspects of criminal justice. There is urgent need to revise statutory

provisions and administrative regulations on behaviour of different criminal justice functionaries to bring the same in conformity with international human rights standards. In fact, according to the Supreme Court, these treaties can be enforced as part of municipal law.

Though India has not yet acceded to the Treaty of Rome, we need to take note of the establishment of the International Criminal Court to deal with 'crimes against humanity'. Our criminal justice system must be able to give better justice than what any international court can possibly offer under prevailing circumstances.

International co-operation in collection of evidence, extradition of fugitives, prevention of terrorism and organized crimes, sharing of intelligence and resources, training and equipment etc. has become a necessity today. The Board of Criminal Justice should monitor developments internationally and endeavour to maximize co-operation among countries and criminal justice institutions for improving the efficiency of the system.

12. SCIENCE, TECHNOLOGY AND CRIMINAL JUSTICE

Developments in Science and Technology (S&T) have both positive and negative implications for the crime and justice scenarios. S&T can help solve more efficiently the problems and challenges of crime particularly those perpetrated with technological tools and devices. However, our criminal justice system has not been able to make full use of S&T tools in criminal investigation and proof because of lack of infrastructure, personnel and resources. Forensic Science has undergone tremendous changes and there must be a concerted, co-ordinated plan between the State Governments and the Central Government to develop the crime laboratories; to update the relevancy and admissibility of scientific evidence; and to modernize the criminal justice system with the use of information-communication technology. The National Policy should make it imperative for governments to commit adequate resources and to provide an effective legal-administrative framework to make criminal justice system depend more and more on scientific investigation and scientific evidence. In this regard, the initiative of Technology Information and Forecasting Advisory Council (TIFAC) of the Ministry of Science and Technology deserves to be strengthened.

Training, accreditation, standard-setting, professionalism and research should receive adequate attention if forensic science is to be fully harnessed in the administration of criminal justice in future. The Union Government should sponsor a 'Science and Technology Mission for Effective and Efficient Criminal Justice' to be developed in the country in the next two Five- Year Plan periods.

Cyber crimes require priority attention in the scheme of things. The legal framework to deal with the same needs a continuous review and the capacity of the system to deal with changing patterns of cyber crime needs continuous upgradation.

Another significant area for policy development is in respect of security of our national assets not only on the land but also in the sea and in space. Given the advances in its scientific capabilities in outer space, India may have to enact its own national laws to safeguard its own strategic interests in space and regulating the launching and uses of space vehicles and objects. Similarly, the protection of the country's interests in the high seas require legislative changes based on international treaties and conventions.

Providing security to the bio-diversity and biological resources of the country is another area warranting attention in the national policy on criminal justice.

Bio-terrorism is a possibility in future and criminal justice has to be prepared for such an eventuality. The Weapons of Mass Destruction (Prohibition of Unlawful Activities) Act, 2005 is geared by and large to export control. A number of offences are created under the Act, which interestingly, are supposed to be enforced by half a dozen Union Ministries including External Affairs and Defence but excluding Home Affairs, the nodal point in security matters. It is necessary to set up a National Authority, duly empowered to co-ordinate between all concerned agencies of the Government, and enforce the law to ensure security against catastrophic terrorism.

13. A NATIONAL STRATEGY TO REDUCE CRIME

India needs a national strategy to reduce crime. The national strategy should aim at crime prevention through education, mobilization and involvement of different sections of the community. A 'National Mission to Reduce Crime' is the need of the hour and it should be one of the main planks of the National Policy on Criminal Justice.

A full-fledged independent, professionally managed, Board of Criminal Justice should be immediately set up as a statutory body, at the Centre and in each State. The Board should have three specialized divisions – A Bureau of Criminal Justice Statistics (BCJS), a Research and Monitoring Division (RMD) and a Law Enforcement Assistance Division (LEAD). The BCJS should collect and collate all information relating to crime on a regular basis. The RMD should gather and experiment ideas through pilot projects in crime control and management, evaluate performance of all segments and recommend

changes to make the system people-friendly and efficient. The LEAD should experiment with public participation models to make the people's involvement at every stage of criminal justice administration possible and efficient.

Delay reduction should be a major focus of the national strategy. It can be achieved by extensive use of modern technology, intensive training of personnel and better systems of performance evaluation and accountability. The Central Government should provide to the States, programme-based grants, distributed through the Board of Criminal Justice, duly guided by objectively-assessed performance on mutually-agreed criteria. A management orientation is required in all segments of criminal justice, especially the criminal courts.

Criminal justice functionaries especially the police and prisons officials should have insurance cover for occupational risks. Service benefits of these personnel should be comparable to those in the Defence Services to attract talented persons to police/prison services.

A National Commission on Criminal Justice on the lines of the National Human Rights Commission, consisting of experts in crime and justice, should be put in place to evolve policies on a continuing basis and advise the Government on reforms in policies and structures. The Board of Criminal Justice can act as the Secretariat of the Commission which will provide the information and logistical support for criminal justice planning and evaluation, the twin functions of the Commission.

14. FUNDS FOR CRIMINAL JUSTICE DEVELOPMENT

Criminal Justice in all its dimensions shapes the quality of governance and influences the perception of the people about the Government and the state. Whichever party in power, every Government is obliged to control crime and enhance the security perception of its citizens by effective management of criminal justice. This would imply that criminal justice is made integral to planned development of society, its economy and the well-being of the people. The Five -Year Plans have to have at their core the maintenance of public order and rule of law without which no development is possible. Therefore, the Governments at the Centre and in the States should have strategic long-term plans and annual targeted plans in respect of criminal justice development covering the police, prosecution, judiciary and the correctional systems. A Judicial Impact Assessment statement should accompany criminal legislations in order to plan mobilization and disposition of resources.

Finally, pending the development of Strategic and Annual Plans by the Governments concerned, the Planning Commission should allocate substantial funds for infrastructural development of the Police and the Judiciary. This would include specific grants for a Victim Compensation Fund at the national level and a programme-based modernization grant for criminal courts throughout the country on the lines of the Fast Track Courts.

ANNEXURE

12

LIST OF PERSONAGES WITH WHOM THE COMMITTEE HAD INTERACTIONS

S/Shri

1. Abhyankar A.G. Assistant Professor.
2. Abhyankar G.N., Assistant Professor.
3. Aghav S.H., Assistant Professor.
4. Ahmed I.G., Dean University College of Law.
5. Arora Manju, Lecturer, DU.
6. Arya. Mrs. S., Assistant Professor.
7. Bajpai Dr. Asha, Associate Professor, TISS.
8. Bangali Swapnil, Assistant Professor.
9. Battacharya Purendu, WBHJS, Director.
10. Belsare Sangeeta, Assistant Professor.
11. Bhattacharjee, Dr. Manik, Principal, Jogesh Chandra Law College.
12. Chakrabarti Dr. Nirmal Kanti, Reader, Dept. of Law, University of Calcutta.
13. Chakraborty Dr. N.K., Associate Professor, Dept. of Law.
14. Chakraborty Kanchari, Addl. Director, W.B. State Judicial Academy.
15. Chandrasekharan Dr. K.N., Director, Indian Law Institute, New Delhi.
16. Chattoraj Dr.B.N., LNJNI chair Professor.
17. Chavan Vijay, Lecturer, D.E.S. Law College, Pune.
18. Deshmukh H.P., Acting Principal, D.E.S. Law College, Pune.
19. Dhotre V.V., Teaching Assistant.
20. Dr. Shamsuddin, DLA-ED.
21. Father Matthew P.C., Principal, St. Xavier's College.
22. Garud P., Assistant Professor.
23. Ghag Abhijit, Assistant Professor.
24. Gupta A.K., Former Professor, Calcutta Medical College.
25. Hazare A., Assistant Professor.

26. Hazare S.C., Principal-in-charge.
27. Kane Charusheela, Assistant Professor.
28. Kapre Swati, Assistant Professor.
29. Khan Prof. M.Z.
30. Khurshid Salman, Gen Secy, The Muslim Institute, Kolkata.
31. Kulkarni S.D., Assistant Professor.
32. Lal A.K, Dean, FRI, ICFRD, DDN.
33. Lohia K.C., Director, Delhi Judicial Academy.
34. Manil Dr. Chakraborty, Head Dept. of Law.
35. Mann Mrs. Santosh Snehi, Addl. Director, Delhi Judicial Academy.
36. Mishra Dr.Yatish, Sr. Research Officer, LNJN, NICFS (MHA).
37. Mitra D.M., Director (LNJN NICFS).
38. Mohamed Prof. Tahir, Member, Law Commission of India.
39. Mohanty A., Assistant Professor.
40. Mysore S.P., Full time lecturer.
41. Oza Rashmi, Lecturer, Law Deptt., Mumbai University.
42. Pedenekar S., Assistant Professor.
43. Raina S.C., Faculty of Law, DU.
44. Rawandale C.J., Associate Professor.
45. Razdan Dr. Usha, Prof. in charge, Law Faculty-I, DU.
46. Reddy Dr. B. Yuvakumar, Associate Professor.
47. Roy Prof. Jaytilak Guha, IIPA.
48. Sarma Amarjyoti, Assistant Professor.
49. Shelke Atmaram, Teaching Assistant.
50. Sinha Minakshi, Lecturer, LNJN NICFS (MHA).
51. Sivakumar S., Prof.
52. Srivastava Promila, Hony DG, Indian Council of Education.
53. Tandan Ms. S.L., Prof.
54. Tikku Dr.A.V., Lecturer, DU.
55. Tiwari Dr. Arvind, Associate Professor, TISS.
56. Vaidya Prachi R., Associate Professor.
57. Wani M. Afzal, Prof. & Dean, University School of Law & Legal Studies, GGSIP University.

**MPs
MEMBERS OF LOK SABHA**

- S/Shri
1. Agrawal Dharendra
 2. Bhakta Manoranjan
 3. Delkar Mohanbhai
 4. Kaushal Raghuvir Singh
 5. Kumar Nikhil
 6. Mandlik S.D.
 7. Sharma Madan Lal
 8. Singh Mohan
 9. Sonowal Sarbananda
 10. Subba Mani Kumar
 11. Susheela Smt. B.

MEMBERS OF RAJYA SABHA

- S/Shri
1. Agarwal Jai Prakash
 2. Alexander P.C.
 3. Biswas Debabrata
 4. Brahma Urkho Gwra
 5. Lalhmingliana
 6. Madani Mahmood A.
 7. Malaisamy Dr. K.
 8. Singh Raj Mohinder

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- S/Shri
1. Bag R.K., Judge, A.J.C, Bose Road, Kolkatta.
 2. Bhattacharya Justice A.M.
 3. Bhut K.M., Principal District Judge, Mahesana.
 4. Chatterjee Dipak, District Judge (Retd.).
 5. D. Rum Nutan Serdessi, ADSJ, South Goa, Marga.
 6. Dahotia Khagen, Ad-hoc ADSJ, Sivsagar.

7. Dhakephalkar K.M. (Retd.) Judge, Member, Maharashtra Law Commission.
8. Gupta Brij Mohan, ADFJ, East Track Court-II, Varanasi
9. Gupta S.M., ASJ, Patiala House, Delhi.
10. Hartalkar Subhash (Retd. Addl. District & Sessions Judge).
11. Hazarika L., Ad-hoc ADSJ, Tinsukia.
12. Joshi J.G., Principal District Judge, Banaskantha, Palampur.
13. Justice Aggarwal S.C.
14. Justice AR Lakshmanan.
15. Justice Chatterjee Susanta, Former Judge, Orissa High Court.
16. Justice Goel Ms. Manju.
17. Justice Murlidhar.
18. Justice Phaujdar S.K.
19. Justice Sengupta Malay.
20. Justice, Basu D.K.
21. Karnik Justice D.G., High Court at Bombay.
22. Kulkarni Sridhar K., ADSJ, Akola.
23. Kumar Praveen, ADSJ, East Track Court, Jhansi.
24. Kumar-II Rakesh, Special Judge/ADSJ, Lucknow.
25. Kundu Suruunjan, ADSJ, East Track Court-II, Contai, Purba, Medinipur.
26. Mahajan S.T., Addl. District & Sessions Judge, Pune.
27. Mahantani J.S., D&SJ, Chamba.
28. Maji P.R., Former Judicial Member, State Administrative Tribunal
29. Malimath Justice (Dr) V.S., Chairman, Committee on Reforms of Criminal Justice System
30. Mondol Brindaban, ADSJ, East Court, Alipore, 24 Paragana, (South)
31. Murthy L. Sreerama, ADSJ, Nalgonda.
32. Rajan S.C., ASJ, Tis Hazari, Delhi
33. Rao P Ananthasen, Metropolitan Sessions Judge Cum ADSJ, Visakhapatnam.
34. Rao S. Bhujanga, Metropolitan Sessions Judge, Huderabad.
35. Rathi K.G., Addl. District & Sessions Judge, Pune.
36. Rayate S.V., Addl. District & Sessions Judge, Pune.
37. Reddy S. Surendra Babu, ADSJ, Cuddapah.
38. Roy Raghunath, Registrar General, High Court, Calcutta.
39. Singh Shree Bhagwan, ADSJ, East Track Court, Allahabad.

40. Tank M.B., ADJ, Ahmedbad (Rural).
41. Teji, R.P.S. ASJ, Tis Hazari, Delhi.
42. Thakore N.N., Judge, City Civil Court, Ahmedabad.
43. Tiwari Surendra, III ADJ, Durg.
44. Ulcy S.P., 10th Ad-hoc ADSJ, Nagpur.
45. Verma Justice J.S.
46. Yadav R.K., ASJ, Karkardooma, Delhi.

LAWYERS/ PUBLIC PROSECUTORS

S/Shri

1. Atre Abhijit, Advocate.
2. Bhat K.N., Advocate, New Delhi.
3. Bhat S.C., Advocate, Supreme Court of India.
4. Bhatt A.N., Advocate
5. Bhatt Mahesh, Senior Advocate, High Court of Gujarat.
6. Chopra D.S., Advocate, Supreme Court of India.
7. Dasgupta B.P., Advocate High Court, Calcutta.
8. Dewan Anil, Sr. Advocate, Supreme Court of India.
9. Ganguly Gitanath, Advocate, High Court.
10. Hartalkar Abhijit, Advocate .
11. Hartalkar Makrand, Advocate.
12. Hartalkar Milind, Advocate.
13. Jadhav D.Y., Advocate.
14. Jaiswal Kamini R.S., Lawyers Chamber, Supreme Court of India.
15. Jethmalani Ram, Advocate, Professor Emeritus, SSLC.
16. Kalia Mukesh, Advocate.
17. Kinkar Surekha, Advocate.
18. Krishnamani M.N., Advocate, Chairman Supreme Court Bar Association.
19. Kumar Sushil, Senior Advocate.
20. Mahapatra Ranbir, Advocate.
21. Mishra B.D., Advocate, High Court of Delhi.
22. Nariman Fali S., Advocate, New Delhi.
23. Nimbalkar Harshad, Advocate Chairman, Bar Council of Maharashtra & Goa.
24. Prabhakar Gundur, Advocate, New Delhi.

25. Raju N.D.B., Advocate.
26. Ranade B.R., Advocate.
27. Rao P.P., Lawyers Chambers, Supreme Court of India.
28. Safullah Kazi, Public Prosecutor.
29. Sahu A.K., Advocate, Supreme Court of India.
30. Shah Vikas, Advocate.
31. Sharma O.P., Addl. G.C.
32. Shintre V.P., Advocate.
33. Suri Rupinder Singh, Sr. Advocate.
34. Tulsi K.T.S., Advocate, New Delhi.
35. Vaidyanathan C.S., Advocate.
36. Vartak Nilima, Advocate.
37. Verghese Dr. Jose P., Advocate.

POLICE AND OTHER LAW ENFORCEMENT AGENCIES / PRISONS

S/Shri

1. Bagchi D., Former IG, DVB.
2. Bawa P.S., IPS (Retd.).
3. Behura R.N., IPS, Jt. Director, IB.
4. Chandra Sarbesh, IPS, Director of Public Prosecution.
5. Cheema A.S., DCP (N&CP), Delhi Police.
6. Das P.K., Special Director, Dte of Enforcement.
7. Datta S.K., IPS Retd.
8. Gupta Sunil Kumar, Law Officer, Central Jail, Tihar Prisons.
9. Johri R.K., Addl. DG. Of Police (Training).
10. Karve Madhav, Deputy I.G., Prisons, Pune.
11. Khatri Capt. H., Dy. DG, Shipping.
12. Kumar Arun, Jt. Dir. & IGP, CBI.
13. Kumar Vineet, DDG & JS, CEIB.
14. Kumawt M.L., IPS, ADG (BSF).
15. Mathur A.B., Jt. Dir (IB).
16. Mukherjee Dr. A.P., IPS.
17. Mukherjee Prasun, IPS, Commissioner of Police, Kolkata.
18. Phulari Sunil, DCP (economic offences wing and cyber cell) Crime Branch.

19. Raghuvanshi K.P., IGP, ATS, Maharashtra.
20. Ranjan Prabhar, Jt. Commissioner of Police, Pune.
21. Sahoo Ms. Suman Bala, IPS, DIG (Administration).
22. Samanta Dr. A.K., IPS (Retd.).
23. Sarangi Dr. Jaydev, Prison Expert, UNODC, ROSA.
24. Sharma Karan, Addl. DG, Dte. Of Cabinet Sectt.
25. Sharma M.L., IPS, Special Dir (CBI).
26. Sharma R.D., DIG (LAW), CRPF Hqrs.
27. Singh Prakash, Former DG, BSF.
28. Singhal N.K., Retd. DGP.
29. Sinha J.K., IPS Retd.
30. Talukdar S.P., IPS Retd., Member, NSAB.
31. Umranikar Jayant, Addl. Director General of Police, C.I.D.
32. Verma K.C., IPS, DG (NCB)
33. Vettikunnel, Research Officer, Central Prison, Pune.
34. Virk G.S., ADIG, ITBP.
35. Wasan N.R., JD (Police), CBI.
36. Yadav V.S., DD, NCRB.

CIVIL SERVICES

S/Shri

1. Aggarwal Rajiv, IAS, Addl. Secy, (MHA)
2. Balodi Yogendra, Judicial Cell, MHA.
3. Balghour I.S., US, M/o Women & Child Development.
4. Banerji A., JS, National Commission for Minorities.
5. Bhattacharya Pradip, IAS, Addl. Chief Secretary, Govt. of West Bengal.
6. Bhatia S.C., SO (MHA).
7. Bhujabal N.K., Commissioner, CBEC, MHA.
8. Chowdhary Ms. Anita, Addl. Secy. (MHA)
9. Dhakephalkar P.M. (Retd. District & Sessions Judge), Joint Secretary, Law & Judiciary Dept., Govt of Maharashtra.
10. Dhingra Smt. Kiran, DG Shipping.
11. Duggal Vinod, Former Home Secy.
12. Gupta Madhukar, IAS, Union Home Secy.

13. Kumawat Mahendra, IPS, Spl. Secy (IAS) MHA
14. Majhi P.N., Director (Judicial), MHA.
15. Meena S.N., US, NCSC.
16. Mehtani Subhash, Dy. Secy (PR).
17. Pant R., JS, Min. of Tribal Affairs.
18. Patil Mangesh S., JL Charity Commissioner, Aurangabad.
19. Perumal N.M., Director (MHA).
20. Prasad S.B., MHA.
21. Ramaraju I, Judicial Cell, MHA.
22. Sarkar S.K., Under Secy, Deptt of External Affairs.
23. Seth P.K., Joint Secy, (MHA).
24. Singh Manoj Kumar, SO (MHA).
25. Sharma A.K., SO (MHA).
26. Tripathi P.K., JS, DoPT.
27. Vijayasinha T., MHA.
28. Viswanathan T.K., Union Law Secretary, D/0 Legal Affairs.
29. Yadav R.S., Asstt. Law Officer, CPCB.

SCIENTISTS

S/Shri

1. Adinarayana V., ISRO.
2. Basavaraju C.H., ISRO.
3. Bhattacharya C.N., Director, Central Forensic Science Laboratory.
4. Bhaskar Dr. SM, Scientist, NTRO
5. Gupta Dr. Manju, Former Bio Secy.
6. Murthi K.R. Sridhara, Antrix Corpn, D/o Space.
7. Nadadur R.G., Jt. Secy, Deptt. of Space.
8. Nag Dr. N.K., Director, State Forensic Laboratory, Kolkata.
9. Raghavan Dr. M.S. Vijay, Adviser, NTRO.
10. Ramamurthy Dr. V.S., Former Secy, (S&T).
11. Ranganath S.V., Addl Secy., Deptt. of Space.
12. Ramasami Dr. T., Secy, (S&T).
13. Rao Dr. M.S., Chief Forensic Scientist, (MHA).
14. Rao K.V.S.S. Prasad, Chairman, NTRO.

SOCIAL GROUPS AND NGOs

S/Shri

1. Bagchi Prof. (Dr.) Jasodhara, Chairperson, State Commission for Women, West Bengal.
2. Bansal Ms. Sangita, Officer (SAMPURNA).
3. Barse Mrs. Sheela.
4. Chakrabarti Ms. Trina, CRY.
5. Chakraborty Ms. Sutapa, Human Rights Law Network.
6. Dasgupta Dr. Satyajit, Human Rights Law Network.
7. Deo Ms. Gurpreet, Dy. Secy, National Commission for Women.
8. Dhall Pawan, Saathi.
9. Dr. Sulabha.
10. Gore Arun.
11. Mehta Ms. Swati, CHRI.
12. Michael P., CCT, NHRC.
13. Mondal Manabendra Nath.
14. Mukopadhyay Dr. Ishita, Director, Women's Studies Research Centre, Calcutta University.
15. Ramkrishna Maharaj, Mission, Kolkata.
16. Rao Dr. U.N. B., IPS Retd., Secy, PADC.
17. Ravi Ms., Secy, National Commission for Women.
18. Rep. from CDSA.
19. Rep. from JANSEVA.
20. Rep. from LOKAYAT.
21. Rep. from SAHELI.
22. Sarangi Dr. Sarita, Director, SEWAK, New Delhi.
23. Sarkar Ganesh, Registrar, W.B. Human Rights Commission.
24. Sen Dr. Samita, School of Women's Studies.
25. Sharma P.C., Member, NHRC.
26. Singh Mamta, SSP, NHRC.
27. Sinha Ms. Indrani, Director, SANLAP.
28. Soans David.
29. Vatsyayan Sunil, NADA India Foundation.
30. Vijender Dr. Shobha, Dir (SAMPURNA).

MEDIA

S/Shrit

1. Abadi Syed Ahmed Mali, Editor, Azad Hind.
2. Agnihotri Ashish, Rapporteur.
3. Das P., Research Fello, LNJN/ Rapporteur.
4. Ghosh Manas, The Statesman House.
5. Hasque Nadimul, Editor, Akhbar-e-Masriq.
6. Karlekar Hiranmay, Con. Editor, "PIONEER".
7. Lamba Sweekar, Rapporteur.
8. Mathur Ms. Arpita, Rapporteur.
9. Mukherjee Dr. Rudrangshu, The Telegraph.
10. Rai Amritanshu, Special Correspondent-Editorial, Star News.
11. Ranjan Sudhanshu, DD News.

OTHERS

S/Shri

1. Adnan Dr. Syed Sajjad Zaheer, Chairman, West Bengal Minorities Commission.
2. Chakravarti D.P., Sr. General Manager & Secretary, GOODricke Group Limited.
3. Durga R.C., Director, NCST.
4. Jain R.B.
5. Joy Ajit, Proj. Co-ordinator, Victim Support & Human Trafficking.
6. Mudgil J.B., B.S.C.
7. Pandit Ms. Shefali, Associate Dir, The Indian Instt. Of Public Opinion Pvt. Ltd.
8. Salim Md., M.P, Chairman, West Bengal Minorities Commission.
9. Sen Ms. Nandita, Chartered Accountants, B. Gupta & Company.
10. Singh Durgesh Prashad.
11. Ten students from Symbiosis Society's Law College.
12. Wore N.R.