UNIT 4 SYNOPTIC DEBATES IN CRIMINAL JUSTICE

Structure

4.1 Introduction

4.2 Objectives

4.3 Maladies of Existing Criminal Justice System

4.4 Current Debates in Criminal Justice System

   4.4.1 Inquisitorial vs. Adversarial System
   4.4.2 Right to Silence - Article 20(3)
   4.4.3 Presumption of Innocence – Standard of Proof
   4.4.4 Burden of Proof
   4.4.5 De-criminalisation, Diversion and Settlement-Arbitration in Criminal Justice System
   4.4.6 A Victim Orientation to Criminal Justice
   4.4.7 Increased Punishment Choices and Alternatives
   4.4.8 Police Reform and Criminal Investigation
   4.4.9 Prosecution Reform
   4.4.10 Criminal Courts to Ensure Speedy and Human Rights-friendly Procedures
   4.4.11 Special Schemes for Protection of Witnesses
   4.4.12 Corruption – A Serious Threat to Justice
   4.4.13 Growing Organised Crime, and Terrorism
   4.4.14 Offences against Women
   4.4.15 Media and Criminal Justice
   4.4.16 Public Participation in Criminal Justice Administration
   4.4.17 Need for a National Policy on Criminal Justice

4.5 Summary

4.6 Terminal Question

4.7 Answers and Hints

4.8 References and Suggested Readings

4.1 INTRODUCTION

Criminal Justice system was devised more than a century ago to protect the rights of the innocents and punish the guilty. Today, it’s a matter of grave concern that people have lost their faith in the administration of criminal justice system. 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. According to National Crime Records Bureau conviction rate for IPC crimes increased marginally from 42.3 in 2007 to 42.6 in 2008. One of the major indicators to determine the quality of criminal justice system is the rate of conviction in criminal offences. The torture of police has been increasing very rapidly from the last decade. The police encounter, custodial death, custodial rape, and the atrocities of police are day to day news. Even in courts, people feel that the poor stand at a disadvantage and equal justice under law is denied to
them. 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.

The aim of criminal justice is to reduce the level of criminality in society by ensuring, maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and to prevent recidivism. In this unit we will discuss the lacunas and shortcomings of criminal justice system which have been a topic of concern and debates not only for the persons involved in administration of criminal justice but for public in general also. Besides we will also see what recommendations have come out of these concerns and debates for improving the criminal justice system.

4.2 OBJECTIVES

After reading this unit, you should be able to:

- assess the shortcomings and maladies of criminal justice system;
- identify the issues of criminal justice debates;
- analyse the formal and informal methods of improving the criminal justice system;
- examine the role of criminal justice reform committees;
- identify role of civil society in criminal justice administration;
- identify reforms suggested by Law Commission of India;
- analyse role of judiciary in administration of criminal justice;
- suggest reforms to improve criminal justice system; and
- sensitise the society on the issues of criminal justice administration.

4.3 MALADIES OF EXISTING CRIMINAL JUSTICE SYSTEM

It is the duty of the State to protect fundamental rights of the citizens as well as the right to property. The State has constituted the criminal justice system to protect the rights of the innocent and punish the guilty. The system, devised more than a century back, has become ineffective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice; and has ceased to deter criminals. Crime is increasing rapidly everyday and types of crimes are proliferating. The citizens live in constant fear.

Today rule of law and public order are a casualty in the criminal justice process. 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.

It is a 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 underprivileged 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 have the best counsel to defend them whereas the poor can afford 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.

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. One should have either money or influence to get justice in present state of affairs in criminal justice.

In a society where half the population is poor and uneducated, the existence of a high degree of dissatisfaction with criminal justice is dangerous in the long run for the democracy and unity and integrity of the nation. Women, children, dalits, tribals, minority groups and disabled persons are the worst sufferers in present situation as the criminal justice system has failed to respond to their grievances.

It’s a matter of serious concern that based on media reports and findings of some of the inquiry commissions, public gather the impression 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. It is a fact that many criminals have infiltrated into the law enforcement organs of the government and control its operations under a guise of legality and patronage.

This shows that the present system has been suffering from various maladies resulting in a wide performance gap on persistent basis. If we analyse the maladies of existing criminal justice system, we come across certain features:

i) accused oriented system;
ii) faulty and slipshod investigation;
iii) time consuming legal process;
iv) lack of coordination between police and prosecution;
v) over crowding in jails etc;
vi) dominance of money and power;
vii) unholy nexus between criminal syndicates, politicians and law officials;
viii) ignorance of Victims;
ix) corruption in the system.
4.4 CURRENT DEBATES IN CRIMINAL JUSTICE SYSTEM

Time and again the central and state governments have appointed a number of commissions, committees and other official bodies to look into various aspects pertaining to reform of the different segments of criminal justice system, namely police, judiciary and correctional administration. Besides academicians, NGOs and public spirited persons have also raised their concerns against the sordid affairs in criminal justice through various forums, seminars and conferences.

The Govt of India, Ministry of Home Affairs constituted the Committee on reforms of Criminal Justice System under Justice Malimath to make a comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and the relevant laws. The Committee, having given its utmost consideration to the grave problems facing the country, has made its recommendations in its final report, submitted in 2003. A committee was also constituted to prepare a Draft of a National Policy on Criminal Justice, under the chairmanship of Prof (Dr.) N. R. Madhava Menon in 2006. Besides, recent reports of Law Commission of India have also voiced their concern for criminal justice reforms.

The points which have emerged out of various debates and deliberations of the committees for the reform of criminal justice are given below:

4.4.1 Inquisitorial vs. Adversarial System

There has been a debate on the adoption of Inquisitorial vs. Adversarial System in criminal justice. The Malimath Committee has given its anxious consideration to the question as to whether present system is satisfactory or whether we should consider recommending any other system. The Committee examined in particular the inquisitorial system followed in France, Germany and other Continental countries. The inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate which results in a high rate of conviction. However, the Committee on balance felt that, a fair trial and in particular, fairness to the accused, are better protected in the adversarial system. It is advised that some of the good features of the Inquisitorial System can be adopted to strengthen the Adversarial System and to make it more effective. This includes the duty of the Court to search for truth, to assign a proactive role to the judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victims.
4.4.2 Right to Silence - Article 20(3)

The right to silence is a fundamental right guaranteed to the accused under Article 20(3) of the Constitution which says that no person accused of any offence shall be compelled to be a witness against himself. At present the participation of the accused in the trial is minimal. He is not even required to disclose his stand and the benefit of special exception to any which he claims. This results in great prejudice to the prosecution and impedes the search for truth. Nowadays it is felt that the accused should be required to file a statement to the prosecution disclosing his stand as the accused is in most cases the best source of information. While respecting the right of the accused a way must be found to tap this critical source of information. The court, without subjecting the accused to any duress, should have the freedom to question the accused to elicit the relevant information and if he refuses to answer, to draw adverse inference against the accused.

It is opined that if this questioning is done “without duress”, the right to silence available to the accused under Article 20(3) of the Constitution of India would be respected as would the procedural provision in the CrPC (Section 161(2)). The Malimath Committee also stated that the drawing of adverse inference on silence does not offend the right granted by Article 20(3), as “it does not involve testimonial compulsion”.

In its 180th report of 2002, the Law Commission of India unequivocally stated that any move to take away the right to silence of accused would be “ultra vires of Article 20(3) and Article 21 of the Constitution of India”. It noted that, “to draw an adverse inference from the refusal to testify is indeed to punish a person who seeks to exercise his right under Article 20(3).”

4.4.3 Presumption of Innocence – Standard of Proof

There is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof for criminal cases. However, the standard of proof laid down by our courts following the English precedents is proof beyond reasonable doubt in criminal cases. It is believed that the basic principle of criminal jurisprudence that every accused is presumed to be innocent till his guilt is proved beyond reasonable doubt has done a lot of damage to the criminal justice.

In several countries in the world including the countries following the inquisitorial system, the standard is proof on ‘preponderance of probabilities’. There is a third standard of proof which is higher than ‘proof on preponderance of probabilities’ and lower than ‘proof beyond reasonable doubt’ described in different ways, one of the being ‘clear and convincing’ standard.

In the interest of speedy justice it is debated that the ‘standard of proof beyond reasonable doubt’ presently followed in criminal cases should be done away with and in its place a standard of proof lower than ‘proof beyond reasonable doubt’ and higher than the standard of ‘proof on preponderance of probabilities’ should be adopted. The Malimath Committee also favoured a mid level standard of proof of ‘courts conviction that it is true’.

But human right discourses on criminal jurisprudence make the presumption of innocence strong to ensure that miscarriage of justice never takes place due to frivolous allegations against the accused. This seems to be relevant in India where
there are concerns about the use of politically, socially or communally motivated criminal charges filed against individuals as a means of harassment.

The standard of proof lies as a corollary to the presumption of innocence. While the prosecution attempts to prove the guilt of the accused, if there is reasonable doubt, the accused must be found not guilty. The Law Commission of India in its 180th Report states that dilution of the basic principle that the prosecution has to prove the guilt against the accused beyond reasonable doubt “would be contrary to basic rights concerning liberty”.

The ICCPR’s Human Rights Committee has stated, “By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.” (General Comment 17, Para 7) Article 66(3) of the Statute of the International Criminal Court (ICC) reads, “In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.”

There is concern about the potential for an increase in wrongful convictions if such a reform was introduced, particularly given the scope for discrimination – present within institutions of the criminal justice system, including the judiciary to impact on the rights of the accused.

**4.4.4 Burden of Proof**

The rule of criminal jurisprudence that guilt of the accused is to be proved by the prosecution that too beyond reasonable doubt puts unnecessary burden on the aggrieved. Therefore, Malimath Committee on reforms of criminal justice has recommended placing an increased burden on the defendant to defend him or herself early in the trial, with consequences if the defence is weak. For example, the Committee recommends the preparation of a statement of prosecution and a statement of defence. However it notes that where the reply of the defence is general, vague or devoid of material particulars, the Court shall deem that the allegation is not denied. Prior to this it may give the accused an opportunity to rectify the statement.

Once again the right of the accused to remain silent with regard to certain facts that may incriminate him/her self is in danger of being violated. The Committee also suggests, “on considering the prosecution and defence statements, the Court shall formulate the points of determination that arise for consideration” and these points for determination shall indicate on whom the burden of proof lies. This is an attempt to reverse the burden of proof and may require the accused to prove his innocence, violating a basic tenet of criminal law – that a person is innocent until proven guilty.

The International Covenant on Civil and Political Rights points out that in accordance with the presumption of innocence, the rules of evidence and conduct of a trial must ensure that the prosecution bears the burden of proof throughout a trial. Article 67(1)(i) of the International Criminal Court Statute also lays down minimum guarantees to the accused including no imposition of “any reversal of the burden of proof or any onus of rebuttal”.

Self Assessment Question

2) Do you think the principles of criminal jurisprudence in favour of the accused should be subverted to expedite criminal justice system? Discuss.

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4.4.5 De-criminalization, Diversion and Settlement-Arbitration in Criminal Justice System

We have constitutional right to get quick and easy justice at reasonable fees and free legal aid. However, the fact is that there are about 38,970 cases pending in the Supreme Court, more that 36.5 lakhs cases pending in the High Courts and more than 2.48 crores cases pending in the subordinate courts, not to mention the cases pending in the various Tribunals and Quasi Judicial bodies.

De-criminalisation 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.

Recently, criminal justice has introduced the concept the 'plea-bargaining'. The concept of plea-bargaining under Section 265-A of Criminal Procedure Code is an appreciable step towards arbitration in criminal justice system. Now the debate arises whether we can introduce the concept of alternative dispute resolution i.e. arbitration and conciliation in our criminal justice system? It is to be kept in mind that arbitration in criminal justice system could be introduced only in the petty and compoundable cases, mostly those cases which are wrongs of private nature. The grave crimes like culpable homicide, mudder, waging war against state are considered as public offences and wrongs against state are could not be open to arbitration and conciliation. Even for arbitration in petty cases a proper procedure must be followed, providing both the parties equal opportunities and following the principle of natural justice.

Arbitration as the technique of alternative dispute settlement has shown amazing results in solving different cases in different areas. Bringing arbitration to the criminal cases would have its own benefits, like early disposal of the cases. However, in order to make this concept beneficial there should be an increase in the number of compoundable offences, the settlement of criminal cases through arbitration and conciliation should not be available in cases where habitual offenders are involves.
Introduction of arbitration in the Criminal Justice System is the need of the hour. The Indian Judicial System is currently facing many problems amongst which the biggest is large number of cases both civil and criminal pending in our courts. Not only this, the problem is more serious and grave in the criminal cases where large number of under trials spend half of their life in jails waiting for their trial. Whereas on other hands the accused are acquitted either because of witnesses becoming hostile or due to other technicalities of law. This is not the only problem it is furthered substantiated by the problems of lengthy procedures, expensive justice etc.

**Self Assessment Question**

3) What is the scope of arbitration and plea bargaining in criminal justice?

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**4.4.6 A Victim Orientation to Criminal Justice**

An important object of the criminal justice system is to ensure justice to the victims, yet he has not been given any substantial right, not event o participate in the criminal proceedings. Administration of criminal justice remained generally unsatisfactory from the point of view of the victims of crime. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who have suffered loss or injury. Compensatory jurisprudence as new part of criminal law is fast developing as it serves two purposes, firstly, a victim is not lost sight of in the criminal justice system and secondly, an accused convicted is made to realise that he has a duty towards those injured by his actions. Currently, movement is growing in several countries, including our own, to re examine the problem of compensation or restitution to the victim. Realising that the offender is in no position to pay the indemnity for his act, criminal lawyers, criminologists and social workers, are contemplating the possibility of the State making compensation to the victim.

It should 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 recognising 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 should be implemented.

The law Commission submitted its 226th report to the Hon’ble Supreme Court of India in July 2009 for its consideration in the pending proceedings filed by one Laxmi in W.P. (Crl.) No. 129 of 2006 on “The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime”.


Law Commission recommended that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping etc. It suggested a broader legislation so that it can deal with the problems of victims of different crimes who need rehabilitation and compensation for survival.

Like Law Commission, Malimath committee also felt that compensating victims of crime is a state obligation and proposed a ‘victim compensation law’ providing for the creation of a ‘victim compensation fund’ to be possibly administered by the Legal Services Authorities created under the Legal Services Authority Act, 1987. It also laid down the categories of offences where compensation can be awarded, not be awarded and withdrawn. The merit of Malimath committee report is that it, for the first time, delved into the ‘participation’ of victims in criminal processes as an inseparable component of justice.

4.4.7 Increased Punishment Choices and Alternatives

Since the IPC was enacted in the year 1860, may developments have taken place, new forms of crimes have come into existence, punishment for some crimes are proving grossly inadequate and the need for imposing only fine as a sentence for smaller offences is felt. There is thus a need to have new forms of punishments such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without commutation or remission etc.

According to the Draft of a National Policy Paper on Criminal Justice (2006), 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.

The IPC prescribes only the maximum punishments for the offences and in some cases minimum punishment is also prescribed. The judge exercises wide discretion within the statutory limits. There are no statutory guidelines to regulate his discretion. Therefore in practice there is much variance in the matter of sentencing. There is no clear indication as to what are all the factors that should be taken into account in the matter of assessing the sentences to be imposed. 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 should 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.
4.4.8 Police Reform and Criminal Investigation

The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is therefore the foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigations gets relegated in priority. A separate wing of investigation with clear mandate that it is accountable only to Rule of Law is the need of the day.

Most of the Laws, both substantive as well as procedural were enacted more than 100 years back. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context. If the existing challenges of crime are to be met effectively, not on the mindset of investigators needs a change but they have to be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensics etc. Investigation Agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention on priority.

In India, we have one policeman for every 1000 people, while there is a policeman for every 300 people in the US. and the worst part of this is that a cop of US is supported with technology, communication and cyber connectivity and vehicles, which increases his capabilities manifolds. Whereas numerous police stations in India don’t have their own vehicles. There is poor connectivity amongst police stations, even though we boast of telecom revolution with every other person having mobile phone. The weapons which our policemen use are very obsolete. There is no centralised database of criminals and crime in our country, which is the biggest hindrance in any of investigations.

There is need for the Law and the society to trust the police and the police leadership to ensure improvement in their credibility. 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.

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.
Police law is continuing from the period of British which is based on police regulation Act, 1861. The object of police administration was to quash the Indian before independence and to maintain the English rule, but today the police administration is the part of India as a welfare state. So there is an urgent need to do basic change in Indian police system.

4.4.9 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.

The Public Prosecutor is appointed by the State or Central Government and the prosecution machinery is to be completely separated from the investigation agency (the police). In 1995, the Supreme Court ordered in *SB Sahane v. State of Maharashtra* (AIR 1995 SC 1628) that the prosecution agency be autonomous, having a regular cadre of prosecuting officers. Also on earlier occasions the Court has categorically laid down that the Public Prosecutor is not a part of the investigating agency, but is an independent statutory authority and that the duty of a Public Prosecutor is to represent not the police, but the State.

While mechanisms to allow better coordination between the prosecution and the police are welcome, in certain states the demarcation between the two agencies is being blurred by appointment of senior police officials to head the prosecution. Demarcation to maintain independence of the prosecution is essential to ensure that the trial is not laden with biases that could go against the right to a fair trial of the accused. It is unfortunate that some State Governments have ignored the various court judgments that have categorically stressed that the prosecution should be independent of the police.

### Self Assessment Questions

4) What amendments are suggested in IPC to make it relevant in present times?

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5) Explain measures to improve coordination between police and prosecution.

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4.4.10 Criminal Courts to Ensure Speedy and Human Rights-friendly Procedures

In the courts, arrears are mounting by leaps and bounds and there is no respite in sight. This is particularly because institution of cases is much more than their disposal at all the levels of judicial administration. Mounting of arrears of cases in courts, particularly in High Courts and District Courts, has been a cause of great concern for litigants as well as for the State. It is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration.

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. Daily 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. In its 221st Report, the Law Commission has made few proposals which when given effect to, will be helpful not only in providing speedy justice but also in controlling frivolous, vexatious and luxurious litigations.

In view of the large pendency and mounting arrears of criminal cases, it is deliberated that the long vacations for the High Courts and Supreme Courts in the larger public interest should be reduced.

4.4.11 Special Schemes for Protection of Witnesses

The prosecution mainly relies on the oral evidence of witnesses for proving the case against the accused. Unfortunately there is no dearth of witnesses who come to the courts and give false evidence with impunity. This is a major cause of failure of the system. The procedure prescribed for taking action against perjury is as cumbersome as it is unsatisfactory.

Many witnesses give false evidence either because of inducement or because of the threats to him or his family members. There is no law to give protection to the witnesses subject to such threats, similar to witness protection laws available in other countries.

Unfortunately the witnesses are treated very shabbily by the system. There are no facilities for the witnesses when they come to the court and have to wait for long periods, often their cross-examination is unreasonable and occasionally rude. They are not given their TA/DA promptly. The witnesses are not treated with due courtesy and consideration; nor are they protected. Witnesses are required to come to the court unnecessarily and repeatedly as a large number of cases are posted and adjourned on frivolous grounds.

Witness Protection Programme”, the Law Commission has confined the Witness Identity Protection procedures to cases triable by the Court of Session of Courts of equal rank.

Witness Identity Protection may require during investigation, inquiry and trial while Witness Protection Programmes apply to the physical protection of the witness outside the Court. It is accepted today that Witness Identity Protection is necessary in the case of all serious offences wherein there is danger to witnesses and it is not confined to cases of terrorism or sexual offences only.

4.4.12 Corruption – A Serious Threat to Justice

Corruption in criminal justice is also a matter of grave concern which 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.

It is apprehended that 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
Basic Issues

Ombudsman can be associated with the body created under the Judicial Inquiry Bill for disciplining erring judges.

Self Assessment Question
6) How corruption has caused damage to criminal justice system?
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4.4.13 Growing Organised Crime, and Terrorism

Another cause of grave concern and debate for policy makers as well as for general public has been growing Organised Crime and Terrorism. Along with other countries of the world India, too, has not escaped their pernicious effect. The nexus between organised crime and terrorism has also been a cause of serious concern to the Country. The task of dealing with the organised crime and the terrorism becomes more complicated as structured group in organised crime is enmeshed with its counterpart (of structured group) in terrorism. The former is actuated by financial/commercial propositions whereas the latter is prompted by a wide range of motives and depending on the point in time and the prevailing political ideology.

The growth of organised crime, terrorism and their invisible co-relationship is destroying the secular and democratic fabric of the country. Now the time has come to sink political differences for better governance of the country and address the task of dealing with these menaces. In the backdrop of the States’ reluctance to share political power, through legislatures, for enactment of federal law to deal with certain crimes, the Malimath Committee has made recommendations to deal with (a) organised crime (b) terrorism and (c) enactment of central law to tackle federal crimes.

4.4.14 Offences against Women

There are several shortcomings or aberrations in dealing with the offences against women which need to be addressed. Today the most debatable section of IPC is 498A demands are being made that either it should be scrapped from the statute or the offence of cruelty (committed by a husband or relative of a husband of a woman – Section 498A IPC) be made compoundable and bailable. This amendment has reportedly been included in legislation recently drafted by the Union Government and an amendment along these lines has already been made to state legislation in Andhra Pradesh. The amendment has been recommended ostensibly to enable a woman who has filed a police complaint against her husband’s family for cruelty and harassment to return to the house.

There is a general complain that Section 498A of the IPC regarding cruelty by the husband or his relatives is subjected to gross misuse and many times operates against the interest of the wife herself. This offence is non-bailable and non-compoundable. Hence husband and other members of the family are arrested
and can be behind the bars which may result in husband losing his job. Even if the wife is willing to condone and forgive the lapse of the husband and live in matrimony, this provision comes in the way of spouses returning to the matrimonial home. This hardship can be avoided by making the offence bailable and compoundable.

It is generally argued that a man who marries a second wife during the subsistence of the first wife should not escape his liability to maintain his second wife under Section 125 of the Code on the grounds that the second marriage is neither lawful or valid. The Supreme Court has held that, for proving bigamy, it is to be established that the second marriage was performed in accordance with the customary rites of either parties under the personal laws which is not easy to prove. Therefore, the evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that marriage was performed according to the customary rites of the parties.

As a man can be punished under Section 497 of the IPC for adultery, for having sexual intercourse with a wife of another man, it stands to reason that wife should likewise be punished if she has intercourse with another married man.

As instances of non-penal penetration are on the increase and they do not fall in the definition under the offence of rape under Section 375 of the IPC. After a careful review of the rape law in vogue and an intensive deliberation with *Sakshi v. Union of India*, (1996) 6 SCC 591; 1999 SCC (Cri) 1159, the National Commission for Women and the other organisations, the Law Commission in its 172nd report submitted to the Government of India recommended, inter alia that the law relating to ‘rape’ be made gender neutral, wider and more comprehensive to bring it in tune with the current thinking. The *Criminal Law Amendment Bill 2010* aims to substitute the word rape for sexual assault.

The Committee is not in favour of imposing death penalty for the offence of rape for in its opinion the rapists may kill the victim. Instead, the Committee recommends sentence of imprisonment for life without commutation or remission. The Committee however feels that investigation and trial of rape cases should be done with most expedition and with a high degree of sensitivity.

### Self Assessment Question

7) What are the amendments proposed regarding offences against women in IPC?

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### 4.4.15 Media and Criminal Justice

Media plays an important role in good governance and achieving the objects of criminal justice. However, the role and responsibilities of the over enthusiastic media in this regard need to be streamlined and standardised lest it should interfere
Basic Issues

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.

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.

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, \textit{inter alia}, depend for their effectiveness on the people’s faith and trust.

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.

4.4.16 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. As per draft national policy on criminal justice (2006), 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 launched 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 mobilise for social defence.
The principle of decentralisation 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.

### Self Assessment Questions

8) Discuss role of media in criminal justice administration.

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9) What is the role of public in preventing crime against society?

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### 4.4.17 Need for a National Policy on Criminal Justice

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.

There should be a national policy to set standards for uniformity of procedures and practice, to 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, 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. 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 a certain percent of its total budget towards training on modern lines.
Basic Issues

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.

Self Assessment Question

10) Do you agree that a national policy is need of hour for improving criminal justice system in India?

Conclusion

A criminal justice system (CJS) does not function in a vacuum. The system and the actors, whether they are police, prosecutors, judges or lawyers, are all embedded in specific social, economic, political and cultural contexts. In India, like elsewhere, class, caste, gender, religious, ethnic and sexual identity and other (dis)abilities greatly influence the working of the criminal justice system. Thus it is critical that the purpose, sincerity and significance of any proposed reforms of the criminal justice system be judged by: the extent to which the process of drawing up the reforms was participatory and inclusive; and the extent to which they address social vulnerability and disadvantage and enable the system to better protect the rights of those most discriminated against. Recent debates on criminal justice have addressed to the most fundamental systemic failings in the criminal justice system which affect human rights of the general public and unity and integrity of the Nation.

4.5 SUMMARY

- Criminal Justice system was devised more than a century ago to protect the rights of the innocents and punish the guilty.
- People have lost their faith in the administration of criminal justice system. Due to poor chances of apprehension, prosecution and punishment of criminals.
- The aim of criminal justice is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice.
- Existing criminal justice system suffers from following maladies:
  i) accused oriented system;
  ii) faulty and slipshod investigation;
  iii) time consuming legal process;
  iv) lack of coordination between police and prosecution;
v) over crowding in jails etc;
vi) dominance of money and power;

vii) unholy nexus between criminal syndicates, politicians and law officials;

viii) ignorance of Victims;
ix) corruption in the system.

- The Govt of India, Ministry of Home Affairs constituted the Committee on reforms of Criminal Justice System under Justice Malimath to make a comprehensive examination of all the functionaries of the Criminal Justice System.

- The Committee, having given its utmost consideration to the grave problems facing the country, has made its recommendations in 2003.

- A committee was also constituted to prepare a Draft of a National Policy on Criminal Justice, under the chairmanship of Prof (Dr.) N. R. Madhava Menon in 2006.

- Recent reports of Law Commission of India have also voiced their concern for criminal justice reforms.

- Some of the important points of debate for improving the criminal justice administration are-
  i) Good features of the Inquisitorial System can be adopted to strengthen the Adversarial System and to make it more effective.
  ii) Accused’s right to silence should be broken to elicit the best information regarding crime.
  iii) Standard of Proof regarding Presumption of Innocence should be diluted In the interest of speedy justice.
  iv) Reversing the burden of proof on the accused.
  v) De-criminalisation of “marginal” offences, which can well be tackled through civil or administrative procedures.
  vi) Settlement without trial (arbitration, conciliation, compounding and plea bargaining) should assume mainstream status in criminal proceedings and laws should be developed accordingly.
  vii) Emphasis on Victim oriented criminal justice.
  viii) Amendment in the IPC for substantial increase in the range and variety of punishments to provide for more choices in sentencing.
  ix) Police Reform and scientific Criminal Investigation.
  x) Setting up of an independent Directorate of Prosecution accountable to the Courts, under the control of the proposed Board of Criminal Justice, with a well-trained, well-paid cadre of prosecutors for delivery of quality justice.
  xii) Special schemes for protection of witnesses.
  xiii) Removal of corruption in criminal justice to prevent distortion of processes and delays in delivery of justice.
xiv) Checking the growth of organised crime, terrorism and their invisible co-relationship is destroying the secular and democratic fabric of the country.

xv) Cases of offences against women should be dealt with a high degree of sensitivity.

xvi) Role and responsibilities of the media need to be streamlined and standardized so that it may not interfere in the administration of justice and violate the fundamental rights of the people involved.

xvii) Criminal justice system should provide more and more opportunities for public participation both in prevention and prosecution of crime.

xviii) Need for a national policy to set standards for uniformity of procedures and practice, to 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.

xix) Aim of criminal justice system should be to protect human rights of the individual and unity and integrity of the Nation.

4.6 TERMINAL QUESTIONS

1) Explain in detail problems and shortcomings of present day criminal justice System.

2) Examine various issues which require immediate attention of the authorities for improving criminal justice administration.

4.7 ANSWERS AND HINTS

Self Assessment Questions

1) Due to nexus between crime and political parties, widespread dissatisfaction with the way crimes are investigated, and criminals prosecuted by our existing Criminal Justice System and due to little protection to life and property of people, Section 4.3 also.

2) In the interest of administration of criminal justice right to silence of accused can be broken and standard of proof can be diluted. See Section 4.4 also.

3) The Indian Judicial System is currently facing many problems amongst which the biggest is large number of cases pending in our courts. Arbitration and plea bargaining can reduce the burden of courts. See Sub-section 4.4.5 also.

4) There is thus a need to have new forms of punishments in IPC such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without commutation or remission etc. Besides quantum of fine also needs to be enhanced. See Sub-section 4.4.7 also.

5) Refer to Sub-section 4.4.8 and 4.4.9

6) Refer to Sub-section 4.4.12

7) Amendments are proposed in Section 375 and 498A IPC, Refer to Sub-section 4.4.14.
8) Media is an important instrument for information and accountability. Investigative journalism has often exposed corruption and helped to maintain rule of law in criminal justice. Refer to Sub-section 4.4.15.

9) System of criminal justice can function effectively with the public support and participation. Refer to Sub-section 4.4.16.

10) There is an urgent need of a national policy to set standards for uniformity of procedures and practice, to monitor compliance and co-ordinate functioning, to achieve the desired degree of efficiency and fairness in crime control and management of criminal justice system in the country. Refer to Sub-section 4.4.17.

Terminal Questions

1) Refer to Section 4.3

2) Refer to Section 4.4

4.8 REFERENCES AND SUGGESTED READINGS


