LAW COMMISSION OF INDIA

ONE HUNDRED AND FIFTY FOURTH
REPORT

ON

THE CODE OF CRIMINAL PROCEDURE, 1973
(ACT No. 2 OF 1974)

(VOL. II)

1996

VOLUME II

ANNEXURES

		Page No.
ANNEXURE I	Questionnaire on the Code of Criminal Procedure, 1973	1
ANNEXURE II	Working Paper	33
ANNEXURE III	Responses received on the questionnaire	37
ANNEXURE IV	Proceeding in the Workshops	55
ANNEXURE V	A. P. Mandala Nyaya Panchayat Bill	101

ANNEXURES

ANNEXURE I

QUESTIONNAIRE
ON
CODE OF CRIMINAL PROCEDURE, 1973

(ACT NO. 2 OF 1974)

INDEX

Q. No.		PAGE NO.
1.	Sections 9 to 12 to make provision for listing of cases for effective trial	1
2.	Special/Honorary Magistrate Courts—Amendment of Section, 13 & 18	1
3.	Executive Magistrate: Insertion of new sub-section 4A in Section 20	1
4.	Public Prosecutor. : Regular cadre of Prosecuting Officers — Explanation to Section 24 to be added	1
5.	Public Prosecutor Insertion of new Section 25A—Establishment of office of Director of Prosecution	1
6.	Sentence which the Magistrate may pass section 29	2
7.	Arrest of Person	2
8.	Insertion of new sub-section 1A, 1B in Sec 41.	2
9.	Protection of members of the Armed Forces from Arrest Amendment of section 45. . . .	3
10.	Arrest how made — Amendment in sec. 46(1) .	3
11.	Arrest and handcuffing—Amendment of Section 46(1).	3
12.	Amendment in sub-section (3) of sec. 46 . .	4
13.	Handcuffing during transit.	4
14.	Intimation of Arrest of Accused Sec. 50A . .	5
15.	Search of the Arrested Person—Amendment of Section 51	5
16.	Examination of accused by Medical Practitioner—Explanation to section 53 to be added . .	5
17.	Examination of the accused in rape cases by Medical Practitioner—Amendment of Section 53A	5
18.	Insertion of new section 53B—Medical Examination—of the victim of rape	6

Q. No.		Page No.
19.	Examination of arrested person by Medical Practitioner at the request of the arrested person Amendment of section 54	7
20.	Identification of person arrested -a new section 54A to be added	7
21.	Duty of Magistrate to verify certain facts .	7
22.	Specific Provisions as to Arrest, interrogation and custody of women and children --insertion of new chapter 5A	8
23.	Proclamation for person absconding . . .	8
24.	Power to police officer to seize certain property Amendment of section 102.	8
25.	Security for good behaviour from habitual offenders amendment of section 110. . .	8
26.	Imprisonment in default of security amendment of Section 122.	9
27.	Order for maintenance of wives, children & parents Amendment of Section 125 . . .	9
28.	Family Courts	9
29.	Insertion of new section 144A-- Curbing the militant activities	9
30.	Delay in Investigation	10
31.	Non-recording of First Information Report .	10
32.	Role of Investigating Agencies--Investigation of Cognizable Offences—Amendment of Section 156	10
33.	Procedure for Investigation--Amendment of Section 157	10
34.	Investigation of Victims of Rape: Amendment of Section 157	10
35.	Police Officer's power to investigate congnizable case/procedure for investigation: Amendment of Section 156	10
36.	Use of Scientific Aid and Equipment in Investigation—Amendment of Section 157 . . .	10
37.	Police Officer's power to require attendance of witnesses —Amendment of Section 160 . .	11
38.	Penal Provision for non-registration of First Information Report—Insertion of new Section 167A	11
39.	Procedure for recording of statements of victims of rape—Amendment of Section 160 . .	11

		PAGE NO.
40.	Amendment of Section 160A	12
41.	Deletion of Section 162 Cr. P.C. and change in the mode of recording statements under Section 161	12
42.	Discharge of accused for unreasonable investigation—Section 167(5)	12
43.	Procedure when investigation cannot be completed in 24 hours and consequent Police Custody . .	12
44.	Insertion of new Sub-section 3A in Sec. 173 . .	12
45.	Inquiry by Magistrate into cause of death in custody—details given—amendment of Section 176—details given	13
46.	Insertion of new section 176A	13
47.	Cognizance of offences by Magistrates—amendment of section 190	14
48.	Prosecution of judges and Public servants—amendment of Section 197	14
49.	Amendment of Section 198	14
50&51	Offences against marriage—jurisdiction of marriage courts	14
52.	Issue of processing—amendment of Sec. 202 . .	14
53.	Special summons in cases of petty offences—amendment of section 206	15
54.	Persons jointly charged—amendment of Sec. 223 . .	15
55.	Section 227—discharge of accused due to delay . .	15
56.	Amendment of sections 227 & 229	15
57.	Framing of charge—amendment of section 228 . .	15
58.	Amendment of Sec. 231	15
59.	Amendment of Sec. 238	16
60.	Proposed Section 238A	16
61.	Amendment in Sec. 239	16
62.	Amendment of Sec. 242	16
63.	Amendment of Sec. 244	16
64&65	Absence of complainant—amendment of sections 249 and 256	16
66.	Power to try summarily—amendment of section 260—changes	17
67&68	Summons and warrant cases	17

69. Insertion of new section 291A -identification report by Magistrate. 17

70. Reports of scientific experts amendment of section 293. 17

71. Introduction of a stage after framing of charge for admission and denial of documents. . . . 18

72. Insertion of new section 311A—taking specimen signatures or handwriting. 18

73. Amendment in Section 312 18

74. Compounding of offences—amendment of section 320 18

75. Amendment in section 327 19

76. Notifying addresses of previously convicted offenders - amendment of section 356 19

77. Amendment of section 357—payment of compensation. 19

78. &79. Insertion of Proposed Section 357(A) in Cr. P.C. . 19

80. Compensation of persons groundlessly arrested—amendment of Sec. 358 20

81. Release on probation of good conduct—amendment of Section 360 20

82. Appeal against sentence or acquittal—amendment of Section 377 & 378 20

83. Suspension of sentence pending appeal—amendment of section 389. 20

84. Insertion of a new section 417A 20

85. Period of detention—amendment of Sec. 428 . . 20

86. Special positions in respect of women —amendment of sections 433, 433A & 125.. . . 20

87. In what cases bail to be taken—amendment of section 436. 20

88. Insertion of new section 436A 21

89. Bailable and non-bailable offences—amendment of section 437 21

90. Amendment of section 437 22

91. Anticipatory bail — amendment of section 438 or deletion. 22

92. Amendment of section 438 22

93. Declaration by sureties — insertion of new section 441A. 22

PAGE No.

94. Forfeiture of bond – amendment of Section 446 . . 22

95. Amendment of the First Schedule – making some more entries. 22

96. Amendment of Section 468 22

Annexure– I 135th Report on Women in Custody New Chapter V-A 23

Annexure– II 132nd Report on "Need for amendment of the Provisions of Chapter IX of the Code of Criminal Procedure, 1973 in order to ameliorate the hardship and mitigate the distress of neglected Women, Children and Parents.". 27

Annexure– III A. Problems of Delay and Arrears in Court and Speedy Trial. . . 29

B. Speedy Trial– Amendment Suggested. 30

C. Plea Bargaining: Insertion of New Chapter XIIA: Procedure for Pre-Trial Bargaining and Plea Bargaining. 32

QUESTIONNAIRE

ON

CODE OF CRIMINAL PROCEDURE, 1973

(2 of 1974)

GENERAL PROVISIONS

CONSTITUTION OF CRIMINAL COURTS

General

1. Sections 9 to 12

Whether the existing provisions of the Constitution of Criminal Courts namely, Sections 9 to 12 require any change?

2. Special/Honorary Magistrates: Amendment of Section 13 and deletion of Section 18

Whether there is need for appointing more Special/Honorary Magistrates to deal with minor criminal cases including metropolitan area? Do you suggest incorporation of necessary changes in Sections 13 and consequent deletion of Section 18 of the Code of Criminal Procedure.

3. Executive Magistrate: Insertion of new sub-section 4A in Section 20

Do you suggest that the State Government may by general or special order and subject to such control and directions as it may deem fit to impose, delegates its powers under sub-section 4 of Section 20 of the Code of Criminal Procedure to the District Magistrate and such a provision should be incorporated by providing a new sub-section 4A of Section 20 of the Code in order to avoid the delay?

4. Public Prosecutor: Explanation to provide to Section 24(6)

Do you agree for insertion of the following Explanation after the proviso in sub-section 6 of section 24 of the Code of Criminal Procedure and such explanation shall be operative retrospectively w.e.f. 18th day of December, 1978 as laid down in *S.B. Shahane* v: *State of Maharashtra* A.I.R. 1995 S.C. 1628 and as mentioned under Clause 3 of the Code of Criminal Procedure (Amendment) Bill, 1994 which reads as under:

"(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

"(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code."

5. Independent Prosecution Agency: Insertion of new Section 25A

A. Do you agree that the Public Prosecutor, Additional Public Prosecutor, Assistant Public Prosecutor, should be independent from the control of the Police in discharging their functions in the Courts. Do you suggest that in order to achieve the said objective, after Section 25, the following new section should be inserted, as provided under section 4 of the Code of Criminal Procedure (Amendment) Bill, 1994 namely,

"25A (1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(3) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(4) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government other than those appointed under sub-section (1) of Section 24 shall be subordinate to the Director of Prosecution.

(5) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may by notification specify.

(6) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecution."

B. Do you also think it necessary that there should be another clause in Section 25A providing for the appointment of Women Public Prosecutors and Assistant Public Prosecutors specifically for the conduct of cases involving women under 18 years of age and in respect of offences under Sections 354, 376, 376A to 376E and 509 of the Indian Penal Code as recommended by the National Commission for Women?

C. Whether offence under Section 376 be necessarily tried by a Court presided over by a woman as recommended by the National Commission for Women?

6. Sentence which the Magistrate may pass : Section 29

Do you suggest that as mentioned in clause 5 of the Code of Criminal Procedure (Amendment) Bill, 1994, in Section 29 of the Principal Act:

(a) in sub-section (2), for the words "five thousand rupees", the words "twenty-five thousand rupees" shall be substituted.

(b) in sub-section (3), for the words "one thousand rupees", the words "five thousand rupees" shall be substituted; keeping in view the depreciation of the value of the rupee since 1973 and to make the provision more deterrent.

Do you suggest any further changes in respect of imposing sentences by the Magistrate.

ARREST OF PERSONS

7. General

Would you suggest that the police should continue to have unrestricted power to arrest any person under Section 41 at any time and at any place without any order or permission from the Magistrate or any other Court?

8. Insertion of new sub-section 1A, 1B in Section 41

The Law Commission in its 152nd Report on "Custodial Crimes" observed that there is a misconception prevailing that if there is a power to arrest the same must be exercised without fail and suggested certain changes in Section 41. Likewise the Supreme Court also observed in *Joginder Singh* v. *State of Punjab*, (1994) JT (3) SC 423. Do you agree that as recommended by the Law Commission and observed by the Supreme Court that two new sub-sections 1A and 1B should be inserted after sub-section 1 in Section 41 of the Code of Criminal Procedure?

"41(1A) A police officer arresting a person under clause (a) of sub-section (1) of this section must be reasonably satisfied, and must record such satisfaction, relating to the following matters:

(a) the complaint, information or suspicion referred to in that clause, is not only in respect of a cognizable offence having been committed, but also in respect of the complicity of the person to be arrested, in that offence;

(b) arrest is necessary in order to bring the movements of the person to be arrested under restraint, so as to inspire a sense of security in the public or to prevent the person to be arrested from evading the process of the law or to prevent him from committing similar offences or from indulging in violent behaviour in general."

Section 41 (1B)

(1) The police officer may, instead of arresting the person concerned, issue to him a notice of appearance requiring him to appear before the police officer issuing the notice or at such other place as may be specified in the notice and to co-operate with the police officer in the investigation of the offence referred to, in clause (a) of sub-section (1) of section 41.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of that notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court."

Do you consider the aforesaid proposed amendment is adequate to avoid frequent and unnecessary arrests? If not, what modification do you wish to suggest indicating the reasons therefor?

9. Protection of members of the Armed Forces from Arrest: Amendment of sub-section (2) of Section 45

Do you agree that in sub-section 2 of section 45 of the Code, after the words "member of the Force", the words "or to such other public servants" should be inserted in order to extend similar protection to such other public servants as are charged with the maintenance of public order as they also have to face similar difficulties as laid down under clause 6 of the Code of Criminal Procedure (Amendment) Bill, 1994?

10. Arrest how made: Amendment in section 46(1)

Do you agree with the suggestion that sub-section 1 of section 46 of Code should be amended by inserting a proviso thereunder providing that an accused should not be handcuffed by the police ordinarily while the accused is in the custody of the police, whether for transporting him to the court or elsewhere, unless such a person has attempted to or there are reasonable apprehension to believe that he will prevent the arrest by any means. A police officer not below the rank of Deputy Superintendent of Police can only authorise handcuffing in such emergent situations.

11. Amendment in section 46(1)

Do you agree with the suggestion that in sub-section 3 of section 46 of the Code, the words "or is not a proclaimed offender declared under sub-section (4) of 82" should be added at the end, as laid down under clause 7(a) of the Code of Criminal Procedure (Amendment) Bill, 1994?

12. Amendment in sub-section (3) of section 46

Do you agree with the suggestion that after sub-section 3 of section 46 of the Code, the following sub-section should be inserted to prohibit arrest of a woman after sunset and before sunrise except in unavoidable circumstances as laid down under clause 7(b) of the Code of Criminal Procedure (Amendment) Bill, 1994 as recommended by the Law Commission in 135th Report on "Women in Custody".

"(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the police officer shall, by making a written report, obtain the prior permission of his immediate superior officer for effecting such arrest or, if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer explaining the urgency and the reasons for not taking prior permission as aforesaid and shall also make a report to the Magistrate within whose local jurisdiction the arrest hand been made."

13. Handcuffing

Do you agree with the suggestion that **section 49** should be amended by insertion of a proviso as stated below:

"Provided no accused shall be handcuffed or put on other fetters by the police or prison authority while transporting or in transit from one jail to another or from jail to court and back, except where an accused is likely to jump bail or breakout of the custody on the basis of well founded ground leading to the said inference in which circumstances such accused shall be produced before the Magistrate and a prayer for permission to handcuff or put fetter upon the accused shall be made before the Magistrate. Such Magistrate in rare cases of concrete proof regarding proneness of the accused to violence, his tendency to escape, he being so dangerous/desperate and upon the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff or put fetter upon the accused. Provided further that in cases where the person arrested by Police, if produced before the Magistrate and remand judicial or non-judicial if given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of grant of the remand.

Provided further when the police arrest a person in execution of a warrant of arrest obtained from a Magistrate, the person is arrested shall not be handcuffed unless the police has obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

Provided further that where a person is arrested by the police without warrant the police officer concerned may, if he is satisfied on the basis of the principle set out above, that if necessary to handcuff cuch a person he may do so till the time he is taken to the police station or thereafter his production before the Magistrate. Any further use of fetter thereafter can only be under the order of the Magistrate as stated above.

Any official belonging to the police or the prison, found violating shall be liable to the penal consequences as provided under the law."

The Supreme Court has directed the police and jail authority to meticulously observe the above guidelines in the case of *Citizens for Democracy through its President* versus *the State of Assam* 1995 (2) U.J. (S.C.) 431. Do you intend to suggest any other measure to prevent the violation of article 21 of the Constitution of India in respect of handcuffing of prisoners?

14. Intimation of Arrest of Accused: Section 50A

Do you agree that a new section 50A on the following lines, as laid down under clause 8 of the Code of Criminal Procedure (Amendment) Bill, 1994 and as recommended by the Law Commission in its 152nd Report on "Custodial Crimes" should be inserted, namely:

"50A. Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and the place where the arrested person is being held to such person as may be nominated by the arrested person for the purpose of giving such information and shall make a record thereof."

15. Search of the arrested person: Amendment of Section 51

Do you agree that in order to avoid the possibility of planting some objects during the search and in the light of the Supreme Court's decision in the case of *State of Bihar* v. *Kapil Singh,* AIR 1969 SC 53 at 58, that it is necessary that one of the formalities to be observed in search of a person with a view to finding out any offending material is that the searching officer or any other officer assisting him should give their personal search to the accused before searching the person of the accused?

Do you agree that before such a search of an officer is made, the searching officer should also observe the formalities contained in Section 100.

16. Examination of Accused by Medical Practitioner at the request of the Police Officer: New Explanation to Section 53

Do you agree with the suggestion that for the Explanation Clause under Section 53 of the Code, the following Explanation should be substituted, as laid down in clause 10 under the Code of Criminal Procedure (Amendment) Bill, 1994, namely:

Explanation—In this section and in sections 53A and 54,—

(a) "examination" shall include the examination of blood, swabs in case of sexual assault, sputum and sweat, hair samples and finger nail clippings and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register."

17. Examination of person accused of rape by Medical Practitioner

Do you agree with the suggestion that a new section 53A after section 53 should be inserted to provide for a detailed medical examination of a person accused of an offence of rape or an attempt to commit rape by the registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner by any other registered medical practitioner as laid down under clause 10 of the Code of Criminal Procedure (Amendment) Bill, 1994, namely:

"53A. (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, delay examine such person and prepare a report of his examination giving the following particulars, namely:

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused and

(iv) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

18. Insertion of new section 53B: Medical examination of the victim of rape

Do you agree that a new section 53B as follows be inserted in the Code to provide for a medical examination of the victim of a rape by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner by any other registered medical practitioner, as laid down in Clause 19 of the Code of Criminal Procedure (Amendment) Bill, 1994:

53B (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be forwarded to such registered medical practitioner without delay.

(2) The registered medical practitioner, to whom such woman is forwarded, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:

(i) the name and address of the woman and of the person by whom she was brought:

(ii) the age of the woman:

(iii) whether the woman was previously used to sexual intercourse:

(iv) marks of injury, if any, on the person of the woman:

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay, forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.—For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in

19. Examination of Arrested person by Medical Practitioner at the request of the arrested person: Amendment in Section 54

Do you suggest that section 54 of the Code should be amended by renumbering as sub-section A thereof, and after sub-section (1) as so renumbered, the following sub-section should be inserted in order to provide that a copy of the report of the medical examination of the arrested person should also be furnished by the registered medical practitioner to the arrested person or his nominee, after his medical examination has been conducted as laid down under clause 11 of the Code of Criminal Procedure (Amendment) Bill, 1994, namely:

"(2) Where an examination is made under sub-section (1), a copy of the report of such examination shall, on a request being made by the arrested person or by any person nominated by him in this behalf, be furnished by the registered medical practitioner to the arrested person or the person so nominated."

B. Whether a proviso be added to Section 54 to the effect that where the arrested person is a female, the examination of the body should be under the supervision of a female registered medical practitioner.

20. Identification of person arrested: Section 54A

Do you agree with the suggestion for insertion of a new section 54A under the Code to empower the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution as provided under clause 12 of the Code of Criminal Procedure (Amendment) Bill, 1994;

"54A. Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court having jurisdiction, may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit."

21. Duty of Magistrate to verify certain facts: Section 57A

Do you agree with the view of having a greater and effective compliance of the various safeguards, a new section 57A should be inserted in the Code of the undermention lines, as recommended by the Law Commission in its 152nd Report on "Custodial Crimes":

"57A. **Duty of Magistrate to verify certain facts.** Where a person arrested without warrant is produced before the Magistrate, the Magistrate shall, by inquiries to be made from the arrested person, satisfy himself that the provisions of sections ... have been complied with (i.e., sections relating to safeguards in connection with arrest, rights on arrest, etc. to be entered) and also inquire about, and record, the date and time of arrest."

22. Specific Provisions as to Arrest, Interogation and custody of Women and Children: Insertion of new Chapter 5A

Do you agree with the following recommendations of the Law Commission of India in its 135th Report on *Women in Custody* that a new Chapter 5A namely specific provisions as to arrest, interrogation and custody of women and children be inserted in the Code of Criminal Procedure to foreclose harassment of women in custody and to protect such women to the extent possible? (See Annexure-I).

23. Proclamation for person absconding

Do you agree with the suggestion that in section 82 of the Code, after sub-section (3), the following sub-sections should be inserted to make the declaration that the person is a proclaimed offender where he fails to appear at the specified place and time mentioned in the proclamation issued under sub-section (1) of section 82 in relation to offences under sections 302, 364, etc., of the Indian Penal Code as laid down under Clause 13 of the Code of Criminal Procedure (Amendment) Bill, 1994:

"(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 436, 449, 459 or 460 of the Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such enquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

24. Power of police officer to seize certain property: Amendment of Section 102

Do you agree with the suggestion that Section 102 of the Code of Criminal Procedure should be amended on the following lines as provided under Clause 14 of the Code of Criminal Procedure (Amendment) Bill, 1994.

In Section 102 of the Principal Act—

(a) In sub-section (3), after the words "transported to the Court" the words "or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation" shall be inserted;

(b) After sub-section (3), the following proviso shall be added at the end, namely:

"Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of section 457 and 358 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

25. Security for good behaviour from habitual offenders: Amendment of section 110

Do you agree with the suggestion that in section 110 of the principal Act, in clause (f) in sub-clause (i)

(i) in item (g) the word "or" shall be omitted;

(ii) after item (g), the following item shall be substituted namely:

"(h) the Foreigners Act, 1946; or". in order to check the flow of undesirable into the country and strengthen the hands of the State authorities

by empowering them to take action under section 110 of the Code against persons assisting infiltration as laid down in section 15 of the Code of Criminal Procedure (Amendment) Bill, 1994.

26. Imprisonment in default of security: Amendment of Section 122

Do you agree that in section 122 of the principal Act, in sub-section (1), clause (b), for the words "bond without sureties", the words "bond, with or without sureties," shall be substituted, to remove the discrepancy between section 107 (1) and section 122 (1)(b) of the Code, as laid down in the Code of Criminal Procedure (Amendment) Bill, 1994.

27. Order for maintenance of wives, children & parents: Amendment of Section 125

Do you agree with the suggestion that in section 125 of the principal Act, in sub-section (2), for the words "five hundred rupees", the words "five thousand rupees" shall be substituted, or do you suggest any further amendments on the lines recommended by the Law Commission in its 132nd Report. (See Annexure-II).

28. Family Courts

Do you agree that the proceedings relating to maintenance of wives, children and parents contained 'under Chapter IX should be transferred to family courts as established under the Family Courts' Act, 1984?

29. Insertion of new section 144A

Do you agree that in order to curb the militant activities of certain communal organisations and to strengthen the hands of State authorities for effectively checking communal tension and foster a sense of complete security in the minds of members of the public, a new section 144A be inserted as follows in the Code to empower the District Magistrate to prohibit mass drill (or training) with arms in public places as laid down in section 18 of the Code of Criminal Procedure (Amendment) Bill, 1994:

'144A. (1) The District Magistrate may, whenever he considers it necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by public notice or by order, prohibit in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organizing or holding of, or taking part in, any mass drill or mass training with arms in any public place.

(2) A public notice issued or an order made under this section may be directed to a particular person or to persons belonging to any community, party or organisation.

(3) No public notice issued or an order made under this section shall remain in force for more than three months from the date on which it is issued or made.

(4) The State Government may, if it considers necessary so to do for the preservation of public peace or public safety or for the maintenance of public order, by notification, direct that a public notice issued or order made by the District Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which such public notice or order was issued or made by the District Magistrate would have, but for such direction, expired, as it may specify in the said notification.

(5) The State Government may, subject to such control and directions as it may deem fit to impose, by general or special order, delegate its powers under sub-section (4) to the District Magistrate.

Explanation:—The word "arms" shall have the meaning assigned to it in section 153A of the 'Indian Penal Code.'

Delay in disposal of cases because of non-registration of First Information Report under section 154

30. What are the causes for delay in investigation by the investigating officers? Have you any suggestions for minimising such delays? (See Annexure-III).

31. Do you agree that delay in disposal of criminal cases is caused due to non-recording of first information report by the police on account of various reasons such as that the crime did not occure within the jurisdiction of the police station or for other ulterior motives of the incharge of the police station? A complainant is thus constrained to approach the higher authorities or resort to filing of complaint before the court for getting prosecuted the criminal. Delay in lodging of FIR ensures in disappearance of material evidence relating to the crime. Do you agree with the suggestion that although there is a remedy already provided under sub-section (3) of Section 154, if the officer-in-charge of a police station refuses to record the information reported relating to a cognisable offence but the aforesaid provision of, however, is not of a penal character, as observed by the Law Commission in its 84th Report, para 3.30 thereof?

32. Role of investigating agencies—Investigation of cognizable offences: Amendment of Section 156

In order to avoid inordinate delays in the investigation of serious offences punishable with sentence for seven years and above, it is felt that the police in the State should be divided into two agencies (1) State Investigation Force and (2) State Law & Order Force and that the investigating force should not be used for other duties. To achieve the same do you agree that under sub-section (1) of Section 156 the words "in every police station there shall be a separate officer in the rank of Station House Officer to investigate cognizable cases punishable with sentence for seven years and above" shall be inserted?

33. Procedure for Investigation: Amendment of Section 157

(a) Do you agree that in sub-section (1) of Section 157 of the Code of Criminal Procedure for the words "an officer in charge of a police station" the words "such officer" be substituted?

(b) Do you agree that in sub-section (1) of Section 157 after the words "..... of his subordinate officers" the words "meant to assist him in such investigation" be inserted?

34. Amendment of Section 157

Whether a further amendment of Section 157 of the Cr. P.C. is necessary that offences in relation to rape the witness should be questioned by a woman police officer and if the victim is under 15 years of age, she should be questioned only in the presence of parents, relatives or other respectable persons as far as possible.

35. Police officer's power to investigate cognizable case/Procedure for investigation: Amendment of Section 156

Do you agree section 156/157 of the Code be amended by providing that wherever practicable, the use of scientific methods of investigation, will be utilised by the Investigating Officer as promptly as possible, while investigating a case?

36. Amendment of Section 157

Do you agree with the suggestion that scientific aid and equipment should be made available at the Police Station and at the district level for carrying out the investigation by the Investigation Officer in scieniific manner as even directed by the Supreme Court. In order to implement the aforesaid requirements, do you agree that an explanation should be added under section 157 Cr. PC to provide on the following lines:

... "As far as possible, minimum scientific aid and equipment as may be notified by the State Government should be made available at every

police station and at the district level and investigation of crime should be carried out through the use of such scientific aid and equipments as far as practicable."

37. Police officer's power to require attendance of witnesses: Amendment of Section 160

Do you agree with the recommendation of the Law Commission made in its 152nd Report that after the existing proviso contained in section 160 (1) on Code of Criminal Procedure, 1973, a second proviso be added, on the following lines:

"Provided further that no person shall be required to attend at any place other than his or her dwelling place unless, for the reasons to be recorded in writing by the Investigating Officer, it is necessary to do so; and every such person shall be summoned by an order in writing".

38. Do you agree that in order to prevent violation of Section 154 by non-registration of FIR, there should be the insertion of a specific penal provision, say, as Section 167A, in the Indian Penal Code, as recommended by the Law Commission in its 84th Report, para 3.32 thereof as follows:

"167A. — Whoever, being an officer-in-charge of a police station and required by law to record any information relating to the commission of a cognisable offence reported to him, refuses or without reasonable cause fails to record such information shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

39. Amendment of Section 160

Do you agree with the recommendations of the Law Commission in its 84th Report on 'Rape and Allied Offences: Some questions of substantive law, procedure and evidence' that sub-sections (3) to (7) be inserted in section 160 of the Code of Criminal Procedure, 1973 in the following manner:

"(3) Where, under this Chapter, the statement of a girl under the age of twelve years is to be recorded, either as first information of an offence or in the course of an investigation into an offence, and the girl is a person against whom an offence under section 354, 354A or 375 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded either by a female police officer or by a person authorised by such organisation interested in the welfare of women or children as is recognised in this behalf by the State Government by notification in the official gazette.

(4) Where the case is one to which the provisions of sub-section (3) apply, and a female police officer is not available, the officer in charge of the police station shall, in order to facilitate the recording of the statement, forward to the person referred to in that sub-section a written request setting out the points on which information is required to be elicited from the girl.

(5) The person to whom such a written request is forwarded shall, after recording the statement of the girl, transmit the record to the officer in charge of the police station.

(6) Where the statement recorded by such person as forwarded under sub-section (5) appears in any respect to require clarification or amplification, the officer in charge of the police station shall return the record to the person by whom it was forwarded, with a request for clarification or amplification on specified matters; and such person shall thereupon record the further statement of the girl in conformity with the request and return the record to the officer in charge of the police station.

(7) The statement of the girl recorded and forwarded under sub-sections (3) to (6) shall, for the purpose of the law relating to the admissibility in evidence of statements made by any person, be deemed to be a statement recorded by a police officer."

40. Amendment of Section 160A

Do you suggest that the aforesaid clauses may be incorporated as Section 160A means only to cover rape and arrest even in the event of removal of Sections 161 and 162?

41. Deletion of Section 162 Cr. P.C. and change in the mode of recording under Section 161

The Fourth Report of the National Police Commission has observed that recording of witnesses' statements by the police during investigation provide scope for arguments based on contradictions, however trivial or natural they might be in the circumstances of any particular case. It, therefore, recommended to do away with the detailed recording of statement as made by a witness in the course of investigation under Section 161 and substitute in its place a revised arrangement in which the investigating officer can make a record of the facts as ascertained by him on examination of a witness. However, it may be considered by you whether Section 162 of the Cr. P.C. should be dispensed with regarding recording of statements of witnesses and instead the statement of important witnesses be recorded under Section 164 of the Code of Criminal Procedure. If so, what should be the types of offences in respect of which recording of statements of witnesses under Section 164 Cr. P.C. should be resorted to.

42. Section 167(5) Cr. P.C.

Do you think that section 167(5) of the Cr. P.C. be amended on the lines of the amendment made by the State of West Bengal wherein they provide for the discharge of the accused on the ground of unreasonable delay in investigation of an offence beyond a period of six months in a case triable by a Magistrate as a summons case, beyond a period of three years in a case exclusively triable by a Court of Sessions, or, in a case under chapter XVIII of the Indian Penal Code, beyond a period of two years in any other case from the date of which the accused was arrested or made his appearance?

43. Procedure when investigation cannot be completed in 24 hours and consequent Police Custody

In the *Central Bureau of Investigation, Special Investigation Cell-1, New Delhi* v. *Anupam J. Kulkarni*, 1992 3 CSC 141, the Supreme Court held that under the proviso to Section 167 (2), the police custody can be only during the first 15 days of the remand and not later. It is felt that such limitation would cause some practical difficulty for the proper investigation in some given cases. Therefore, do you agree that the police custody can be sought during the period of remand at any time if a need arises and Section 167 of the Code of Criminal Procedure be amended accordingly. But, however, the total remand of police custody should not exceed 15 days but it may exceed only under special circumstances with the permission of the court and for reasons to be recorded by the court.

44. Insertion of new sub-section 3A in Section 173

Do you agree that the following new sub-section (3A) be added to section 173 to (i) enable the police to take note of the desire of the parties to compound offences compoundable under section 320 at any stage of investigation even at the stage of investigation.

(ii) to help quicker disposal of cases of compoundable category and to reduce the work load of the police.

(iii) whether a specific time limit of three months for completion of the investigation in respect of the offences under section 176 be incorporated?

45. Inquiry by Magistrate into cause of death : Amendment of Section 176

Do you agree that Section 176 be amended to provide that in the case of death or disappearance of a person, or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty-four hours of death, as laid down in clause 21 of the Code of Criminal Procedure (Amendment) Bill, 1994 in the following manner:

In section 176 of the principal Act,—

(i) in sub-section (1) the words "where any person dies while in the custody of the police or" shall be omitted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Where;

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed;

(iii) after sub-section (4), before the explanation, the following sub-section shall be inserted, namely:

"(5) (a) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reason to be recorded in writing."

(b) Do you agree that a better method of postmortem is evolved in view of the prevailing view the most of the time due to collusion of police and medical officer, the postmortem is not done properly?

(c) Are you of the opinion that if the a prima facie case is made out whether he can commit the case to the Court of Session for trial as provided in Section 209 in order to avoid further delay?

46. Insertion of new section 176A : Inquiry by Magistrate into custodial injury

Do you agree with the recommendation of the Law Commission in its 152nd Report on Custodial Crimes that the aggrieved person, on refusal to record the FIR by the police officers should have a right to file a petition (i) before the Chief Judicial Magistrate in the case of custodial injury or torture.

(1) Any person (including Legal Aid Centre or NGO, any friend or relative) either directly or on being aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (3) of section 154 in cases relating to custodial offences, may file a petition giving the substance of such information before the Chief Judicial Magistrate, in case of custodial offences.

(2) The Chief Judicial Magistrate if satisfied, on a preliminary enquiry that there is a prima facie case, may himself hold enquiry into the complaint or direct some other Judicial Magistrate to hold enquiry and thereupon direct the officer of the Court to make a complaint to the competent court in respect of offence that may appear to have been committed.

(3) The Chief Judicial Magistrate may obtain the assistance of any public servant or authority as he may deem fit in holding the enquiry under sub-section (2).

4—2 M of L & J/ND/97

47. Cognizance of offences by Magistrates: Amendment of section 190

Do you agree that the following proviso be inserted to sub-section (1) of section 190 of the Code to empower a Magistrate to authorise further detention in custody of an accused person for a period not exceeding a week, after recording reasons therefor, in view of the decision of the Patna High Court in Rammed Mahlo's case (1977) Bihar L.J.R. 498 that there is a lacuna in the Code as there is no provision therein which enables a Magistrate to pass an order of remand after submission of the police report under section 173 (2) and before taking cognizance of the offence disclosed by the police report under section 190, as laid down in Clause 22 of the Code of Criminal Procedure (Amendment) Bill, 1994:

> "Provided that where it is not possible for a Magistrate to take cognizance of an offence under clause (b), he shall, after recording reasons therefor, authorise the detention of the accused person otherwise than in the custody of the police, for a period not exceeding seven days."

48. Prosecution of Judges and public servants : Amendment of section 197

Do you agree that sub-section (3) of section 197 amended to extend protection similar to one available to the members of Armed Forces charged with the maintenance of public order in the matter of prosecution in respect of offences alleged to have been committed while acting or purporting to act in the discharge of their duties, to other public servants, charged with the maintenance of public order as they have also to face similar difficulties, as mentioned in clause 23 of the Code of Criminal Procedure (Amendment) Bill, 1994 in the following manner:

> In section 197 of the principal Act, in sub-section (3), after the words "members of the Forces", the words "or to such other public servants" shall be inserted.

49. Amendment of Section 198

Do you think for the words "15 years" the words "17 years" should be substituted?

50. Offences Against Marriage : Jurisdiction of Family Courts

Do you agree that all the offences mentioned in Chapter XX, XXA, and Section 509 of the Indian Penal Code, 1860 should be tried only by the Family courts and suitable amendments may accordingly be made both in the Family Courts Act, 1984 and the Code of Criminal Procedure? If so, what amendments do you suggest. (See also Sections 198, 198A of the Code of Criminal Procedure.) What are the other offences in IPC and other relevant Acts which may be tried by the Family Courts?

51. Do you agree that in such criminal cases relating to matrimonial offences should firstly be examined by Marriage Counsellor and other Experts as specified under Sections 5, 6 and 12 of the Family Courts Act, 1984 for making efforts for reconciliation between the parties before the commencement of trial and insert the necessary provision in the Family Courts Act, 1984 making these offences compoundable on the same lines as in Section 320 of the Code of Criminal Procedure?

52. Postponement of issue of process : Amendment of Section 202

Do you think that in sub-section (1) of section 202 after the words "may, if he thinks fit," the following shall be inserted, namely, "and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction," in order to see that innocent persons are not harassed by unscrupulous persons as laid down in Clause 24 of the Code of Criminal Procedure (Amendment) Bill, 1994?

53. Special summons in cases of petty offences : Amendment of Section 206

Do you agree that sub-section (1) of section 206 be amended as follows:

(a) in the opening paragraph, after the words and figures "under section 260", the words and figures "or section 261" shall be inserted;

(b) in the proviso, for the words "one hundred rupees", the words "one thousand rupees" shall be substituted,

to enable a quick disposal of petty cases and to reduce congestion in the Court of Magistrates the value of the money has gone down considerably as laid down in clause 25 of the Code of Criminal Procedure (Amendment) Bill. 1994?

54. What persons may be charged jointly: Amendment of Section 223

Do you agree that for prompt disposal of cases, scope of proviso to section 223 be widened in the following manner to enable the Court of Session also to hold such trials as laid down in clause 27 of the Code of Criminal Procedure (Amendment) Bill, 1994:

(a) for the word "Magistrate", the words "Magistrate or Court of Session" shall be substituted;

(b) for the words "if he is satisfied", the words "if he or it is satisfied" shall be substituted.

55. Amendment in Section 227

Whereas under Section 227, the Court of Sessions is required to consider the record of the case and the documents submitted therewith; viz., the Police Report and the documents sent with it under Section 173 Cr. P.C. and after hearing the submissions of the accused as the Court may think necessary, may discharge the accused. It implies that the record produced by the prosecution is only considered by the Court at this stage.

Do you agree that if accused is able to produce such documentary evidence at the preliminary stage itself which shall be admitted or denied by the prosecution, and if so admitted by the prosecution, on the basis of such documentary evidence produced by the accused, the Court may discharge the accused under Section 227, without letting the accused to undergo the dilatory trial and then acquitting him on that basis?

56. Amendment in Section 227 and 229

Should delay in disposal of criminal cases entitle an accused to be discharged in respect of the offence being prosecuted? If so, what should be the norms for measurement of delay what other factors should be considered while discharging an accused on such grounds under section 227 and 229.

57. Framing of charge : Amendment of Section 228

Do you agree that in section 228 of the principal Act, in sub-section (1), in clause (a), for the words "and thereupon the Chief Judicial Magistrate", the words "the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit and thereupon such Magistrate" shall be substituted in order to give discretion to the Sections Judge to transfer a case either to the Chief Judicial Magistrate or to any other Judicial Magistrate of the First Class and to fix a date for the appearance of the accused before the Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, so that a lot of time, which is wasted in summoning the accused by the Magistrate, may be saved, as laid down in clause 27 of the Code of Criminal Procedure (Amendment) Bill, 1994?

58. Amendment in Section 231

Do you agree that the prosecution should be required to produce all evidence in support of the prosecution within a specific period of framing of

the charge against the accused under Section 231 Cr. P.C. for expenditious disposal of the case?

59. Amendment in Section 238

Do you agree with the suggestion that under Section 238 read with Section 207, the Court shall be required to satisfy himself that he has complied with the provisions of Section 207 Cr. P.C., within a period of one month of taking cognizance of offence, which provision may curtail the delay caused due to non-compliance of Section 207 for a long period?

60. Proposed Section 238A

Do you agree that a new Section 238A should be inserted wherein it may be provided that the court shall hear the argument on charge within a period of 30 days of the first appearance by the accused before the Court or by taking cognizance of the Court?

61. Amendment in Section 239

Whereas under Section 239, the Magistrate, upon considering the Police Report and the documents sent with it under Section 173 and making such examination if any, of the accused, the Court may discharge the accused. It implies that the Police Report and the documents sent with it under Section 173 are only required to be examined by the Magistrate at this stage.

Do you agree that if accused is able to produce such documentary evidence, which shall be admitted or denied by the prosecution, and if so admitted by the prosecution, the Magistrate may discharge the accused on the basis of such documentary evidence, to avoid him to undergo the dilatory trial and then acquit him?

62. Amendment in Section 242

Do you agree that a new sub-section (4) be inserted under Section 242 on the lines as proposed under the Section 239 above?

63. Amendment in Section 244

Do you agree that a similar provision of fixing of a time limit for recording of evidence for prosecution in warrant cases instituted otherwise than on police report, as proposed under Section 231 above, should also be fixed under Section 244?

64. Absence of complainant: Amendment of Section 249 and 256

Do you suggest that sections 249 and 256 of the Code be amended to enable the Magistrate to discharge the accused in case the complainant remains absent in the proceedings instituted upon complainant, on any day fixed for the hearing of the case, even in cases of offences which are non-compoundable and cognizable, on the following lines:

> Section 249 absence of complainant—when the proceedings have been instituted upon complainant, on any day fixed for the hearing, the complainant is absent, the Magistrate may, in his discretion, notwithstanding anything herein before contained, at any time before the charge has been framed, discharged the accused.

65. Do you agree that simultaneously there should be a provision regarding restoration of a criminal case dismissed for default in appearance and consequential discharge or acquittal of the accused for non-appearance as projected under section 249 and 256 of the Code of Criminal Procedure as recommended in 141st Report of the Law Commission. If so, subject to which terms and conditions?

66. Power to try summarily: Amendment of Section 260

Do you agree that sub-section (1) of section 260 be amended to make summary trial of offences specified therein mandatory and to provide that the offence of theft and other cognate offences, namely, offences under sections 379, 380, 381, 411 and 414 of the Indian Penal Code may be tried summarily where the value of the property involved does not exceed two thousand rupees instead of two hundred rupees at present? Do you suggest the amendment in the following manner:

(a) for the words "two hundred rupees", wherever they occur, the words "two thousand rupees" shall be substituted; (b) in clause (vi), for the words "criminal intimidation", the words "criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both" shall be substituted as provided in clause 28 of the Code of Criminal Procedure (Amendment) Bill, 1994.

The Code divides offences into two major-categories—summons and warrant cases. It also provides for summary trial for all summons cases and certain other offences under section 260. The following questions arise:

(i) Can the scope of summons cases be extended to cover all cases attracting punishment upto three years instead of two years?

(ii) As a measure of simplification of procedure, should not all summons cases be tried, summarily and the limit of punishment raised to six months subject of Sec. 259 and Sec. 260(2)

(iii) Can you suggest a modified summons procedure which is substantially different and simpler than warrant procedure?

67. Summons and Warrant cases

Do you agree that there should be only one procedure for both warrant and summons cases. If so, what should be the common procedure? Can summons procedure be dispensed with and make warrant procedure being applied uniformly?

68. Alternatively do you agree that all summons cases should be tried summarily so that warrant procedure be applicable only in warrant cases and consequently the definition of "warrant cases" in section 2 (x) be amended and the words 'exceeding two years' should be substituted by the words "three years".

69. Insertion of new section 291A : Identification report of Magistrate

Do you agree that in order to save time of the Court, a new section 291A be inserted in the following manner, as laid down in clause 29 of the Code of Criminal Procedure (Amendment) Bill, 1994, with a view to making memorandum of identification prepared by the Magistrate admissible in evidence without formal proof of facts stated therein with a provision that the Court may, if it thinks fit, on the application of the prosecution or the accused, summon or examine the Magistrate as to the subject matter contained in the memorandum of identification?

70. Reports of certain Government scientific experts : Amendment of Section 293

Do you think that in sub section (4) of section 293—

(a) for clause (b), the following clause shall be substituted, namely:

"(b) the Chief Controller of Explosives" (b) after clause (f), the following clause shall be added, namely:

"(g) any other Government scientific Expert specified by notification by the Central Government for this purpose."

In view of the changes made under the Indian Explosives (Amendment) Act, 1978, from the designation 'the Chief Inspector of Explosives' to 'the Chief Controller of Explosives' as laid down in clause 31 of the Code of Criminal Procedure (Amendment) Bill, 1994?

71. Introduction of a stage after framing of charge for admission and denial of documents

Even though section 294 lays down that where any document is filed before any court by the prosecution or the accused, the prosecution or the accused, as the case may be the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. Where the genuineness of any document is not disputed, such document may be read in evidence without proof of the signature of the person to whom it purports to be signed. Further, section 296 also contemplates that evidence of any person whose evidence is of a formal character may be given by affidavit. But generally such provisions are not resorted to either by the prosecution or by the accused during trial. In order to make proper use of such provisions, it needs to be examined as to whether a stage after framing charge may be carved out in which it may be made compulsory to admit or deny any document if any produced by the opposite party, to avoid delay because of proving such document. Similarly, prosecution or the accused should be allowed to make use of section 296 as mentioned above during their evidence.

72. Insertion of new section 311A : Power of Magistrate to order a person to give specimen signatures or handwriting

Do you agree that a new section 311A be inserted in the Code in view of the suggestions made by the Supreme Court in *State of UP* Vs. *Ram Babu Mishra,* AIR 1980 SC, 791 that a suitable legislation be made on the anology of section 5 of the Indentification of Prisoners Act 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting as contained in clause 3 of the Code of Criminal Procedure (Amendment) Bill, 1994?

73. Amendment in Section 312

(A) Witnesses who attend court are not paid appropriate monetary allowances and when paid, it is limited only to the day on which they are examined, although they might be called on a large number of occasions, dislocating their daily work. Should they not be compensated or paid daily allowance for all the days they are forced to attend court?

(B) Do you think that it is also imperative to insert a provision for providing adequate protection of witnesses so that they can depose truthfully and fearlessly?

74. Compounding of offences: Amendment of section 320 by adding some more references

(a) Do you agree that the table appended to section 320 be amended by adding sections 160, 334, 336, 356, 380, 384, 395, 453, 456, 461, 485, 498, 498A, 510?

(b) Do you agree that the table appended to by adding (a) the offences under sections 320 and 326 attracting only clauses 73 and 83 in the definition in section 320 can a'so be added?

(c) In sections 369, 461, 406, 407, 408, 411 and 414 I.P.C. the value of the property can be raised upto Rs. 3,000/- instead of Rs. 250/- in view of the present rate of value of money?

(d) Do you agree that where the accused are convicted in respect of these offences constructively by application of sections should also be correspondingly be made applicable?

(e) Do you agree that if a conviction and sentence under sections 130, 145, 147, 150, 151 I.P.C. is awarded in conjunction with those offences compoundable, such conviction and sentence should also be compoundable in the like manner?

(f) Do you agree that the section 498 should be deleted in the table number one and be inserted in the table under sub-section(2)?

(g) What are the other offences that can be made compoundable?

75. Amendment of Section 327

Do you agree with the recommendation of the Law Commission in its 84th Report on 'Rape and Allied Offences: Some questions of substantive law, procedure and evidence' that trial in camera be held in cases of sexual offences in order to avoid embarrassment to the victim to relate the full glare of publicity and to enable her to give all the factual details in the following manner :

Proviso to be added to section 327 of the Code of Criminal Procedure, 1973.

"Provided further that unless the presiding judge or magistrate, for reasons to be recorded, directs otherwise, the inquiry into and trial of rape or allied offence shall be conducted in camera.

Explanation.—In this sub-section, the expression 'rape or allied offence' applies to—

(a) an offence punishable under section 354 or section 354A of the Indian Penal Code;

(b) an offence punishable under section 376, section 376A, section 376B or section 376C of that Code;

(c) an attempt to commit, abetment of or conspiracy to commit any such offence as is mentioned in clause (a) or (b) of this Explanation."

Further, the following sub-section should be added to section 327:

Sub-section to be added to section 327, Code of Criminal Procedure, 1973 after re-numbering present section as sub-section (1).

"(2) Where any proceedings are held in camera, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the Court."

76. Order for notifying address of previously convicted offender: Amendment of Section 356

Do you agree that sub section (1) of section 356 of the Code be amended in the following manner in order to bring within its ambit all offences in Chapter XVI of the Indian Penal Code (offences affecting the human body) punishable with imprisonment for three years or more as well as the aggravated form of the offence under section 506 (criminal intimidation) punishable with imprisonment for a term which may extend to seven years, or with fine, or with both, as laid down in clause 34 of the Code of Criminal Procedure (Amendment) Bill, 1994?

77. Amendment of Section 357

(A) Do you agree with the suggestion that sub-section (1) of Section 357 should be amended so as to empower the competent Court to order payment of compensation even in case where the conviction has been recorded and regardless of whether fine is imposed or not if an offence is compounded before the Court or the Competent Authority as proposed under proposed Chapter XIIA of the CrPC, in view of the recommendations of the Law Commission made in its 142nd Report?

78. Insertion of proppsed Section 357(A) in CrPC

Do you agree that in order to provide separately for compensation for custodial offences, committed within the custody of a public servant, a new section 357(A) should be inserted as recommended by the Law Commission in its 152nd Report providing for adequate compensation with the types of harm suffered by the victim and such amount wholly or partly be collected from the delinquent public servant.

Or

79. Alternatively whether a separate provision be inserted based on the concept of "victimology" providing for the constitution of a Compensation Board on the lines on those prevailing in the United Kingdom?

80. Compensation of persons groundlessly arrested : Amendment of Section 358

Do you agree that sub section (1) and (2) of section 358 of the Code be amended to substitute the words "one thousand rupees" in place of the words "one hundred rupees", to make the provision more effective as laid down in clause 35 of the Code of Criminal Procedure (Amendment) Bill, 1994.

81. Order to release on probation of good conduct or after adomonition Amendment of Section 360

Do you agree that a new sub-section (3A) of section 360 of the Code be amended by providing such measures for effective implementation of correctional methods so that after release of the accused on probation, the accused is treated well and rehabilitated.

82. Appeal by the State Government or complainant against sentence or acquittal

Do you agree that the appeal against the sentence or acquittal against the orders of the Magistrate can be filed before the Sessions Court instead of High Court and that section 377 and 378 be amended accordingly as contained in clause 37 of the Criminal Law (Amendment) Bill, 1994.

83. Suspension of sentence pending the appeal : release of appellant on bail: Amendment of Section 389

Do you agree that a proviso be added to sub-section (1) of section 389 that in all cases where conviction is in respect of an offence punishable with 7 years or above the Public Prosecutor be given an opportunity for showing cause against such release.

84. Prevention in Women's institutions : insertion of a new Section 417A

Do you agree with the suggestion of the Law Commission of India in its 84th Report on 'Rape and Allied Offences that Section 417A be inserted in the Code of Criminal Procedure so that where there is no suitable arrangement in the locality for keeping arrested women in custody in a place of detention exclusively meant for women the arrested women be sent to a institution established and maintained for the reception, care, protection and welfare of women or children licensed under the women's and children's institutions (Licencing) Act, 1956 or an institution recognised by the State Government.

85. Period of detention undergone by the accused to be set off against the sentence of imprisonment : Amendment of Section 428

Do you suggest insertion of the following proviso to section 428 to the effect that in cases referred to in section 433A also, such period of detention shall be set off against the period of 14 years referred to in that section in appropriate cases?

86. Special positions in respect of Women

(a) In respect of women convicted of any offence, should there be any further change under Sections 433 and 433A of the Code of Criminal Procedure regarding remission or commutation of sentences.

(b) Whether any further changes are necessary under section 125 of the Code of Criminal Procedure in matter of maintenance of wife, children, etc.

87. In what cases bail to be taken : Amendment to section 436

Do you agree that section 436 (1) of the Code be amended in the following manner in view of the fact that in respect of bailable offences, a person has to remain in jail for his inability to furnish bail, till the case is disposed of, as

provided in clause 40 of the Code of Criminal Procedure (Amendment) Bill, 1994:

(a) in the first proviso for the words "may, instead of taking bail" the words "may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail" shall be substituted;

(b) after the first proviso the following Explanation shall be inserted, namely:—

Explanation—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the court to presume that he is an indigent person for the purposes of this proviso.

88. Insertion of new Section 436A : Maximum period for which an under-trial prisoner can be detained

Do you agree that the following new section 436A be inserted in the Code in view of the fact that undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence as provided in clause 41 of the Code of Criminal Procedure (Amendment) Bill, 1944 :

"436A. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his ppersonal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period of release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law:

Explanation.—In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

89. When bail may be taken in case of non-bailable offence : Amendment of of section 437

Do you agree that section 437 be amended in the following manner in order to make the provision stringent and also to see that the person on bail does not interfere or intimidate witness, as provided in clause 42 of the Code of Criminal Procedure (Amendment) Bill, 1994 :

(1) in sub-section (1):—

(a) in clause (11), for the words "a non-bailable and cognizable offence", the words "a cognizable offence punishable with imprisonment for three years or more but not less than seven years shall be substituted;

(b) after the third proviso, the following proviso shall be inserted, namely :

"Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this subsection without giving an opportunity of hearing to the Public Prosecutor."

5—2 M of L & J/ND/97

(ii) in sub-section (3), for the portion beginning with the words "the Court may impose", and ending with the words "the interest of justice", the following shall be substituted, namely :

"the Court shall impose the conditions:—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary".

90. Amendment of Section 437

Whether a proviso should be inserted namely where such person is a female, she shall ordinarily be released on bail unless the court thinks otherwise for the reasons to be recorded in writing.

91. Direction for grant of bail to person apprehending arrest : Amendment of section 438

Do you agree with the view that section 438 is being misused and be deleted?

92. Amendment in Section 438

Do you suggest any other amendments in section 438 to the effect that the Court of Sessions or High Court before granting such bail should take into consideration certain circumstances and follow necessary steps by giving notice to the Public Prosecutor and accordingly making the necessary provisions for the same in the Code?

93. Declaration by sureties : Insertion of new section 441A

Do you agree that after section 441 the following section shall be inserted providing that a person standing surety for the accused person shall disclose as to how many cases he has already stood surety for accused persons as provided in clause 44 of the Code of Criminal Procedure (Amendment) Bill, 1994 :

"441A. Every person standing surety to an accused person for his release-on-bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

94. Procedure when bond has been forfeited : Amendment of Section 446

Do you suggest any amendments in section 446 regarding levy of penalties or reduction of the same by the Court (See clause 45 of the Bill)

95. Amendment of the First Schedule

Do you suggest any addition of entries in the Schedule or any amendment to the existing Schedule?

96. Amendment in Section 468

Do you agree that a Court should be barred to take cognizance of offence after elapse of a period of limitation of five years of an offence, in cases where the offence is punishable with imprisonment for a term exceeding three years but not exceeding ten years, by insertion of a new provision under sub-clause (d) of sub-section 2 of Section 468 Cr. P.C.?

ANNEXURE I

135TH REPORT ON WOMEN IN CUSTODY

NEW CHAPTER V-A

1. Application of the Chapter

The provisions of this Chapter shall, as regards the matters covered thereby, apply notwithstanding anything to the contrary contained in any other provision of this Code.

2. Arrest of women

(1) Where a woman is to be arrested under this code, then unless the circumstances indicate to the contrary, *her submission to custody on an oral intimation of arrest shall be presumed*, and unless the circumstances otherwise require or unless the police officer arresting is a female, *the police officer shall not actually touch the person of the woman for making her arrest.*

(2) Except in unavoidable circumstances, *no woman shall be arrested after sunset and before sunrise*, and where such unavoidable circumstances exist the police officer making the arrest shall, by making a written report, obtain the prior permission of the immediate superior officer not below the rank of an Inspector for effecting such arrest or, *if the case is one of the extreme urgency*, shall, after making the arrest, forthwith report the matter in *writing to his such immediate superior officer, with the reasons for arrest* and the reasons for not taking prior permission as aforesaid and shall also make a similar report to Magistrate within whose legal jurisdiction the arrest has been made.

3. Medical Examination of women

(1) The Magistrate before whom an arrested female is produced shall, whether or not such female makes a request for examination of her body under Section 54, *inform her about her right to such examination, in order to bring on record any facts which may show that an offence against* the body has been committed with respect to such female after her arrest. (This amendment can in due course be made applicable to males also).

(2) Whenever the person of a female is to be examined either under Section 53 or under Section 54, *the examination shall be made only by or under the supervision of a female registered medical practitioner*, and with strict regard to decency.

(Present sub-section (2) of section 53, Cr. P.C. to be deleted).

(3) The registered medical practitioner holding an examination under section 53 or section 54 *shall furnish to the arrested female a copy of the report* of the examination, free of cost.

(This amendment can in due course be made applicable to males also).

4. Women and children attending for investigation

(1) A male person under the age of fifteen years or a woman shall not be required to attend under Section 160 at any place other than his or her dwelling place.

(Present proviso to section 160(1), Cr. P.C. to be deleted).

(2) Where, under this Code, the statement of a male person under the age of fifteen years or of a woman is recorded by a male police officer, either as first information of an offence or in the course of an investigation into an offence, *a relative or friend of such male person or woman, and also a person authorised by such organisation interested in the welfare of woman* or *children* as is recognised in this behalf by the State Government by notification in the Official Gazette, *shall be allowed to remain present throughout the period during which the statement is being recorded.*

NOTE: This will arise provided Sections 161 and 162 are retained.

5. Admonition and probation under the Code

Where the person convicted by a court is a woman, the court shall, in exercising its discretion as to release of the offender on probation under sub-section (i) of section 360 or *release of the offender after the admonition* under sub-section (3) of that section, have due regard to the fact that the offender is a woman.

6. Period of detention of women sentenced to imprisonment for life

In respect of women convicted of any offence, should there be any further change under Sections 433 and 433A of the Cr. P.C., regarding remission or commutation of sentences.

7. Pregnant woman and suspension of imprisonment

(1) When a Pregnant woman is convicted of any offence and the court sentences her to imprisonment for life or for a specified term, the court may, if it thinks fit, at the time of passing such sentence, regard being had to the age, character or antecedents of the offender, the circumstances in which the offence was committed and the circumstances of the woman herself, direct:

(a) that execution of the sentence of imprisonment in her case shall be suspended till she is delivered of a child or the pregnancy is otherwise terminated and such period thereafter, as the court may specify, expires, and

(b) that, during such period of suspension of execution of sentence, she shall be released on her entering a bond with or without sureties—

(i) to appear and undergo sentence on the expiry of such period and,

(ii) in the meantime, to keep the peace and be of good behaviour, and to observe such other conditions, if any, as the court may impose.

(2) An order under this section may be made by an Appellate Court, or by the High Court or the court of Session when exercising its power of revision.

(3) When an order has been made under this section in respect of any woman, the High Court or the Court of Sessions may, on appeal when there is a right of appeal to such Court or when exercising its powers of revision, set aside or modify such order in the interest of justice.

(4) The provisions of Sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(5) The Court, before directing the release of a woman under sub-section (1), shall be satisfied that the woman or her surety, if any, has a fixed place of abode or regular occupation in the place for which the court acts, or in which the woman is likely to live during the period named for the observance of the conditions.

(6) If the Court which convicted the woman or a Court which could have dealt with the woman in respect of her original offence, is satisfied that the woman has failed to observe any of the conditions of her recognizance, it may issue a warrant for her apprehension, and after hearing the parties, revoke or set aside the order of suspension and direct that the sentence be executed forthwith for the period to which she has been sentenced.

(7) Where the period for which the execution of a sentence of imprisonment passed on a woman is suspended by the court under sub-section (1) expires,

(a) the woman shall surrender herself to that court or to such other court as may be directed by that court in its order;

(b) if she does not so surrender herself, she shall be arrested under a warrant to be issued by such court; and

(c) the court before which she surrenders herself, or the court before which she is produced on arrest under its warrant, as the case may be, shall direct the sentence to be executed for the period to which she has been sentenced.

(8) Where, in respect of any woman, execution of the sentence of imprisonment has been suspended under the provisions of this section, the period of suspension shall not be set off against the term of imprisonment imposed on her; and the liability of such woman to undergo imprisonment in accordance with the sentence, on the expiry of the period of suspension of sentence, shall remain unaffected by the suspension.

NOTE: [Compare the decision in Champalal v. State of Maharashtra, AIR 1982 SC 791; (1982) Cr. L.J. 612. (contrast section 428, Cr. P.C., 1973)]

8. Female prisoners : The High Court on its administrative side may direct the Sessions Judges to satisfy themselves that female prisoners are protected and properly looked after, in accordance with the safeguards contained in sections 450I to 450N and may take such measures as may be desirable in order to move the State Government to take necessary action.

9. Medical examination : As far as practicable the following provisions shall be complied with, regarding the medical examination of female prisoners and consequential action:

(a) On admission to jail, every female prisoner shall be medically examined by lady medical officer and, wherever deemed necessary for medical reasons, be kept separately in a female enclosure for such period as, in the opinion of the Medical Officer concerned, may be necessary.

(b) Every female prisoner shall also be medically examined on her readmission to jail after release on bail, parole or furlough, by a lady medical officer.

(c) If the officer incharge or the medical officer suspects that a female prisoner is pregnant, the female prisoner shall be sent to the district Hospital for detailed examination and report.

(d) The Lady Medical Officer of the District Government Hospital to whom the female prisoner has been referred under clause (c) shall certify the state of her health, pregnancy, duration of pregnancy and probable date of delivery and the special diet, if any, to be prescribed and other measures to be adopted.

(e) Gynaecological examination of female prisoner shall thereafter be performed in the District Government Hospital by a lady medical officer and proper pre-natal and ante-natal care shall be provided to the female prisoner according to medical advice.

(f) In cases of advanced stage of pregnancy, the female prisoner shall be shifted to a female ward of the Government Hospital.

(g) A pregnant female prisoner referred to in clause (f) shall be kept in the women's ward of the Government Hospital for not less than fifteen days after the birth of a child or for such longer period as may be advised by the Gynaecologist, (227).

10. Transit

(1) A female prisoner shall not be handcuffed and shall not be required to wear any fetters or crossbars during her transit from one jail to another or for the purpose of being taken to the court or for investigation.

(2) A female prisoner shall be escorted by the Matron or Female Warden, if required to leave the female enclosure and such matron or female warden shall remain with the prisoner till her return to the enclosure or release from the jail.

(3) A female relative of the female prisoner shall be allowed to accompany the female prisoner during her transit from one jail to another or for the purpose of being taken to court or for investigation.

11. Place of detention : Where a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for woman, she shall be sent to an institution established and maintained for the reception, care, protection and welfare of women or children, licensed under the Women's and Children's Institution (Licensing) Act, 1956 or an institution recognised by the State Government as far as practicable except in cases where any special law requires that she should be sent to a protective home or other place of detention authorised for the purposes of such special law.

12. Inspection of jails : (1) A judicial officer preferably a lady officer (where one is available) to be nominated by the Sessions Judge, or where a Lady Judicial Officer is not available, a male Judicial Officer accompanied by a Lady Social worker, shall, at places other than the Headquarters of the Court of Session, at least once in every two months, make a surprise visit to jails for inspection, with a view to:

(i) providing female prisoners opportunity to communicate their grievances:

(ii) ascertaining the conditions in the jails and verifying whether the requisite facilities are being provided and the provisions of the law are being observed;

(iii) bringing to the notice of the Sessions Judge lapses, if any, on the part of the officers in charge of jails, on the above matters and shall prepare a report of every such inspection.

(2) The Sessions Judge shall carry out similar inspections of the jails located at the Headquarters of the Court of Sessions.

(3) The Sessions Judge shall forward copies of the inspection reports relating to inspections under this scheme to the Commissioner of Police (or other corresponding officer), the Inspector General (Prisons) and the State Government and may make such recommendations as may be required on the facts and in the circumstances of the case.

(4) If the authorities fail to carry out the recommendations of the Sessions Judge, the matter shall be brought to the notice of the High Court for suitable action.

13. Appointing of Jail Visitors : (1) The Central Government or the State Government, as the case may be, shall, for every District or Jail, appoint not less than three visitors, of whom at least one shall be a medical officer and two shall be social workers, of whom at least one shall be a woman, wherever practicable.

(2) Not less than two visitors, out of whom at least one shall be a lady social worker, shall, once in every six months, make a joint inspection of every part of the jail in the District in respect of which they have been appointed, with a view to ascertaining in regard to female prisoners the conditions prevailing therein and whether the requisite facilities are being provided and the provisions of the law are being complied with and whether the directions, if any, given by the Sessions Judge, or the High Court or the Supreme Court, as the case may be, are being carried out.

(3) The visitors shall send a report of their inspection to the Sessions Judge, who shall deal with such report in the same manner as has been provided in section (1) above, in respect of the report of inspection submitted by a judicial officer.

14. Definitions : (1) For the purposes of section 60 to 60N (both inclusive)—

(a) "female prisoner" means a woman detained in jail, whether during investigation, inquiry or trial or after conviction or under a law providing for preventive detention, and

(b) "jail" includes a police lockup, a prison and a place where persons are kept under detention under a law providing for preventive detention.

132nd Report on "Need for amendment of the Provisions of Chapter IX of the Code of Criminal Procedure, 1973 in order to ameliorate the hardship and mitigate the distress of neglected Women, Children and Parents."

1. Do you agree with the suggestions of the Law Commission in its 132nd Report that an Explanation be added to section 125(1) that the phrase "unable to maintain herself" relates to the then actual separate income of the wife, if any, and not to the possibility or potentiality of the wife being able to earn for herself by securing an employment or by exerting herself in future?

2. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that sub section (2) of section 125 should be so amended that the order of maintenance operates from the date of the filing of the application claiming monthly allowance by way of maintenance and the magistrate has no option or discretion to make it operative from the date of the magistrate's order awarding maintenance allowance?

3. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that first proviso to section 125(3) disabling a wife or claimant from recovering the maintenance amount on expiry of one year should be deleted?

4. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that proviso (2) to section 125(3) pertaining to consideration of the offer of the person (against whom an order for monthly allowance by way of maintenance is claimed) to maintain the wife after the passing of the order may be deleted?

5. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that sub sections (4) and (5) of section 125, depriving a wife from claiming maintenance if 'living in adultery', should be deleted *inter alia* as it is by and large invoked to embarrass and harass a wife?

6. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "the magistrate passing an order for maintenance under section 125 should be empowered to pass an order directing a person liable to pay the monthly allowance to deposit the monthly allowance for a period up to six months in advance in a fit case taking into account the fact's and circumstances of the case?

7. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "a magistrate passing an order for maintenance under section 125 shall be empowered to issue an order against the employer of the person liable to pay the monthly allowance determined by him, directing such employer to deduct from the salary of such person a sum equivalent to the amount of maintenance determined by him and to deposit the same in the court within a week of such deduction from month to month whenever it appears appropriate to do so on account of the failure of such person to regularly pay the amount directly to the wife, child or parents in whose favour an order has been passed?

8. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "the amount of monthly allowance ordered to be paid, including the arrears, shall be a charge on the properties of the person against whom the order has been passed"?

9. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "an order for monthly allowance shall not stand discharged or satisfied except by actual payment from time to time or with a settlement of the court recording its satisfaction that the arrangement or settlement is for good consideration, genuine, voluntary, lawful and fair"?

10. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "a person aggrieved by an order of maintenance passed by the magistrate shall have a right of appeal to the Court of Sessions. However, when the appeal is directed against an order awarding maintenance, the appeal shall not be maintainable unless the appellant deposits the amount of arrears of maintenance from the date of institution of the petition till the date of the order under appeal in the court of the magistrate and produces along with the memorandum of appeal an affidavit to the effect that such amount has been deposited and future amount will be regularly deposited"?

11. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that "an officer, to be designated as Maintenance Counsellor, shall be appointed by the State to represent the case of the wife, child or parent claiming maintenance free of cost as a measure of social welfare with the option to the concerned person to appoint an advocate of his or her choice at the cost of such person, if so desired."

12. Do you agree with the recommendations of the Law Commission of India in its 132nd Report that the following special procedure for speedy disposal of the matters pertaining to maintenance under section 125 should be incorporated in Chapter 9 of the Code.

(1) Prescribing a time limit for filing a written statement or statement of objections coupled with conferment of the power on the magistrate to pass an order as prayed on failure of the respondent to file the statement within the prescribed time limit;

(2) deciding the matter on affidavits with opportunity to the other side to cross-examine the witnesses of the deponents; and

(3) requiring the magistrate as far as practicable to dispose of the matter within six months after hearing it from day to day.

ANNEXURE III

A. PROBLEMS OF DELAY AND ARREARS IN COURT AND SPEEDY TRIAL

A. Problems

1. (a) What in your opinion, are the causes of delay in the trial courts in the disposal of cases?

(b) Have you any suggestion to make for cutting short such delays?

2. Specific Causes

How far is delay due to

(a) Inadequate number of Judges?

(b) Insufficient accommodation, lack of books, lack of stenographical assistance or other factors by way of unsatisfactory conditions of work affecting quality of work?

(c) Defects in the procedure?

3. Petty criminal cases — disposal by other agencies

Should petty criminal cases be disposed of by honorary magistrates?

4. Arguments

Would you consider it appropriate that there should be some time-limit for oral arguments, during which counsel can, if so desired, supplement by written submission?

5. Do you think that in order to avoid delay in rendering speedy justice taking the services of retired judicial officers and administrative staff to help them on a temporary basis like a pilot project will go in a long way in ensuring the speedy trial of criminal cases?

6. How are case lists prepared? Is it done in a systematic manner with reference to flow of cases and the need for quick disposal; or are they being prepared in routine manner? It appears to be the practice to post about 40 to 50 cases every day, while the actual judicial work, i.e. examination of witnesses etc., does not cover more than a couple of cases, even that too, for one or two witnesses only. Is it better management of the courts possible? Should all appearance cases and miscellaneous matters be listed before a pool of special magistrates so that all other courts may devote their time to taking evidences and hear arguments, and thus they should be free from involvement in miscellaneous matters and consumption of time required for such purposes can be utilised for the effective trial of main cases?

7. Adjournments in trial

Even though Section 309 contemplates for holding the proceedings as expeditiously as possible and examination of witnesses from day to day, yet it is an open fact that on account of adjournments, there is caused inordinate delay in disposal of criminal cases. To control adjournments is a matter of great importance to tackle the issue of delay. In what manner Section 309 can further be amended?

6—2 M of L & J/ND/97

8. Disposal of certain cases by Nyaya Panchayat

In order to render criminal justice at the door steps of victim and for expeditious disposed of cases, is it feasible to refer some of the criminal cases Nyaya Panchayat as recommended by the Law Commission in its 114th Report on Gram Nyayalaya. What should be the category of offences which may be referred to Nyaya Panchayats?

9. Compounding of offences

Of late, various High Courts have quashed criminal proceedings, (in respect of non-cognizable offences) because of settlement between the parties to achieve the harmony and peace in the society, for example, criminal proceedings in respect of offences under Section 406 relating to misappropriation of dowry articles or *Istri Dhan* and offences under Section 498A, IPC were quashed *Arun Kumar Vohra* v. *Mrs. Reetu Vohra* (1995) 1 All India Criminal Law Reporter 431; *Nirlap Singh* v. *State of Punjab*, 1993 (2) All India Criminal Law Reporter 800. Similarly should other class offences may be made compoundable by expanding the scope of Section 320 of the Code of Criminal Procedure.

10. Conversion of some warrant cases into summons and to be tried summarily

Should any other class of offences, which are triable as a warrant case, be converted into trial in summary manner as laid down under Chapters XX and XXI.

11. Compounding at the stage of investigation

Wherein respect of any offence compoundable under Section 320 of the Code of Criminal Procedure, if the parties give their desire to compound the case on the initiative of the Investigating Officer he shall make a report of the same to the Magistrate who thereupon deal with the case under Section 320. Whether such a step will help in reducing the number of cases going for trial before a court at the initial stage itself.

12. What are the causes for delay in investigation by the investigating officers? Have you any suggestions for minimising such delay? should the State Police be divided into two agencies: (i) State Investigating Force and (ii) State Law and Order Force and that in each District the Investigating Force should not be used for other duties?

13. Can the Code of Criminal Procedure be amended to permit creation of a Judicial-cum-Police Agency to screen all decisions by State and Central Investigating Agencies either to file charge sheet or to drop investigation. In what manner such Agencies be structured?

14. Whether trial should proceed in a case where an under-trial prisoner has already spent a sufficiently long period in jail, which is equivalent to a substantial portion of the term of imprisonment prescribed for the offence? If the answer is in affirmative what should be the norm for releasing a person who has been arraigned for such a considerable period.

15. It is noticed that when the police file a charge sheet in a court, there is some amount of delay in taking it on file. Is there any particular reason for this, as such delays extend to three or four months in some cases?

B. Speedy Trial — Amendment Suggested

Procedure in Sessions cases

1. (a) Is the procedure under sections 208-209 of the Code of Criminal Procedure, 1973, in regard to sessions cases, an improvement over the pre-1973 position from the point of view of ensuring a speedy and fair trial of the accused? If not, please comment with reasons.

(b) If, in your view, the procedure in the Code of 1973 in regard to sessions cases is not an improvement,—

(i) Should the pre-1973 position be restored, by adopting section 207A of the Code of 1898 as inserted in 1955 and by making suitable modifications in various sections of the Code of 1973; or

(ii) Should the pre-1955 position be restored, by adopting sections 207 *et seq* of the Code of 1898 as they stood before 1955; or

(iii) Is it, in your opinion, yet too early to judge the effect of the change made by the Code of 1973?

2. Section 18

It is noticed that a large number of offences which figure in the first class magistrate's courts are not of a serious nature, although they are cognizable. Cannot such cases be transferred to the courts of special magistrates who have been invested with the powers of a second class magistrate? What special administrative or legal arrangements would be required if a list of cases is prepared to be tried by such magistrates? 2. *Review of Strength of the Court : Insertion of new Section 23A.*

3. Do you suggest incorporation of new section 23A providing that the State Government may after consultation with the High Court should review the strength of courts once in two years for setting up a new/additional court depending upon the pendency of the cases therein in order to meet the situation leading to delay in disposal of cases and the activate disposal of cases and timely action in the matter?

4. Compounding of Offence at any stage of investigation and insertion of new Sub-section 3A in Section 173

Do you agree that the following new sub-section (3A) be added to section 173 to (i) enable the police to take note of the desire of the parties to compound offences compoundable under sectoin 320 at any stage of investigation even at the stage of investigation. (ii) to help quicker disposal of cases of compoundable category and to reduce the work load of the police.

5. Section 231

Do you agree that the prosecution and Investigating Agency as the case may be required to produce all evidence in support of the prosecution within a specific period of framing of the charge against the accused under Section 231 Cr. P.C. for expeditious disposal of the case?

6. Section 238

Do you agree with the suggestion that under Section 238 read with Section 207, the Court shall be required to satisfy himself that he has complied with the provisions of Section 207 Cr.P.C., within a period of one month of taking cognizance of offence, which provision may curtail the delay caused due to non-compliance of Section 207 for a long period?

7. Section 312

Witnesses who attend court are not paid appropriate monetary allowances and when paid, it is limited only to the day on which they are examined, although they might be called on a large number of occasions, dislocating their daily work. Should they not be compensated or paid daily allowance for all the days they are forced to attend court so that their presence can be secured in a better manner?

8. Appointment of honorary/special Magistrates

Whether immediate appointment of Honorary/Special Magistrate are necessary for trying certain offences for expeditious disposal of cases and if so, what are the classes of offences they can try.

C. Plea Bargaining : Insertion of new Chapter XIIA : Procedure for Pre-Trial Bargaining and Plea Bargaining

1. Whether before the commencement of trial an endeavour should be made by the Magistrate to explore the willingness of the parties to compounding the compoundable offences?

2. Do you agree with the suggestion that a separate chapter XIIA for concessional treatment to offenders willing to plead guilty be introduced in the Code of Criminal Procedure on the lines recommended by the Law Commission of India in its 142nd Report on "Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining." Such procedure may *inter-alia* provide for the following:

(a) **Competent Authority** — The jurisdiction for the exercise of the powers under this chapter shall be exercised by the competent Authority mentioned hereunder :

In respect of criminal cases where the relevant statute provides for imprisonment of less than 7 years for the offences alleged to have been committed, a metropolitan magistrate or a magistrate of the first class, designated by the High Courts and in respect of criminal cases where the relevant statute provides for imprisonment is between ... years to 10 years for the offences alleged to have been committed a Bench consisting of two services, duly designated in the High Court shall be the Competent Authorities under this Chapter for the purposes of receiving, considering and disposing the application files under this chapter.

(b) The procedure may be invoked only by the offender himself by making an application pleading guilty with a plea bargaining after cognizance is taken and before the evidence is recorded.

(c) The application will be entertained only after the Competent Authority is, upon ascertaining in the manner specific in the procedure, is satisfied that it is made voluntarily and knowingly.

(d) The Competent Authority will hear the application in the presence of the aggrieved party and the public prosecutor.

The Competent Authority shall thereupon impose the necessary such punishments as it deems fit, keeping in view the nature of the offence and the penal provision attracted and plea of the accused.

ANNEXURE II

DR. S. C. SRIVASTAVA
Joint Secretary & Law Officer

D.O. No 6(3) (33)/95—LC (LS)

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
DEPARTMENT OF LEGAL AFFAIRS, LAW COMMISSION, SHASTRI BHAVAN
NEW DELHI-110 001
Tel 3385931

Dated October 26, 1991.

Dear Sir,

This is to encroach upon your valuable time for the cause of national importance. The Government of India has made a reference to the Law Commission of India to undertake a comprehensive revision of the Code of Criminal Procedure, 1973 and come up with appropriate recommendation.

Ever since, the Code of Criminal Procedure, 1973 came into force, the need for amending its various provisions was being felt for removing certain difficulties/lacunae experienced in its working. Consequently, the Code was amended in 1978, 1980, 1983, 1988, 1990, 1991 and 1993 for certain specific purposes.

The Government of India introduced the Code of Criminal Procedure (Amendment) Bill, 1994 in the Rajya Sabha for carrying out number of changes in the Code. While the Bill is at present pending, before the Parliamentary Standing Committee on Home Affairs, the Government of India has made the aforesaid reference to the Law Commission.

The Law Commission has already made various recommendations in its various reports on the subject relating to the reforms in the Code of Criminal Procedure and other ancilliary matters. Various other agencies of the Government have also made recommendations on the subject.

It is needless to emphasise that there has been inordinate delay in the disposal of criminal cases and there is consequent loss of faith in the criminal justice system which has shaken, the confidence of the people in the rule of law. Of late, there has been alarming rise in the arrears of criminal cases which have been pending for several years.

In view of above, the Law Commission has undertaken the study of the comprehensive revision of the Code of Criminal Procedure so as to remove the germane problems leading to consequential delay in disposal of criminal cases. It is felt that there is a need to review the machinery and the processes involved in the administration of criminal justice. Accordingly, the Commission seeks to elicit your considered opinion on the following subjects, at the first instance, as the same will be helpful in formulating its recommendations to the Government for amending the Code. Needless to mention that your learned opinion on other issues not highlighted hereunder would also be of great assistance to us.

Quite apart from the issues highlighted hereunder, the Commission will soon circulate a comprehensive questionnaire on the Code of Criminal Procedure. This would be followed by Workshops at various places to have a thread bare discussion on the various issues involving the provisions of the Code.

1. Role of Investigating Agencies

The prime role of Investigating Agencies in discharging the functions of collecting evidence against the accused cannot be ignored. Unless, the Investigating Officers are tuned, and trained in their field of investigation, there is bound to be lacunae of various kinds in the prosecution of the accused. You are requested to send detailed views on this issue so that effective reforms can be brought in the role of Investigating Agencies. For this purpose in case of serious offences punishable for 7 years imprisonment and above, a separate investigating agency exclusively to investigate such cases may be appointed which will be incharge of the case till the conclusion of the trial. Such field of consideration by you may also point out measures as to how to structure the Investigating Agencies: and necessary supervision by the higher authorities, and also in respect of duties of Investigating Officers in connection with the collecting of evidence and conducting of trial of cases.

2. Arrest

The Supreme Court has emphasised that arrest in every case is not a must. Therefore, a change can be considered in Section 41, namely, whether a police officer may instead of asking the person concerned issue him a notice of appearance requiring him to appear before the police officer as may be specified, unless there are special reasons for immediate arrest.

3. Reforms in prosecuting agency

Recently, the Supremt Court has held in the case of *S. B. Shahane* v. *State of Maharashtra*, AIR 1995 SC 1628 that there should be a separate cadre of Public Prosecutors so that they can render their functions independently from the control of Police, as well as to reduce the possibility of political or other types of interference with the police investigation and for effective scrutiny of investigation.

Since the prosecuting agency render statutory functions as officers of the Court, there is all the more reason that such prosecuting officers should be absolutely independent. What steps should be undertaken in this regard so that the objective behind it can be attained in the true spirit, may be highlighted by you. (i) Whether they should be headed by a Director of Prosecution, (ii) what should be qualifications of such a Director and (iii) what should be the methods of appointing him and Public Prosecutors to conduct such cases.

4. Deletion of Section 162 Cr.P.C. and change in the mode of recording under Section 161

The Fourth Report of the National Police Commission has observed that recording of witnesses' statements by the police during investigation provide scope for arguments based on contradictions, however trivial or natural they might be in the circumstances of any particular case. It, therefore, recommended to do away with the detailed recording of statement as made by a witness in the course of investigation under Section 161 and substitute in its place a revised arrangement in which the investigating officer can make a record of the facts as ascertained by him on examination of a witness. However, it may be considered by you whether Section 162 of the Cr.P.C. should dispensed with regarding recording of statements of witnesses and instead the statement of important witnesses be recorded under Section 164 of the Code of Criminal Procedure. If so, what should be the types of offences in respect of which recording of statements of witnesses under Section 164 Cr.P.C. should be resorted to.

5. Procedure when investigation cannot be completed in 24 hours and consequent Policy Custody

In the *Central Bureau of Investigation, Special Investigation Cell-1, New Delhi* v. *Anupam J. Kulkarni*, 1992 3 SCC 141. the Supreme Court held that under the proviso to Section 167 (2), the police custody can be only during the first 15 days of the remand and not later. It is felt that such limitation would cause some practical difficulty for the proper investigation in some given cases. Therefore, do you agree that the police custody can be sought during the period of remand at any time if a need arises and Section 167 of the Code of Criminal

Procedure be amended accordingly. But, however, the total remand of police custody should not exceed 15 days but it may exceed only under special circumstances with the permission of the court and for reasons to be recorded by the court.

6. Disposal of certain cases by Nyaya Panchayat

In order to render criminal justice at the door steps of victim and for expeditious disposal of cases, is it feasible to refer some of the criminal cases to Nyaya Panchayat as recommended by the Law Commission in its 114th Report on Gram Nyayalaya. What should be the category of offences which may be referred to Nyaya Panchayats, needs consideration.

7. Adjournments in trial

Even though Section 309 contemplates for holding the proceedings as expeditiously as possible and examination of witnesses from day to day, yet it is an open fact that on account of adjournments, there is caused inordinate delay in disposal of criminal cases. To control adjournments is a matter of great importance to tackle the issue of delay. A deep thought has to be given on it, and in what manner Section 309 can further be amended.

8. Compounding of offences

Of late, various High Courts have quashed criminal proceedings, (in respect of non-cognizable offences even) because of settlement between the parties to achieve the harmony and peace in the society, for example, criminal proceedings in respect of offences under Section 406 relating to misappropriation of dowry articles or Istri Dhan, and offences under Section 498A, IPC were quashed (Arun Kumar Vohra v. Mrs. Reetu Vohra (1995) (1) All India Criminal Law Reporter 431; Sirlap Singh v. State of Punjab, 1993 (2) All India Criminal Law Reporter 800). Similarly, should other class offences may be made compoundable by expanding the scope of Section 320 of the Code of Criminal Procedure.

9. Conversion of some warrant cases into summons and to be tried summarily

Should any other class of offences, which are triable as a warrant case, be converted into trial in summary manner as laid down under Chapters XX and XXI.

10. Compounding at the stage of investigation

Where in respect of any offence compoundable under Section 320 of the Code of Criminal Procedure, if the parties give their desire to compound the case, the Investigating Officer shall make a report of the same to the Magistrate who thereupon deal with the case under Section 320. Whether such a step will help in reducing the number of cases going for trial before a court at the initial stage itself.

11. Appointment of honorary/special Magistrates

The appointments can be considered for trying certain offences, for expeditious disposal of cases. This matter also needs further probe as to the class of offences, which such Magistrates can try.

12. Anticipatory Bail

Anticipatory bail provisions have very often been found to be misused by the accused. Should such provisions be retained on the statute book.

13. Plea Bargaining

Plea bargaining has gained ground recently in many countries. Should such a plea bargaining be encouraged at the pre-trial stage.

14. Special Positions in respect of Women

(a) In respect of women convicted of any offence, should there be any further change under Sections 433 and 433A of the Code of Criminal Procedure regarding remission or commutation of sentences.

(b) Whether any further changes are necessary under Section 125 of the Code Criminal Procedure in matter of maintenance of wife, children, etc.

15. Victimology

The concept of victimology, namely, providing sufficient compensation and relief for rehabilitation of the victims is recognised in many countries, and State also under law is required to take steps in this direction. Whether Section 357 of the Code of Criminal Procedure be suitably amended to fulfil this object.

I would, therefore, request you to kindly spare some of your precious time in giving your valued opinion to the issues raised herein above at your earliest convenience, preferably within one month.

Looking forward to your co-operation.

With regards,

Yours sincerely,

(S. C. SRIVASTAVA)

ANNEXURE III

RESPONSES RECEIVED ON THE QUESTIONNAIRE ON THE CODE OF CRIMINAL PROCEDURE, 1973

As already stated the Law Commission circulated a comprehensive Questionnaire (Appendix I) on the Code of Criminal Procedure for eliciting opinions from various quarters. The Commission also circulated the letter (Appendix II) highlighting the main issues involved in the Code of Criminal Procedure.

The Questionnaire was sent to the Chief Justices of High Courts and the Registrars of the High Courts (with a request to kindly get it circulated among all the Judges), Sessions Judges, Supreme Court Bar Association, High Court Bar Associations, District Bar Associations, Human Rights Commission, State Law Commissions, Bar Council of India, State Bar Councils, Advocates, Academicians and some social organisations. The Questionnaire was also sent to the Chief Secretaries, Home Secretaries (with a request to get it circulated to all the police officers) and Law Secretaries of various States and Union Territories.

Responses were received from fifty-eight judges, fourteen advocates, four police officers, two State Governments, four academicians, and three State Law Commissions.

Issue No. 1—Role Of Investigating Agency

Views of Judges

Out of thirteen judges, eight are of the view that a separate investigating agency should be appointed for all sessions cases/murder cases etc. They should be given intensive training in the investigation of grave crimes, knowledge of law, forensic science etc. Their pay scale may be more than the other police agency. Such agency be headed in every district by an officer of I.P.S. One judge is satisfied with the existing provisions of the Code and four have not either touched upon or clearly expressed their views. One has opted for 'no comment'. Out of forty-five judicial officers, thirty-four agree with the proposal of the Law Commission. However, some of them have also suggested to take the help of expert legal advisors by the investigating agency. Eight officers have not responded clearly and are silent on the issue. One officer did not agree with the suggestion. The Institute of Judicial Training & Research (U.P.) Lucknow has responded in the affirmative.

Views of Advocates/Public Prosecutors/Bar Associations

Eight Advocates/Prosecutors have suggested to entrust investigations to a separate police agency which should be separated from the regular police entrusted with law and order functions. However, as per Mr. K. F. Rustamji there is no need to have a separate investigating agency exclusively to investigate conventional crime, even if it is grave crime except specialized offences like economic offences. According to two advocates, it will not be advisab e to create a separate cadre because maintenance of law and order and investigation of a case are interlinked. Further, One advocate is silent on the issue. The Madras Bar Association has responded in the affirmative.

Views of Academicians

According to Dr. K. N. Chandrasekharan Pillai, the police department can create one branch consisting of only graduates/post-graduates for criminal investigation. There are many special branches in various states which are preferred to General grades of police for crime investigation. The other academicians did not offer their views on the issue.

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Views of Police Officers

Two police officers havt supported the issue raised by Law Commission and suggested the proposal needs to be considered at the earliest. However, two have not responded to the issue.

Views of the State Law Commission

The Himachal Pradesh Law Commission has responded in affirmative. The Madras State Law Commission has informed that a detailed note will be sent shortly, however, it has not responded to any issue/Question of Law Commission of India.

Views of State Governments

Only the Government of Gujarat has responded and it has agreed with the suggestion of the Law Commission of India. The Government of Karnataka has forwarded a note on "the structure of the system of Directorate of Prosecutions and prosecuting Agencies in practice in Karnataka" which relates to the Issue Number 3. However, it has not responded to any other issue/Question of Law Commission of India.

ISSUE NO. 2—ARREST

Views of Judges

Four judges have supported the proposal of the Law Commission, four are satisfied with the present position, and rest of them have not given the reply directly or are silent on the issue. However, one has not offered any comment. Twenty-four Judicial Officers/District Judges agree with the proposal of the Law Commission of India. However, twelve judges have partly agreed saying that to authorise the issue of notice by the police to the person concerned would not be safe as there is no guarantee that police officer will not indulge in discrimination. At the same time, there would be delay in case notice is issued for appearance of the concerned person before the police officer. Some have suggested to make the provision conditional on the basis of bailable and non-bailable offences. Three have offered 'no comment' on the issue and three are silent. The Institute of Judicial Training & Research (U.P) Lucknow has agreed as proposed by Law Commission of India.

Views of Advocates/Government pleaders/Bar Associations

Five advocates have supported the proposal of the Law Commission, but have suggested that the discretion of the Police Officer with regard to special reason for effecting immediate arrest needs to be preserved without any hindrance, and the other four/five advocates partly agreed on the issue and one disagreed. One advocate is silent on the point. The Madras Bar Association has also supported the issue.

Views of Police Officers

One police officer feels that the existing laws are adequate and amendment is not necessary in this regard whereas the other two feel that the power of arrest is the most abused power. It is necessary that we should re-categorise all the offences into two groups "arrestable" and "non-arrestable". Presently arrests are resorted to even before the suspected person's version is ascertained and appreciated. In most cases, it has led to unwarranted and unjustified arrests. This safeguard should be built into the law.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai has agreed to the suggestion, however, other academicians have not responded.

Views of State Law Commission

The Himachal Pradesh Law Commission agreed as proposed subject to further suggestion that the words which may reasonably be suspected 'to be' be added after the word 'person' and before the word 'any' in Section 41(1)(b).

Views of State Governments

Only the Government of Gujarat has responded to this issue and it has supported the proposal.

ISSUE NO. 3—REFORMS IN PROSECUTING AGENCY

Views of Judges

Nine judges are in favour of a separate cadre of Public Prosecutors so it can function independently from the control of police and politicians. Some of them are of the view that the such Directorate of Prosecution be headed by a Judicial Officer not below the rank of District Judge. He may be appointed by promotion and/or by direct recruitment of advocates with sufficient experience. Justice K. N. Goyal (Retd) partly agreed and has given elaborate suggestions vide para 'A', clause 4 pages 1 to 3, to his reply whereas, three judges either have not expressed their views or are silent on the issue. Thirty-one judicial officers have responded saying that there should be a separate cadre of Public Prosecution, headed by 'Director of Prosecution'. Some of them have suggested that the Director should be appointed by the High Court of the State. They also have suggested qualifications for the other Prosecutors. Head of the Directorate should be a person who had been a judge of High court for at least five years or worked as Advocate-General for five years or worked as Public Prosecutor in the High court for a period of 10 years. Ten officers have not directly responded to the issue and three partly agreed. The Institute of Judicial Training & Research (U.P.) Lucknow has responded in the affirmative, however, it did not agree with the proposal of Women Public Prosecutors and Assistant Public Prosecutors.

Views of Advocates/Government Pleaders/Bar Associations

Ten advocates are of the view that there should be a separate independent cadre of Public Prosecutors which should be an autonomous body, preferably headed by a judicial officer of the rank of Sessions Judge. One of them has suggested that it should be headed by the District Attorney at the District level, Advocate General at the State level and Attorney General of India at the National level. Other Advocates are silent on the point. The Madras Bar Association has suggested that for the Sessions Court, Members of Bar Association with 7 years experience and Director and Dy. Director must be appointed with experience of 15 years and with the concurrence of the High Court. For other Courts the proposed cadre people may be appointed.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai has expressed his view saying that this branch should not oversee the investigation or have any relation with the judiciary. It should be independent. A Director of Public Prosecution having degree of L.L.B. with 10 years bar experience could be the head of this branch. It should be a post that can be filled by way of promotion of eligible candidates from among the Public Prosecutors who are in turn be appointed only by way of competitive test/interview. Professor H. C. Dholakia has also suggested to appoint women prosecutors to conduct the case under Sections 354, 376, 376A to 376E and 509 of I.P.C. Professor B. B. Pande and Professor A. K. Saxena have not responded.

Views of State Law Commission

Himachal Pradesh Law Commission has agreed to what has been proposed by Law Commission of India.

Views of Police Officers

Mr. C. Dinakar, Director General of Police, C.O.D. Training, Special Unit, Bangalore and Mr. H. J. Dora, I.P.S. Additional Director General of Police, C.I.D. Hyderabad have responded in the affirmative, however, Mr. C. Anjaneya Reddy, I.P.S. D.G. (Vig. & Ex.), Hyderabad has drawn the attention to National Police Commission's Fourth Report.

Views of State Governments

The Government of Karnataka has forwarded a note on the structure of the system of Directorate of Prosecuting Agency which is functioning in the said state and also informed that 14th report of Law Commission of India was implemented to establish the Directorate of Prosecution. The Government of Gujarat has supported the proposal of the Law Commission of India.

ISSUE NO. 4—DELETION OF SECTION 162 CR. P.C. AND CHANGE IN THE MODE OF RECORDING UNDER SECTION 161

Views of Judges

None of the Judges, has suggested to delete Section 162 of the Code. Three/four have suggested for some amendment of both the Sections. Two are silent on the issue and one has expressed satisfaction of the existing provisions. One of them says that further recording under Section 161 of the important witnesses should not be accepted because (a) if their statements are not recorded, that wil. give ample scope to the witnesses to change their version, (b) the large number of magistrate would be required to remain busy in recording the statement of important witnesses u/s 164.

However, a proviso may be added in section 162 that where witnesses totally deny the statement u/s 162, the same may be allowed in evidence after showing his signatures made thereon. Another judge has suggested that a proviso may be added that in case of discrepancies in the said two statements, undue weight should not be given unless it affects the prosecution case.

Thirty Judicial Officers do not agree with the suggestion of Law Commission saying that the deletion of section 162 and amendment under Section 161 will not serve any purpose. Eight have not responded to the issue. Three have agreed as suggested by Law Commission. However, one officer is of the view that Section 161(2) and Proviso of Section 162(2) may be deleted. Rest of officers have partly agreed with the proposal. The views of the Institute of Judicial Training & Research (U.P.) Lucknow, partly support the proposal of the Law Commission of India.

Views of Advocates/Public Prosecutors/Bar Associations

Six advocates are of the view that Section 162 should not be deleted, however, some have suggested certain amendments in the existing provisions. One has suggested for the use of scientific means viz. tape recorder etc. to inspire greater confidence. But others have suggested that such move would increase the load on the already heavily burdened judicial officers. A provision for obtaining signature of literate witnesses may be made and a carbon copy of such statement should be furnished to the witnesses. Three advocates partly agreed with the suggestion and two are silent on the point. The Madras Bar Association has responded in the affirmative.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai does not support the proposal and rest of the three academicians are silent on the issue.

Views of the State Law Commissions

The Himachal Pradesh Law Commission does not support the proposal. However, it has suggested that the statement under section 161 should be recorded in the presence of an Advocate/relatives/respectable person of the area/any other person of the choice of witness.

Views of Police Officers

Two police officers do not agree for deletion of Section 162. According to them the accused gets an opportunity to contradict the witnesses with the statements recorded during investigation. It helps the prosecution to refresh the

memory of witnesses and confront them with in case of hostility. It is not necessary that the statements are recorded in detail and furnished to the accused and to the court. They don't agree for recording the statement of important witnesses under section 164. Mr. C. Anjaneya Reddy, Director General (Vig. & ENFT), Hyderabad has given the example of report of National Police Commission on the issue.

Views of the State Governments

Only the Government of Gujarat has responded to the issue and it did not agree with the proposal.

ISSUE NO. 5—PROCEDURE WHEN INVESTIGATION CANNOT BE COMPLETED IN 24 HOURS AND CONSEQUENT POLICE CUSTODY

Views of Judges

Seven judges out of thirteen have supported the proposal of Law Commission and four of them suggested that the period of 15 days may be enhanced to 30 days. Others have not either expressed their views or are silent on the issue. Twenty-eight Judicial officers agree with the suggestion, however, they are of the view that duration of police custody may be increased upto 30 days in view of the nature of the offence. Fourteen officers have not responded to the issue clearly. Two judges do not agree with the suggestion. The Institute of Judicial Training & Research (U.P.) Lucknow, has responded in the affirmative.

Views of Advocates/Government Pleaders/Bar Associations

Five advocates have extended their support to the proposal made by the Law Commission. However, three point out saying that the period of 15 days' police custody can be extended under special and exceptional circumstances for reasons to be recorded by the court. Two Advocates disagree and two have not offered any comment. The Madras Bar Association has responded in the affirmative.

Views of Police Officers

Two police officers have supported the proposal of the Law Commission and Mr. C. Dinakar and Mr. S. Sripall are silent on the point.

Views of the Academicians

Only Dr. K. N. Chandrasekharan Pillai has supported the plea for revising section 167 so as to enable the police to seek custody even during remand.

Views of the State Law Commission

Only Himachal Pradesh Law Commission has responded and has agreed to the proposal.

Views of the State Governments

According to the Government of Gujarat Section 167 should be suitably amended. No other State Government has responded the issue.

ISSUE NO. 6—DISPOSAL OF CERTAIN CASES BY NYAYA PANCHAYAT.

Views of Judges

Only six Judges have responded to the issue saying that Nyaya Panchayats are unable to give a fair trial to the accused person. Members of Nyaya Panchayat usually are not educated and do not know the basics of law and its procedure. They themselves are the Prosecutors and Judges. Due to growing political rivalry in the villages, if injustice is caused to the accused, instead of going in revision, the accused may seek justice in streets, which will disturb the whole system. Abandonment of jury system in India is proof positive that adjudicatory power should not be entrusted to any forum other than judiciary. Seven judges have replied in the negative.

Seventeen judicial officers have supported the proposal saying that petty offences like those punishable under sections 323, 337, 338, 441, 442, 447, 352 I.P.C., theft of property worth less than Rs. 500/-, Cattle Trespass Act etc. may be referred to Nyaya Panchayats. However, Twenty-two officers apprehended that it will not be feasible to refer any of the cases to Nyaya Panchayat due to groupism of people in the villages. Five officers have not responded to the issue. The Institute of Judicial Training & Research (U.P.) Lucknow has offered no comments.

Views of Advocates/Government Pleaders/Bar Associations

Three Advocates did not agree with the proposal and say that it is not advisable as the rural setting is still not free from factions and prejudices, which are not conducive for administration of justice by Nyaya Panchayat. One is satisfied with the existing system. Whereas one Advocate is in favour of disposal of cases by Nyaya Panchayat. Seven Advocates are silent on the issue. According to the Madras Bar Association the caste factor and political lineage are rampant in villages, therefore, it should not be done.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai has not supported empowering Nyaya Panchayats to deal with criminal cases. Other academicians have not touched upon the issue.

Views of Police Officers

Shri H.J. Dora, I.P.C. and Shri C. Anjaneya Reddy have responded and feel that the proposed amendment may be considered. Other police officers have not responded.

The State Law Commissions

The Himachal Pradesh Law Commission is of the opinion that cases of trivial nature may be entrusted to Nyaya Panchayats with a rider that it should have no power to inflict the punishment of imprisonment. The amount of fine should not exceed Rs. 500.

Views of the State Governments

Only Government of Gujarat has responded by saying that such cases should initially be referred to Nyaya Panchayat and if Nyaya Panchayat records a finding to the effect that it is not possible to arrive at an amicable settlement or compromise, those may be sent to the criminal court. It has proposed to confer judicial powers in Nyaya Panchayat only to record the compromise.

ISSUE NO. 7—ADJOURNMENTS IN TRIAL

Views of Judges

Only one Judge has suggested that Section 309 be amended on similar lines as of the provisions as contained in Section 14 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. Two-Three are of the view that it requires some amendment but the way out they have not suggested. One does not agree with any change in the section. However, nine judges have not touched upon the issue.

Twenty-seven Judicial Officers are of the view that Section 309 may suitably be amended and no unwanted adjournments be granted. Some of them are of the view that the time limit should be fixed for the disposal of cases and in case of non-disposal of the cases, the matter should be referred to the Supreme Court/High Court. Sixteen officers have not responded clearly and one is silent. The Institute of Judicial Training & Research (U.P.) Lucknow has suggested to make the provisions that if a complainant seeks adjournments beyond the limit fixed by the Code, the interim order will be passed in favour of opposite party and in the case of the accused the bail granted the accused shall stand automatically cancelled till the next date.

Views of Advocates/Government pleaders/Bar Associations

Two/three advocates are of the view that no trial ought to be permitted to be adjourned once it has begun except in very rare cases. One of them has suggested the measure of inflicting penalty on witnesses not present and converting the statement recorded under section 161 and signed by them as evidence in examination-in-chief with limited evidentiary value attached to it would go a long way. Of course the problem of defence not getting the benefit of cross examination of such witness is to be tackled. Proceeding with the case even in the absence of an Advocate, who had been told about the date would go a long way in curbing the menace of adjournments under flimsy grounds. Another Advocate further has suggested that the Judges may be required to sit as long as necessary in order to complete their calender. Six Pleaders have not responded to the issue. The Madras Bar Association has suggested, "it need not be amended. High Courts can impress upon Subordinate Courts to adhere to Section 309 strictly."

Views of Academicians

Only Dr. K.N. Chandrasekharan Pillai has responded to the proposal saying that the provisions in Explanation 2 under S. 309 might be emphasised to discourage the tendency of parties to seek adjournments and section 309 may be amended accordingly.

Views of Police Officers

Shri H.J. Dora, I.P.S. has welcomed the proposed amendment of section 309 and Shri C. Anjaneya Reddy, I.P.S. has agreed with the problem, however, he has not suggested any solution for the same. Remaining two officers have not responded.

Views of the State Law Commissions

The Himachal Pradesh Law Commission has suggested for quick service of summons for the presence of the witnesses by a separate investigating agency. Further a necessary amendment should be made thereby creating a duty on the magistrate or on a court to record reasons for adjournments.

Views of State Governments

On this issue, nothing has been suggested by the Government of Gujarat.

ISSUE NO. 8—COMPOUNDING OF OFFENCES

Views of Judges

Eight Judges have supported the proposal and suggested amendment. One does support partly giving its reasons in his reply, however, four/five have not touched the issue. According to some Judges all offences except murder and rape under I.P.C. should be made compoundable with the permission of the court keeping in view the larger interest of the society in general and the victim in particular and the amount Rs. 250/- be increased.

Twenty-eight Judicial Officers/District Judges, endorsed the views as expressed by the Law Commission on this issue. Majority of them have suggested to increase the amount from Rs. 250/- to 2000/- or 2500/- or 5000/- or 10,000/-. Some of them have suggested to make all offences compoundable except those which are punishable with life imprisonment or death. However, some of them have specified some Sections of IPC to be included under section 320 and even some offences should be compoundable without the permission of the court. Rest of them are silent and one officer has responded in the negative. The Institute of Judicial Training & Research (U.P.) Lucknow has responded in the affirmative.

Views of Advocates/Government Pleaders/Bar Associations

Six Advocates have supported the proposal. However, a few of them have further suggested that a provision for compounding by agreement to pay compensation may also be considered for inclusion in Section 320. Two advocates disagreed with the proposal and three have not responded. According to the Madras Bar Association 160 can be compounded.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai has welcomed the proposal to widen the scope of section 320 by giving the list of cases including the example of the case, *Mahesh Chandra v. State of Rajasthan* AIR 1988. SC. 2111. Professor H.C. Dholakia has also suggested to expand the table under Section 320 by including the offences under sections 160, 334, 336, 356, 369, 380, 384, 395, 406, 407, 408, 411, 414, 453, 456, 461, 485, 510, of IPC etc. Rest of the academicians have not responded the issue.

Views of Police Officers

Mr. C. Anjaneya Reddy has said that the number of compoundable offences can be enlarged. Shri H. J. Dora, IPS has partly agreed and has suggested that the power of compounding offences can be retained with the court. Other police officers are silent on the point.

Views of the State Law Commissions

The Himachal Pradesh Law Commission has partly agreed with the proposal. However, it has clearly stated that offences under section 498 A of I.P.C. are offences against the Society and should not be made compoundable.

Views of the State Governments

The Government of Gujarat has responded in the affirmative.

ISSUE NO. 9—CONVERSION OF SOME WARRANT CASES INTO SUMMONS AND CASES TO BE TRIED SUMMARILY

Views of Judges

Two Judges have replied in the affirmative, whereas according to another five no change is proposed because it is already being done by the Magistrate as and when such situation arises. Five Judges have not responded to the same. One/two are of the view that there should be only one procedure. Twenty-one judicial officers have supported the proposal of the Law Commission. However, some of them want only one procedure "warrant procedure"; some of them wish to change the definition of "warrant case", a few officers want that offences punishable with imprisonment for a period less than 3 years be tried in summary manner. Eight officers want no change and Fourteen have not expressed their views. The Institute of Judicial Training & Research (U.P.) Lucknow has supported the proposal.

Views of Advocates/Government Pleaders/Bar Associations

Five Advocates have supported the proposal by the Law Commission. One of them is of the opinion that all the summons cases should be tried summarily so that warrant procedure be applicable only in warrant cases. And the definition of warrant cases be amended as proposed by the Law Commission. Four Advocates did not comment. Two are of the view that the existing procedure is good but observed that provisions for summary trial should be abolished. The Madras Bar Association has responded in the negative.

Views of Police Officers

Shri H.J. Dora, I.P.S. and Shri Anjaneya Reddy has responded in the affirmative and other two police officers have not responded.

Views of Academicians

Dr. K.N. Chandrasekharan Pillai does not wish to support the suggestion for conversion of warrant cases into summons and Professor B.B. Pande and Professor A.K. Saxena have not expressed their views on this issue, however, Professor H.C. Dholakia has responded in the affirmative.

Views of the State Law Commissions

Only the Himachal Pradesh Law Commission has responded to the issue. It has opined that the trial of all the criminal offences except murder and rape, should be simple and be tried as summons cases unless Magistrate thinks it fit to try a particular case as a warrant case.

Views of the State Governments

The Government of Gujarat has responded in the negative by saying "no procedure should be different for warrant and summons cases."

ISSUE NO. 10—COMPOUNDING AT THE STAGE OF INVESTIGATION

Views of Judges

Only one judge has supported the proposal. Three do not agree and apprehended more harm than good. Further according to one Judge, in view of the provisions of Section 25 of the Evidence Act and Section 161 of the Code of Criminal Procedure, this power cannot be conferred on the investigating officers. Remaining have not touched upon the issue.

Twenty-seven judicial officers have supported the issue. However, they have suggested that it should be with the permission of the Court and voluntarily. According to three officers, it is not desirable at the stage of investigation due to some reasons/investigating officers' role. Fifteen/Sixteen officers have not responded. The Institute of Judicial Training & Research (U.P.) Lucknow has offered no comments on this issue.

Views of Advocates/Government Pleaders/Bar Associations

Majority of Advocates have supported the proposal of the Law Commission, however, six/seven have not responded the issue. The Madras Bar Association did not agree with the proposal.

Views of Academicians

Dr. K. N. Chandrasekharan Pillai and Professor H. C. Dholakia have welcomed the suggestion whereas Professor B.B. Pande and Professor A.K. Saxena are silent on the issue.

Views of Police Officers

Two police officers agreed with the suggestion. However, Shri C. Anjaneya Reddy has suggested that the officers of the rank of Dy. S.P. and above should be authorized to compound the offences at the investigation stage and make a report to the Court. One officer has not responded to the issue.

Views of the State Law Commission

Himachal Pradesh Law Commission has responded in the affirmative.

Views of the State Government

The Government of Gujarat has responded in affirmative.

ISSUE NO. 11—APPOINTMENT OF SPECIAL/HONORARY MAGISTRATES UNDER SECTIONS 13 AND 18 OF THE CODE

Views of Judges

Majority of the Judges of the High Courts as well as the Judges of the District Courts and other subordinate courts are of the view that Honorary/ Special Magistrates should be appointed to try certain petty offences for expeditious disposal of such cases. In this connection, it may be relevant to point out that 11 Judges of the different High Courts a few of them retired, have expressed their views on this issue in addition to 45 Judges of the District Courts and other subordinate courts. It has been found that majority (6 out of 7) of the Judges of the High Courts have lent their support in favour of appointment of Honorary/Special Magistrates whereas it has been opposed by Justice M. Karpaga Vinayagam of the Madras High Court. However, 4 High Court Judges have not made any comment on this point. Further, out of 45 Judges of the District Courts and other subordinate Courts, 28 are in favour of such appointments as against 5 who are opposed to this proposal and 12 of them are silent in this regard. It may also be pointed out that a committee consisting of Hon'ble Judges of Andhra Pradesh High Court with Hon'ble Justice D. Reddeppa Reddy, Justice B.S. Raikote and Justice A.S. Srivastava has suggested that appointment of Special Judicial Magistrates of Second Class and Special Metropolitan Magistrates may be made under Sections 13 and 18 of the Code for the trial of cases coming under offences which are triable by Magistrates of the Second Class. On the other hand, Hon'ble Justice M. Karpaga Vinayagam observed that the proposal of appointment of government servants under sections 13 and 18 of the Code as Judicial Magistrates of Second Class to try particular cases and that too, for a period of one year, is not useful and proper. Instead, he has suggested that the post of Judicial Magistrates by selection on regular basis should be increased.

Views of Advocates/Government Pleaders/Bar Associations

Favouring the proposal of appointment of Honorary/Special Judicial Magistrates, Shri K.T.S. Tulsi, Additional Solicitor General of India, comments that this could be a significant step whereby public involvement can be ensured in the process of criminal justice. He further observes that there are a large number of citizens in all parts of the country with adequate experience and educational qualifications, who enjoy wide respect in different sections of society. Their involvement in the criminal justice system would not only reduce the burden on the criminal justice machinery but would also lead to a wider acceptability of the system and generate confidence amongst the public, but this should be done with regard to minor offences only. In all, Fourteen advocates including Additional Solicitor General of India and High Court Bar Associations of Bombay and Madras, who sent their replies, have supported this proposal.

Views of Academicians

The Commission received the views of Professor H.C. Dholakia, a former Member of the Law Commission of India on the subject. He is also of the view that more special/honorary judicial magistrates should be appointed in order to deal with minor offences by including metropolitan areas also. On the other hand, Professor Dr. K. N. Chandrasekharan Pillai does not support the proposal. However, Professor B.B. Pandey and Professor A.K. Saxena have made no comment on this issue.

Views of Police Officers

The Police Officers are divided on this issue. Whereas the appointment of special/honorary Magistrates is favoured by Shri H.J. Dora, Additional DGP (CID) and C.A. Reddy D.G. (Vig and Enforcement), Hyderabad, for summary trial of cases and offences punishable with fine only, Shri C. Dinkar, DGP(COD), Bangalore, is of the view that such appointments are not desirable under section 18 of the Code, though appointment under section 13 may be continued.

On the other hand, Shri S. Sripall, DGP, Tamil Nadu, questions the rationale behind the proposed abolition of second class Magistrates contemplated in the Code. He is, however, of the view that a large number of offences

which are required to be tried in the courts of First Class Judicial Magistrates should be transferred to the Second Class Judicial Magistrates as these offences are less serious in nature.

Views of the State Law Commissions

While agreeing with the proposed amendment, the Himachal Pradesh Law Commission is in favour of amendment of sections 13 and 18 of the Code to the extent that in section 13(1) the word "or advocate" after the word "Government" and before the word "all" be added whereas section 18 be retained as it is except that from sub-section (3), the words "State Government—as the case may be"—may be deleted. Thus, the Commission has recommended the appointment of an advocate also in addition to that of a government servant under section 13 of the Code while under section 18 the State Government should be deprived of its authority to empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of First Class, as is the provision in the Code at present. Besides, the Tamil Nadu State Law Commission has intimated with reference to the questionnaire on the Code of Criminal Procedure that a detailed note will be sent shortly by it and the same is yet to be received.

Views of the State Governments

No comments were received on this issue though the State Governments of Karnataka and Gujarat have conveyed their responses on the questionnaire.

ISSUE NO. 12—ANTICIPATORY BAIL

Views of Judges

The majority view (5:3) of the High Court Judges is that Section 438 of the Code must be retained and not deleted, but certain guidelines formulated by the Supreme Court in numerous decisions and that strict conditions should be laid down in order to prevent misuse of this provision. Justice R.G. Vaidyanath of Bombay High Court has also suggested that this section should be used only in extraordinary and exceptional cases, and normally not in serious offences which are punishable either with death or imprisonment for life. Justice K. N. Goel (Retd.) has, however, suggested that the power to grant anticipatory bail should be given only to the High Courts and not to the Courts of Session. The logic is based on the fact that now High Courts are interfering under Article 226 of the Constitution with the FIR/arrest of the accused persons by stay of proceedings. Hence, the negation of section 438 in U.P. It has been suggested by a few Judges that Public Prosecutor should be given a clear notice of 7 days and that only High Court should exercise the power within whose jurisdiction the offence has been committed. The majority (28:10) of the Judges of District Courts and other subordinate judiciary have also taken similar stand. It is to be pointed out at this place that States of Orissa and West Bengal have already inserted a similar proviso after sub-section (1) in Section 438 of the Code, which reads:

> **ORISSA:** "Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State notice to present its case" Orissa Act 11 of 1988, s. 2.
>
> **WEST BENGAL:** ".....Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State not less than seven days' notice to present its case." .....W.B. Act 25 of 1990.

On the other hand, Justice D. Redeppa Reddy of the Andhra Pradesh High Court along with Justice B.S. Raikote and Justice K.S. Srivastava are in favour of deletion of section 438 of the Code as they find that anticipatory bail is doing more harm than good to the society.

Views of the Police Officers

The majority of police officers are in favour of deletion of section 438 from the Code of Criminal Procedure keeping in view the difficulties faced by the investigating agencies in detection of heinous offences relating to property and person. However, Shri C. Anjaneya Reddi, DG (Vig. & Enft.) and ex-officio PS to the Government of Andhra Pradesh (GAD) of Hyderabad observes that the provision for anticipatory bail should be retained, as in the legislation affecting women and weaker sections, arrest has been mandatory, there is every likelihood of false or exaggerated allegations being made in respect of these offences. Arrest will follow even before preliminary investigation is done. So unless anticipatory bail is provided there is no way for the accused persons to save themselves from social ignominy following such arrest.

Views of Advocates/Government Pleaders/Bar Associations

In the lawyers' opinion, anticipatory bail should not be written off despite the fact that this provision has been widely misused. According to them, like the misuse of this provision, the provisions on arrest have also been misused. However, statutory provision needs to be clarified that only the Courts which have jurisdiction to try offences ought to be empowered to grant anticipatory bail and if the accused apprehends arrest at some other place, he must show that he is the resident of that place in order to be able to invoke the jurisdiction of local court. Such transitory anticipatory bail must not exeeced 7 days and should be confirmed by the Court of jurisdiction, failing which the same should lapse.

Views of Academicians

Professor H.C. Dholakia, a former Member of the Law Commission of India, has opined that in order to prevent misuse of provisions regarding anticipatory bail, stringent requirements may be prescribed. In this context, he refers to the West Bengal Amendment as follows:

> In sub-section 1 of section 438, the following proviso shall be added:
>
> "Provided that when the apparent accusation relates to an offence punishable with death, imprisonment for life or a term not less than 7 years, no final orders shall be made on such application without giving the State not less than 7 days' notice to present its case:"

Other academicians have, however, not made any comment in this context.

Views of the State Law Commissions

No comments have been received.

Views of the State Governments

State of Gujarat does not support the deletion of Section 438 of the Code. No more replies have been received on this subject.

ISSUE NO. 13—PLEA BARGAINING

Views of Judges

In most of the cases of response received by the Commission from the High Court Judges, no comment has been made on this point. Some 4 judges have taken up the issue wherein three of them have favoured the proposal. Thus, two different views have emerged as follows:

Justice D. Redeppa Reddi does not approve of this method of settling disputes as it may give rise to dubious practices besides being hit by Article 14 of the Constitution because of conferment of unfettered and unguided discretionary powers on the presiding officers. Further, it would also invite unnecessary criticism of the judiciary from litigant public. However nineteen judges of district courts and other subordinate judiciary have favoured the proposal as against 9 who are opposed to it. On the other hand, Justice G.S.N. Tripathi of Allahabad High Court supports the idea of pre-trial bargaining in respect of compoundable offences only.

Views of Police Officers

The views on this point are equally divided. Shri H. J. Dora, Addl. DGP (CID) Hyderabad does not favour the acceptance of plea bargaining while Shri Anjeneya Reddi DG (Vig. & Enft.) supports its acceptance.

Views of Advocates

Plea bargaining has been appreciated by the lawyers' community also. Shri K.T.S. Tulsi, Addl. Solicitor General of India, observes that it is an important technique to avoid overcrowding of criminal cases in courts, but the same should be adopted with safeguards prevent its abuse. In this regard he suggests that if investigation and prosecution are entrusted with the District Attorneys and Advocate-Generals, there would be less possibility of this technique being abused. The Madras Bar Association has also supported this proposal.

Views of Academicians

No comments have been received.

Views of State Law Commissions

No comments have been received.

Views of State Governments

Only Sate Government of Gujarat has replied in the affirmative on this point.

ISSUE NO. 14—SPECIAL POSITION IN RESPECT OF WOMEN

Views of Judges

The Judges of High Courts feel that in respect of women convicted of an offence, the provisions are self-contained and do not require further amendment. However, minority of Judges (3:7) have appreciated the proposed amendment for further changes in sections 433 and 433A of the Code. The subordinate judges and district judges have subscribed to the same view in 8 to 20 ratio. Further, the amendment of section 125 of the Code has been supported along with a suggestion to make a special provision for interim maintenance in favour of wives, children and old parents. Some suggestions for the increase of maintenance allowance upto Rs. 1000/-, 2000/-, 2500/- and 3000/- have also been given. Some subordinate judges have approved the limit upto Rs. 5000/- as proposed by the Commission.

Views of Police Officers

Majority view is in favour of consideration of the special position for women including the amendment of section 125 of the Code.

Views of Advocates

In all fourteen replies have been received on this point. Majority of the lawyers find no relevance in amending sections 433 and 433A of the Code. However, in resppect of section 125, the proposed amendment has been approved. Shri K.T.S. Tulsi has suggested that a provision for ensuring safe and adequate residence to the wife and children (if necessary by dividing the existing accommodation) may also be incorporated. The Madras Bar Association suggests that Rs. 2500/- should be substituted in place of Rs. 500/- under section 125 of the Code.

Views of Academicians

Academicians are against the proposal of special status in respect of women prisoners.

Views of State Law Commissions

No comments have been received.

View of State Governments

The State Government of Gujarat has supported the proposed change in respect of special position of women as well as in respect of maintenance under section 125 of the Code.

Issue No. 15

Victimology

Views of Judges

While supporting the concept of victimology the Judges of the High Courts (8:1) have suggested that if compensation is to be awarded under section 357 of the Code, the Magistrate or the Court concerned should be empowered to direct the State to pay compensation to the victim of assault because in many a case the accused persons are too poor to pay the compensation. The Judges of district courts and subordinate courts have also supported the proposal by a majority of 25 to 30. In this respect it may also be relevant to point out that the historical pronouncement of the Allahabad High Court made on 9-2-1996 in the Civil Writ Petitions No. 32982 of 1994, 39919, 39920, 39921, 40216 and 40752 of 1994 filed by Shri Sudhir Chaptiyal, Dev Raj Kapoor and others on behalf of the Uttrakhand Sangharsh Samiti against State of Uttar Pradesh has laid down guidelines for victim compensation. Similarly Twenty-five out of Twenty-seven judges of subordinate judiciary have welcomed this proposal.

Views of Police Officers

The proposal of victimology has been welcomed by the police officers also who say that action has already been taken by the governments in providing rehabilitation, reemployment to victims of SC and ST related offences. Shri C. Anjenaya has also suggested that not less than 75% of the amount of penalty should be paid to the victim of assault by way of compensation.

Views of Advocates

The lawyers have approved this proposal by saying that it is a step in the right direction. Shri K. T. S. Tulsi has suggested that section 357 needs to clarified in respect of awarding compensation at the stage of plea bargaining or compounding of offences and the order in that regard must be made enforceable as a decree of court.

Views of Academicians

Professor K. N. Chandrashekharan Pillai has observed that even without an amendment to section 357 of the Code, it is possible for the courts to award compensation. Today the State is also made liable to pay compensation under public law (see Neelawati Behara alias Lalita Behara vs. State of Orissa & Ors. AIR 1993 S.C.1960). Professor A.K. Saxena has suggested that it will not be possible for the State of provide compensation to all the victims claiming compensation as it will put a huge financial burden upon society in the shape of taxes. But when the compensation is to be paid by the convict through his earnings under forced labour he will be automatically reformed and will be deterred from becoming a habitual criminal.

List of State Governments, Judges of High Courts, District Judges/Judicial Officers, Bar Councils/Bar Associations, Advocates/Public Prosecutors, Police Officers, academicians and State Law Commissions.

A. State Governments

1. Mr. P.J. Dholakia, Secretary & RLA, Govt. of Gujarat.
2. Mr. D'Souza Robinson, Additional Secretary to Govt. of Karnataka (Department of Law and Parliamentary Affairs).

B. Judges of High Courts

1. Justice D. Reddeppa Reddy*
2. Justice B. S. Raikote*
3. Justice Krishna Saran Srivatav*
   *(High courts of Andhra Pradesh)
4. Justice S. P. Kulkarni
   (High Court of Bombay, Nagpur Bench)
5. Justice O. P. Jain
   (High Court of Allahabad)
6. Justice R. G. Vaidyanatha
   (High Court of Bombay)
7. Justice Anant D Mane
   (High Court of Bombay, Bench at Aurangabad)
8. Justice G. S. N. Tripathi
   (High Court of Allhabad)
9. Justice M. Karpagavinayagam
   (High Court of Madras)
10. Justice K. N. Goel (Retd.) (Lucknow)
11. Justice Giridhar Malviya
    (High Court of Allahabad)

12 & 13 Judgement of Allahabad High Court by D. B. in writ petition No. 39919, 39920, 39921, 40216 and 40752 of 1994 filed by Uttarakhand Sangharsh Samity.

C. District Judges/Judicial Officers

1. Shri R. C. Kathuria
   (District and Session Judge, Haryana)
2. Shri O. P. Garg
   (District and Session Judge, Haryana)
3. Shri S. N. Kapoor
   (Addl. District and Sessions Judge, Karkardooma Court, Delhi).
4. Shri A. S. Yenegure
   (Addl. District and Asstt. Sessions Judge, Sawantwadi, Maharashtra)
5. Shri M. G. Jadhav
   (Chief Judicial Magistrate, Sawantwadi, Maharashtra)
6. Shri M. D. Keskar
   (Chief Judicial Magistrate, Ratnagiri, Maharashtra)
7. Shri R. B. Patil
   (Civil Judge, Deorukh, Ratnagiri, Maharashtra)
8. Shri B. S. Wasnik
   (Civil Judge, Aurangabad, Maharashtra)
9. Shri Arun D. Kulkarni
   (Addl. District Judge, Aurangabad, Maharashtra)
10. Shri P. R. Borkar
    (Extra Jt. District Judge, Aurangabad, Maharashtra)

11. Shri S. Z. H. Kazi
(Joint District & Sessions Judge. Thane, Maharashtra)

12. Shri G. D. Tadwalkar
(Addl. District and Sessions Judge. Sawantwadi, Sindhudurg)

13. Shri Pavashe L. S.
(Chief Judicial Magistrate. Solapur, Maharashtra)

14. Shri A. B. Palkar
(District & Sessions Judge. Solapur, Maharashtra)

15. Shri S. Y. Padhye
(Addl. District Judge & Asstt. Session Judge, Solapur, Maharashtra)

16. Shri S. R. Ghanavatkar
(District & Session Judge, Satara, Maharashtra)

17. Shri L. D. Anekar
(Addl. District Judge, Nagpur, Maharashtra)

18. Shri J. A. Patil
(District Judge, Pune, Maharashtra)

19. Shri P. G. Choudhari
(Addl. District Judge, Osmanabad)

20. Shri K. P. Kotecha
(Addl. District Judge & Sessions Judge, Osmanabad)

21. Shri J. C. Shirsale
(Civil Judge, Osmanabad)

22. Dr. (Smt.) Pratibha Rasal
(Addl. District Judge, Nagpur, Maharashtra)

23. Shri F. N. Velati
(Jr. District Judge, Nagpur, Maharashtra)

24. Shri S. S. Sabne
(Addl. District Judge, Nagpur, Maharashtra)

25. Shri M. M. Parlikar
(Addl. District Judge, Nagpur, Maharashtra)

26. Shri C. L. Pangarkar
(Jr. Director, Judicial Officers' training Institute, Nagpur, Maharashtra)

27. Shri V. R. Kingaonkar
(I/c, Director, Judicial Officers' training Institute, Nagpur Maharashtra)

28. Shri P. S. Mane
(District Judge, Nasik, Maharashtra)

29. Shri Subhash S. Deshmukh
(Addl. District Judge, Nasik, Maharashtra)

30. Shri A. V. Karnik
(District & Session Judge, Ahmadnagar Maharashtra)

31. Shri B. R. Choudhari
(Chief Judicial Magistrate, Aurangabad Maharashtra)

32. Shri A. D. Bhosale
(Addl. Distt. & Session Judge, Aurangabad Maharashtra)

33. Shri P. R. Borkar
(Extra Jt. District Judge, Aurangabad, Maharashtra)

34. Shri K. D. Patil,
(Addl. Distt. Judge, Akola, Maharashtra)

35. Shri A. H. Shah
(Additional Principal Judge, Bombay City Maharashtra)

36. Shri M. L. TAahaliyani
(Chief Metropolitan Magistrate, Mumbai, Maharashtra)

37. Shri P. K. Chavare
(Addl. Session Judge. Mumbai City, Maharashtra)

38. Mrs. Mridula R. Bhatkar
(Judge, City Civil Courts. Gr. Bombay Maharashtra)

39. Shri J. N. Patel
(Designated Courts, under TADA (P) Act. 1987, Brihan Mumbai, Maharashtra)

40. Shri B. K. Kulkarni
(Principal Judge, City Civil Court, Bombay Maharashtra)

41. Shri G. L. Chopra
(District & Session Judge, Amritsar, Punjab)

42. Shri H. R. Shelat
(Distt. Judge, Valsad, Ahmedabad, Gujarat-Now Judge, High Court, Gujarat)

43. Shri S. D. Gunewar
(District & Session Judge, Ratnagiri Maharashtra)

44. Shri A. S. Rane
(Extra Joint District Judge, Nagpur, Maharashtra)

45. Institute of Judicial Training & Research Lucknow (U. P.).

D. Advocates/Public Prosecutors/Bar Associations

1. Shri Benoy Kumar Sinha, Advocate, Bar Council of Bihar.
2. Shri Vijay Shankar Mishra
(Govt. Advocate, High Court, Ahmedabad).
3. Shri S. B. Pawar, Advocate, High Court, Bombay.
4. Shri P. Sitapati. Advocate & Spl. Public Prosecutor, Secunderabad.
5. Shri C. Padmanabha Reddy, Sr. Advocate, Hyderabad.
6. Shri T. Bali Reddy, Advocate, Hyderabad.
7. Shri K. F. Rustamji, Bombay.
8. Shri Ashok Damodar Shah, Advocate, Ahmedabad.
9. Shri K.T.S. Tulsi, Addl. Solicitor-General, India, New Delhi.
10. Shri F.E. Devitre, Bombay Bar Association, High Court of Bombay.
11. Shri K. Sethumadhava Rao, Spl. P.P., Nellore.
12. Shri Rudra Jyoti Bhattacharjee, Advocate, High Court of Calcutta

13. Shri Arun R. Gupte, Senior Counsel for Central Govt., Mumbai, Maharashtra.

14. Shri M. Ravindran, Sr. Advocate, President, Madras High Court Bar Association, Madras.

15. Shri Imtiaz Husain, Member, State Bar Council of M.P., Jabalpur.

E. Police Officers

1. Shri H. J. Dora, I.P.S., Addl. DG., CID, Hyderabad, Andhra Pradesh.

2. Shri C. Anjaneya Reddy, IPS, DG, (Vig. & Enft.), Hyderabad, Andhra Pradesh.

3. Shri C. Dinkar, DG, COD Training, Special Units and Economic Offences, Bangalore, Karnataka.

4. S. Sripal, IPS, DGP, Tamilnadu.

F. Academicians

1. Dr. K. N. Chandrasekharan Pillai, Professor, Head and Dean, Department of Law, Cochin University, Cochin, Kerala.

2. Prof. B. P. Pande, Coordinator, Faculty of Law, University of Delhi, New Delhi.

3. Prof. H. C. Dholakia, former Member of Law Commission.

G. State Law Commissions

1. Himachal Pradesh State Law Commission, Simla. (Member Secretary).

2. Rajasthan Law Commission, Jaipur.

3. Tamil Nadu Law Commission, Madras.

H. Memorandum

1. Ms. Anita Dhanda, Indian Law Institute, New Delhi.

2. Shri Balwant Singh Malik, Senior Advocate, Supreme Court, New Delhi.

ANNEXURE IV

SUMMARY OF PROCEEDINGS OF THE WORKSHOPS ON THE CODE OF CRIMINAL PROCEDURE

Proceedings of the Meeting of the Law Commission of India held at Andhra Pradesh Judicial Academy, Secunderabad on 26-11-1995 at 10.00 a.m.

In the process of undertaking a comprehensive revision of the Code of Criminal Procedure, 1973, the Chairman, Law Commission of India, Hon'ble Sri Justice K. Jayachandra Reddy held a meeting in association with Sri Ch. Krishna Murthy, Member, Law Commission of India, on 26-11-1995 from 10.00 a.m. to 1.30 p.m. at Andhra Pradesh Judicial Academy, Secunderabad. The following senior judicial officers, senior police officers and senior advocates participated in the said meeting.

1. Sri Y. Venkateswara Rao, District & Sessions Judge, Rangareddy District.
2. Sri C. Y. Somayajulu, Chief Judge, City Small Causes Court, Hyderabad.
3. Sri M.E.N. Patrudu, Registrar (Management), High Court of A.P., Hyderabad.
4. Sri G. Yethirajulu, Director, A.P. Judicial Academy, Secunderabad.
5. Sri L. Ramachenna Reddy, Special Judge for C.B.I. Cases, Hyderabad.
6. Sri D. Subrahmanyam, Metropolitan Sessions Judge, Hyderabad.
7. Sri K. Veerapu Naidu, Add. Director, A.P. Judicial Academy, Secunderabad.
8. Sri N. Vidya Prasad, Add. Dist. & Sessions Judge, Rangareddy District.
9. Sri D. Appa Rao, Addl. Chief Judge, City Civil Court, Hyderabad.
10. Sri S. Chandra Rao, C.M. M-cum-M.S.J., Hyderabad.
11. Sri G Bhavani Prasad, Secretary, Legal Affairs, Govt. of A.P., Hyderabad.
12. Sri G. Vo. Seethapati, Special Judge for Economic offences, Hyderabad.
13. Sri H. J. Dora, IPS., Addl. D.G.P., C I D, Hyderabad.
14. Sri Lokendra Sharma, D.I.G., C.I.D.
15. Sri K. Ch. Venkata Reddy, IPS., Joint Director, A.P. Police Academy,
16. Sri M. Ramakrishna Rao, Chief Legal Advisor-cum-P.P., Hyderabad.
17. Sri E. Yella Reddy, President, Bar Council of India & President, A.P. State Bar Council & Advocate.
18. Sri C. Padmanabha Reddy, Advocate.
19. Sri P. Seethapati, Advocate.
20. Sri T. Bali Reddy, President, A.P. High Court Advocates' Association & Advocate.

During the meeting the Hon'ble Chairman, Law Commission of India, while addressing the participants apprised the members about the reference made by the Government of India to the Law Commission to undertake a comprehensive revision of the Criminal Procedure Code, 1973 and to make appropriate

recommendations. It is expressed by the Chairman that the need for amending various provisions of Criminal Procedure Code, 1973 was being felt for removing certain lacunae experienced and in pursuance of such experiences amendments were made in 1978, 1980, 1983, 1988, 1990, 1991 and 1993 on certain aspects. It is further apprised that the Law Commission has already made several recommendations through its various reports about the reforms to be brought in the Code of Criminal Procedure and that certain recommendations were also received from various other agencies and the Government about the necessity of such recommendations. It is further expressed by the Hon'ble Chairman that there has been inordinate delay in disposal of criminal cases and there is consequent loss of faith in the criminal justice system which has shaken the confidence of the people in the rule of law and that there has been alarming rise in the arrears of criminal cases. It is further expressed that in view of the above circumstances, the Law Commission of India has undertaken a study for comprehensive revision of the Code of Criminal Procedure so as to remove the germane problems leading to consequential delay in disposal of criminal cases. The Hon'ble Chairman further expressed that the Law Commission seeks to elicit opinion from different parts of the country to formulate the information and to make necessary recommendations to the Government for amending the Code.

1. Role of Investigating Agencies: It is essential to have a separate investigating agency in cases of serious offences punishable for seven years imprisonment and above to enable such agency to monitor the progress from the stage of registering the F.I.R. to the stage of conclusion of the trial. It is further suggested that the delays can be avoided in speeding up the trials if an investigating agency is exclusively created for investigation purpose only.

2. Arrest: The powers that are being exercised by the police officers under Section 41 of the Criminal Procedure Code have to be controlled by putting some limitations on the powers conferred under the above Section.

3. Reforms in prosecuting agency : It is suggested that there should be a separate cadre of Public Prosecutors to enable them to function independently from the control of the police and avoid political or other types of interference with the police investigation and there is a further suggestion that the Directorate of Prosecution shall be headed by a District & Sessions Judge and other judicial officers as Director, Joint Directors etc., to monitor the functioning of the Public Prosecutors of the respective State. It is further suggested that there shall be coordination between the Prosecuting Agency and the Investigating Agency to assist the courts for effective dispensation of justice.

4. Deletion of Section 162 Cr.P.C., and change in the mode of recording under Section 161 : It was unanimously suggested that the recording of statement under Section 160 (1) Gr. P.C., can be dispensed with and an alternative has to be provided either by way of making it necessary to get the statements of the witnesses recorded under Section 164 Cr. P.C., through a Judicial Magistrate or such other measure that is necessary.

5. Procedure when investigation cannot be completed in 24 hours and consequent Police Custody : In view of the decision of the Supreme Court in C.B.I., New Delhi vs. Arupam J. Kulkarni, 1992 (3) SCC 141, the police custody under proviso to Section 167 (2) can be only during the first 15 days of the remand and not later. It is suggested that Section 167 can be amended in such a way that the police custody can be given at any time before conclusion of the investigation with a saving clause that such police custody is permissible under special circumstances.

6. Disposal of certain cases by Nyaya Panchayat : It is suggested that the Nyaya Panchayat at Mandal level would certainly reduce the burden of regular civil and criminal courts at gross-root level. But in order to make the people to repose confidence on such Nyaya Panchayats they shall be headed by judicial officers not below the rank of Munsif Magistrate who is in service.

7. Adjournments in trial. : Frequent granting of adjournments on flimsy grounds shall be avoided under Section 309 Cr. P.C., and that the Bench shall

watch the situation whenever adjournment is to be granted and the advocates and prosecutors shall be sensitized about the necessity of speeding up the trials to lessen pendency of the courts.

8. Compounding of offences: Section 320 of the Code of Criminal Procedure has to be once again gone through as to what are the penal provisions of I.P.C., that are to be brought to the table under Section 320 Cr. P.C. It is also expressed that in the said revision, care shall also be taken whether it is essential to delete any existing penal provisions of I.P.C., from the table of Section 320 Cr. P.C., regarding the compounding of offences, so that the morale of the public may not be affected.

9. Conversion of some warrant cases into summons and to be tried summarily: The participants suggested that it is sufficient if a uniform procedure is adopted in respect of all cases triable before the judicial First Class Magistrates by amending the provisions in such a way to see that sufficient opportunity is given to the accused in defending himself in order to meet the ends of justice.

10. Compounding at the stage of investigation : It is suggested that suitable amendments have to be made to the relevant provisions to enable the investigating agency to effect compromise at the investigation stage between the victims and the accused in respect of offences which are not exclusively triable by Sessions Courts and to report the said compromise to the competent court to record the same after hearing both parties.

11. Appointment of Honorary/Special Magistrates: It is necessary that the appointments for the above posts shall be done by appointing eligible persons on full time basis and the present practice of appointing retired judicial officers or the executive officers has to be dispensed with.

12. Anticipatory: It is suggested that there shall be by some restrictions in the power of granting anticipatory bail under Section 438 Cr. P.C., since there is a comment that this beneficial provision is being misused to a very large extent. Some of the participants suggested that the provision itself can be deleted from the Code.

13. Plea Bargaining : It is suggested that since the plea Bargaining which is known as alternate dispute resolution has been successful in western countries it is desirable to introduce the same in India also on experimental basis and on the basis of the success of such experiment the same can be extended to other parts of the country.

14. Special positions in respect of women: It is suggested that there may be liberal application of remission and commutation of sentences in respect of women to achieve the object of Sections 433 & 433-A of the Criminal Procedure Code by amending them suitably.

It was expressed that the reliefs provided under Section 125 of the Criminal Procedure Code are not reaching the dependents due to the ineffective procedure of execution of the orders. Therefore, it is suggested that it is essential to create a special agency to enforce the awards to enable the dependents to survive.

15. Victimology: It is suggested that it is essential to amend the Code in such a way providing for awarding of compensation in all desirable cases against the accused and the State by way of awarding compensation and rehabilitation to the victims by incorporating a separate provision.

After detailed discussions and the above suggestions, the Hon'ble Chairman of the Law Commission requested the participants to send the suggestions in writing giving the details, if necessary, by sending them to the Secretary, Law Commission of India, New Delhi, within fortnight. After conclusion of the discussions, the Director, A.P. Judicial Academy proposed vote of thanks and the meeting was concluded at 1.30 p.m.

Memorandum of proceeding of the Workshop by Law Commission of India, Held on 9th December, 1995 in the Judges' Library High Court, Allahabad

For considering the amendment in the Code of Criminal Procedure with a view to streamline administration of criminal justice a Workshop was organised in the Judges' Library, High Court, Allahabad on 9th December, 1995 at 10.00 A.M. The Workshop was presided over by Hon'ble K. Jayachandra Reddy, Chairman, Law Commission and Hon'ble Judges of the High Court, including the Hon'ble Chief Justice, Lawyers, Police Officers and Professor of Law in the university of Allahabad and members of Registry participated in the Workshop. A questionnaire was also circulated amongst them earlier at the instance of the Law Commission.

The following were present :

1. Hon'ble Mr. A. Lakshmana Rao, Chief Justice, Allahabad High Court.
2. Mr. Justice K. Jayachandra Reddy, Chairman, Law Commission of India.
3. Hon'ble Mr. Justice V. N. Khare, Judge, Allahabad High Court.
4. Hon'ble Mr. Justice Palok Basu, Judge, Allahabad High Court.
5. Hon'ble Mr. Justice Girdhar Malaviya, Judge, Allahabad High Court.
6. Hon'ble Mr. Justice A. B. Srivastava, Judge, Allahabad High Court.
7. Hon'ble Mr. Justice G.S.N. Tripathi, Judge, Allahabad High Court.
8. Hon'ble Mr. Justice Kundan Singh, Judge, Allahabad High Court.
9. Hon'ble Mr. Justice N.B. Ashthana, Judge, Allahabad High Court.
10. Hon'ble Mr. Justice S. N. Sahai (Retd)/Chairman, State Law Commission.
11. Prof. (Mrs) Alice Jacob, Member Law Commission.
12. Mr. Ch. Prabhakara Rao, Member Secretary, Law Commission.
13. Prof. S. C. Srivastava, Joint Secretary & Law Officer, Law Commission.
14. Mr. Justice I. Panduranga Rao, former Judge, A.P. High Court and presently Chairman, Special Court under Land Grabbing (Prohibition) Act, Hyderabad.
15. Sri A. D. Giri, Advocate High Court, Allahabad.
16. Sri. D. S. Mishra, Advocate, High Court, Allahabad.
17. Sri P. N. Mishra, Advocate, High Court, Allahabad.
18. Sri Jagdish Singh Sengar, Advocate, High Court, Allahabad.
19. Sri Vijay Shanker Mishra, Advocate, High Court, Allahabad.
20. Sri Syed Farman Zaqvi, Additional Government Advocate, High Court, Allahabad.
21. Sri Gopal Chaturvedi, Advocate, High Court, Allahabad.
22. Sri Dilip Gupta, Advocate, High Court, Allahabad.
23. Dr. A. K. Saxena, Prof. Dean & Head of Law Faculty, Allahabad University, Allahabad.
24. Dr. Rakesh Khanna, Professor, Allahabad University, Allahabad.
25. Sri O. P. Garg, District Judge, Allahabad.
26. Sri M. L. Singhal, Director, Judicial Training Research Institute, U.P.
27. Sri Ashok Kumar Srivastava, Additional District Judge, Allahabad.
28. Sri A. N. Mittal, Special Chief Judicial Magistrate, Allahabad.
29. Sri Daya Shanker Pandey, District Government Counsel (Criminal) Allahabad.

30. Sri Devi Prasad Tripathi, Senior Public Prosecuting Officer, Civil Court, Allahabad.

31. Sri Chandra Gupta, District Government Counsel (Criminal), Allahabad.

32. Dr. D. V. Mehta, Additional Director General, Police Head Quarter, Allahabad.

33. Sri Ramesh Sehgal, Deputy Inspector General, Police Head Quarter, Allahabad.

34. Sri A. B. Lal, Deputy Inspector General, Housing and Welfare, Police Head Quarter, Allahabad.

35. Sri H. P. Shukla, Deputy Inspector General, Railways, Allahabad.

36. Sri P. C. Singh, Deputy Inspector General, Vigilance, Allahabad.

37. Sri V. K. Tewari, Superintendent of Police, Railways, Allahabad.

38. Sri Jagmohan Yadav, Commandant, P.A.C. 42 Battalion, Allahabad.

39. Sri A. P. Maheshwari, Superintendent of Police, S.I.B., Coop., Lucknow.

40. Sri Khem Karan, Secretary/Legal Remembrancer, U.P.

41. Sri N. S. Gahlot, Registrar, Allahabad High Court.

42. Sri J. C. Gupta, Vigilance Officer, High Court, Allahabad.

43. Members of Registry.

After the welcome address by Hon'ble the Senior Judge Mr. Justice V. N. Khare, Hon'ble Chief Justice of Allahabad High Court Mr. Justice A. L. Rao delivered the introductory lecture wherein he emphasised how fair and speedy justice can be achieved in criminal cases after enumerating the procedure for grant of bail to the accused pending investigation/trial which, according to him, should be the rule of law. Hon'ble the Chief Justice elaborated that the investigation should be commensurate to the fundamental rights of individual liberty and freedom enshrined in Article 21 of the Con 2 the Police to arrest the accused in each and every cognizable case without intervention of the court.

Hon'ble the Chief Justice also emphasised that there should be an independent authority which should conduct the prosecution objectively and independently free from influence and restraints of the investigating agency.

His Lordship also said that all efforts should be made to eliminate the inordinate delay in the disposal of the cases for which purpose he laid emphasis on the fact that there should be proper service of summons to the witnesses and trial of petty cases should be entrusted to the panchayats. He also laid emphasis on extending the scope of compoundable offences and urged that in suitable cases notice should be sent to the accused asking to remit specified amount of fine without attending the Court. The result of the cases should be promptly communicated to the accused as also to the concerned parties including investigating/prosecuting agency.

In his keynote address Hon'ble Mr. Justice K. Jayachandra Reddy, Chairman of the Law Commission impressed that the speedy trial is guaranteed by the Constitution and with that end in view the Law Commission is considering suitable amendment in the Code of Criminal Procedure. His Lordship pointed out that there are four agencies involved in the criminal trial i.e. (i) Investigating agency; (ii) Prosecution; (iii) Defence counsel and (iv) Court. The Hon'ble Chairman expressed the view that the investigating agency should be separate from the rest of the police wing dealing with law, order and security. His Lordship expressed concern over delay in the disposal of the cases as a result of which many a times a prisoner languishes in prison for longer time during trial than the period for which he is otherwise sentenced. In the circumstances the power conferred upon the police for arresting an accused for cogniz-

able offence should be suitably curtailed. His Lordship suggested amendment in the Code and the Evidence Act so as to make the statement under Section 161 Cr.P.C. admissible in evidence. Provision should also be made for compounding of petty offences at the investigation stage. He also suggested the Workshop to consider the proposal for bargaining for lesser sentence by pleading guilty at the stage of framing charge and/or initiation of the proceedings.

In order to make the prosecuting agency efficient and objective his Lordship suggested that there should be regular cadre of prosecuting agency headed by Director of prosecution. Separate courts should be established for trial in the cases of custodial deaths and atrocities on women. He also suggested for enlarging the scope of Nyaya Panchayat in the matter of administration of justice.

Some of the aforesaid participants in the discussion have already given their views in writing to the Secretary, Law Commission through Shri Alok Kumar Singh, Additional Registrar and some of the writes-up are being enclosed with this memorandum.

The substance of the discussion held during the course of the Workshop may be summed up as follows:—

Speedy trial commensurate with justice should be the keynote for any amendment in the Criminal Procedure Code, Indian Penal Code and the Evidence Act. Provisions should be made so that investigation of the offence should be entrusted to a separate wing of the police headed by a Director of Investigation. This wing of the police should deal with the investigation of the offence right from the stage of lodging of report to the submission of the charge-sheet.

Provision should also be made to avoid indiscriminate and unnecessary arrest of the accused in each and every cognizable offence. The arrest should be resorted to only where offender is likely to abscond and/or repeat the crime.

Except in heinous offence like murder, dacoity etc., punishable with death or imprisonment for life, grant of bail should be rule rather than exception.

There should be a separate wing of prosecution under Director of Prosecution. It should be independent from investigating agency and deal with cases in an objective and independent manner with a view to assist the court in imparting real justice.

Some of the speakers also emphasised on the role of the court in the matter of speedy trial. It was urged that the trial should proceed day to day until concluded. All efforts should be made to ensure attendance of the witnesses on the date fixed. The evidence of the formal witnesses should be recorded on affidavits which should be submitted along with the charge-sheet. System of bargaining for lesser sentence by pleading guilty by the accused at the commencement of the trial may be introduced. The compounding of the offences may be encouraged and there should also be provision for awarding compensation to the victim of an offence.

The speakers also laid emphasis on making use of modern scientific inventions such as video camera, computers etc. It was urged that the investigation may commence even before the first information report is lodged and the investigating agency with the aid of the video camera may take photographs of the scene of the occurrence and of other material evidence on the spot.

Some of the participants also suggested for imparting training to the investigating/prosecuting staff and also the presiding Judges of the Court in order to improve the efficiency and performance.

In the end the Hon'ble Chief Justice of the High Court thanked the participants for their valued suggestions and requested them to send their views in writing to enable the Law Commission to make use of the same while affecting amendment in the Criminal Procedure code and other ancillary laws.

The proceedings of the Workshops were conducted by Shri Alok Kumar Singh, Additional Registrar of the Allahabad High Court.

Proceedings of the Workshop on Amendments to Cr. P.C. held on 19-12-1995 At 10 AM in the Committee Room, Vidhansoudha, Bangalore

A workshop on the Code of Criminal Procedure was held on 19-12-1995 at 10.00 AM in the Committee Room, Vidhansoudha, Bangalore.

The following were present:

1. Hon'ble Mr. Justice Jayachandra Reddy.
2. Mr. D. Basavaraji — Law Secretary, I/c.
3. Mr. N. A. Muthanna - Prl. Home Secretary.
4. Mr. B. N. P. Albuquerque -- Secretary-II, Finance Dept.
5. Mr. A. S. Malurkar -- Director General of Police.
6. Mr. S. C. Bharman — Addl. DGP (Law & Order).
7. Mr. C. Dinakar — DGP (COD).
8. Jayasingh Peter -- Member, State Law Commission.
9. Mr. Ananda Rao - Member, State Law Commission.
10. Mr. S. B. Chanal — Addl. Law Secretary.
11. Mr. Robinson D'souza — Addl. Law Secretary.
12. Mr. Javaraiah — Director, Translation Dept.
13. Mr. D. Shankar Reddy — Former Director of Prosecutions.
14. Mr. M. R. Devappa — Joint Director of Prosecutions rep. Director or Prosecutions.
15. Mr. Vasantha Rao Kulkarni — Jt. Director of Prosecutions.
16. Mr. K. V. Vasudava Murthy — Secy., Kar. Legal Aid Board.
17. Mr. K. N. Subha Reddy — President. Advocates Assn.
18. Mr. Bennur — Asstt. Secretary, Kar. Legal Aid Board.
19. Mr. K. Prabhakar — Law Officer, Agriculture Dept. (President, Prosecutors Association).
20. Mr. Narsimhan — Deputy Secretary, Law Department.
21. Mr. V. C. Hatti — Dy. Secretary, Law Deptt.
22. Mr. Moossakunni Nair Moole — Dy. Secretary, Law Deptt.
23. Mr. G. T. Veerabhadrappa — Dy. Secretary, Law Deptt.
24. Mr. A. B. Patil — State Public Prosecutor.
25. Dr. S. Srinivasan -- Addl. DGP (Technical Service & Crimes).
26. Mr. Murari Mouni — Dy. Secretary, Law Deptt.
27. Mr. Venkatasudharshan — Under Secy., Law Department.
28. Mr. M. Ramesh Rao — Under Secy., Law Department.
29. Mr. Vedamurthy — Under Secy., Law Department.

1. **Sri D. Basavaraj, Law Secretary,** I/c, who was the Co-chairman, welcomed the participants and introduced the Hon'ble Chairman and briefly mentioned the amendments to Cr. P.C. suggested—by the Law Commission.

2. The Hon'ble Chairman, Law Commission gave an overall picture of the amendments suggested by the Law Commission, their urgent necessity in the present circumstances and invited the participants to express their views.

10—2 M of L & J/ND/97

3. Sri K. N. Subba Reddy, President Bar Association

Expressed that the investigating agency should be separated from the Law & Order agency. A separate and exclusive agency should be there for handling the criminal cases, that the IOs do not attend trial cases and witnesses do not come forward to give evidence. He agreed with the proposal of the Law Commission with regard to Secs. 161 and 162 Cr. P. C.

4. Sri M. R. Devappa, Joint Director of Prosecutions represented on behalf of Director of Prosecutions, Bangalore who is on official tour Presented a report which is appended to these proceedings.

5. Sri Vasantha Rao Kulkarni, Joint Director of Prosecutions

Suggested that a notice should be issued to the Public Prosecutors while considering application under Secs. 437 and 438 Cr. P. C.

6. Sri Ananda Rao, Member, State Law Commission, Tamil Nadu

Read a report expressing his views on the matter. A copy of the report is appended to these proceedings.

7. Sri Shankar Reddy, Former Director of Prosecutions

Suggested that Sec. 313 Cr. P.C. need to be retained as it is, and said that the Courts must put to the accused only those material aspects appearing in the evidence against him. He also said that Sec. 313(2) Cr. P.C. is not made use of by the courts.

Regarding 161 & 162 Cr. P.C. he felt that, it is necessary to appoint Spl. Magistrates. He also emphasised training to Magistrates on every aspect including writing of judgements.

He also discussed regarding Secs. 24 and 25 Cr. P.C. He felt that the present system in Karnataka under the Law Department supervision is working satisfactorily and that the Police Officers have adjusted to this system. The change of party in power should not result in change of prosecutors. There was also a discussion regarding preferring of appeals and the authority to take final decision. It was suggested that the power of taking final decision should be vested with the Director of Prosecutions and his views should be final.

8. Sri K. V. Vasudeva Murthy, Secretary, Karnataka Legal Aid Board

Chairman, Law Commission called his views about entrustment of cases to Nyayapanchayat instead of Lok Adalath.

Sri Vasudeva Murthy said that the present system of Lok Adalath in Karnataka is working satisfactorily with the assistance of Retired Judges as conciliators and senior advocates and he expressed his reservation about Nyaya Panchayat effectively delivering justice if local and political persons are made members of Panchayats.

Sri K. V. Vasudeva Murthy suggested that instead of summoning a Doctor in every case as a witness after his transfer to a distant place he may be examined on interrogatories.

9. Sri Huthanna, Prl. Home Secretary

Referred to the present perception of the public in delivery of Criminal Justice system and the judiciary is failing. He left of the increase in litigants resulting in increasing cases. He also advocated to provide necessary infrastructure to Police Department. Elementary support to the department is being denied. He requested to impress upon the Union Government as well as State Government to sanction adequate funds to judiciary when crores of rupees are

being sanctioned to the development activities. He suggested inclusion of expenditure on Courts and Criminal Justice as a priority aspect in the budget. He also said that the number of courts should be increased commensurate with the developmental activities.

10. Sri Malurkar, Director General of Police.

He expressed that Sec. 161 may not require any amendments. He felt that there are not enough Magistrate in the Courts resulting in increase of number of cases.

About the co-operation and co-ordination between the Police and Prosecution Department, he said that, in each district, a monthly meeting of the Superintendent of Police and other Police Officers and the Asstt. Director of Prosecutions is being held and they discuss and review the cases pending trial in the Courts. He left that, it is difficult to secure the witnesses before the Court and if the Courts adjourn the case without examining the witnesses, it will be further difficult for them to attend again. They have to be given Batta. He said that the witnesses have to be briefed before their examination. He welcomed Nyayapanchayats and constitution of Special Magistrates.

He felt that the responsibility of paying Batta to witnesses may be entrusted to Investigating Officer, so that it would be convenient for them to get the witnesses.

11. Sri Dinakar, C.O.D.

Referred to the arrest of persons whose names are mentioned in FIR, though the Cr. P.C. says that, their arrest is not a must, it is being wrongly presumed. He felt that by doing this, even innocent persons are arrested. He said that arrest of women accused is normally made during day time and sent to remand homes managed by ladies.

He discussed regarding handcuffing of the accused. Chairman, Law Commission said that ordinarily handcuffing should not be done. It is purely depending upon the accused and the nature of the offence the accused committed is to be taken into consideration. He expressed his feeling that the very purpose of Anticipatory Bail is being misused and it is difficult to recover the property involved in the offence.

12. Sri S. C. Bharman

He said that the present rate of conviction is much lower compared to earlier system existing in 1973 and the prosecution is not only to blame. He said that getting the charge sheets scrutinised by prosecutors will delay the matter.

Sri. Shankar Reddy interfered and said that, during his tenure as Director of Prosecutions he had issued circulars and a register is maintained in every Prosecutor's Office showing details of as to when the charge sheet is received, when it is filed, signature of the person who received the charge sheet etc.

13. Additional State Public Prosecutor Sri A. B. Patil.

That all the Magistrates should be given proper training in writing judgements that too Executive Magistrates. They are ignorant about law. There are also so many repetition in the judgement and due to this appellate Courts timings will be unnecessarily wasted.

Memorandum of the Proceedings of the Legal Workshop on Criminal Law held at Kerala High Court on 20-12-1995.

A workshop on Criminal Law was held at Kerala High Court on 20-12-95 at 3.30 p.m. The Hon'ble Judges of the Kerala High court. Advocate-General, Additional Advocate-General Director of Public Prosecution, Additional Director of Pubiic Prosecution, Director of Training and Registrar of the High Court and Senior Advocates amongst others were present in the workshop.

The following officials participated in the workshop:

1. Justice K. T. Thomas
2. Justice K. G. Balakrishnan
3. Justice K. S. Joseph
4. Justice K. K. Usha
5. Justice B. M. Tulsi
6. Justice T. V. Ramakrishnan
7. Justice K. S. Radhakrishnan
8. Shri S. Narayanan
9. Justice N. Dhinkar
10. Justice B. N. Patnaik
11. Justice P. Shanmujam
12. Justice P. A. Mohammed
13. K. A. Abdul Salam, CBI Retainer Counsel
14. C. S. Rajan, Secy., Indian Law Institute.
15. M. A. T. Rao, Advocate
16. Director of Training
17. Registrar
18. P. S. Divakaran, Registrar
19. M. V. Viswanathan. Addl. Director of Training
20. M. K. Damodaran
21. K. A. Mohamed Sherif, District Judge
22. B. Kamal Pasha, IInd cell District Judge EKM
23. D. Maharajan, Chief Judicial Magistrate EKM
24. M. N. Sukhnarayan
25. K. C. Peter
26. M. Rotric Singh
27. S..K. Devi
28. K. P. Dandapani
29. V. I. Joseph
30. S. Venkila Subramanayam
31. Mrs Lilly Leslie, Additional Govt, Pleader Public Prosecutor, Ernakulam
32. G. Krishna Kumari, Senior Govt. Pleader.
33. Alan Papali
34. Salil Narayanan
35. P. G. Charko
36. P. M. Saji
37. K. Mohan
38. George Verghees Kananthanam
39. V. N. Achuthan
40. T. R. Raman

41. T. V. Prabhakaran
42. Shyam P. Prabhu
43. Manoj K. John
44. Reji George
45. Shibu P. Pudussery
46. L. J. Suresh Babu

47 to 52 abstained

53. K. V. Vinod Kumar
54. K. S. Vipinan
55. M. Esakki Achari
56. M. R. G. Nair
57. Madam Pillai
58. S. R. Manoj
59. P. T. Girijan
60. P. R. Venkash
61. Pins. C. Mundadar
62. Jaleja Sreenivasan
63. Anu Srivaraman
64. P. V. Asha
65. Uma Gopinath
66. Asha Cherian
67. Kochiwol Koduvatahe
68. V. G. Sreedevi
69. K. V. Bhadra Kumari
70. Deepsur D. Jayan
71. V. Sithukuttyamme
72. M. Hemalathar
73. P. V. Kochuthreeh
74. Valslamma Kurian
75. B. Uma
76. Jaishri Sheba Jacob
78. Wilson John
79. Rani Joy
80. N. Saju Thomas
81. P. P. Peelhnimbnm
82. M. K. Shashi Kumar
83. S. K. Balachandran
84. V. Ram Kumar
85. Roy Chacko
86. N. A. Ganapati
87. Rajjeev V. Kurup
88. Sipy K. Joseph

89. T. R. Ramach
90. T. Sethumadhavan
91. Susheela R. Bhatt
92. Saju John
93. T. V. Ajay Kumar
94. Daisy A. Philipax
95. G. Hari Haran
96. V. Jayaprasad
97. M. T. George
98. Sajith Mathew Joy
99. Abhay Ahuja, Advocate, High Court, Bombay
100. A. V. Ravi Shankar
101. Vijaya Kumar, Secretary, Kerala State Legal Aid & Advice Board
102. Beelm Kurian Thomas
103. Rafaic Chennara
104. Sreekant
105. P. R. Shaji
106. P. Sanggary
107. Dheji P. Abraham
108. V. R. Ramachandran Nair
109. Jayaprasad, M. R.
110. Udaya Kumar, K. B.
111. Gangader, A. R.
112. Eldho Pant
113. Thomas Kunnathoor
114. E. M. Abdulkadir
115. Sanjay, T.
116. K. R. Rajkumar
117. Jose P. George
118. K. M. Paulose
119. G. Reyappan Pallon
120. P. Santhosh Kumar
121. O. D. Sivadas
122. Sunny Xavier
123. S. P. Chaly
124. Pramod, R.
125. A. Sathianaddan
126. A. S. Jose
127. Saigi Jacob
128. Biju M. John
129. P. Babukumar

130 M. N. Ravindran

131. V. K. Mohammed Yusuf : Advocate

132. Thomas T. Valance

133. Santhosh V. K.

134. Alex M.

135. A. M. Babu

136. Soyuj P. K.

137. P. C. Haridas

138. Bindu R.

139. Joseph K.

140. K. George

The Hon'ble Chairman of the Law Commission in his inaugural address and the participants. In the Presidential address the Hon'ble the Acting Chief Justice pointed out the relevancy in conducting the workshop on Criminal Law in which the Chairman, Law Commission of India is the Chief Guest especially when the Law Commission of India is collecting views from various quarters for making recommendations for amendment in the Criminal Procedure Code, the Indian Penal Code and the Evidence Act.

The Hon'ble Chairman of the Law Commission in his inagural address initiating the discussion broadly outlined the areas in which amendments in the criminal law were proposed. The Hon'ble Chairman stated that there were complaints that Section 41 Cr. P.C. was being misused. The question whether instead of arrest it is sufficient to take a bond from the accused or suspected persons for appearance is to be considered. Another area was the use of the statements recorded under section 161 Cr. P.C. for corroboration and the use of such statements recorded by the police. There is a suggestion that signed statements may be obtained so that it can be used as evidence. Enlarging the scope for compounding of offences by adding the list of such compoundable offences under section 320 Cr. P.C. is another point for contemplation. The Chairman also invited suggestions regarding the proposal for a prosecuting agency independent from the investigating agency. Settlement of cases through Nyaya Panchayats and plea bargaining were also referred to the Chairman. The Chairman also stressed the need for making the provisions for summary trial effective. The Chairman mentioned the proposal for a Victim Compensation Board as a new step in the branch of victimology.

Participating in the discussion, Shri N. N. Sukumaran Nayar, Senior Advocate emphasised that the power of authority under section 41 Cr. P.C. must be balanced with the fundamental rights of the citizens. Taking into consideration the social changes, drastic amendments must be made to the Criminal Procedure Code. Misuse of powers under section 41 Cr. P.C. by the investigating officers must be curbed.

Shri T. V. Prabhakaran suggested that sections 161 and 162 Cr. P. C. must be left untouched. It is necessary to record statements under section 161 Cr. P.C. so that the defence will know the evidence that is likely to be adduced against the accused persons. He also stated that the provisions for compounding under Section 320 Cr. P.C. must be taken in criminal legislation other than the India Penal Code also. The old provisions in the Cr. P.C. must be restored. Offences punishable with a limited period of imprisonment must generally be made compoundable.

Shri V. N. Achutha Kurup pointed that in many cases, the statements under section 161 Cr. P.C. were not truly and correctly recorded.

Shri Pirappancode Sreedharan Nair suggested that statement under section 161 Cr. P.C. are necessary to know for what purpose a witness is cited.

Advocate Shri T. R. Raman Pillai suggested that investigation must be efficient and must be taken up by senior officers. They should not entrust the work to the subordinates. It will be advantageous if the investigating officers have discussions and consultations with the prosecutors. There must be provision for completing the trial within a time limit.

Advocate Shri M. K. Damodaran supported the proposition for a separate investigating agency. He, however, suggested that the eye witnesses to the case must be produced before a Magistrate within two or three days of the incident and their statements must be recorded. There must be a separate Directorate of Public Prosecution and Public Prosecutors must be selected by the Court. He also pleaded that the provisions in section 206 Cr. P.C. must be liberally used in petty cases.

The doyen of the Bar, Advocate Shri Kunhirama Menon suggested that commital proceedings can be done away with. If petty cases are made over to honorary magistrate courts, the time spent for calling such cases in the regular courts can be utilised for trial of contended cases. Shri Kunhirama Menon also suggested that sections 307 and 308 Cr. P. C. be suitably amended so that there will be no need to examine the approvers and permit them to be cross-examined before tendering pardon.

Smt. Suseela Bhat champoining the cause of women wanted maintenance amount under section 125 Cr. P.C. to be enhanced. She also suggested that a time limit must be fixed for disposal of maintenance cases. Stay of execution of maintenance orders must be granted only on condition of deposit of the amount and there must be provision in the statute itself for the purpose. Adjournments should be granted in maintenance cases only on payment of cost.

Shri Ratna Singh, Director General of Prosecutions explained the steps taken by the Directorate to expedite trial of case. He pointed out that petty cases consume a lot of court's time and it should be avoided. When the main witnesses are hostile the prosecutor himself must have the discretion to give up the remaining witnesses and cut short the trials. He also suggested that the investigating agency must be separate from the prosecuting agency. He advocated shorter questioning under Section 313 Cr. P.C. section 206 Cr. P.C. provisions must be liberally used. He also suggested that the evidence under section 138 N.I. Act must be made compoundable.

Registrar of the High Court Shri K. V. Sankaranarayanan extended vote of thanks to all the participants of the workshop. The workshop was over by 6 p.m.

Proceedings of the legal workshop on Criminal Law was held on 21st December, 1995 at Thiruvananthapuram, Kerala

The following were present:

1.	Sri. R. Rajendra Babu	: District and Sessions Judge, Thiruvananthapuram.
2.	Smt. D. Sreedevi	: Judge, Family Court, Thiruvananthapuram.
3.	Sri. P. S. Gopinathan	: Motor Accidents Claims Tribunal, Thiruvananthapuram.
4.	Sri. M. Sasidharan Nambiar	: Enquiry Commission and Special Judge, Thiruvananthapuram.
5.	Sri. R. Gopalakrishnan Pillai	: District Judge (Vizhinjam Enquiry Commission), Thiruvananthapuram.
6.	Sri. B. Jnanasudarsanan	: Chief Judicial Magistrate, Thiruvananthapuram.
7.	Smt. P. Vijayam	: Additional Chief Judicial Magistrate, Thiruvananthapuram.
8.	Sri. Antony T. Moraes	: Prl. Asst. Sessions Judge, Thiruvananthapuram.
9.	Sri. N. Mohan Das	: II Addl. Asst. Sessions Judge, Thiruvananthapuram.
10.	Sri. A. Moosa	: Judl. Magistrate of the I Class I, Thiruvananthapuram.
11.	Sri. A. Ajith Prasad	: Judl. Magistrate of the I Class II, Thiruvananthapuram.
12.	Sri. V. K. Babu Prakash	: Judl. Magistrate of the I Class III, Thiruvananthapuram.
13.	Sri. N. Rajan	: Judl. Magistrate of the I Class IV, Thiruvananthapuram.
14.	Sri. C. Khalid	: Law Secretary, Government of Kerala, Thiruvananthapuram.
15.	Smt. Lalitha	: Addl. Secretary, Law Department, Government of Kerala, Thiruvananthapuram
16.	Sri. Nagarajan	: Joint Secretary, Law Department, Government of Kerala, Thiruvananthapuram.
17.	Smt. Basheera Beevi	: Legal Assistant, Law Department, Government of Kerala, Thiruvananthapuram.
18.	Sri. P. S. Thaha	: Professor, Govt. Law College, Thiruvananthapuram.
19.	Sri. Kochu Govinda Pillai	: Professor, Law Academy, Peroorkada, Thiruvananthapuram.

20.	Sri. Rajivan IPS	:	Dy. I.G. of Police, (CISR) Thiruvananthapuram.
21.	Sri. Siby Mathew	:	Dy. I.G. of Police (Administration), Thiruvananthapuram.
22.	Sri. Alexander Jacob	:	Commandant Special Armed Police, Thiruvananthapuram.
23.	Sri. Senkumar	:	City Commissioner of Polic, Kochi.
24.	Sri. Abdul Hakkim	:	Legal Advisor, Police Hqrs., Thiruvananthapuram.
25.	Dr. K. Sreekumari	:	Associate Prof. of Forensic Medicine and Deputy Police Surgeon, Medical College, Thiruvananthapuram.
26.	Sri. A. Shajahan	:	Addl. District Magistrate, Thiruvananthapuram.
27.	Sri. N. Chandrasekharan Nair	:	Dy. Dir. of Prosecution, Thiruvananthapuram.
28.	Sri. M. Nandakumar	:	Dy. Collector (Housing), Thiruvananthapuram.
29.	Sri. B. S. Mavoji	:	Dy. Collector (Election), Thiruvananthapuram.
30.	Sri. M. Jayachandran Nair	:	Public Prosecutor, Thiruvananthapuram.
31.	Sri. K. K. Vijayan	:	Addl. Public Prosecutor, Thiruvananthapuram.
32.	Smt. Gracy John Kattakayam	:	-do-
33.	Smt. Valsa John	:	-do-
34.	Sri. S. R. Jayakumar	:	-do-
35.	Sri. M. M. Hussan	:	-do-
36.	Sri. V. G. Govindan Nair	:	Advocate, Thiruvananthapuram.
37.	Sri. Sasthamangalam G. Gopalakrishnan Nair	:	-do-
38.	Sri. Poovappally M. Ramachandran	:	-do-
39.	Sri. Vengannoor K. Chandrasekharan Nair	:	-do-
40.	Sri. S. Balachandran	:	-do-
41.	Sri. Cherunniyoor P. Sasidharan Nair	:	-do-
42.	Sri. M. Rajagopalan Nair	:	-do-
43.	Smt. Vimala K. Nambiar	:	-do-
44.	Sri. Konchira G. Neelakantan Nair	:	-do-
45.	Sri. A. J. Mohammed Sali	:	-do-
46.	Sri. K. Gopalkumaran Nair	:	-do-

The following persons had taken active participation in the deliberations and expressed their views and suggestions on the proposed amendments.

1.	Sri. R. Rajendra Babu	: Distt. & Sessions Judge, Thiruvanantha puram.
2.	Sri. N. Mohan Das	: II Addl. Asst. Sessions Judge, Thiruva nanthapuram.
3.	Sri. V. K. Babu Prakash	: Judicial. Magistrate of the I Class III Thiruvananthapuram.
4.	Sri. C. Kalid	. Law Secretary, Govt. of Kerala, Thiru-vananthapuram.
5.	Sri. Smt. Basheera Beegum	: Legal Asst. Law Department, Govt. o Kerala, Thiruvananthapuram.
6.	Sri. P. S. Thaha	: Professor, Government Law Colleg Thiruvananthapuram.
7.	Sri. Kochu Govinda Pilla	: Professor, Law Academy Peroorkada Thiruvananthapuram.
8.	Sri. Rajivan IPS	: Deputy Inspector General of Polic (CSIR), Thiruvananthapuram.
9.	Sri. Abdul Hakkim	: Legal Advisor, Police Head Quarters Thiruvananthapuram.
10.	Sri. M. Jayachandran Nair	. Public Prosecutor, Thiruvananthapuram.
11.	Sri. V. G. Govindan Nair	: Advocate, Thiruvananthapuram.
12.	Sri. Cherunniyoor P. Sasidharan Nair	. Advocate, Thiruvananthapuram.
13.	Sri. Sasthamangalam G. Gopala-krishnan Nair	Advocate, Thiruvananthapuram.

We, the Judicial Officers have decided to have a detailed discussion on the proposed amendments on 19th day of January, 1996 and our views and suggestions on the quetionnaire on Criminal Procedure Code will be forwarded shortly. I extend our thanks for your lordships coming over here and giving us the chance to express our views and suggestions on the proposed amendments and for spending your lordships valuable time with us for a while.

Memorandum of the proceedings of the Legal Workshop on Criminal Law held at Jaipur on 13-1-96.

A Workshop on criminal law was held at Jaipur on 13-1-96. It was attended amongst others by Chairman Central Law Commission Hon'ble Justice K. Jayachandra Reddy, Members Justice R.L. Gupta, Dr. Alice Jacob and Member Secretary Shri Prabhakar Rao, Joint Secretary Dr. S.C. Srivastava, Chairman State Law Commission, Hon'ble Justice V.S. Dave, State Home Minister Shri Kailash Meghwal. Hon'ble Justice Smt. Gyan Sudha Mishra of Rajasthan High Court. Director General of Police, Rajasthan Shri Davendra Singh, Dy. Director of Police, Shri Shyam Pratap Singh Rathore and other Police Officers, Members State Law Commission Shri Sunder Lal Mehta, Shri P.A. Sinha and Dy. Secretary Dr. B.L. Babel, Advocates, Professors and Women Social Workers.

There was a free and open exchange of views on the proposed amendments in Cr. P.C. Many very important suggestions were made on behalf of the Government as well as all the Classes and Sections of Society.

First of all Chairman State Law Commission, Hon'ble Justice Shri V.S. Dave welcomed all the guests and participants and expounded as to why basically and fundamentally amendments became necessary in Criminal Laws. Chairman Central Law Commission, Hon'ble Justice Shri K. Jayachandra Reddy, stating that Investigation, Prosecution, Defence and Courts were the Four main Wings of Judicial Administration, explained the background of the proposed amendments.

(1) Hon'ble Justice Shri V.S. Dave, Chairman, State Law Commission, Rajasthan, Jaipur.

(1) For making investigation effective and immediate a separate cell should be established, in other words, there should be a separate agency for conducting investigation.

(2) All efforts should be made to establish harmony and adjustments between prosecuting agency and investigating agency.

(3) Special Magistrates should be appointed for recording statements under section 164 Cr. P.C.

(4) The statements recorded under section 162 Cr. P.C. should also be used for corroboration.

(5) Director of prosecution should be a senior most Judicial Officer.

(6) The matter of reintroducing Nyaya Panchayat and its utility should be considered.

(7) All efforts should be for compromise between the parties before charge-sheet is produced in the Court.

(8) All the offences punishable with three years or more than 3 years imprisonment should be tried as warrant cases.

(9) The practice of appointing Honorary and Special Magistrates should be re-introduced.

(10) Section 313 of Cr. P.C. should be thoroughly improved and it should not be a mere formality.

(11) There should be proper and adequate provision for compensating the aggrieved and victims of crimes.

(12) Full importance should be given to the doctrine of victimology.

(13) Law should be enacted for fully compensating the aggrieved persons suffering from various crimes.

(14) There should be the same procedure for summons and warrant trials.

(15) It is necessary to change the procedure of trial of summary cases in Essential Commodities Act. The necessity of trial being completed by one and the same Presiding Officer should be done away with.

(2) Hon'ble Kailash Meghwal, Home Minister, Government of Rajasthan, Jaipur.

(1) The assault on a human being should be made as a cognizable offence. These offences happened to be of simple nature yet they cause endless pain to the aggrieved and if he is made to file a complaint in the Court, it means great expense and great delay.

(2) Mostly the provisions of Sec. 34 and Sec. 149 of I.P.C. are misused. In any one case all the members of the family are falsely implicated though they may be innocent. Therefore, effective steps should be taken to stop the misuse of these provisions.

(3) Today Judicial Administration has been reduced to mere paper justice and for making it true and substantial fundamental amendments should be made.

(4) There must be some alternative procedure to replace third degree methods during investigation.

(3) Shri Davendra Singh, Director General of Police, Rajasthan.

(1) It is extremely necessary to have harmony and adjustments between investigation and prosecution and one can not succeed without the other. It is necessary that the investigation should get the benefit of the help of prosecution even at the stage of investigation. so that no lacuna remains during investigation.

(2) There are many lapses in today's Judicial Administration which should be removed. The question of handcuffing an accused is an important issue. It is necessary to handcuff the serious criminals. Many times accused escape when they are not handcuffed and responsibility is fixed on the concerned Police Officers.

(4) Shri Shyam Pratap Singh Rathore, Addl. Director of Police. Rajasthan. Jaipur.

(1) A separate Officer should be appointed for recording F.I.R. and his work should only be to record F.I.Rs.

(2) Section 160 Cr. P.C. should be amended and the investigating officer should be authorised to summon a person living outside his jurisdiction to record his statements.

(3) The practise of handcuffing an accused should be terminated.

(5) Shri Ajit Singh, Superintendent of Police, Jodhpur.

(1) The definition of the term "public" should be amended in Cr. P.C.

(2) Section 41, 42 and 43 Cr. P.C. should be reconsidered.

(3) The practice of handcuffing an accused should remain as it is.

(4) Proposals for amendments seeking handcuffing only with the permission of the Superintendent of Police or Officer higher than Superintendent of Police should be reconsidered because many times these officers are not available and it becomes imperative to handcuff an accused person.

(6) Shri Kapil Garg, Superintendent of Police, Udaipur.

(1) Section 437 Cr. P.C. requires thorough amendment. The provision for granting bails should be made more stringent.

(2) In any matter in which bail bonds were once cancelled, bail should not be again granted in that matter.

(3) Provision should be made that in any case bail may be granted only once.

(4) The provision under section 438 Cr. P.C. that is relating to anticipatory bail should be done away with.

(5) Offence violating the modesty of a woman under section 354 I.P.C. must be made non-bailable.

(6) Section 306 of I.P.C. should be made cognizable and non-bailable.

(7) Shri M.L. Kalia, Former Director General of Police, Rajasthan, Jaipur.

(1) Adequate increase must be made in the number of personnel so that they may discharge their duties well.

(2) In case third degree methods are to be banned, the alternatives must be suggested.

(3) The view point, of Public and Government regarding Police requires change.

(4) Only one investigating officer should be entrusted with the investigation of a case.

(8) Shri R.G. Sharma, Addl. Director, Prosecution.

(1) Many times the chargesheet is filed in court prosecution with delay resulting in acquittal of an accused person. Therefore, there must be provision for punishing the defaulting officers in a case, where chargesheet is filed with delay.

(2) Summary procedure must be adopted in cases of embezzlement.

(3) There must be very clear directions for the issuance of production warrants.

(9) Shri Liaqat Ali Khan, Addl. Superintendent of Police, Hanumangarh.

(1) There must be very good harmony and adjustment between prosecution and investigation.

(2) A Senior Police Officer should be appointed on the post of Director Prosecution.

(10) Shri Natwar Lal Sharma, Addl. Superintendent of Police.

(1) The term 'Disappear' wherever used in Criminal Procedure Code should be deleted.

(11) Shri Goverdhan Lal Meena, Jhalwar.

(1) The offences under section 395, 356 and 380 I.P.C. should not be made compoundable.

(12) Shri Umaid Singh, Police Inspector.

(1) Section 147 I.P.C. should not be made compoundable because it is a serious offence against the State and it directly affects law and order situation.

(13) Miss Sumitra Goyal, Addl. Govt. Advocate.

(1) The procedure for trial of offences committed against women should be changed and amended.

(2) In case of rape and the like the courts should not indulge in technicalities but should adopt a liberal attitude as far as technicalities are concerned.

(14) Shri R.N. Khandelwal, Advocate.

(1) Investigating agency should be established separately.

(2) In matters of investigations the accountability of police officers must be fixed.

(3) Courts while passing Judgments must comment against defaulting officers as far as investigation was concerned and a system of grading should be adopted.

(4) Accused should not be arrested in matters which are compoundable.

(5) The cases under FERA and Customs Act must be made compoundable.

(15) Shri P.C. Jain, Advocate.

(1) Investigation agency must be independent.

(2) The investigatiing officer must at least be a LL.B.

(3) The copies of the statements recorded under section 161 and 162 Cr. P.C. must immediately be sent to the courts, so that no alterations could at all be made.

(16) Shri Mathuresh Bihari, Advocate.

(1) The statements recorded under section 161 Cr. P.C. must be got signed by witnesses.

(2) For service of summons and warrants a separate officer and process server should be appointed.

(3) The expenses of witnesses must be defrayed without delay; so that they may not hesitate in coming to courts.

(4) Where in a case of multiple offences some offences were compoundable then all the offences should be allowed to be compounded.

(17) Shri Jahoor Naqvi, Advocate.

(1) The provision of anticipatory bail under section 438 Cr. P.C. should not be withdrawn.

(18) Shri Dharam Gopal, Advocate, Bharatpur.

(1) The Nyaya Panchayat must be reintroduced.

(2) In view of increasing number of cases more courts should be established.

(3) Law like prevention of atrocities on SC/ST Act, have created lot of problems causing dissensions in society and therefore, such laws should not be enacted.

(19) Shri Gul Raj Gopal Khandelwal.

(1) There must be a separate agency for investigation.

(2) The matters compounded outside the Court should be recognised by the Court.

(3) Nyaya Panchayat must be reintroduced.

(4) Provision should be made for the appointment of a Judicial Officer in a Nyaya Panchayat.

(5) Even the Magistrates must be conferred powers under section 482 Cr.P.C.

(6) The Procedure of trial of cases on Police challan and on private complaints must be the same.

(7) The provisions under section 438 Cr. P.C. for anticipatory bail must continue.

(8) The maximum amount provided in section 125 Cr. P.C. for maintenance must be increased.

(9) Section 304 A Cr. P.C. must be made non-bailable.

(10) Honorary Magistrates should be appointed.

(20) Shri R.N. Mittal, Advocate, Bharatpur.

(1) The jurisdiction for revenue cases vested in executive magistrates must be withdrawn and should be vested with judicial officers, because the executive Magistrates get no time to hear such matters.

(2) The power to handcuff an accused must be only that of Dy. Superintendent of Police or his higher officer.

(21) Shri Ram Lal Vivek, Addl. Director, Prosecution, Bharatpur.

(1) Investigating agency must be a separate agency.

(2) During investigation the judicial officer should go on site and enquire.

(3) Section 162 Cr. P.C. should be deleted.

(4) The participation of public must be ensured in judicial administration.

(5) The post of Director Prosecution must be filled from amongst the officers of prosecution department.

(22) Shri Gopal Ram Bhabra, Bayana.

(1) The function of a police officer must be only up to registering the F.I.R. The investigation must be done by a separate agency.

(2) The copies of all the documents prepared during investigation must be sent to the court.

(3) Security should be ensured for the convicts and under-trial prisoners, so that there may not be any repetition of the case of Rajan Pillai.

(4) No advocate should be arrested without informing the Advocates Association.

(5) Provision should be made for effective implementation of order relating to Maintenance.

(6) Bail should not be granted in cases of rape.

(7) The burden of proof in cases of bigamy should be on the husband.

(23) Shri Bhagchand Jain, Advocate.

(1) The accused should be medically examined during investigation.

(2) There should be a provision under section 107, 109 and 151 Cr. P.C. for releasing on personal bonds.

(3) Before reading out the substance of charge in summons cases the accused must be heard.

(4) A limit of Rs. 10,000 should be fixed in matters which are compoundable.

(5) There should be a provision in Cr. P.C. for serving the summons through Dak.

(24) Shri Amar Singh.

(1) During trial in the court investigating officer should present along with the prosecuting agency.

(2) Section 41 Cr. P.C. should be amended so that arrest may be made only after investigation.

(3) The provision under section 161, and 162 Cr. P.C. should remain as they are but a provision should be made for getting a statement signed by the witness.

(4) At the end of such statement ROC should be written.

(5) Nyaya Panchayat should not be conferred with powers to award punishment.

(25) Shri O.P. Jain, Advocate, Sikar.

(1) The copies of all the documents prepared during investigation should be produced in the court.

(2) Wherever necessary no challan should be produced in the court without a report from FSL.

(3) The Medical Board should be constituted for Medically examining the accused and the aggrieved persons.

(4) Provisions should be made for sale of properties under section 82, 83 Cr. P.C.

(26) Shri K.K. Acharya, Director Prosecution, Rajasthan, Jaipur.

(1) Section 24 Cr. P.C. should be amended.

(2) Public Prosecutor must be under the control of Director Prosecution.

(3) A provision should be added by way of section 25 A Cr. P.C. laying down the qualifications of Director Prosecution.

(4) A separate legal cell should be established in Police Department.

(27) Shri Verma, Addl. Director, Prosecution.

(1) In order to curb delay in trial a period should be fixed for trial.

(2) A provision should be made to ensure service of summons and warrants.

(28) Shri Amar Singh Codara, District & Session Judge Jaipur City, Jaipur.

(1) The procedure for the trial of summons and warrant cases must be the same.

(2) Similarly the procedure for trial of cases on police challan and cases on private complaints must be the same.

(29) Shri Jagat Singh, Law Secretary, Govt. of Rajasthan.

(1) The copies of F.I.R. must be sent to the Magistrate without any delay.

(2) The Prosecution Department should be responsible to the Advocate General.

(3) Trial must be from day to day.

(4) Provision should be made, so that cases of ordinary nature may be sent to Nyaya Panchayat.

(5) Doctrine of Victimology must be applied and aggrieved persons in serious matters must get compensation.

12—2 M of L & J/ND/97

Proceedings of the Workshop on Criminal Law by the Law Commission of India and Criminal Justice Society of India held at Haryana Niwas, Chandigarh on 20-1-1996

Under the auspices of Law Commission of India and Criminal Justice Society of India, a worksohp on Criminal Law was held on 20-1-1996 at Haryana Niwas, Chandigarh.

1. The following persons attended the workshop:

S. No.

1. Mr. Justice K.J. Reddy, Chairman, Law Commission.
2. Mr. Justice S.P. Kurdukar, Cj. Pb. & Hry High Court.
3. Mr. K.T.S. Tulsi, Additional Solicitor General of India.
4. Hon'ble Mr. Justice R.P. Sethi, Pb. & Hry High Court.
5. Hon'ble Mrs. Justice Dr. S. Saksena, Pb. & Hry High Court.
6. Mr. Kalyan Rudra, IPS, DG(P), Haryana.
7. Mr. O.P. Sharma, IPS, DG(P), Punjab.
8. Mrs. Alice Jacob, Member, Law Commission.
9. Sh. Prabhakar Rao, Member, Law Commission.
10. Sh. R.L. Gupta, Member, Law Commission.
11. Sh. S.C. Srivastava, Joint Secy., Law Commission.
12. Mr. K.P.S. Gill, Ex. DGP (Pb.).
13. Mr. M.S. Chahal, IAS, Financial Commissioner, Punjab.
14. Mr. S.S. Brar, Home Secretary, Punjab Civil Secretariat.
15. Mrs. Kakshish Kaur, Legal Remembrancer, Govt. of Punjab.
16. Mr. M.K. Bansal, Legal Remembrancer, Govt. of Haryana.
17. Mr. Pardeep Mehra, IAS, Advisor to U.T. Adm. Chandigarh.
18. Mr. H.L. Sibal, Advocate General, Haryana 29/5-A, Chandigarh.
19. Mr. M.L. Sarin, Advocate General, Punjab, 48/4-A, Chandigarh.
20. Sh. B.L. Kulati, Registrar, Pb. & Hry. High Court.
21. Sh. G.L. Chopra, District Judge, Amritsar.
22. Sh. A.S. Sodhi, District Judge, Hoshiarpur.
23. Sh. M.S. Nagra, District Judge, Gurgaon.
24. Mrs. Nirmal Yadav, Addl. District Judge, Rohtak.
25. Sh. R.C. Kathuria, District Judge (Vig.) Haryana, Chandigarh.
26. Sh. Amar Dutt, District Judge, Chandigarh.
27. Sh. B.B. Parsoon, Additional District Judge, Chandigarh.
28. Mr. K.K. Atri, IPS, I.G.P., Litigation, Punjab Chandigarh.
29. Mr. R.K. Gupta, IPS, I.G.P., (Trg. I) Punjab, Chandigarh.
30. Mr. R.C. Prasad, IPS, DIG Ferozepur Range, Ferozepur.
31. Mr. R.C. Singh, IPS, S.S.P. Hoshiarpur.
32. Mr. D.R. Markan, Law Officer, CID Punjab, Chandigarh.
33. Mr. R.S. Dalal, (I.P.S.), DIG, Ambala Range, Ambala.
34. Mr. Rakesh Malik (.P.S.), DIG Crime, Panchkula.

35. Mr. V.N. Rai, (I.P.S.), DIG Rules, Panchkula.

36. Mr. S.N. Vashisht (I.P.S.), SP Crime, Panchkula.

37. Mr. L.R. Dabbas (I.P.S.) AIG T&T, Panchkula.

38. Mr. R.P. Singh, IPS, IGP. Chandigarh.

39. Mr. C.S.R. Reddy, IPS, SSP, Chandigarh.

40. Harijai Singh, Editor-in-Chief, The Tribune, Chandigarh.

41. Mr. Kanwar Sandhu, Editor, Indian Express, Chandigarh.

42. Sh. Y.S. Bajwa, Advocate, Legal Correspondent, Indian Express, 19/18-A, Chandigarh.

43. Sh. P.S. Thiara, Advocate, Legal Correspondent, Ajit, 2549/19-C, Chandigarh.

44. Sh. S.K. Gambhir, Advocate and Secy. Genl. of the Criminal Justice Society, New Delhi.

45. Mr. P.K. Chaube, Advocate, R-19 (2nd Floor), Gulmohar Park, New Delhi.

2. Shri K.T.S. Tulsi, Additional Solicitor General of India and President of Criminal Justice Society of India, in his welcome address, referred to the grave situation prevailing in our society where innocent people are convicted, but the real criminal who may be more dangerous, remain untouched. He further added that there is a need to restore public confidence in the criminal justice system. He also focused the attention to the alarmingly low rate of conviction of terrorists and non-terrorists.

3. Hon'ble Shri S.P. Kurudukar, Chief Justice, Punjab and Haryana High Court, in his inaugural address, emphasized the need to amend the Code of Criminal Procedure, Indian Penal Code and the Indian Evidence Act. He also emphasised the need to review the sentencing policy.

4. The Chairman, Law Commission of India, Shri Justice K. Jayachandra Reddy, in his presidential address, apprised the participants about the reference made by the Government of India to the Law Commission to undertake a comprehensive revision of the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act. He invited responses from the participants for suggesting amendments to the existing criminal justice system apart from the need to reform law in the light of changing circumstances and the principle of according speedier justice.

He highlighted the main issues mentioned in the questionnaire on Code of Criminal Procedure particularly the aspect of delay, arrest, creation of separate investigating agency, provision for separate directorate of prosecution, police custody, Nyaya Panchayat, plea bargaining, victimology, and to review the scheme of summons, warrant and summary trial cases. He also referred to the changes to be brought in respect of compounding of offences.

5. Mr. Justice R.P. Sethi of the Punjab and Haryana High Court called for major overhaul of the procedural law and stressed on the need for delegation of trial of minor offences by the Nyaya Palikas. He favoured scrapping of Section 164 of the Cr PC which deals with confession of the accused and the statements of witnesses to be recorded by the magistrates during investigation, which according to him, do not serve any useful purpose.

His Lordship was of the opinion that both Sections 162 and 164 are not necessary. He said that Section 161 should be made effective by associating people. He also pointed out that accused may be asked: "Have you heard the statement? Do you want to say anything?"

Justice Sethi also suggested that minor offences be delegated to Nyaya Panchayat.

He felt that when people are associated, presumption of guilt be presumed in favour of prosecution for heinous offences where investigation is properly done.

Mr. Justice Sethi was also of the opinion that major part of the fine should be awarded to the victim.

Justice Sethi called for a delegation of powers to the 'Nyaya Palikas' for petty offences subject to appeal to the appellate authorities.

6. The factor of delay in justice, especially in the case of women and old persons, was stressed by Justice Dr. S. Saxena. She suggested that the time limit for the husband to file a written reply evidence be fixed. She regretted that husbands adopted dilatory tactics in payment of maintenance and a woman had to wait as if she was begging.

Justice (Mrs.) Saxena suggested that in granting relief, the capacity of the woman should not be considered, and the only thing that to be considered should be whether she really had a source of income. She felt the court must be empowered to get the maintenance amount reduced from the source of earning of the persons itself.

Justice (Mrs.) Saxena also emphasized the need for revision for interlocatory order and enhancement of the amount of maintenance prescribed in the court.

Referring to the rape offences, Justice (Mrs.) Saxena felt that Section 327 of the Code of Criminal Procedure is hardly observed. She also pointed out the aspect of delay in disposal of cases due to the absence of witnesses.

Referring to the Indian Evidence Act, Justice (Mrs.) Saxena felt that this section has been misused and has been applied even where no recovery has been made. She, therefore, pleaded for amendment of Section 27.

15. Justice Chellapathy suggested that certain offences must be transferred to the Nyaya Panchayats. Citing the example of the Karnataka Gram Panchayat Act, he remarked that it had some very good clauses with respect to the Nyaya Panchayats.

He regretted that although it was the duty of the presiding officers to prepare questionnaires, in most instances, it was done by clerk at the court.

8. Mr. Hira Lal Sibal, Advocate General, Haryana, called for changes in the lodging of the FIR system. He remarked that the FIR often did not represent the statement of the complainant. The evidence and the witnesses are collected by the complainant with the help of the police to substantiate the story of the complainant.

He added that the FIR was generally recorded some days after the incident. He suggested that a provision must be made that every statement which was recorded be sent to the magistrate. He felt the accused defence was never investigated and no evidence was taken by the police. Usually, no attempt was made by the police to find out the truth, but if it was done, it would acquire greater credibility, he added.

While opposing the idea of completely doing away with the statement of the accused, which is recorded under Section 313 Cr PC. Mr. Hira Lal Sibal, said that it should be retained for particular type of offences, such as those under 409 of the IPC. He also spoke about enacting special procedures for terrorist crime.

9. Mr. K. P. S. Gill, former Director General of Police, Punjab, said that different types of crime should be dealt with differently and the terrorist crime should not be grouped with other types of crime and said that it needed a separate investigational strategy with a different approach. He also insisted upon the daily writing of case diaries by the investigating officers and proper check by the supervisory officers to avoid manipulations later.

He narrated his experience as a SP, wherein he introduced the practice of the daily recording of the diary. Each officer at the thana was required to write what he had done all day long, and the report was sent to the SP daily. The consequence, according to him, was reduction in the conviction rate and speedier disposal of cases. This method, he said, could be enlarged with the latest electronic devices. He felt that the most of the delays were deliberate because the investigating officer had a vested interest in it.

10. Mr. R. S. Cheema, senior advocate, stressed on the relief of anticipatory bail, under Section 438 CrPC, as the basic bull work for democracy and opposed its scrap. Mr. Cheema also talked about Section 313 CrPC being a formality and wanted it to be modified so as to strengthen the existing provision of putting written defence by the accused.

12. Mr. G. S. Grewal and Mr. Piara Singh Mann spoke about putting more strength in the criminal procedure for speedy trial of cases in the courts. Mr. Grewal maintained that an independent prosecuting agency would ensure quicker justice.

He said that what was needed was a revolutionary change in the laws as the era of "a tooth for a tooth" no longer exists.

He also said the special circumstances and the situation of the country in the era of organised crime and terrorist activities called for a more rational approach. Stating that procedures must be friendly to the common man, he suggested that some responsible people of the community must be involved at the time of the lodging of the FIR as well as the time of recording of the statement.

18. Mr. M. L. Sharma, Joint Director, CBI, felt that the laws were not adequate to handle the situation and hence police often resorted to measures which were not approved. He added that in a conspiracy situation and in the case of sponsored crime, the number of people involved ran into dozens. He felt that a confession made before the SP should be made admissible in the court, as often the same person often pleaded not guilty before the court. He also suggested that the testimony of the undercover agents and wiretapping be accepted in the courts as in the western countries.

9. He advocated a particular definition for organised crime and supported the retention of provisions of 161 CrPC (evidence of witnesses during investigation) though with certain modifications.

10. Mr. R. S. Dayal, DIG, Ambala range, and Mr. R.C. Prasad, DIG, Ferozpur range, expressed their views on the problems being faced by the investigating agencies and the "mistrust" which the other connecting agencies like the prosecution and the courts had about them.

14. Mr. Bansal, Legal Remembrancer, Haryana emphasized the need to amend Section 304A to impose more fine.

As regards sessions trial, he was of the view that pre-1973 position be restored, i.e. on the same time the prosecution and defence may produce witnesses. He also pointed out that recording of statement of eye witnesses should be imposed.

Mrs. Baxi, Legal Remembrancer, Govt. of Punjab, also suggested the need to review Section 468. She felt that the question of maintenance under section 125 CrPC be transferred to family court. This, according to her, would save time.

Prof. Paras Dewan felt that as in Germany at the time of charge-sheet the question should be asked from the accused so that inquisitorial system, namely, the court should investigate, be adopted.

He also felt that listing of cases in courts be made on some understanding. A monthly review be also made by the High Court taking stock of situation, he added.

Mr. Gambhir, Advocate, felt that there is no need to change Section 161 CrPC. He, however, felt that under Section 309(2) a time limit be put on remand.

Mr. Kathuria, Sessions Judge, pointed out that cases under Section 125 CrPC should not be transferred to family courts.

He also felt that Section 200 CrPC be amended and it should be left to the discretion of the magistrate to record complaint. He did not favour any change in Section 169.

Mr. R. K. Gupta I.G., Punjab felt that whenever a complaint is made to the police. FIR must be registered. He was also of the view that stay given under Section 482 of the Code of Criminal Procedure delays the trial. If stay is not effected within six months, the investigation should go on, he added.

6. Dr. B. B. Parsoon, Additional District and Sessions Judge, Chandigarh, proposed that career in judiciary should start from the Nyaya Panchayats where the judicial officer could be associated with the members of the Panchayat and the jurisdiction of the presiding officer could be fixed by making cluster of village panchayats. This, he said, would facilitate grassroot judicial democracy. He also called for an amendment in the provisions of Section 125 CrPC so that the destitute females are provided maintenance not only from the income, property of the husband but also the in-laws, in case the husband does not possess any income or property as in case of joint families. Mr. Parsoon also condemned the gender bias against females by the investigating agencies.

7. Mr. R. C. Kathuria, District and Sessions Judge (Vigilance), Haryana, laid emphasis on the care the system needed to take of the victims of the crime. He stressed on more frequent invocation of the provisions of CrPC (search warrants for illegal detention of the detainees) rather than invoking the provisions of Article 226 (for habeas corpus).

19. G. S. Grewal, Advocate, remarked that anybody who could misuse law tried to misuse it. He cited the instance of TADA where one-year time was granted for the purpose of investigation. According to him, not a single case had come to his notice where the investigation was carried out within a period of one year. The two remedies, according to him, are day-to-day trial and increase in the efficiency of the investigating officer.

Proceeding of the workshop Held at Patna on 3-2-1996

The workshop was attended by Hon'ble Chief Justice of Patna, five High Court Judges, six lawyers, three District Judges and five police officers including the D.G.P. At the outset Hon'ble Chief Justice of Patna High Court Shri Justice D. P. Wadhwa welcomed the gathering and expressed his happiness to arrange the present workshop and hear the views from the Hon'ble Chairman and others.

2. The following were present:

(1) Hon'ble Chairman Justice K. Jayachandra Reddy

(2) Hon'ble Member Justice R. L. Gupta

(3) Hon'ble Member Ch. G. Krishna Murthy

(4) Hon'ble Chief Justice D. P. Wadhwa

(5) Hon'ble Member Secretary Ch. Prabhakara Rao

(6) Hon'ble Law Minister, Bihar—Shri Bijendra Pd. Yadav

(7) Hon'ble Justice S. K. Homchaudhuri

(8) Hon'ble Justice Nagendra Rai

(9) Hon'ble Justice S. N. Jha

(10) Hon'ble Justice Aftab Alam

(11) Hon'ble Justice R. M. Prasad

(12) Hon'ble Justice N. K. Sinha

(13) Hon'ble Justice P. K. Sarin

(14) Shri Braj Kishore Prasad, Chairman, Bar Council

(15) Shri P. N. Pandey, Sr. Advocate

(16) Shri Kanhaiya Pd. Singh, Sr. Advocate

(17) Shri Janardan Rai, Advocate

(18) Shri K. P. Gupta, Advocate

(19) Shri J. P. Gupta, Advocate

(20) Shri D. P. Maheshwari, Home Commissioner

(21) Shri Krishna Choudhary, D.I.G. Police

(22) Shri S. K. Saxena, D.G. Police

(23) Shri Anil Kumar, I.G. (C.I.D.)

(24) Shri P. K. Sarkar, Law Secretary

(25) Shri N. N. Singh, Registrar-General

3. Hon'ble Chairman Mr. Justice K. J. Reddy had stated that Prime Minister and Home Minister had called upon the Law Commission of India to redraft the Criminal Law in order to bring about speedy justice and come up to the standards of the litigant public. Hence, the Law Commission has been arranging these type of workshops in order to elicit opinion from the various sections of the society.

4. Of late the law of crime has taken new dimensions as the white collar offences are being committed frequently. The British rulers had enacted various laws in the past which have stood the test of the time and even the laws that were passed in 19th century are still being followed by us. They have used their wisdom by understanding the conditions prevailing in India

and see that the law is passed which is being applied till today. But due to the growth of various types of crimes, the courts are unable to dispose of the cases promptly and even the under-trial prisoners have to languish in jails for months/years thereby the public is feeling frustrated due to the delay being caused in the disposal of cases by the courts. Even for minor offences much time is being wasted. It may be due to various reasons; viz., the lawyers are asking for more adjournments, the prosecution is not able to procure witnesses and with the overcrowdedness of the dockets, the courts are not able to cope up with the same thereby the delay is being caused. We have therefore to find out ways and means to ensure speedy disposal so that the innocent people may not languish in jails unnecessarily.

5. Hon'ble Chairman had highlighted important topics on which the questionnaire had been prepared by the Law Commission of India. He had dealt with the subjects one by one namely,

a. **Investigation :** In any criminal trial the investigating officer has got an important role at the time of investigating the crime from the very beginning. Of late the investigation is not being conducted effectively due to various reasons. For example, the investigating officer while investigating a particular offence may be drafted for other duties like bandobast and maintenance of law and order. If the investigation is not perfect and effective the entire case would be exposed to criticism before the court. It was therefore emphasised that steps should be taken to make the investigation perfect and effective. For achieving the objective, we should appoint investigating officers separately whose duties should be exclusively for the investigation. In other words, there should be separate wing only for that purpose and they should be trained in that particular field.

b. **Prosecuting Agency :** Another agency which would ensure perfect trial before the court is prosecuting agency. There should be separate Director of Prosecution. It was suggested that at the State level there should be Director of Prosecution and at the District level there should be Additional Director of Prosecution. There should be mutual discussion and briefing among the Prosecutor and Director/Additional Director of Prosecution of the police personnel. A cadre has to be created and necessary rules on that behalf may be formulated in order to ensure the creation of the said posts. Even though in some of the States Director (Prosecution) has been functioning there is no similar office in other States. Therefore, uniformity may be ensured.

c. **Trial :** It has been suggested that the procedure for the summons cases and warrant cases should be scrutinised thoroughly in order to make it simple. Presently, two types of procedures are being followed for the said offences. Therefore, suggestions are solicited for the purpose of simplifying the procedures. For example, offences punishable up to two years can be summarily tried.

d. **Section 161 Cr. P.C. :** This is a matter where Defence Counsel are finding fault with the statements made by the witnesses and recorded by the police officers. Entire criminal cases trial depends upon the evidences of the various witnesses and the defence counsel would naturally take advantage of the lacuna that is noticed in the statements recorded by the police officials who are criticised for obtaining the signatures or thumb impressions of the witnesses without reading the contents to them and certain amount of coercion is being influenced on the witnesses at the time of recording the statements of the witnesses. Generally, the police officers prepare the statements in the police station and present the same as if they have been taken in the presence of the witnesses. Therefore, a suggestion has been made by the Hon'ble Chairman to consider this aspect as to whether section 161 of Cr. P.C. statements should be deleted or retained in the statute.

e. **Honorary magistrates :** Hon'ble Chairman suggested for the appointment of honorary magistrates who can be entrusted with the responsibility of petty offences. They were trying such offences in the past

and they have been lately abolished. He therefore suggested to revive the said office.

f. **Compromise :** Within the ambit of section 320 of Cr. P.C. attempts should be made seriously to compound the offences. In other words, the parties should be free to compromise the offences either at the beginning of trial or during the course of the trial.

g. **Plea bargaining concept :** In some of the developed countries the concept of plea bargaining is being applied. In India except in small compoundable offences, the concept is not being applied. Even in compoundable offences it is not quite negligible. Therefore, efforts should be made to bring in the concept by incorporating it in the statute so that the court can save some time if the accused confess to have committed the crime and plead for some concession at the time of award of sentence.

h. **Concept of victimology :** Again in other countries helpless victims are being provided some financial assistance either by order of the court or by order of the State. In India the court is presently in some deserving cases awarding compensation to the victims while taking the circumstances into consideration. If the accused is not able to pay the compensation, there can be creation of some fund so that the compensation can be paid to the victims out of the said fund. How to get the money is the matter of modality which can be formulated in due course.

6. The Hon'ble Chairman has pointed out various other minor things in the light of the questionnaire prepared by the Law Commission on Cr. P.C. He has requested the participants to convey their views in writing if not orally.

7. **Justice Nagendra Rai and Justice S. N. Jha :** The Judges have agreed that the investigation agency should be separate from the present set up. There should be a separate officer like Director of Prosecution who should work in co-ordination with the D.G.P. They have suggested that D.G.P. should be the head of the organisation and would keep liaison or co-ordination with the Director of Prosecution.

They have not favoured the proposal for creation of honorary magistrates as experience in the State of Bihar is not happy because those posts are likely to be filled up on various political considerations. They have also suggested for deletion of section 161 Cr. P.C. statements. But they have emphasised on the applicability or use of section 164 statement very rigorously.

They have also dealt with the aspect of arrest within the ambit of section 41 Cr. P.C.

8. **Mr. Krishna Choudhary, D.I.G. :** He also agreed with the proposal for separation of investigating agency from the police department. In other words a separate wing in the police department and in that connection he has suggested for separate provision for making the investigating agency liable for laches in the investigation.

He has advocated for giving freedom to the police people for handcuffing prisoners. It is the unhappy situation prevailing in Bihar as there are cases of escaping. Due to the judgements of various courts they are not able to effectively control the prisoners at the time of transport etc. He also agreed for police custody for fifteen days.

9. **Mr. D. P. Maheswar, Home Commissioner :** He has particularly dealt with the functions of the Director of Prosecutions. He stated that in the State of Bihar Director of Prosecution is monitoring the prosecutions only and the appointments are being made by the Law Department thereby the independence of the office has been ensured.

10. **Mr. Gupta Advocate, Ranchi :** He has advocated for introduction of Gram Nyalaya. He had emphatically suggested that after creation of the said Nyalayas, petty offences can be entrusted to them. Presently the courts

are overburdened with the trial of petty cases which is not desirable. If the Gram Nyalayas are created efforts can be made seriously to settle the disputes easily. He also suggested for restriction of grant of adjournments.

11. **Mr. P. N. Pandey, Advocate :** To a suggestion made earlier for deletion of section 91 of the Cr. P.C. by one of the speakers, he suggested that there is no need to delete the said section. He has also advocated for introduction of plea bargaining concept in our criminal law.

12. Thereafter, there was some discussion regarding utility of section 313 of Cr. P.C. statements. To a clarification sought by Shri Saxena, D.G.P., Hon'ble Chairman has explained the implication of the plea of pre-bargaining. It was stated by various speakers that it does not serve any useful purpose except observing the formality and wasting the time of the court. Therefore, the general consensus of the gathering was that it may be considered for deletion.

13. **Post-lunch Session :** The Hon'ble Chairman has suggested that Law Commission of India had prepared a questionnaire on I.P.C. and copies thereof are distributed to the gathering on that day. Therefore, he highlighted various topics dealt with in the questionnaire and requested the participants to convey their views in writing afterwards. He had stated that the necessity of fresh thinking on the redrafting of sections 34 and 141 of I.P.C. Under section 141 I.P.C. the presence of five or more persons is required and this section has to be read along with section 34 which deals with the common intention. There are many offences wherein guilt of the accused is proved, but it fails due to the lack of requirement of five persons. Therefore, it requires fresh thinking and he had also dealt with subjects like community service, holding public offices, public censure, constructive liability of the company, authorisation, highway aecidents, publishing scurrilous matters in the press, blackmailing, culpable homicide, fresh thinking on section 299 and 300 I.P.C., hit and run cases, wrongful restriction, hijacking of aircraft and under Article 21 of the Constitution. Hon'ble Chairman has elaborately explained the distinction in the provisions contained in sections 299 and 300 while citing illustrations thereunder. He has further stated that the Home Minister had called upon the Law Commission to give the report on the law of evidence also. But it was felt that the said Act does not require much changes except suggesting for amendment of sections like 6, 8, 11, 25, 30 and 114.

14. The workshop concluded with the vote of thanks by Hon'ble Chairman and reply by Chief Justice of Patna.

Proceedings of the Workshop conducted at Mumbai on 24-2-1996

A workshop on the Criminal Law was conducted at Mumbai on 24-2-96.

The following participated:

1. Justice K. Jayachandra Reddy, Chairman, Law Commission.
2. Shri Ch. Prabhakara Rao, Member Secretary, Law Commission.
3. The Honourable Shri Justice R.G. Vaidyanath.
4. The Hon'ble Shri Justice S.P. Kulkarni.
5. Shri V. K. Kulkarni, I/C Principal Judge, City Civil Court, B' Bay.
6. Shri J.N. Patel, Judge, Designated Court, (Under TADA Act, 1987), Greater Bombay.
7. Shri P.K. Chavare, Judge, City Civil Court and Additional Sessions Judge, Greater Bombay.
8. Smt. M.R. Bhatkar, Judge, City Civil Court, Greater Bombay.
9. Shri A.H. Shah, Additional Principal Judge, City Civil Court, Greater Bombay.
10. Shri M.L. Tahaliyani, I/C Chief Metropolitan Magistrate, Esplande, Bombay.
11. Shri K.D. Patil, IInd Additional District Judge & Additional Sessions Judge, Akola.
12. Shri P.R. Borkar, Extra Joint District Judge, Aurangabad.
13. Shri A.D. Bhosale, IIIrd Additional District and Additional Sessions Judge, Aurangabad.
14. Shri B.R. Choudhari, Chief Judicial Magistrate, Aurangabad.
15. Shri A.V. Karnik, District and Sessions Judge, Ahmednagar.
16. Shri Subhash S. Deshmukh, IIIrd Additional District & Sessions Judge, Nashik.
17. Shri A.J. Rohee, IInd Addl. Distt. and Sessions Judge, Malegaon, sitting at Nashik.
18. Shri P.S. Mane, Distt. and Sessions Judge, Nashik.
19. Shri V.R. Kingaonkar, I/C Director, J.O.T.I., Nagpur.
20. (i) Shri S.S. Sabne, Ist Addl. Distt. & Addl. Sessions Judge, Nagpur.
    (ii) Shri M.M. Parlikar, IInd Addl. Distt. Judge and Addl. Sessions Judge, Nagpur.
    (iii) Shri S.B. Bahle, VIIIth Addl. Distt. Judge and Addl. Sessions Judge, Nagpur.
21. Shri F.N. Velati, Joint District and Addl. Sessions Judge, Nagpur.
22. Dr. (Smt.) Pratibha Rasal, Vth Addl. District Judge and Addl. Sessions Judge, Nagpur.
23. Shri A.D. Anekar, IXth Addl. Distt. Judge and Asstt. Sessions Judge, Nagpur.
24. Shri P.G. Choudhari, Addl. Distt. and Sessions Judge, Osmanabad.
25. Shri K.P. Kotecha, IInd Addl. Distt. and Sessions Judge, Osmanabad.
26. Shri J.C. Shirsale, Civil Judge, Sr. Division, Osmanabad.
27. Shri J.A. Patil, Distt. and Sessions Judge, Pune.

28. Shri S.R. Ghanavatkar, Distt. and Sessions Judge, Satara.

29. Shri S.V. Padhye, IVth Addl. Distt. Judge and Asstt. Sessions Judge, Solapur.

30. Shri A.B. Palkar. Distt. and Sessions Judge, Solapur.

31. Shri L.S. Pavashe. Chief Judicial Magistrate, Solapur.

32. Shri G.D. Tadwalkar, Addl. Distt. and Sessions Judge, Sindhudurga at Sawantwadi.

33. Shri S.Z.H. Kazi, Joint District and Sessions Judge, Thane.

34. Shri P.R. Borkar, Extra Joint District Judge and Shri A.D. Kulkarni, Addl. District Judge. Aurangabad.

35. Shri S.D. Gundwar, Distt. and Sessions Judge, Ratnagiri.

36. Shri R.B. Patil, Civil Judge (J.D.) & J.M.F.C., Deorukh.

37. Shri A.S. Yenegure, 2nd Addl. Distt. Judge and Asstt. Sessions Judge, Sawantwadi.

38. Shri M.G. Jadhav, Chief Judicial Magistrate & Jt. Civil Judge, S.D., Ratnagiri at Sawantwadi.

39. Shri M.D. Keskar, Chief Judicial Magistrate, Ratnagiri.

While inaugurating the workshop the Hon'ble Chief Justice Mr. Justice M.B. Shah stated that the present workshop was arranged to obtain opinions from various sections of the society on the provisions contained in Cr. P.C., I.P.C and the Evidence Act. He indicated about the posts held by the Hon'ble Chairman of the Law Commission from time to time, i.e. he worked as High Court Judge, later on Supreme Court Judge wherein he had delivered important decisions on criminal law. He has further stated that effort of the law is to punish the culprit and for that purpose if necessary the law has got to be amended. In that context he placed reliance on the reported decision in Collector Vs Gurnal wherein it has been indicated that the prosecution need not prove the guilt of the accused with mathematical precision. The presumption can be drawn on the basis of the circumstances. The fundamental principle of the jurisprudence has to be reaffirmed with reference to the statutes and in that context he referred to State of Punjab V Balbir Singh wherein Justice K.J. Reddy had dealt with section 50 of the NDPS Act.

2. He further suggested that investigating agencies should be established separately. The statements recorded at the time of enquiry should be considered as relevant, as being considered relevant under the Customs Act. He further stated that sufficient number of prosecutors are not being appointed which is causing delay at the time of trial of the cases. The bail applications that are being filed under section 438 of Cr. P.C. should be scrutinised very carefully at the time of granting bail and the anticipatory bail should be granted very cautiously. Under the accidental cases the victims are not getting sufficient financial help and the punishment being awarded to the guilty persons are not adequate under the present law.

3. Thereupon, Hon'ble Chairman of Law Commission dealt with the subject by stating that before independence, four Law Commissions were established and after the independence, the first Law Commission was constituted under the chairmanship of Shri Setalvad and brought about many important reports. The Law Commission in its 41st report dealt with the amendments on Cr. P.C. according to which the same was amended in 1973. Presently, being the Law Minister, the Prime Minister of India desired that the Law Commission should make a comprehensive study and come up with a report dealing with provisions contained in Cr. P.C. and I.P.C. Home Minister also desired accordingly. Hence, the Commission is conducting workshops at various places to know the views of different sections of the society. After having deliberations, it will submit a report to the government. Presently, the litigant public are also interested in getting speedy and inexpensive justice.

Therefore, the Law Commission has prepared questionnaire on various topics and they are as follows:

(a) **Investigation.**—The investigating officer is presently entrusted with other responsibilities such as bandobast to VIPs and maintenance of law and order. Due to the multifarious activities they are not able to cope up with efficient functioning of investigation which is quite important in any criminal case. Therefore, the suggestion is that there should be separate agency which should exclusively deal with investigation.

(b) **Section 41 Cr. P.C.**—The police has been empowered to arrest anybody on the basis of suspicion under section 41 Cr. P.C. But the criticism is that many innocent people are unnecessarily harassed. Therefore, arrest should be made only in exceptional cases according to the circumstances of the case. It is not mandatory on the part of the police to arrest everybody. Hence various views have been expressed on that subject.

(c) **Section 161 & 162 Cr. P.C.**—It is a well-known fact that the statements under these provisions are not recorded on the spot and the police would generally prepare in their Station Houses and later on make the witness sign either by compulsion or and the like. The present practice is that the said statements are being utilised by the counsel in the court for the purpose of contradiction. But the suggestion is as to whether the said statement should be utilised for corroboration also. Therefore in that connection he referred to the 14th and 41st report of the Law Commission wherein it was suggested to obtain the signatures or thumb impressions of the witnesses after the statements are recorded. Therefore, the Hon'ble Chairman suggested for valuable views from the participants.

Under section 167 Cr. P.C., the police custody is ordered for a fortnight. Whether this provision requires scrutiny or not is a matter for consideration.

(d) **Nyaya Panchayats.**—In 114th report of the Law Commission it was suggested for establishing Nyalayas wherein a Law Officer and layman would be associated. It would appear that in some States the said Nyalayas are functioning. In Maharashtra it would appear that they are not functioning and as such the feasibility of establishing the same may be considered.

(e) **Compounding of offences.**—The concept of compounding offences should be broad based and more sections should be brought under this concept and particularly petty offences may be brought under this category.

(f) **Plea-bargaining.**—The concept of plea-bargaining should be tried in India particularly with reference to petty offences and the same is being practised in countries like U.S.A.

(g) **Victimology.**—The concept of victimology has to be inserted in Indian law as the State has got responsibility to take care of the victims. Whether the accused is convicted or acquitted, it makes no difference to the victim. When once there is a loss of life in the family, the dependents of the victim should be supported by the State Government. Therefore, there should be a provision for paying adequate compensation to such persons and certain amount of methodology has to be formulated in order to pay sufficient amount of compensation to the victims.

(h) **Section 313 Cr. P.C.**—The statement of the accused should be viewed under the principle audi alteram partem and of late statements of the accused are being recorded in a lengthy way and there is no purpose actually served by recording such statements. Therefore, it requires scrutiny about its utility.

Thereupon the participants came up with their views and the same are indicated below in seriatim.

Mr. Justice A. C. Agarwal.—The present law is mostly in favour of the accused and under Article 21 of the Constitution the principle of double jeopardy has been provided under which second trial is inadvisable and under Article 22 of the Constitution there is a guarantee for giving protection to the accused and the present practice is to lead all possible evidence which ultimately ends in acquittal due to the lacunae in the prosecution case. Our jurisprudence is particularly in favour of the accused as such it has got to be reviewed in the interest of justice.

Further he stated that the investigating agency should be separated from the prosecuting agency. Special magistrates/Executive magistrates should be appointed for supervising the investigating agency which should work under the Law Ministry. He has in that context suggested for changes in the process of leading Chief-examination and the cross-examination.

He has suggested for enlarging the scope for bringing many offences under the category of compoundable offences and petty offences can be tried by the Nyaya Panchayats. Thereupon the Hon'ble Chairman of the Law Commission came up with the information regarding category of the prosecutors. He suggested that public prosecutors should be appointed permanently and there should not be a change as and when the governments change. If there is a permanent agency like that, there will be coordination between the prosecuting and investigating agency.

Mr. Justice A. A. Desai.—He suggested that there should not be meddling with section 313 Cr. P.C. as by this section certain right has been conferred on the accused under humanitarian consideration and this section should remain with some modification, i.e., the accused should be in a position to come up with his defence at the time of framing of charges. In other words he should be precluded from changing his defence at a later stage.

Thereupon few participants have come up with their views that section 313 statements are privileged right to the accused as such they should remain as they are.

Mr. Justice S. N. Variava.—Presently the law is in favour of the accused. Therefore, in order to bring home the guilt of the accused, the accused should declare his defence at the time of framing of the charges. Therefore, the law should be amended drastically on this aspect.

Mr. Justice Vishnu Sahai.—The present system of recording the statements of the accused under section 313 Cr. P.C., even though it remains in favour of the defence statements under section 161 Cr. P.C. can be utilised in corroboration also in addition to such statements being used for the purpose of contradiction. Further, he has stated that under section 309 Cr.P.C., there should not be a limit without discretion for the judge to give adjournments. Therefore, the said provision does not require any amendment. Regarding the compounding of offences, he suggested that such type of compromise should be made possible at the stage of investigation itself. Honorary magistrates can be appointed to deal with petty offences on the basis of merit and credibility. Similarly, the concept of victimology can be inserted in our law. Of late anticipatory bails are being granted indiscriminately and they are being misused. As such he opined that they should be granted only in exceptional cases in the interest of justice and certain amount of discretion should be given to the judge for granting anticipatory bail. He also pleads for such provisions to be provided under various laws to protect the rights of women folk.

Mr. Justice B.N. Srikrishna.—He suggested that it should be the aim of the law to punish the guilty whatever be the technicalities that may be in favour of the accused.

Mr. Justice R.G. Vaidyanatha.—Under section 438, there should be some control to grant bail to a person apprehending arrest and the benefit should not be conferred to the accused. Under section 162 Cr.P.C. the benefit if at all is available should not be used in favour of the accused only and the same can be used in favour of the prosecution also. Honorary magistrates can be asked to record the statements of the witnesses. The prosecuting agency should be independent.

Mr. Moore, Law Secretary.—He suggested that the prosecuting agency should be independent. Presently in Maharashtra the prosecuting officers are working under the police officers which is not desirable. Further he stated that the investigating officers have no knowledge of law and as such they should be associated with the prosecutors. In such circumstances the investigating officer would get the assistance of the prosecuting officer from the very beginning of the investigation.

Presently due to the lacuna in section 161 or the evidence being unavailable the courts are not able to convict the accused. This type of law should be changed drastically. Anticipatory bail should continue.

The Secretary (Appellate side) Law Department.—The present presumption as per jurisprudence is that the accused is always innocent. It should be changed. In other words the philosophy of the Indian criminal system should not be always in favour of the accused. At the time of punishing the accused the law should be quite deterrent. In the State of Maharashtra the Director, Prosecution is functioning and in order to have a coordination between the prosecuting agency and the Director, Prosecution certain modalities are being worked out.

Shri Adik Shirodkar, Sr. Advocate.—In the decided case by the Supreme Court namely, Nandiny Satpathy, the court had made an observation about the investigation collection of the evidence, obtaining necessary statements etc. under the credibility on the part of the police officers. Unless and until certain amount of credibility on the part of the investigating officer is ensured, the process will not be conducted effectively. The present presumption of jurisprudence that the accused is innocent should continue and the law of contradictions and omissions was considered by the courts in many decided judgements. The status of the section 161 Cr.P.C. should remain as it is. Similarly, section 313 Cr.P.C. But the statement of the accused under this provision may be curtailed. Because the law provides that the accused can defend himself. Anticipatory bail should continue as it is. In that context he referred to the cited case in Gurubaksh Singh. He has further canvassed that the magistrates should be supplied with necessary law journals so that they can get their knowledge up to date. He agrees for the introducing plea bargaining and the compromising of the cases. He canvassed the idea for appointment of more magistrates and ultimately he stated that the prosecuting agency should be separate from the investigating agency.

Shri Vyasya, Senior Advocate.—He almost agreed with the views expressed by Shri Shirodkar and also the proposed amendments set out in the questionnaire. The presumption of jurisprudence that the accused is always innocent should continue.

Mrs. Desai, Govt. Pleader.—As the crime rate is going up, the law should be changed drastically. Anticipatory bail should continue. Under section 167 Cr.P.C. fifteen days for police custody appears to be sufficient so as to complete the investigation. She suggested for review of section 67 of the Bombay Police Act. She further stated that the investigating officer should have the knowledge of law or obtain the assistance from the people having knowledge of law.

Shri Gupta, Senior Advocate.—He referred to the 152nd report of the Law Commission with regard to Custodial Crimes. He canvassed for the ideas of implementing the report.

Shri S.R. Chitnis, Senior Advocate.—He suggested that the present position with regard to sections 161 and 162 Cr.P.C. should continue. In Bhajan Lal's case the Supreme Court had clearly pointed out about the functions of the investigating agency. As provided under sections 437 and 438 the anticipatory bail should be granted sparingly and cautiously.

Shri Govindkar, Govt. Pleader.—The grant of anticipatory bail should continue and only persons with merit may be appointed as Special Prosecutors.

Shri Raja Bhosle, Govt. Pleader.—The public prosecutors should not work under any governmental department. The status with regard to section 162 Cr.P.C. should remain as it is and as provided under section 41 Cr.P.C. the police should have restricted power to arrest. The position under sections 138 and 438 should remain as it is.

Shri Thorakia, District Judge.—By appointing separate agency for investigation the problem will not be solved. In other words, the investigating officer should have proper training in performing his duties. He is of opinion that the power of the police to arrest should not be curtailed. Even the police officer should be given proper training to keep their knowledge up to date and there should be coordination between the investigating agency and the prosecuting agency.

The cases pertaining to petty offences should be entrusted to Nyaya Panchayats and for adjourning the cases in the court the judges should have discretion either to grant or not or otherwise on the basis of the circumstances. The list under the category of compoundable offences should be enlarged. He has also canvassed the idea of introducing plea bargaining. He suggested that for every agency credibility is the criterion.

Shri Kulkarni and Shri Kotikar.—These District Judges have not contributed anything even at the request of the Chief Justice except approving the views as expressed in the questionnaire.

Shri Khobrey.—He formulated a scheme in order to make the investigating officers work effectively. He has furnished a scheme in a detailed way. This can be read as the part of the replies received with reference to questionnaire sent by the Law Commission.

Mrs. Desai, District Judge.—She canvassed the idea for creating the prosecuting agency as separate and suggested ways and means to make the investigating agency to work efficiently. She also suggested for keeping the status of section 162 Cr.P.C. as it is and the said statements can be utilised for the purpose of coordination also. The anticipatory bail should continue, but it should be restricted to only selected cases. At the time of recording statements of the accused under section 313, the accused should not be allowed to change the version from time to time. In other words, he should adhere to one version throughout either at the time of framing of charges or at the time of recording statement under section 313 Cr.P.C.

Mrs. Bhat, District Judge.—She canvassed a view for the appointment of prosecutors from the beginning of the case. For appointing such prosecutors the District Judges should be consulted.

There was cross discussion among the speakers. They have stated that since the material/evidence is being collected against the accused, he should be given opportunity to defend himself. Another suggestion was that the accused should be given time up to seven days to disclose his version. Another view was that physical arrest of the person under section 41 Cr.P.C. should be done away with.

Mr. Patel, District Judge.—The Judge should have discretion to admit a particular document or otherwise. Another view was that maintenance allowance should be increased under section 125 Cr.P.C. It was further suggested that the warrants issued by the courts are not being executed in time. There should be a provision for attachment of salaries of the husbands if the maintenance is not paid to their wives in section 125 Cr.P.C. proceedings.

Shri Agarwal, Secretary, Home Department.—In some cases copies of complaints are not supplied to the parties, particularly in the private complaints. The opposite parties are not getting opportunity to defend themselves in the absence of supply of material. This position requires proper consideration. Another suggestion was with regard to utilisation of video cameras and their admission for the purpose of evidentiary value.

After lunch Hon'ble Chairman of Law Commission stated that on the basis of report of the previous Law Commissions, certain amendments were proposed in I.P.C. and a Bill was introduced in the Parliament, but the same had elapsed due to the dissolution of the House. Thereafter, there was a rethinking and the Union Home Minister desired that instead of amending a few provisions, there should be thorough revision of the entire Act. Hence, the Law Commission has undertaken the task of making recommendations for amendment in I.P.C. by way of inserting new concepts. In that context, he dealt with the following topics:

1. Under the category of punishment, community service can be introduced.
2. Disqualification for public servants.
3. Public censure.
4. Constructive liability of the corporation under section 194A & B of the Companies Act.
5. Cheating of government in contracts by public servants.
6. Blackmailing.
7. Hijacking of vehicles.
8. Anti social elements.
9. Culpability.
10. F.I.R. being not registered which is an offence.
11. The definition of section 299 and 300 I.P.C. and the distinction in the phraseology in the two sections.

There was a little discussion on the above topics. Then, Hon'ble Chairman requested the participants to consider the above topics and reduce their views in writing in detail and send them to Law Commission. Thereafter the workshop ended with vote of thanks by the Hon'ble Chairman.

14—2 M of L & J/ND/97

Proceedings of workshop held at Madras on March 13, 1996 relating to the proposed amendments to certain sections/clauses of code of criminal procedure

The above workshop was headed by Mr. Justice K. Jayachandra Reddy, Chairman, Law Commission of India along with Thiru Justice V. Ramaswami, Chairman, Tamil Nadu State Law Commission.

Present :

1. S. Sripall—D.G.P. (Trg.)
2. V.K. Rajagopalan—Addl. D.G.P. C.B.C.I.D.
3. K.V.S. Murthy—D.I.G. Admn.
4. Letika Saran—D.I.G. C.B.C.I.D.
5. S. Ramani—Joint Director, Vigilance & Anti-Corruption
6. K.E. Venkatraman—Legal Adviser, Director of Vigilance & Anti Corruption.
7. S. Saravanaperumal—Director, Prosecution.
8. V. Chandrasekaran—Addl. Secy. (Courts), Home Department, Madras-9.
9. M. Muniraman—Law Secretary.
10. M. Nagoormeeran—Director of Govt. Litigations, High Court.
11. A. Krishnankutty Nair—Dy. Secy. to Govt., Law Department.
12. A.R. Chittaranjan—Under Secy. to Govt., Law Department.
13. K. Sumathi—Advocate, High Court, Madras (Women Lawyers Association).
14. S. Vanamamalai—Legal Adviser to DIG/C.B.C.I.D.
15. T.C. Sridharan—Under Secy. to Govt. (Law).
16. P.K. Kasi Viswanathan—Dy. Commr. of Police, City Police Office.
17. Ammu Balachandran—Advocate, Madras High Court.
18. P. Anand Rao—Full Time Member, State Law Commission.
19. P. Jeyasingh Peter—Full Time Member, State Law Commission.
20. Justice K. Swamidurai—Part Time Member, State Law Commission.
21. K. Ramalingam—Inspector General of Prisons.
22. L. Vijayanarayanan—Dy. Inspector General of Prisons.
23. R.C. Varadarajulu—Member-Secretary, State Law Commission.
24. S. Loordusaamy—Deputy Secretary, State Law Commission.

Mr. Justice V. Ramaswami, Chairman, State Law Commission, welcomed the participants. He highlighted the importance of workshop and briefed about the proposed changes required for certain sections in the Code of Criminal Procedure. He requested all the participants to come out with their views/ suggestions on the above.

After this followed Key Note address from Mr. Justice K. Jayachandra Reddy, Chairman, Law Commission of India. He said that it was the first time in the 19th century Law Commission was constituted during the British Rule and the Law Commission was headed by Macuulay. This Commission have given a lot of suggestions to amend the laws and the suggestions were accepted and laws were amended accordingly. After independence, first Law Commission of India was constituted in the year 1955. He said that Law Commission of India was constituted every three years from the year 1955. He said Law Commission have the uphill task of suggesting to bring out various reforms in the field of law and as regard the code of criminal procedure. He said that Law Commission in its 14th report have suggested amendments to

certain sections in the code of criminal procedure. He also pointed out that an Amendment Bill was recently introduced in the Rajya Sabha in the year 1994 for amendment of the code of criminal procedure. He also informed that Law Commission of India was asked by Government of India that instead of making piecemeal suggestion to the code of criminal procedure, but to make an in-depth study of the entire code of criminal procedure and to come out with the suggestions to amend the code of criminal procedure wherever relevant to suit the modern times. Having this uphill task he has been conducting workshop at various States of India participated by professionals like judges, lawyers, high police officials and other persons connected with it and the workshop held today is one such. He briefed the important sections which needs to be amended and requested the participants to give their valuable suggestions. He also enlightened the valuable suggestions given by the participants in the workshop held earlier in various other States and some of them have to be really thought of though few other suggestions may not be partially possible.

Gist of discussion

(1) Chairman, Law Commission of India referred to the 4th report of police commission and informed that necessity arises to have a separate investigating agency in the police department so that investigation process in the cases of serious offences may not be disturbed since such police officers are disturbed by entrusting them with other work such as bandobust, security etc.

Thiru S. Sripall, D.G.P. (Trg.) suggested that instead of having a separate investigating agency, it would be better to increase the strength of the police officers and also give some additional powers for investigation and this would help in expediting the investigation and such investigating officers would not be entrusted with any other work and thus would help in completing the investigation at the earliest.

(2) Section 41 of the Code of Criminal Procedure

Immediate Arrest

Chairman, Law Commission of India said that police officers thinks that arrest is a must. He pointed out that the Supreme Court in a judgement in one of its cases has ruled that police officers are misusing their discretionary powers for the immediate arrest whether the offences are of minor/major one and stressed the need for having a separate prosecuting agency to prevent immediate arrest. This agency should work on three aspects—

(1) As an investigating agency.

(2) Certain legal questions may arise in which case there should be a legal cell in the police department for the investigation. He said in some States there are legal cell consisting of legal experts to act as an advisor to D.G.P., Commissioner of Police.

(3) Filing of police charges.

Effective investigation is very much necessary. Co-operation between investigating and prosecuting agency should be good.

Thiru S. Saravanaperumal, Director Prosecution, though welcomed the above measure, opined that Director of Prosecution must be a senior police officer so that investigation and prosecution will be done at the earliest and the Director of Prosecution should not be from the law professionals like District Judge etc.

Thiru V. K. Rajagopalan, Additional D.G.P. C.B. C.I.D. supported the statement of Director Prosecution.

Thiru S. Sripall, D.G.P. Training opined that immediate arrest should not be completely avoided because few persons approach the political influence thereby delaying the investigation. However, he agreed for certain changes in discharging immediate arrest.

Ammu Balachandran & K. Sumathi opined that Director of Prosecution should be law professional instead of police personnel.

Sections 161 & 162

D.G.P. Thiru S. Sripall agreed with the proposal to get the accused arrested in warrant cases. Whereas in respect of summons cases to ascertain the facts contradicting the witnesses and get the attestation. Chairman, Law Commission of India referred to section 157 of the Indian Evidence Act and said that he wished the following:

(a) Police Commission suggestion on the above is agreeable.

(b) Regarding the statement as above, said that there is no harm in taking the signature to be attested. This would enable to identify the witnesses. The witnesses should be produced before the higher authority and the magistrate. This would be much more authentic as well as contradicting.

Thiru Saravanaperumal, Director of Prosecution said that the above will only lead to overburden the magistrate who will not be accepting to this. However, amendment to these sections was sought by him and other police personnel.

Section 167

Chairman, Law Commission of India said that the arrested persons for the first fortnight should be kept under police custody and thereafter under judicial custody and therefore amendment to section 167 is necessary. There was no objection from the police officers.

Nyaya Panchayat

Chairman, Law Commission of India said that though Nyaya Panchayat does not prevail in all the States, a Bill has been introduced in Andhra Pradesh Assembly recently, wherein a retired judicial officer should preside over the Nyaya Panchayat and the type of offences to be tried are prescribed in the Bill. He also pointed out that Judge, Desai while as Chairman Law Commission of India gave vital suggestions to the Govt. on the above. Since the above does not prevail in the State of Tamil Nadu there was no remarks from the participants.

Anticipatory Bail

There were comments on Anticipatory bail from the participants which are used as key tool to escape from arrest and thereby delay the investigation by getting the political affluence.

Thiru S. Sripall, D.G.P., said that changes are must in respect of anticipatory bail so that it is not used by rich persons quite often to escape punishment for their offences. Also the place where anticipatory bail sought for irrespective of offences committed in some other States.

Thiru S. Saravanaperumal and Thiru S. Ramani, Joint Director, Vigilance & Anti-corruption also agreed that changes are necessary for anticipatory bail in the matter of application such as giving notice to the Public Prosecutor, grounds on merits, kind of offences etc.

Plea-Bargaining

Chairman, Law Commission of India referred to the method of plea-bargaining prevalent in U.S.A. wherein the accused for minor offences is fined and not being prosecuted.

Thiru S. Sripall, D.G.P. viewed that this must be seriously thought of because the society should not take advantage of this and pay the amount for the offences committed. It also matters about the type of offences that should come under the category of plea-bargaining. Ammu Balachandran, Advocate, Madras and K. Sumathi, Advocate, Wowen Lawyers Association suggested that trial in respect of cases such as rape should be tried in family courts in the State and only women prosecutor should be appointed for such courts. In this context special reference is made to Article 125 that the provision is salutary to make more changes.

Proper compensation for victimology

There was unanimous opinion that the victims should be properly compensated in the affected areas such as where dacoity has taken place. Thiru S. Sripall, D.G.P. opined that investigation should be thoroughly done at the local place where dacoity has taken place. He also suggested to ascertain the assets of the accused person/s. Chairman, Law Commission suggested to have victim compensatory court. He also informed that proper care should given to the witnesses and they should be in a respectable manner.

Ammu Balachandran & K. Sumathi Advocates said that witnesses oral statement should be recorded so that it does not vary from the written statement from them during the course of the trial.

Chairman, State Law Commission suggested for a separate police set up for serious offences. Mr. S. Sripall, D.G.P., said that investigation suffers because of the multifarious duties by station staff and we should aim in reducing the jurisdiction of the police station and increase number of police stations. He further said that policemen are foot soldiers of the executive and therefore they should have ample power in their field to conduct thorough investigation without any interruption. He also requested for increase in number of police officers. He also suggested for a District Crime Branch in each District headed by Dy. Supdt. of Police so that while conducting investigation it should not be disturbed for any other matters and sufficient police officers should be provided to him.

Additional D.G.P. also opined that investigation is very much delayed as the investigation officers are asked to lookafter maters like bandobast, security etc.

Chairman State Law Commission, opined that investigation is also delayed due to sudden transfer of investigating officers, allocation of different urgent work etc.

Thiru K. V. S. Moorthy, I.G. CBCID said that additional level of separate investigating team should be set up, since hundreds of murder cases are pending for trial for disposal.

Ammu Balachandran said that even after F.I.R. no action is being taken by the police saying that matters of urgent importance such as murder cases even seems to be pending. So she suggested some changes are necessary for the speedy disposal of cases.

As regards the arrest of accused, Thiru S. Sripall, D.G.P. suggested that modern finger print technology should be well utilised for the arrest of accused when information provides that he is guilty. The modern techniques must be made available in all the police stations to take necessary action on the accused. However changes to prevent immediate arrest is sought for.

Director of Prosecution

Thiru S. Saravanaperumal, Director of Prosecution said that to expedite the investigation and to prosecute the accused the Director of Prosecution must have some police officers. Now this is being done by Public Prosecutors who are politically appointed as a result of which after the tenure the new Public Prosecutor takes charges etc. Hence public prosecutor himself should be from the senior police officers.

K. Sumathi, Advocate and Ammu Balachandran strongly opposed this and said that the Director of Prosecution should be from judicial side only for the proper handling of cases.

Thiru V. K. Rajagopalan, Addl. D.G.P. said that at least Asst. Public Prosecutor should be a police personnel for the proper assistance to the prosecutor.

Amendment to I.P.C.

Chairman, Law Commission of India pointed out that two Sections that are being added in respect of liabilities of the Directors of the company and this is being referred to Company Law Board and the other being complexity in sections 34 & 149.

Ransom Offences

Chairman, Law Commission of India said that public property contractors are cheating government by their defective work. They should be dealt with. The offences against privacy with reference to Article 21 is necessary.

Amendment to Sections 299 & 300

It was generally opined that it shall be left out as it is.

Chairman, Law Commission of India concluded the meeting after getting the suggestions from various personnel and he requested them to send written suggestion to him or through Member-Secretary, State Law Commission for consideration.

He also requested the participants if they desire to have a long time session with the Chairman of Tamil Nadu State Law Commission on their subjects.

Chairman, State Law Commission once again thanked the participants and requested them to send their written suggestion to State Law Commission which would be dealt with. He also requested the participants to have lunch and with this meeting ended.

Proceedings of the Workshop conducted at Sales Tax Bhawan, New Delhi, on 4-5-96 regarding the proposed Amendments by the Law Commission for Revision of code of Criminal Procedure, 1973.

A workshop was organised by Delhi High Court at Sales Tax Bhawan, I.T.O.. New Delhi on 4th May, 1996 regarding the proposed amendments by the Law Commission for revision of Code of Criminal. The workshop was attended by the following persons :

1. Hon'ble Mr. Justice K. Jayachandra Reddy, Chairman, Law Commission.
2. Hon'ble Mr. Justice M. Jagannadha Rao, Chief Justice, Delhi High Court.
3. Hon'ble Ms. Justice Usha Mehra
4. Hon'ble Mr. Justice Manmohan Sarin
5. Hon'ble Mr. Justice Y. K. Sabharwal
6. Hon'ble Mr. Justice Arun Kumar
7. Hon'ble Mr. Justice Daiveer Bhandari
8. Hon'ble Mr. Justice Cyriac Joseph
9. Hon'ble Mr. Justice K. Ramamoorthy
10. Hon'ble Mr. Justice J. E. Goel
11. Hon'ble Mr. Justice R. L. Gupta, Member, Law Commission
12. Mr. G. Krishnamurthy, Member, Law Commission
13. Prof. (Mrs.) Alice Jacob, Member, Law Commission
14. Mr. Prabhakara Rao, Member Secretary, Law Commission
15. Dr. S. C. Srivastava, Joint Secretary & Law Officer, Law Commission
16. Mr. M. A. Khan, Registrar, Delhi High Court
17. The District & Sessions Judge, Tis Hazari Courts alongwith ten senior Additional District & Sessions Judges & 20 Senior Metropolitan Magistrates
18. The Commissioner of Police with some senior officers
19. The Director of Prosecution, Govt. of N.C.T. of Delhi with Shri R. P., Dhania, Shri R. K. Manchanda, Chief Prosecutors, and S/ Shri K. K. Singh, Ranbir Singh, Addl. Public Prosecutors
20. Sh. R. D. Joly, 413, Lawyers Chamber, Delhi High Court
21. Sh. Raj Kumar Bahri, 1550-D, Babar Pur Road, Shahdara, Delhi
22. Ms. Neelam Grover, 9, Lawyers Chamber, Delhi High Court
23. Sh. K. B. Andley, 63, Defence Enclave, Vikas Marg, Delhi
24. Sh. R. K. Naseem, C-27, New Krishna Park, Dholi Piao. Opp. Janakpuri, New Delhi.
25. Sh. Ramesh Gupta, Chamber No. 64, Patiala House. New Delhi
26. Sh. K. K. Sud, 103, Lawyers Chamber, Delhi High Court, New Delhi
27. Sh. Dinesh Mathur, A-17, Hawz Khas, New Delhi
28. Sh. S. K. Aggarwal, Standing Counsel, (Genl.), Govt. of N.C.T. of Delhi, New Delhi.

The Registrar enlightened the House with his remarks on the need to organise the workshop and invited Hon'ble Ms. Justice Usha Mehra to take over from him and address the House. The workshop/seminar was presided over by Hon'ble Mr. Justice Reddy, Chairman, Law Commission. Hon'ble Ms. Justice Usha Mehra laid stress on the importance of the workshop and need to make amendments in the Criminal Procedure Code. Her Lordship also talked about the scenario of Crime and Criminal Laws in the post-independence era. Her Lordship also suggested some remedies to the problems coming in

the way of justice delivery apparatus. Hon'ble Mr. Justice M. J. Rao, Chief Justice, Delhi High Court also addressed the participants and apprised the House with the reforms in the Criminal Laws which are required in the fast changing criminal envirconment in the country. Hon'ble Mr. Justice Reddy, Chairman, Law Commission spoke on the necessity of organising the work-shop. His Lordship also emphasised on the uniformity, in the justice delivery apparatus.

Separate Investigating Agency

The need to set up a separate investigating agency was expressed by His Lordship Mr. Justice Reddy. The participants were asked of their views on the above point and suggestions were furnished that due to other responsibilities the Investigating Officer cannot justify the investigation which he is required to perform. Stress was laid on the fact that the present investigation procedure is not adequate and, therefore, a separate investigating Agency should be formulated. Most of the cases in the Courts were adjourned because of the fact that the investigating officer is not present in the Court.

Mr. R. C. Gupta, ADJ also recommended that the Investigating Officer must be trained and special remuneration should also be provided to them. The Agency should be separate for all the cases.

Mr. Dhingra suggests that the agency should be separate for all the cases. It should not be under the same police department, should be independent and independent from political interferences. Mr. Dayal, ADJ stresses that it should be controlled by the Directorate of Prosecution. Mr. B. N. Singh, Representative, Delhi Police suggested that separation alone may not help but other aspects have to be looked into.

The House agrees on the point that a separate investigating agency should be formulated and it should be governed by the Directorate of prosecution which will be headed by a Director. The Director has to be from the judiciary. His Lordship Mr. Justice Reddy argued for the proper guidelines to be laid down showing the procedure of co-ordination between the police officers and the Director otherwise unwanted disputes may arise due to ego problems. Mr. Justice Reddy also talked about the detailed procedure of witness Act, how the statements are recorded and put to the courts and suggests the steps to eliminate the error concept etc.

Anticipatory Bail

At the outset it is pointed out that there is no anticipatory bail in the State of Uttar Pradesh and as such the provision of anticipatory bail can be waived in the Capital also. The consensus says that this provision should not go because the capital is housing most of the VIPs and other famous personalities for whom going to lockup itself is more than being jailed as a social stigma is attached to it. It was suggested that it should not go but it should be more liberalised. Misuse of sub-section 1. 2, & 3 of Section 458 should be stopped. The provisions of Section 488 have to be retained with some improvements.

Witnesses

Most of the cases are adjourned because witnesses do not turn up as they come from far-flung areas. Proposal of giving protection to the witnesses was also forwarded.

Deletion of Section 162 Cr. PC

It was finally decided that change in Section 162 Cr. PC is required.

Compounding

Ms. Neelam Grover said that trial courts must be empowered. Mr. Khanna, Mr. Malik, Ms. R. S. Nag, Mr. Sood all talked on the point and the House was unanimous for the compounding.

Vote of Thanks by Hon'ble Mr. Justice M. M. Sarin.

ANNEXURE V

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THE ANDHRA PRADESH GAZETTE

PART—IV-A EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 32] HYDERABAD, THURSDAY, MAY 4, 1995

ANDHRA PRADESH BILLS

ANDHRA PRADESH LEGISLATIVE ASSEMBLY

The following Bill was introduced in the Andhra Pradesh Legislative Assembly on 4th May, 1995.

L.A. BILL No. 32 OF 1995.

A BILL TO PROVIDE FOR THE ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE IN MANDALS AND MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty-sixth Year of the Republic of India as follows:—

PART I—PRELIMINARY

Short title extent and commencement

1. (1) This Act may be called the Andhra Pradesh Mandala Nyaya Panchayats Act, 1995.

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(2) It extends to the whole of the State of Andhra Pradesh, except.—

(a) the municipal corporations governed by the law relating the Municipal Corporations for the time being in force in the State;

(b) the municipalities governed by the law relating to municipalities for the time being in force in the State;

(c) the mining settlements governed by the Andhra Pradesh (Telengana Area). Mining Settlements Act, 1956; and

Act XLIV of 1956

(d) the Cantonments governed by the Cantonments Act, 1924.

Central Act 2 of 1924.

(3) It shall come into force on such date as the Government may, by notification, appoint.

Definitions

2. In this Act, unless the context otherwise requires,—

(a) "Government" means the State Government of Andhra Pradesh;

(b) "Gram Panchayat" means a Gram Panchayat constituted under the Andhra Pradesh Panchayat Raj Act, 1994.

Act 13 of 1994.

(c) "Mandal" means such area in a district as may be declared by the Government by notification to be a Mandal under section 3 of the Andhra Pradesh Districts.

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(Formation) Act, 1974; Act 7 of 1994.

(d) "Member" means a member of the Nyaya Panchayat;

(e) "Nyayadhyaksha" means a Nyayadhyaksha nominated under section 9.

(f) "Nyayapalaka" means a Nyayapalaka nominated under section 8;

(g) "Nyaya Panchayat" means a Mandal Nyaya Panchayat established under section 8;

(h) "Notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;

(i) "Prescribed" means prescribed by rules made under this Act.

Establishment of Mandal Nyaya Panchayats.

3. The Government may, for the administration of Civil and Criminal Justice, established a Mandal Nyaya Panchayat for each Mandal, by a notification with effect from such date as may be specified therein.

4. Every Nyaya Panchayat shall consist of five members, possessing the qualifications specified in section 5 who shall be nominated by the District Magistrate concerned in consultation with the District and Sessions Judge;

Provided that out of the five members to be nominated, one shall be a member belonging to Scheduled Castes or Scheduled Tribes or Backward Classes or minorities or one shall be a woman.

Qualifications and disqualifications for nomination as member.

5. (1) No person shall be eligible for nomination member unless,--

(a) he has completed the age of thirty years.

(b) he is either a graduates in law or a graduate of any recognised University or a well known social worker or a person having good reputation.

(2) A person who has been convicted by Criminal Court,—

(i) for an offence under the Andhra Pradesh Prohibition Act, 1995; Act 17 of 1995.

(ii) for an offence under the Protection of Civil Rights Act, 1955; or Central Act 22 of 1955.

(iii) for any other offence involving moral turpitude;

Shall be disqualified for nomination or to continue as a member.

(3) A person shall also be disqualified for nomination or to continue as member, if he is,—

(i) of unsound mind and stands so declared by a competent court;

(ii) a deaf-mute;

(iii) applicant to be adjudicated as an insolvent or an undischarged insolvent; or

(iv) a person against whom proceedings are pending in a Criminal Court.

6. (1) There shall be a Nyayapalaka for one or more Nyaya Panchayats, who shall possess the qualifications specified in sub-section (2) and shall be nominated by the District Magistrate, in consultation with the District and Sessions Judge.

(2) No person shall be qualified for nomination as Nyayapalaka unless he is,—

(a) a retired judicial officer; or

(b) a person who has held any post under the Government and who had exercised magisterial powers for not less than three years; or

(c) a person who has held any post under the Government and has passed Criminal Judicial and Civil Judicial tests conducted by the Andhra Pradesh Public Service Commission; or

(d) a person who has served as a member of the Nyaya Panchayat for not less than three years.

(3) The Nyayapalaka shall assist and advise the Nyaya Panchayat or Panchayats to which he is nominated on any two days in a week mutually agreed upon by him and the Nyaya Panchayat concerned it as often as his services are required by the Nyaya Panchayat concerned and mutually agreed upon by him and the Nyaya Panchayat.

Term of Office of Members.

7. (1) Save as otherwise provided, in this Act, the term of office of the members shall be three years from the date of their nomination.

(2) Any casual vacancy among the members of the Nyaya Panchayat shall be filled by nomination of another member in the same manner as a regular vacancy but the term of office of the member so nominated shall be the residue of the person in whose vacancy he is nominated.

Resignation of member, Nyayadhyaksha, or Nyayapal.

8. A member or the Nyayadhyaksha or the Nyayapalaka may resign his office by giving notice in writing to the District Magistrate and such resignation shall take effect on the date on which it is accepted by the District Magistrate.

Nomination of Nyayadhyaksha.

9. (1) The District Magistrate shall nominate one of the members to preside over and conduct the proceedings of the Nyaya Panchayat and the Member so nominated shall be designated as Mandal Nyayadhyaksha and where a woman member is nominated she shall be designated as Mandal Mahila Nyayadhyaksha.

(2) In the absence of the Nyayadhyaksha, the proceedings shall be conducted by one of the members present and chosen from among themselves who shall be called the Presiding Member.

(3) The quorum for conducting the proceedings of the Nyaya Panchayat shall be three members inclusive of the Nyayadhyaksha or as the case may be the Presiding Member.

Trial of cases.

10. (1) The Nyaya Panchayat shall try all the civil disputes specified in section 15 and the offences specified in section 26.

Provided that in respect of the category of disputes specified in items (9) and (10) of section 15 and items (6), (7) and (8) of section 26, as far as practicable, a Mandal Mahila Nyayadhyaksha shall conduct the proceedings of the Nyaya Panchayat.

Provided further that in respect of offences specified in section 26 punishable with imprisonment, the Nyaya Panchayat shall be assisted by the Nyayapalaka in the trial and shall be advised by him in reaching the findings:

Provided also that where the Nyaya Panchayat is of the opinion that in a civil dispute the assistance and advice of the Nyayapalaka is required in the interests of justice, the Nyayapal shall, as the request of the Nyaya Panchayat render such, assistance and advise the Nyaya Panchayat suitably.

(2) The Nyaya Panchayat shall be provided with one junior clerk with knowledge of typewriting and one attender.

Members etc. to be honorary offices.

11. The offices of member, the Nyayadhyaksha and the Nyayapalaka shall be honorary offices and they shall be paid such daily allowances as may, by order, be fixed by the Government.

Seal of Nyaya Panchayat.

12. Every Nyaya Panchayat shall have a seal in such form and of such dimensions as may be prescribed.

Conduct of business of Nyaya Panchayat.

13. (1) Subject to the provisions of this Act, the Nyaya Panchyat shall in regard to the conduct of its business follow such rules as may be prescribed.

(2) Save as otherwise provided in this Act or the rules made thereunder the provisions of the Indian Evidence Act, 1872, the Code of Criminal Procedure,

Central Act II of 1872.

1973, and the Code of Civil Procedure, 1908, shall not apply to the proceedings of a Nyaya Panchayat: Central Act 2 of 1974. Central Act 5 of 1908.

Provided that the Government may by notification apply such provisions of the Code of Criminal Procedure, 1973, as they deem necessary for the investigation and trial of offences by the Nyaya Panchayat under this Act. Act 2 of 1974.

Nyaya Panchayat to have exclusive Civil and Criminal jurisdiction. Central Act 2 of 1974. Central Act 5 of 1908.

14. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or the Code of Civil Procedure, 1908, or any other law for the time being in force relating to suits or applications cognizable by revenue courts, and subject to the provisions of this Act, a Nyaya Panchayat shall have and the ordinary civil or criminal courts as the case may be, shall not have, jurisdiction for trial of such offences as are specified in section 26 and such suits and disputes as are specified in section 15.

PART II—CIVIL JURISDICTION

Suits cognizable by Nyaya Panchayat.

15. The Nyaya Panchayat shall take cognizance of civil suits or disputes of the following description, namely:

(1) a suit for recovery of money due on a promissory note or agreement or contract or arising out of a business or trade transaction the value of which does not exceed rupees fifty thousand;

(2) suits relating to non-payment of wages to labour;

(3) suits relating to disputes between landlord and lessee in respect of the lease of land;

(4) suits relating to right of way for men, carts and cattle in fields and court-yards;

(5) suits relating to water channels;

(6) suits relating to right of drawing water from a well or tube-well or irrigation channel;

(7) suits relating to boundary disputes and encroachments other than those relating to Government properties;

(8) suits relating to purchase and sale of lands to the extent of five acres of dry land or two and half acres of wet land;

(9) matrimonial disputes including custody of children (other than suits for dissolution of marriage of judicial separation) which may be resolved by conciliation;

(10) disputes relating to maintenance;

(11) any other disputes of a civil nature that may be referred to by the parties for conciliation and settlement;

(12) disputes reagrding recovery of movable property or regarding compensation for wrongful taking over or injuring movable property;

(13) disputes regarding damage caused by cattle trespass;

(14) disputes regarding rent due on any immovable property;

(15) any other disputes which the Government may, from time to time, by order empower the Nyaya Panchayat to take cognizance.

Certain disputes not to be tried by Nyaya Panchayat.

16. (1) The Nyaya Panchayat shall not have jurisdiction to take cognizance of the following disputes, namely:—

(i) a dispute by or against the State or Central Government or a local body, or a public servant for acts done in his official capacity;

(ii) a dispute by or against a minor or a person of unsound mind;

(iii) a dispute for a balance of partnership account, unless the balance has been struck by the parties or their agents.

Nyaya Panchayat to close a case in certain circumstances.

17. If, in a civil dispute it becomes necessary to decide:

(a) legal title to immovable property; or

(b) any legal question regarding the validity of a contract of agreement; or

(c) any complicated issue of fact or law which should be decided by court of law, the Nyaya Panchayat may on its own motion and shall on an application by either party to the dispute pass orders closing the case, and advise the parties to approach the appropriate civil court.

Application of the Limitation Act, 1963.

18. The provisions of the Indian Limitation Act, 1963 shall apply to disputes cognizable by a Nyaya Panchayat under this Act.

Appearance in person or by agent.

19. No legal practitioner shall be allowed to appear before a Nyaya Panchayat on behalf of any party to a dispute but any party may authorise in writing a servant, gumastha, partner, relation or a friend who is not a legal practitioner to appear and plead for him as his authorised agent with the permission of the Nyayadhyaksha.

Procedure to be followed by Nyaya Panchayat in Civil disputes.

20. (1) The party initiating a civil dispute of the nature referred to in section 15 shall file a petition before the Nyaya Panchayat in the prescribed form furnished to him free of cost, stating his name and address, the name and address of the opposite party and a brief statement of his case.

(2) The petitioner shall not be required to pay any court fees on his petition.

(3) The Nyaya Panchayat shall serve a notice on the opposite party enclosing a copy of the petition and fixing a date for his appearance and to file a counter in defence.

(4) After the respondent files his counter the Nyaya Panchayat shall fix a date for hearing and inform both the parties to be present.

(5) (a) On the date fixed for hearing the Nyaya Panchayat shall hear both the parties in regard to their respective contentions and if the dispute is of a petty nature which does not require recording of any evidence pronounce the decision on the same day.

(b) In case any of the parties to the dispute desire to produce oral and/or documentary evidence or the members of the Nyaya Panchayat are of the opinion that the disputes involves questions of fact which have to be decided by recording oral or documentary evidence for a just decision on the dispute, the Nyaya Panchayat shall require the parties to produce oral and documentary evidence, if any, on a date fixed for hearing.

(6) Evidence given orally before the Nyaya Panchayat shall be on oath or on solemn affirmation.

(7) The evidence of each person shall be recorded in the form of a memorandum of the substance of the evidence.

(8) In regard to any incidental matters that may arise during the course of enquiry, the Nyaya Panchayat shall adopt such procedure as is deemed fit from time to time.

Central Act V of 1908.

(9) The Nyaya Panchayat shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying the suit in respect of the following matters, namely:—

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object produceable as evidence;

(iii) the reception of evidence on affidavits.

(10) The hearing shall be on a day to day basis and shall be disposed of within a period of six weeks.

(11) After the enquiry is completed the members shall discuss among themselves and pronounce the decision within one week after the last day of hearing. The order shall be signed by all the members present. Where the decision is by majority of the members present that fact should be noted in the order itself and the dissenting members also shall record their reasons for the dissent in the order.

(12) The order shall contain the number of the petition, the names of the parties, the particulars of the claim, the points in issue, the substance of evidence adduced on either side, if any, the findings reached by the Nyaya Panchayat and the reasons therefor. The order shall be written and pronounced either by the Nyayadhyaksha or by a member authorised by him. A copy of the order shall be delivered to both the parties as quickly as possible free of cost.

Transfer of Civil Disputes.

21. The District and Sessions Judge may on an application by either party to the civil dispute pending before a Nyaya Panchayat transfer the same to any other Nyaya Panchayat within his jurisdiction, if it is considered necessary in the interests of justice.

Payment of Interest in money decrees.

22. In suits for money where the Nyaya Panchayat passes a decree for payment of money the Nyaya Panchayat may also order payment of interest thereon at a rate not exceeding 12% per annum on the sum decreed from the date of suit till the date of payment or it may direct that it be paid by instalments, without interest or with interest.

Execution of decrees and orders.

23. Any decree or order passed by a Nyaya Panchayat shall be sent to the District Munsif having jurisdiction over the Mandal concerned and thereupon the District Munsif shall execute the same in accordance with the provisions of the Code of Civil Procedure Code, 1908 as if it is a decree passed by him.

Compromise decrees.

24. If both the parties to a civil suit or dispute arrive at a compromise and file an application before the Nyaya Panchayat to record the same, the Nyaya Panchayat shall pass a decree in accordance therewith.

25. (1) An appeal shall lie to the District Judge having jurisdiction from any order passed by a Nyaya Panchayat within thirty days from the date of receipt of a copy of such order.

(2) Pending disposal of the appeal, the District Judge may stay the execution of an order or decree, as the case may be appealed against.

(3) The decision of the District Judge in any such appeal shall be final.

PART III—CRIMINAL JURISDICTION

Nyaya Panchayat to take cognizance of and try offences.

26. The Nyaya Panchayat shall take cognizance of, and try, any of the following offences either on a complaint or on a police report, when committed within the local limits of its jurisdiction, namely:

(1) offences punishable under sections 160, 277, 278, 283 to 291, 323, 334, 341, 342, 352, 358, 504 and 510 of the Indian Penal Code;

(2) offences punishable under section 379 of the Indian Penal Code in respect of property of the value of which does not exceed rupees fifty thousand;

(3) offences punishable under section 426 of the Indian Penal Code when the loss or damage, caused thereby does not exceed rupees fifty thousand.

(4) complaints of illegal seizure or detention of cattle under the Chapter—V of the Cattle Trespass Act, 1871 and offences of forcibly opposing the seizure of the cattle or rescuing the same, punishable under section 24 of that Act, and offences of damage to land or crops or public roads by pigs or cattle punishable under section 26 of that Act: Central Act I of 1871.

Provided that in the case of complaint of illegal seizure or detention of cattle under Chapter– V aforesaid, the compensation that may be awarded by a Nyaya Panchayat shall not exceed five hundred rupees;

Act 13 of 1993. (5) offences punishable under the Andhra Pradesh Panchayat Raj Act, 1994;

Act 17 of 1995. (6) offences under clauses (a), (c) and (d) of section 8 and sections 9 to 11 of the Andhra Pradesh Prohibition Act, 1995;

(7) offences against women punishable under the Indian Penal Code and triably by a Judicial First Class Magistrate;

Central Act 2 of 1974. (8) maintenance cases under section 125 Code of Criminal Procedure, 1973.

Explanation:—The offences mentioned in this section shall include abetments of such offences.

Procedure for criminal trials.

27. (1) In every criminal case trial by the Nyaya Panchayat, as soon as the accused appears before the Nyaya Panchayat, he shall be questioned whether he pleads guilty to the accusation or not. If he pleads guilty the Nyaya Panchayat shall record the plea and pass orders of conviction and sentence him only to fine not exceeding the amount of fine prescribed for the concerned offence under the law.

(2) If the accused does not plead guilty he shall be asked to file a statement of his defence. Where however he gives oral statement it shall be reduced to writing and his signature shall be obtained thereon. After hearing both the complainant and the accused, the Nyaya Panchayat shall give its findings whether the offence is proved or not. If the accused is found guilty, the Nyaya Panchayat shall impose a fine, not exceeding the amount of fine prescribed for the concerned offence under the law; but shall not award any sentence of imprisonment, though prescribed for such offence.

Central Act 2 of 1974.

(3) If the Nyaya Panchayat is of the opinion that the case warrants recording of evidence following the provisions of the Code of Criminal Procedure, 1973 or warrants imprisonment in case of conviction, whether it is a case falling under sub-section (1) of sub-section (2), it shall request the Nyayapalaka to assist and advise the Nyaya Panchayat in the trial and in reaching the findings as far as possible following the summary procedure laid down in sections 260 to 265 of the Code of Criminal Procedure, 1973. After the trial is concluded the Nyayapalaka shall tender his advice to the Nyaya Panchayat and after considering the same the Nyaya Panchayat shall take a decision and pronounce the judgment accordingly.

(4) The provisions of section 19 shall apply to the trial of criminal cases also by the Nyaya Panchayat.

Hearing and decisions.

28. (1) The hearing shall be on a day to day basis and the case shall be disposed of within a period of six weeks. After the enquiry is completed, the members of the Nyaya Panchayat shall discuss among themselves and pronounce the decision within a week of the last date of hearing. The order shall be signed by all the members present. Where the decision is by majority of the members present that fact shall be noted in the order itself and the dissenting members also shall record their reasons for the dissent in the order.

(2) The order shall contain the number of the case, the names of the parties, the particulars of the claim, the points in issue, the substance of evidence adduced on either side, if any, the findings reached by the Nyaya Panchayat and the reasons therefore. The order shall be written and pronounced either by the Nyayadhyaksha or by a member authorised by him. A copy of the order shall be delivered to both the parties as quickly as possible free of cost with the seal of the Nyaya Panchayat.

Evidence to be on oath.

29. Evidence given orally before Nyaya Panchayat shall be on oath or on solemn affirmation.

Power of Nyaya Panchayat to transfer cases

30. If at any stage of the proceedings, it appears to the Nyaya Panchyat that the case is one which ought to be tried by a Judicial Magistrate of the First Class or if at the close of trial, the Nyaya Pancayat is of the opinion

that the accused is guilty and that he ought to be received a punishment more severe than that which it is empowered to impose, it shall submit the case to the First Class Magistrate having jurisdiction who may transfer First Class Magistrate having jurisdiction who may transfer the case to his own court and proceed according to law.

Power of District Judge to transfer cases.

31. The District and Sessions Judge having jurisdiction may on an application by any party or whenever he considers it necessary in the interests of justice, transfer any case pending before a Nyaya Panchayat to any other Nyaya Panchayat within his jurisdiction.

Transfer of cases by Magistrate.

32. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, if a complaint or Police report of an offence cognizable by a Nyaya Panchayat is made to a Magistrate, he may direct the complainant or the Police to present the complaint to the Nyaya Panchayat within whose jurisdiction the offence was committed.

Appeal in criminal cases.

33. (1) An appeal shall lie to the Court of Sessions from any order or sentence passed by a Nyaya Panchayat within sixty days of the passing of such order or sentence.

(2) The Court of Sessions may, pending disposal of the appeal under sub-section (1) direct that further proceedings in respect of any criminal proceedings be stayed or the execution of any sentence be suspended.

(3) Any order passed by a Court of Sessions under sub-section (1) shall be final.

Certain persons accused of theft not to be tried by Nyaya Panchayat.

34. The Nyaya Panchayat shall not take cognizance of any offence of theft in which the accused,—

(a) has been previously convicted with imprisonment of either description for a term not less than three years; or

(b) has been previously fined out any Nyaya Panchayat; or

(c) has been bound over to be of good behaviour in proceedings instituted under section 109 or section 110 of the Code of Criminal Procedure, 1973. Central Act 2 of 1974.

Compounding of offences.

35. The offences cognizable by a Nyaya Panchayat and punishable under Indian Penal Code specified in sections under clauses (1), (2) and (3) of section 26 may be compounded by both the parties with the permission of the Nyaya Panchayat.

Compensation to complainant etc.

36. In imposing any fine, the Nyaya Panchayat may direct that the whole or any portion of the fine recovered shall be applied—

(a) towards defraying the expenses properly incurred in the case by the complainant ; or

(b) in giving compensation to a person for any material loss or damage caused to him by reasons of commission of the offence.

Punishment for non-payment of fine.

37. Where a Nyaya Panchayat imposes a fine and such fine is not paid as required, it shall record an order specifying the amount of the fine imposed and that it has not been paid and shall forward the same to the nearest Magistrate, who shall proceed to execute it as if it were an order passed by himself and such Magistrate may sentence the accused to imprisonment in default of payment of fine.

Compensation to accused for false or frivolous case.

38. If a Nyaya Panchayat is satisfied, after enquiry that a case brought before it is false, frivolous or vexatious, it may order the complainant to pay the accused such compensation, not exceeding rupees one hundred as it deems fit:

Provided that no such order shall be passed, unless the complainant is given an opportunity to show cause against it.

39. Instead of passing a sentence, the Nyaya Panchayat may, except in the case of the offences under the Andhra Pradesh Prohibition Act, 1995, discharge after due admonition a youthful offender who, in the opinion of such Nyaya Panchayat is, at the time of conviction for the offence, under the age of sixteen years. Youthful offenders

PART IV—MISCELLANEOUS

40. The proceedings before the Nyaya Panchayat and the judgement of the Nyaya Panchayat shall be in Telugu language. Proceedings to be in Telugu.

41. (1) If the applicant or complainant fails to appear after having been informed of the time and place fixed for the hearing, the Nyaya Panchayat may hear and decide the suit or criminal case in his absence. Disposal of suits and cases in absence of party concerned.

(2) The Nyaya Panchayat may hear and decide a suit or criminal case in the absence of the applicant or the accused if a summon has been served upon him or if he has been informed of the time and place fixed for hearing:

Provided that no sentence shall be passed by a Nyaya Panchayat on any accused, unless he has appeared either in person or by a representative before the Nyaya Panchayat and the substance of his statement has been recorded in the prescribed register.

(3) If, after the service of summons upon him an accused fails to appear either in person or by a representative the Nyaya Panchayat may apply to the First Class Magistrate having jurisdiction and such First Class Magistrate shall compel the accused to appear in person or by the representative before the Nyaya Panchayat as if he were a Court trying the case.

(4) Where an accused person has under sub-section (3) been compelled to appear before the Nyaya Panchayt, the Nyaya Panchayat shall forthwith take his statement and thereafter his attendance at the hearing of the case shall not be compulsory.

42. (1) If in the opinion of the Government a Nyaya Panchayat is not competent to perform or persistently makes default in performing, the functions imposed on it by law or exceeds or abuses its power, they may by notification dissolve the Nyaya Panchayat with effect from such date as may be specified therein but a new Nyaya Panchayat shall be established in lieu thereof within a period of six months from the date of such dissolution. Power of Government to dissolve a Nyaya Panchayat.

Provided that the Government may, for reasons to be recorded in writing postpone the establishment of the new Nyaya Panchayat for such further period as may be fixed; but the interval between the dissolution and the establishment aforesaid shall not exceed one year.

(2) On the date fixed for the dissolution of the Nyaya Panchayat under sub-section (1) all its members including Nyayadhyaksha and Nyayapal shall forthwith be deemed to have vacated their offices as such.

(3) Before publishing a notification under sub-section (1), the Government shall communicate to the Nyaya Panchayat the grounds on which they proposed to dissolve the Nyaya Panchayat, fix a reasonable period for the Nyaya Panchayat to show cause against such proposal and consider its explanation and objections if any.

(4) Where a Nyaya Panchayat is dissolved and no new Nyaya Panchayat is constituted in lieu thereof, the District Magistrate shall transfer all suits and proceedings and the Criminal cases pending before such dissolved Nyaya Panchayat to any other Nyaya Panchayat within his jurisdiction.

43. (1) The District Magistrate may by notification and with effect from a date to be specified therein remove any member or Nyayadhyaksha or Nyayapalaka who in his opinion is guilty of misconduct in the exercise of the powers vested in him under this Act. A Nyayadhyaksha who is removed from office shall cease to be a member also. Removal of Nyayadhyaksha, Nyayapalaka or member.

(2) The District Magistrate shall, when he proposes to take action under sub-section (1) give to the member or Nyayadhyaksha or Nyayapalaka concerned an opportunity for explanation and the notification issued shall contain a statement of the reasons for the action taken.

Provided that the District Judge concerned shall be consulted before taking action under this section.

(3) Any person aggrieved by an order in a notification issued under sub-section (1), may within thirty days from the date of publication of such notification prefer an appeal to the Government and the Government may pending a decision on such appeal postpone the date specified in such notification, and shall, in case the review petition is allowed by order, cancel such notification.

(4) If any notification issued under sub-section (1) is cancelled under sub-section (3), the person if any nominated as Nyayadhyaksha, Nyayapalaka or member between the date of such notification and the date of the cancellation thereof shall cease to hold office to which he so nominated and the person in respect of whom such notification was first issued shall be restored to office from the date of cancellation of such notification.

(5) Any person in respect of whom a notification has been issued under sub-section (1) removing him from office of Nyayadhyaksha or member shall unless the notification is cancelled under sub-section (3), be ineligible for nomination as Nyayadhyaksha, Nyayapalaka or as member or from holding any of the offices for a period of three years from the date from which his removal from office has taken effect.

Conviction by Nyaya Panchayat not a previous conviction.

44. A conviction by a Nyaya Panchayat under this Act shall not be deemed to be a previous conviction for the purpose of section 75 of the Indian Penal Code.

Resjudicate and pending suits and cases.

45. (1) The Nyaya Panchayat shall not try any suit in respect of any matter which is pending for decision in, or has been heared and decided by a Court of competent jurisdiction in a former suit between the same parties or those under whom they claim.

(2) Where a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, no Nyaya Panchayat shall take congnizance of any such offence or on the same facts, of any other offence of which the accused might have been charged or convicted.

Assistance of Police to the Nyaya Panchayat.

46. Every Police Officer functioning within the jurisdiction of a Nyaya Panchayat shall be bound to assist the Nyaya Panchayat in the exercise of the lawful authority.

Power to make rules.

47. (1) The Government may, by notification make rules for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Government may make rules,—

(i) as to the payment of Honorarium to the Nyayadhyaksha, members and the Nyayapal of the Nyaya Panchayat;

(ii) as to the conditions of service of the staff appointed for the purposes of the Nyaya Panchayat;

(iii) as to the receipt and custody of all documents and records by or on behalf of Nyaya Panchayat and the grant of copies of judgment, orders and other records.

(iv) as to the place and the manner in which the proceedings of the Nyaya Panchayat will be conducted;

(v) as to the manner in which any process issued by the Nyaya Panchayat may be served;

(vi) as to the particulars of the registers and records to be maintained by the Nyaya Panchayats;

(vii) as to the conduct of training programme for members of Nyaya Panchayats;

(viii) as to the supervision and inspection of the Nyaya Panchayat by the District Magistrate and the District and Sessions Judge in respect of specified matters;

(ix) as to any other matter which is necessary to give effect to the provisions of this Act.

(3) Every rule made under the Act shall immediately after it is made be laid before the Legislative Assembly of the State if it is in sessions and if it is not in session, in the session immediately following for a total period of fourteen days, which may be comprised in the session or in two successive sessions and if before the expiration of the session in which it is so laid or session immediately following the Legislative Assembly agrees in making any modification in the rules or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled as the case may be so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Speedy and efficient justice is an essential ingredient of good governance. It is common knowledge that the prevailing system of administration of Justice is cluttered with dilatory procedures and is burdened with heirarchy of appeals and revisions consuming decades. Litigation has become oppressive with technicalities, excessive professional intervention and exhorbitant costs. The average lay person is deterred by the costly and delayed judicial and legal process. Even petty problems get complicated and it is difficult to see the light of relief through the dark tunnels of procedure and precedent.

In this background, creation of a mechanism to settle disputes and render justice with speed, efficiency and economy has been engaging the attention of the Government for quite sometime. In order to minimise the procedural delays and needless expenditure and to see that judicial decisions are given in relatively simple and easy cases speedily and with a view to establish judicial bodies at Mandal level, integrating the age old concept of village elders settling disputes with the modern principles of natural justice, for hearing and deciding upon petty litigations without involving cumbersome legal process, the Government have decided to, undertake a suitable legislation for establishment of "Nyaya Panchayat" at Mandal Level.

The salient features of the proposed legislation are,---

(1) there will be a Mandala Nyaya Panchayat in every Mandal;

(2) the Nyaya Panchayat shall consist of five members nominated by the District Magistrate in consultation with the District Judge, of whom one shall be a member belonging to Scheduled Castes/Scheduled Tribes or Backward Classes or Minorities or one shall be a woman;

(3) for nomination as member one should be a law graduate or graduate or well known social worker or a person having good reputation;

(4) there shall be a Nyayadhyaksha who shall be nominated by the District Magistrate. He shall be a retired judicial officer or must have held a post in Government and had exercised magisterial powers etc.

(5) one of the members will be nominated as Nyayadhyaksha and if the woman member is nominated she shall be called as Mahila Nyayadhyaksha. The Nyayadhyaksha or Mahila Nyayadhyaksha as the case may be will preside over and conduct the proceedings.

(6) all offices will be hono'rary offices.

(7) the Nyaya Panchayats will try on the Civil side mainly suits of the value which does not exceed rupees 50,000/-, suits relating to non payment of wages, disputes between landlord and lessee, suits relating to water rights, boundary disputes, right of way, purchase and sale of lands, matrimonial disputes which can be resolved by concilation, maintenance disputes etc. which are of a trivial nature.

(8) the Nyaya Panchayat will try on the criminal side mainly offences punishable mostly with imprisonment not exceeding six months or with fine, offences relating to theft of property not exceeding rupees fifty thousands in value, certain offences under the A.P. Prohibition Act, all offences under the A.P. Panchayat Raj Act, etc.

(9) while trying both civil and criminal cases, the Nyaya Panchayat will follow a simple procedure and not the elaborate procedure either under the code of Civil Procedure 1908 or under the Criminal Procedure Code, 1973. Strict rules of evidence under the Indian Evidence Act, 1872 are also not made applicable;

(10) Provisions are made for quick disposal of the cases;

(11) the Nyayapala will assist the Nyaya Panchayat in important civil case and in criminal cases where it is considered that the punishment of imprisonment should be imposed. An appeal will lie to the District Judge from a decision of the Nyaya Panchayat;

(12) Police will assist the Nyaya Panchayat in exercise of its powers;

This Bill seeks to give effect to the above decisions.

(T. SEETHARAM)

Minister for Services
Courts and Justice.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 1(3), 2, 3, 4, 11, 12, 13, 15(15), 20(A), 20(B), 27, 42(1), 43(1) and 47 of the Bill authorise the Government to issue notifications or orders or to make rules in respect of matters specified therein. All such orders or rules which are intended to cover matters mostly of procedural nature are to be laid on the Table of the Legislative Assembly of the State and will be subjected to any modifications made by the Legislative Assembly.

The above provisions of the Bill regarding delegated legislation are thus of a normal type and are mainly intended to cover matters of procedure.

(T. SEETHARAM)

Minister for Services

Courts and Justice.

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