

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

INDIA

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Indian Police Service

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GENERAL OVERVIEW

1. Political system.

India attained independence from the British Crown on August 15, 1947, and became a sovereign democratic republic on January 26, 1950. The Constitution of India provides for a quasi-federal system of government. The President acts as Head of State. A Council of Ministers, headed by the Prime Minister, aid and advise the President. The Council of Ministers is collectively responsible to the Lok Sabha, the lower house of Parliament.

The country is divided into 25 States, each headed by a Governor appointed by the Union Government. A Council of Ministers headed by the Chief Minister aids and advises him or her and is collectively responsible to the State Legislative Assembly. (Article 372 of the Constitution of India protects all the law in force before the commencement of the Constitution until altered, repealed, or amended by the competent Legislature or authority. It is under this provision that the common law of the land has survived. This includes not only the personal laws such as the Hindu Law and Mohamedan Law, but also the rules of English common law and customary laws.) In addition, there are seven Union Territories (including New

Delhi, the national capital city) which are directly administered by the Union Government through its officials.

The Constitution of India clearly limits the law-making power of the Union and State governments in what are known as the Union List, State List and the Concurrent List in Schedule VII. Subjects of relevance to the criminal justice system include the constitution; organization, jurisdiction and powers of the Supreme Court of India; and the extension of the powers and jurisdiction of members of a police force. Public Order, Police, officers and servants of the State High Courts and prisons are within the legislative competence of States.

In sum, the criminal Justice System in India is a legacy of the British system. It has four subsystems, those being the Legislature (Parliament), Enforcement (police), Adjudication (courts), and Corrections (prisons, community facilities).

2. Legal system.

The Indian legal system is a mix of adversarial and accusatorial. In civil law, a conscious attempt has been made to respect and preserve the timeworn tenets of both Hindu and Muslim jurisprudence. (The President of India and Governors act according to the advice of the Council of Ministers.) An informal justice system does operate in the rural areas in civil and family matters.

3. History of the Criminal Justice System.

The jurisprudence of Ancient India, which was essentially Hindu-ruled, was shaped by the concept of 'Dharma', or rules of right conduct, as outlined in the various manuals explaining the Vedic scriptures such as 'Puranas' and 'Smritis'. The King had no independent authority but derived his powers from 'Dharma' which he was expected to uphold. The distinction between a civil wrong and a criminal offense was clear. While civil wrongs related mainly to disputes arising over wealth, the concept of pataka or sin was the standard against which crime was to be defined. (Basham, 1967; Jois, Vol. I, 1990).

The Mauryas Dynasty, which had extended to substantial parts of the Central and Eastern regions during the 4th Century, B.C., had a rigorous penal system which prescribed mutilation as well as the death penalty for even trivial offenses. About the 2nd or 3rd Century A.D., the Dharmashastra code was drawn up by Manu, an important Hindu jurist. The code recognized

assault and other bodily injuries and property offenses such as theft and robbery. During the rule of the Gupta Dynasty (4th to 6th Century A.D.), the judicial hierarchy was formed. The judiciary was comprised of the guild, the folk-assembly or the council and the king himself. Judicial decisions conformed to legal texts, social usage and the edict of the king, who was prohibited from violating the decisions. (Pillai, 1983; Griffith, 1971; Thapar, 1990).

India was subjected to a series of invasions by the Muslims beginning in the 8th Century A.D. and ending in the 15th century when a mixed race of Persians, Turks and Mongols set up the Moghul Empire. They occupied most of the Northern region and enforced a Mohammedan criminal law that classified all offenses on the basis of the penalty which each merited. These included retaliation (blood for blood), specific penalties (as for theft and robbery) and discretionary penalties (Griffith, 1971; Atchuthan, 1983).

India became a nation under the British who arrived in the early 17th Century as traders of the East India Company. The Company slowly acquired territory across the sub-continent, strictly for commercial operations in the beginning, but gradually assumed considerable powers of governance. Considering the Muslim criminal law to be irrational and draconian, the Company brought about several reforms through a series of regulations which modified or expanded the definitions of some offenses, introduced new offenses and altered penalties to make them more logical and reasonable. (Jois, Vol.II, 1990).

In 1857, the large possessions and the authority enjoyed by the Company were transferred to the British Monarch by an Act of Parliament. Until this time, India was a loose collection of kingdoms, interactions between whom were nominal, though cultural links were quite pronounced.

An Indian Penal Code (IPC) defining crime and prescribing appropriate punishments was adopted in 1860, following the painstaking work of the First Law Commission, particularly its Chairman Lord Macaulay. Drawing inspiration from the English criminal law, the IPC has stood the test of time. As a sequel to the IPC, a Code of Criminal Procedure was enacted in 1861 and established the rules to be followed in all stages of investigation, trial and sentencing. (Rao, 1991). This code was repealed and a new Code came into effect in 1974. These two codes, along with parts of the Indian Evidence Act of 1872, form the essence of India's criminal law. A large number of special and local laws such as the Arms Act, Prohibition Act, Immoral Traffic (Prevention) Act, etc., take care of various other anti-social

activities.

CRIME

1. Classification of Crime.

*Legal classification. The IPC divides an estimated 300 offenses into two classes. Cognizable crimes are those in which a police officer may arrest the accused or a suspect without a warrant, and includes murder, rioting, rape, kidnapping and abduction, robbery, dacoity, organized robbery, house-breaking and theft. Non-cognizable crimes are those in which a warrant is required for arrest and are generally of a more trivial nature. Crimes can be classified as "bailable" or "non-bailable", depending on their severity. (Rao, 1991)

*Age of criminal responsibility. Under the IPC, criminal responsibility starts at the age of seven. However, any act by a child between 7 and 12 years old, which would otherwise be criminal, is free from liability if it is proved that the child had not attained sufficient maturity of understanding to judge the nature and consequences of his or her conduct on the occasion in question.

*Drug offenses. The Narcotic Drugs and Psychotropic Substances Act of 1985 promulgated by the Union government is the main legislation dealing with drug offenses. The Act defines narcotic drugs as coca leaf, cannabis (hemp) opium straw, and manufactured drugs, which includes all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate. Psychotropic substances are those listed in the Schedule of the Act and include, among others, LSD, DET, and MDA.

The Act prohibits cultivation of coca plants and the possession, sale, purchase, and use of coca leaves in violation of the Act and in contravention of any license granted under it. A similar prohibition is imposed by the Act for psychotropic substances. Officers empowered under the Act include those of the Union Government (Central Excise, Narcotics, Customs) and the State Government (including Revenue, Drug Control, Excise, and the Police).

2. Crime statistics.

The National Crime Records Bureau of the Union Ministry of Home Affairs in New Delhi

publishes Crime in India annually.

*Murder. There were 39,174 murders recorded in 1991. The IPC defines murder as an act by which death is caused intentionally. Attempts are not included.

*Rape. There were 10,410 rapes in 1990. The IPC defines rape as sexual intercourse by a man with a woman against her will, without her consent, or with her consent, if her consent has been obtained by putting her or any person in whom she has an interest in fear of death or harm. Attempts are not included.

*Property crime. There were 10,831 dacoities recorded in 1990. The IPC defines a dacoity as a robbery committed or attempted to be committed jointly by five or more persons. Attempts are not included.

*Serious drug offense. In 1990, there were 5,299 drug offenses, as established by the Narcotic Drugs and Psychotropic Substances Act of 1985. There were 64,234 kilograms of illegal substances seized. Attempts are not included.

*Crime regions. In 1991, 8 cities recorded more than 10,000 cognizable IPC offenses each. These were the four metropolitan cities of Bombay, Calcutta, Madras and Delhi and the cities of Ahmedabad, Bangalore, Hyderabad and Pune. The four districts of Patna, Bhopal, Indore, and Jaipur also registered more than 10,000 cognizable IPC offenses.

Murders arising out of land disputes are more common in rural areas. Suburban areas which have isolated housing units and are not intensively policed report a large number of dacoities. Cities tend to report a large number of pocket pickings and forcible snatching of jewelry cases.

VICTIMS

1. Groups most victimized by crime.

Due to the absence of survey data, it is difficult to say whether a particular ethnic or age group is more victimized than another.

2. Victims' assistance agencies.

A few private voluntary agencies are active in assisting victims and survivors, particularly

in cases of murder or rape. All of the States have State-sponsored Legal Advice Boards which offer free legal advice to the poor, both in criminal and civil litigation.

3. Role of the victim.

The victim has no role either in prosecution or in sentencing.

4. Victims' rights legislation.

Under Section 357 of the Code of Criminal Procedure, when a Court imposes a fine or a sentence which includes a fine, it may order the fine to be awarded to the victim in compensation for any loss or injury caused by the offense. In cases where no fine is imposed, the Court may direct the accused to compensate any person for loss or injury. Section 358 of the Code of Criminal Procedure provides for compensation to a person wrongfully arrested by the police.

Until a few years ago, the courts were reluctant to invoke these sections of law. Recently, the Higher Courts have been more inclined to award compensation where no fine has been ordered.

POLICE

1. Administration.

The Police are a civil authority subordinate to the Executive, represented in the Union Government by the Prime Minister and in the States by the Chief Minister, and their respective Councils of Ministers. Prominent among the Union police forces are the Central Bureau of Investigation (CBI), Border Security Force (BSF), Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF) and the Indo-Tibetan Border Police (ITBP). Each of these forces is headed by a Director/Director-General with the status of a three-star General in the Army. The CBI is controlled by the Department of Personnel of the Union Government headed by a Minister of State who reports to the Prime Minister. The other forces are controlled by the Union Ministry of Home Affairs headed by a Cabinet Minister.

The bulk of the Indian Police is comprised of forces in the States. Each State has its own force headed by a Director-General of Police (DGP) who is equivalent in rank to his counterpart in the

Union Government forces. A number of Additional Directors-General or Inspectors-General of Police (IGP) who look after various portfolios, such as Personnel, Law & Order, Intelligence, Crime, Armed Police, Training, and Technical Services are located at the State Police Headquarters and report directly to the DGP. Major cities in a State are headed by a Commissioner of Police (CP) who, again, reports to the DGP. Areas outside these cities in a State are divided into Districts of varying size. Each district is headed by a Superintendent of Police (SP) and supervised by a Deputy Inspector-General (DIG) whose jurisdiction is called a Range, composed of a group of three or four districts.

In each District and in the city police force, the basic police unit is a Police Station (PS). A few police stations have an Out-post (OP) which is a mini-station for serving remote or trouble-prone localities. The number of police stations depends on the size of the State and the District. The state of Madhya Pradesh, which is the largest state in terms of area (443,447 square kilometers) has 1,101 Police Stations and 554 out-posts. While the larger districts have an average of 22 Police stations, the smaller ones have 15. A medium-sized State such as Tamil Nadu, with an area of 130,058 square kilometers, has 1,090 police stations and 163 out-posts. A medium-sized District covering an area of about 8,000 square kilometers has about 40 police stations.

Each police station is headed by a Sub-Inspector or Inspector referred to as the Station House Officer (SHO). A designated number of Constables, the lowest rank in the police force, and Head Constables are assigned to each police station. In some States, there are additional ranks, such as Assistant Sub-Inspector or Assistant Police Inspector. While urban police stations often have certain functional divisions such as Law and Order and Crime and Traffic, no such divisions exist in rural or village police stations.

An Armed Reserve at the District Headquarters, under the command of the Superintendent of Police, handles public disturbance problems, such as religious or caste riots and clashes between political rivals. There are a few battalions of the Special Armed Police (SAP) used for more serious situations. The SAP is deployed by the Director General of Police when the situation warrants it. For example, if during a major breakdown of public peace the State Police are outnumbered and unable to cope with the magnitude of the disorder, a State Government may ask for Central forces, especially the Central

Reserve Police Force. The cost of such deployment is usually borne by the State government.

The Criminal Investigation Department (CID) is an important arm of every State Police department. Headed by an Additional Director of General Police or Inspector General of Police, it is a specialized agency for conducting sensitive inquiries into allegations against public figures or police personnel. More importantly, it is entrusted with the investigation of important criminal cases which cannot be solved by the District Police.

2. Resources.

*Expenditures. There are separate budgets for the Union and State Police forces. A large State such as Madhya Pradesh has an annual police budget of Rupees 3,730 million. A medium-sized State such as Tamil Nadu has an annual police budget of Rupees 3200 million.

There are two schemes by which the Union Government assists State Police departments to strengthen police administration: the Police Housing Scheme and the Modernization Scheme. While the Police Housing Scheme funds the construction of housing units for lower levels of police personnel, the Modernization Scheme finances the purchase of equipment in the areas of communication, transport and scientific investigation.

*Number of police. As of December 31, 1991, the actual collective police strength in the 25 States and 7 Union Territories was 1,152,586. This figure includes 13,654 female police personnel. (Crime in India, 1991, pp.196-200).

Madhya Pradesh, the largest state, has a police force strength of 86,345, including 1,060 female police. The Constabulary, namely, Head Constables and Constables, constitutes more than 90% of the force strength in almost every State. A medium-sized State like Tamil Nadu, with a population of 55 million, has a force strength of about 70,000, which includes 1,275 female police personnel.

As of December 31, 1991, there were 35.1 police officers per 100 square kilometer and 1.4 police officers per 1,000 population in the country. In Madhya Pradesh, there is one police station for every 60,165 persons in the population. In the State of Tamil Nadu, there is now one police officer per 800 persons in the population, and one police station per 52,000 persons in the population.

The Law ensures that the police force is representative of the traditionally poor and

underprivileged sections of the society. There is a quota of 22.5% for recruitment in every force for Scheduled Castes and Scheduled Tribes. Additionally, in some States, there is a prescribed quota for those listed as Backward and Most Backward.

3. Technology.

*Availability of police automobiles. Considerable attention has been given by both the Union Government and State Governments to increase the mobility of police through the provision of passenger cars, jeeps (including four-wheel drive), trucks, buses and motorcycles. For example, the Tamil Nadu Police force has a fleet strength of 3,980. The fleet strength of the Madhya Pradesh is 3,008. Cars are used for VIP security duty and for senior officers above the level of superintendent. All other vehicles are allotted to teams of personnel at the District or police station level for patrolling or investigation work.

*Electronic equipment. Radio communication is very well organized in most of the forces. Very High Frequency (VHF) telephones connected by a large number of relay stations are used to link the police headquarters to the police stations in every State. For instance, in Tamil Nadu, 1,015 police stations out of a total of 1090 have been provided VHF telephones; 101 of the 163 outposts also have this facility. In Madhya Pradesh, 1,062 police stations and 256 outposts have a wireless telegraph facility. The State Police have 1,516 static and 590 mobile VHF sets. There is also an Inter-State Police Wireless (ISPW) which offers a national grid. At present, the national capital, New Delhi, is connected to the capital cities of States and Union Territories through high frequency radio telegraph and by numerous teleprinter links.

Fax facilities are also available in a number of forces. Computerization of crime information has taken place in a majority of States and is monitored by the National Crime Records Bureau (NCRB) working under the Union Home Ministry in New Delhi. Both mainframe and personal computers are used. Computer-aided dispatch is yet to be introduced. (While the use of computers for personnel management is still limited to a few police forces, there is the distinct possibility of widespread use in the near future.) (Encyclopedia of the Indian Police, 1993)

*Weapons. The most common weapon available at the police station level is the .410 musket. The

District Armed Reserve police use .303 rifles and tear-gas guns. The Special Armed Police possess stun-guns, mortars, light machine guns and AK-47 rifles. A few individual police officers on special assignments, such as VIP security, carry revolvers. Bullet-proof vests are generally available to police assigned to protect high dignitaries.

4. Training and qualifications.

There are different recruitment regulations for the Constabulary, Sub-Inspector/Inspector and Assistant Superintendent (ASP)/Deputy Superintendent (DSP) levels. While the minimum educational qualification for the Constabulary and Sub-Inspector/Inspector is a High School diploma, an undergraduate college degree is required for entry into the ASP and DSP level.

Physical requirements include a minimum height of five feet five inches, good eye-sight and minimum attainments in a physical efficiency test consisting of running, jumping, climbing and throwing. Psychological tests are not yet used in a majority of forces.

Superintendents of Police (SP) are recruited every year by the Union Government on the basis of a national competitive exam and are appointed into what is known as the Indian Police Service (IPS). (Although IPS officers are recruited by the Union Government, they are assigned to each of the 25 States and collectively to the 7 Union Territories. Positions in the Central forces are manned partly by IPS officers drawn from the States and partly by recruitment from the open market.) The other levels are recruited by the Union Government forces or by the State Governments. Superintendents of Police are trained at the National Police Academy, Hyderabad, for about a year. At the end of the year, they also undergo a brief orientation training at the Police Academy of the State to which each is assigned. (IPS officers are exposed to a variety of training programs during their career. These are given at the National Police Academy or at the various management institutions.) Almost every State and Central Police force has its own training institution. In certain cases, training resources may be pooled, as in the case of the North Eastern Police Academy, which covers the smaller States in that region.

The duration of training varies from State to State, and with rank. Generally, DSPs and Sub-Inspectors spend a year at the Academy and Constables are trained for a shorter period (9 months) at Police Recruit Schools. The training faculty are normally police personnel themselves.

Only at the NPA, Hyderabad, are outsiders such as lawyers and management consultants associated with training programs.

5. Discretion.

*Use of force. The Criminal Procedure Code permits the use of force by the Police to disperse an unlawful assembly that threatens public peace. A police officer acting under this legal authority cannot be prosecuted except with the sanction of the Government. The use of deadly force is permitted as a final resort against an individual accused of an offense punishable with death or with life imprisonment if he forcibly resists or attempts to evade an arrest.

The Constabulary, whose duties generally involve patrol, carry a long baton (lathi). Officers may carry a revolver during specific operations or when the occasion otherwise demands it, such as during the tour of a VIP or while patrolling a disturbed area.

* Stop/apprehend suspect. A complaint of the commission of a cognizable offense is docketed into what is known as a First Information Report (FIR). An individual could be arrested by the Police on a specific complaint or on suspicion of having committed a cognizable offense. In all such cases, the arrestee has to be brought before the nearest Magistrate within 24 hours of the arrest. Any detention in police custody beyond 24 hours is allowed only with the orders of a Magistrate. The Magistrate has the authority under the Criminal Procedure Code to either release the individual on bail or lodge him in a sub-jail for pre-trial detainees and those under investigation. In certain cases, to facilitate investigation, the Magistrate may permit an arrestee to be retained in police custody for a short period.

After completing the investigation and obtaining legal opinion from the prosecuting personnel, the police investigator either establishes a charge-sheet, accompanied by statements of witnesses, before the competent Magistrate under the appropriate section of law, or, in the event of insufficient evidence, files a Final Report dropping further action. If the defendant is charged, during the trial, it is the responsibility of the investigating officer to assist the Public Prosecutor in every way, including the production of witnesses.

*Decision to arrest. Police may arrest, without a warrant and without an order from a Magistrate, any person who has committed or is suspected to

have committed a cognizable offense. Police may also arrest persons for the purpose of preventing the commission of such an offense without a warrant or order. Very few arrests are made on the basis of a warrant.

*Search and seizure of property. Normally, a warrant is obtained by the Police to search a place. However, when an officer believes that a material needed for investigation is available in a certain place and concludes that the loss of time incurred by obtaining a warrant would be prejudicial to the investigation, he may search the place without a warrant after recording the grounds for his belief.

Any police officer may seize any property which is alleged or suspected to be stolen or which is found under circumstances which create suspicion of the commission of any offense.

*Confessions. Under Section 25 of the Indian Evidence Act, no confession made to a police officer is admissible as evidence. However, there is a provision in Section 27 which states that when such confession leads to the recovery of a material fact (for example, the weapon used in a murder), the portion of the confession which had directly led to the recovery can be admitted into evidence. Also, during the course of an investigation, a Magistrate may record the confession of any person after warning the person that the recording could be used as evidence against him/her.

6. Accountability.

Complaints of police misconduct are first handled by the departmental hierarchy. Allegations of torture or death in police custody are often probed by the CID. Charges of corruption are investigated by the Director of Vigilance who is usually a police officer of the rank of DGP or IGP and is stationed outside the department. The Director of Vigilance reports to a Vigilance Commissioner, who is a high ranking civil service officer. In some States, police standing orders provide for an automatic inquiry into complaints of police torture by a civil authority called the Deputy Collector. Complaints can also be made to a revenue divisional officer who possesses magisterial powers. If the inquiry proves the complaint to be true, a charge-sheet under the IPC may be filed in Court against the delinquent police officers who may ultimately stand trial as offenders.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

*Rights of the accused. An accused is not required to be physically present in court and may be represented by his pleader. The accused is entitled to receive without delay a copy of the police report, the first information report (FIR), and all statements and confessions on which the prosecution proposes to rely for proving its case. This privilege also extends to cases initiated in a manner other than by a police report. All evidence admitted during a trial shall be recorded in the presence of the accused or his pleader. If the accused pleads guilty, the Judge shall record the plea and may, using his or her discretion, convict him or her thereon. The system of trial by jury was given up decades ago.

*Assistance to the accused. Any person accused of an offense before a criminal court has the right to be defended by a pleader of his choice. In cases where the accused has no means of engaging a pleader, it is incumbent on the Court to assign a pleader for his or her defense at State expense.

2. Procedures.

*Preparatory procedures for bringing a suspect to trial. A police investigation and the filing of a charge-sheet before a Magistrate precede a criminal trial. If the Magistrate believes that on the basis of the available record there is sufficient ground for prosecution, a summons or warrant is issued. Warrants are used for offenses punishable with death, life imprisonment, or for prison terms exceeding 2 years.

When the accused appears before the Magistrate, the Magistrate ensures that, on the facts of the case, the charges against the accused have been correctly framed. This is done after the Magistrate has furnished a copy of the police report and other records to the accused. At this stage or at any time before judgment is delivered, the Magistrate may alter or add any charge and explain the charge to the accused.

The trial commences thereafter with the Assistant Public Prosecutor (APP) examining prosecution witnesses. However, when the Magistrate finds that a cited offense is in fact triable exclusively by the higher Court, namely, the Court of Sessions, he or she commits the case to that Court after notifying the Prosecutor. Except for minor differences, the trials before

Sessions and Magistrate Courts proceed in similar fashion.

*Official who conducts prosecution. An Assistant Public Prosecutor, who is usually a full-time Government counsel, conducts the prosecution in the Magistrate's Court. A Public Prosecutor (PP) is also available at every District headquarters to conduct cases before the Sessions Court. The Public Prosecutor is appointed on a contract basis for a specified period. There is also a Public Prosecutor who is contracted for the whole State and appears on behalf of the Government before the High Court. Any person, including a police officer with a ranking at or above Inspector, who has not investigated the case may conduct the prosecution in a Magistrate's Court. This person may conduct the prosecution after receiving the permission of the court or the Public Prosecutor\ Assistant Public Prosecutor.

*Alternatives to trial. Indian criminal law does not provide for plea bargaining.

*Proportion of prosecuted cases going to trial. While almost all cases before the Sessions Court proceed to a trial, a substantial number of those before a Magistrate's Court do not. The difference is explained by the severity of the cases before the former.

*Pre-trial incarceration conditions. In cases where police investigation cannot be completed within 24 hours of the arrest, the accused is presented to the nearest Judicial Magistrate. If the circumstances warrant custody of the accused, the Magistrate will order a period of detention. For first-time offenders, 15 days is ordered. However, such detention periods can be extended to 90 days if the offense is one punishable by death or imprisonment for more than 10 years or for 60 days for other lesser offenses.

*Bail procedure. The First Schedule of the Criminal Procedure Code classifies offenses as non-bailable or bailable. Non-bailable offenses include murder or attempted murder, causing grievous hurt, rape, theft, robbery, and dacoity. A person arrested for a bailable offense may be released by the police or by a court before whom he or she is produced. Based on the discretion of the police or the court, the suspect may be discharged on his/her own recognizance. An individual accused of a non-bailable offense punishable with death or imprisonment for life, may be released on bail only by the High Court or a Court of Session. This provision excludes women,

persons below 16 years of age or those who are sick or infirm.

*Proportion of pre-trial offenders incarcerated. Nearly 75% of pre-trial offenders are incarcerated, most for 1 or 2 days. Only about 25% of pre-trial offenders may be expected to be in jail during the trial. While no national data exists, the number of prisoners awaiting trial in Tamil Nadu prisons was 607 as of June 1993.

JUDICIAL SYSTEM

1. Administration.

Supreme Court. The highest Court of the land is the Supreme Court of India located in New Delhi. Other judicial bodies at the Union level take the form of tribunals whose members may be from the judiciary or from the civil service. The Supreme Court of India is a court of records and hears appeals from any judgments of a High Court. It has the power to issue prerogative writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari in the enforcement of fundamental rights (Sandhu and Choudhuri 1987).

High Courts. Each State or a group of States has a High Court. This is also a court of record which hears appeals from the district courts and has the power to grant writs.

Court of Sessions. Below the High Court is a Court of Sessions of which the Judge, in his or her capacity as District Judge, also handles civil cases. There are a few Additional and Assistant Judges exercising the powers of the Sessions Judge in specified offenses.

District Courts. At the district level, the lower criminal courts (sub-divisional courts) are headed by Magistrates (sub magistrates and sub-divisional magistrates) with jurisdiction over offenses listed in the First Schedule to the Criminal Procedure Code. One of the Magistrates in a District is appointed as the Chief Judicial Magistrate. Magistrates commit for trial to the Court of Sessions certain offenses, such as murder, which are exclusively triable by Sessions Judges. Magistrates are competent to try and dispose of lesser offenses. (To oversee and assist the Police in the maintenance of public peace, particularly in matters such as dispersal of an unlawful assembly posing threat to public

tranquillity and the handling of disputes over immovable property, the Criminal Procedure Code empowers the Government to appoint a few Executive Magistrates. Executive Magistrates are civil servants who look after Magisterial functions in addition to their own administrative duties. The most senior civil servant in a District, namely the Collector/Deputy Commissioner, is appointed as the District Magistrate.)

2. Special courts.

The Criminal Procedure Code empowers the High Court, upon being requested by the Union or State Government, to confer on any person the powers of a Judicial Magistrate to try particular cases or classes of cases. Special courts exist for handling a variety of problems, including terrorist violence, family disputes, juvenile delinquency, theft of forest wealth, corruption among public officials, and various socio-economic offenses (such as adulteration, hoarding and black-marketing of essential food articles). Judges presiding over such courts sometimes look after IPC offenses.

3. Judges.

*Number of judges. Including the Chief Justice, the Supreme Court of India has 26 Judges. The number of judges varies in the State High Courts. One of the medium-sized High Courts is Madras with 24. Increasingly, female judges are being appointed at all levels. At present, there is one female on the Supreme Court. There is no regional or ethnic quota for the higher judiciary.

*Appointment, training, and qualifications. Judges of the Supreme Court and the High Courts are appointed by the President of India acting on the advice of the Executive and after a process of consultation with the existing Judges. Judges who have sat on a High Court for at least 5 years, or have practiced as an Advocate in a High Court for 10 years, or a person who, in the opinion of the President, is a distinguished jurist, are all eligible for the Supreme Court.

Anyone who has held a judicial office for 10 years or has been an Advocate in a High Court for 10 years is eligible for a position on the High court. Sessions Judges are appointed by the State Governor in consultation with the High Court. Other judicial appointments are made by the Governor after consultation with the State Public Service Commission and the High Court.

PENALTIES AND SENTENCING

1. Sentencing Process.

*Who Determines the sentence? The trial judge determines the sentence.

*Is there a special sentencing hearing? There is no special sentencing hearing. At the end of a trial, the sentence is wholly determined by the Judge, who delivers the sentence. The accused is required to be present in Court at this time, unless absence at the trial had been previously approved or if the sentence is a fine.

*Which persons have input into the sentencing process? No other person (social worker, psychiatrist or victim) has input in the sentencing process.

2. Types of Penalties

*Range of penalties. Available penalties include the death sentence, life imprisonment, imprisonment, forfeiture of property, and fines. Under certain circumstances, a person under 21 years of age who is convicted of an offense punishable with a fine or with imprisonment for 7 years or less may be released on probation. Community-based treatment is also available. Probation with and without supervision is the primary community based treatment. The probation department functions under the Home Department in most states and under the welfare department in the other states. Generally, punishment takes the form of a term of imprisonment or fine or some combination of both.

*Death penalty. A death sentence can be imposed for murder and for specified offenses against the State which include waging war against the Government of India, attempting or abetting war or mutiny. Special reasons have to be given for imposing the death penalty. For instance, in addition to the above circumstances, the death penalty can be imposed for abetting the suicide of a child, an insane or delirious person, an idiot, or an intoxicated person. The death penalty can also be imposed when an individual serving a life sentence attempts to murder, even if a non-fatal injury results from the attempt.

Execution is by hanging. While nationwide figures on executions are not available, inquiries indicate that in Tamil Nadu, two to three persons are hanged each year.

PRISON

1. Description.

*Number of prisons and type. As of April 1, 1992, there were 1,155 prisons in India. These included 86 Central Prisons, 252 District Prisons and 718 sub-jails.

In a typical State, such as Tamil Nadu, there are five categories of prisons. In Tamil Nadu there are 8 central prisons, which are used for convicts serving one month or more, 2 special prisons for women, which are used for female convicts serving more than 1 month; 113 sub-jails, which are used for convicts serving less than 1 month or awaiting trial; 1 Borstal School used for adolescent convicts from 16 to 23 years old; and one Open Air Prison. In addition, some States have a District Prison which accommodates convicts serving a term of 1 year or less.

*Number of prison beds. As of April 1, 1992, the total prison capacity of India was 193,987. The State of Tamil Nadu is at 50% capacity, with a prison population of 18,228. Women account for less than 5% of the total Indian prison population.

* Number of annual admissions. Information not obtained.

*Average daily population/number of prisoners. Information not obtained.

*Actual or estimated proportions of inmates incarcerated. Information not obtained.

2. Administration.

*Administration. The administration of Prisons in India is the sole responsibility of the States. All prisons are managed by State governments or by the Union Territory administration. The Central Government is largely concerned with policy formulation and planning services. In each State, the head of prison administration is an Inspector-General who is usually a police officer. He has a few Deputy Inspectors-General to look after the jails in each of the various geographical ranges into which the State is divided. In the state of Tamil Nadu there are four such Ranges.

Prisoners are classified on the basis of age, sex, mental health, nature of offense

(criminal, civil, or security), and the frequency of the commission of crime. In Tamil Nadu prisons, prisoners are categorized into A and B classes. The criteria for A class are social status, education, style of living, character and antecedents. Those convicted for offenses involving gross depravity of character or for offenses against society are not eligible for A class.

The Central Prisons and the jails have both custodial and treatment staff who include medical doctors, psychologists, welfare officers, social workers, teachers and vocational instructors. The hierarchy of custodial staff in the prison system takes the following form: superintendent, jailer, deputy jailer, assistant jailer, head warders, warders.

*Number of prison guards. Prison guards are known as warders, who are supervised by head warders. While no national data is available, as of 1993, the state of Tamil Nadu had 2,108 warders, 347 head warders, and 33 chief head warders, of which 76 were female.

*Training and qualifications. While no national data is available, the basic qualification for recruitment of warders in the state of Tamil Nadu is a High School diploma. They are put through a six-month training program in discipline, the principles of prison administration, and the practice of correctional procedure.

*Expenditure on Prison system. While no national data is available, during the fiscal year 1992-93, the Tamil Nadu Prison Department had a budget of Rupees 238 million.

3. Prison conditions.

*Remissions. Different scales of remission exist. For instance, 2 days per month for good conduct or work done while in prison can be given. Convicts employed in prison services such as cooking and sweeping and who must work on Sundays and other holidays get 3 days of remission every quarter. There is also a Special remission of 30 days a year for maintaining prison discipline.

Parole is allowed in the form of emergency leave (15 days yearly) and ordinary leave (30 days yearly) for participating in family ceremonies, such as marriages or funerals and for attending to domestic problems like enrollment of children into school and repairs to one's home.

*Work/education. Prisoners sentenced to rigorous imprisonment are assigned the appropriate class of

hard, medium, or light labor under recommendation of the medical officer. Purposeless and non-productive forms of labor are avoided. Prisoners are often taught trades such as carpentry, tailoring, weaving, and book binding.

Every central prison has an elementary school with qualified teachers. Adult education is available for all prisoners. Attendance is optional. Prisoners can also enroll in distance education programs, such as university correspondence courses. There are many instances of prisoners receiving under-graduate and graduate degrees.

*Amenities and Privileges. Vegetarian and non-vegetarian food is provided at fixed costs, which are slightly higher for A class prisoners. A special diet is available to women and their babies, and to sick prisoners on medical advice. Each central prison has a hospital with a part-time medical officer. Writing and receiving letters and interviews with relatives are permitted. Recreation in the form of games, yoga, television watching and meditation classes are also available.

EXTRADITION AND TREATIES

*Extradition. India has entered into bilateral extradition treaties with Nepal, the United States of America, Uganda, Bhutan, The Netherlands, Belgium, Canada and the United Kingdom (including Northern Ireland). India is a member of the South Asia Association for Regional Cooperation (SAARC) Convention on Suppression of Terrorism along with Pakistan, Sri Lanka, Bangla Desh, Nepal and the Maldives. The Convention provides for the extradition of fugitive offenders.

*Exchange and transfer of prisoners. Information not obtained.

*Specified conditions. As a general rule, offenses of a political nature are excluded from the purview of extradition. Also, the return of a fugitive criminal to India is sought only if the offense with which he is charged is recognized by the extradition treaty with the country from which such extradition is sought.

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