

**A CRITICAL STUDY OF CRIMINAL JUSTICE
SYSTEM DURING COLONIAL ERA AND POST
LIBERATION OF GOA**



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LAW**

By

T.R. Souza
16.5.11

Nagesh S. Colvalkar
M.Com, LL.M.

Research Guide
Dr. Carmo D'Souza
LL.M., Ph.D.

[Signature]
16.5.11

Associate Professor
V.M. Salgaocar College of Law, Panaji

Goa University, Taleigao, Goa
April 2010

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Board -
[Signature]
16/5/2011

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DECLARATION

I hereby declare that the thesis titled “**A CRITICAL STUDY OF CRIMINAL JUSTICE SYSTEM DURING COLONIAL ERA AND POST LIBERATION OF GOA**” submitted to the Goa University, Goa, for the award of the Degree of Doctor of Philosophy (Law) is the outcome of original and independent research work undertaken by me during the period 2006 – 10. This study is carried out under the supervision and guidance of Dr. Carmo D’Souza, Associate Professor, V. M. Salgaocar College of Law, Miramar, Panaji, Goa. It has not been previously formed the basis for the award of any degree, diploma, fellowship or certificate of this or any other Universities. I have duly acknowledged all the sources used by me in the preparation of this thesis.

Date: 24-04-2010

Place: Panaji-Goa.



Shri. Nagesh S. Colvalkar

Dr. Carmo D'Souza
Associate Professor,
V. M. Salgaocar College of Law,
Miramar, Panaji – Goa.

CERTIFICATE

This is to certify that the thesis titled “**A CRITICAL STUDY OF CRIMINAL JUSTICE SYSTEM DURING COLONIAL ERA AND POST LIBERATION OF GOA**” for the award of Ph.D. Degree in Law is the bonafide record of the original work done by Shri. Nagesh S. Colvalkar, during the period of study under my supervision and completed to my satisfaction. This thesis has not formed the basis for the award of any degree, diploma, certificate, associateship, fellowship or similar title to the candidate of this University or any other Universities.

Date: 24-04-2010

Place: Panaji-Goa.



Dr. Carmo D'Souza
Research Supervisor

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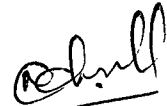
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ABBREVIATIONS

| | |
|-------|--|
| AA | Alcohol Anonymous |
| AIR | All India Reporter |
| APP | Assistant Public Prosecutor |
| ARD | Acid Rock Drainage |
| BEST | Brihanmumbai Electric Supply and Transport |
| CHOGM | Commonwealth Heads of Government Meet |
| CID | Crime Investigation Department |
| CLD | Concise Law Dictionary |
| CPP | Codigo Penal Portuguese |
| CrPC | Criminal Procedure Code |
| CRZ | Costal Regulation Zone |
| DCGHG | Deputy Commandant General Home Guards |
| DDCD | Deputy Director Civil Defence |
| DGP | Director General of Police |
| DHS | Department of Health Services |
| DP | Director of Prosecution |
| DySP | Deputy Superintendent of Police |
| FB | Foreign Branch |
| FIR | First Information Report |
| FRO | Foreigners Registration Office |
| GRE | Coenchea Ramponkarancho Ekvott |
| GRP | Goa Reserve Police |

| | |
|-------|--|
| IO | Investigation Officer |
| IPC | Indian Penal Code |
| JMFC | Judicial Magistrate First Class |
| NCAER | National Council of Applied Economic research |
| NCRB | National Crime Research Bureau |
| PCC | Police Clearance Certificate |
| PCR | Police Control Room |
| PMO | Public Medical Officer |
| PP | Public Prosecutor |
| PTS | Police Training School |
| RICA | Regional Institute for Correctional Administration |
| SP | Superintendent of Police |
| VIP | Very Important Person |
| VVIP | Very Very Important Person |

LIST OF STATUTES

Essential Commodities Act, Act 10 of 1955

Borstal Schools Act, Act 18 of 1929

Customs Act, Act 52 of 1962

Air (Prevention and Control of Pollution) Act, Act 14 of 1981

Code of Criminal Procedure, 1973, Act 02 of 1974

Environment (Protection) Act, Act 29 of 1986

Prevention of Corruption Act, Act 49 of 1988

Forest (Conservation) Act, Act 69 of 1980

Juvenile Justice (Care and Protection of Children) Act, Act 56 of 2000

Indian Penal Code, Act 45 of 1860

Probation of Offenders Act, Act 20 of 1958

Indian Evidence Act, Act 01 of 1872

Mines Act, Act 35 of 1952

Prevention of Food Adulteration Act, Act 37 of 1954

Water (Prevention and Control of Pollution) Act, Act 06 of 1974

CHAPTER – I
INTRODUCTION

1. Introduction

1.1. Goa the Beautiful:

Goa is famous and internationally known for its natural and scenic beauty. Till today persons from different countries flock to Goa to bask under the glorious sun on the snow white beaches of Goa. It is not many years back that, at its height, the hippies had made Goa their capital. Wherever you had to put a step, you would find a host of hippies, so happy, so joyful and merging into the culture of Goa; the Goan people have been known for their high culture and great hospitality. They have welcomed the people from other parts of India as well as from abroad with open arms.

The above described situation has not come into existence over night. It has taken centuries to create this mixed culture of East and West like a finely blended tea powder. But then, with freedom comes license and with license comes crimes. The freedom which the people have enjoyed in Goa especially after liberation in 1961 has also made Goa encounter a number of crimes like murder, grievous hurt, rape, dacoity, robbery, etc. This trend has disturbed the peace of Goa and many people have started questioning whether Goa deserves freedom at all. They even go to the extent of stating that the Portuguese era was much better because life was safe, no thefts and robbery and major crimes were at the minimum.

This scholar has thought about this matter a great deal and discussed the same with experts. The real question is whether there should be controls over liberty or liberty should be enjoyed to the fullest extent. The experts were of one opinion and they were all of one voice that no research has been done on this important issue and that I should take up this as an academic challenge to prove or disprove that the freedom is better or dictatorship and control is better in terms of controlling crimes.

When I say that Goa is blessed with the fine mixed culture, what I mean to state legally is that, Goa is the meeting point of different theories of jurisprudence. The colonial period when Portuguese ruled over Goa from 1510 to 1961 can be said to be the reign of the influence of the Roman law system and the implementation of the European Legal system in Goa.

After its independence and the takeover by India, the Indian legal system which is largely based on the common law jurisprudence coupled with statutory laws and interpretations of the courts, came to be applicable to the then Union territory of Goa and now Goa state. As a result one can see, conflicting situations between the Portuguese system and the Indian Laws.

In view of the land tenure laws which are unique in the Portuguese system and unknown to the Indian system, it has not been possible to reconcile the two legal systems. Hence to understand this, one would have to look into the different theories of jurisprudence which have created their impact on the

European as well as the common wealth countries. Hence we will now proceed to look into the high points of these theories.¹

1.2. What is Jurisprudence?

Most of the writers and experts in countries influenced by the common law have explained that jurisprudence in its widest sense is the science of Law. This definition is peculiar to England, British Dominions and the United States. Sir John Austin defines jurisprudence a little differently in his famous treatise, "*Province of Jurisprudence Determined*" (1832), as an aggregate of laws and of laws as rules.

Though, many theories have accepted jurisprudence as a science of law or a philosophy of laws, it was Dean Roscoe Pound who went a little further than what the other experts said and gave a purposeful definition as jurisprudence defining the content and purpose of the law rather than the abstract content of the authoritative precepts. To understand this evolution from law as a philosophy to law as a sociological engineering, which we believe democratic India has adopted, let us now go through the different theories of jurisprudence.

¹ See Dias, *Jurisprudence*, 5th edition, Chapter I (Butterworth Law Publishers Ltd., Kent UK), also Lloyd's *Introduction to Jurisprudence*, 7th edition by M.D.A. Freeman, Chapter I (Sweet and Maxwell United, Swiss Cottage, London).

1.2.1. Theories of jurisprudence:²

The most important school that gave birth to legislative law making process was the Analytical School of Jurisprudence.

a. Analytical School of Jurisprudence:

This concept involved three elements³:

1. A precept element, a body of legal precepts more or less defined-the element to which Bentham referred when he said that 'Law' was an aggregate of 'Laws'".
2. A technique element, a body of traditional ideas as to how legal precepts should be interpreted and applied and causes decided and a traditional technique of findings the grounds of decision of particular cases in the authoritative legal precepts and of developing and applying legal precepts-a technique by which the body of precepts is eked out, and the several precepts are extended, restricted and adapted to the exigencies of the administration of justice.
3. An ideal element, a body of philosophical, political and ethical ideas as to the end of law and as to what legal precepts should be in view, thereof, with reference to which legal precepts and the traditional ideas

² Lloyd's; *Introduction to Jurisprudence*, Chapter I, Pg 22

³ Dias, *supra* note 1 at 375 to 384.

of application and decision and the traditional technique are continually reshaped and given new content or new application.

We can say that Sir John Austin and Jeremy Bentham were the two most important writers who created the groundwork for legislation to make laws come in a big way. The analytical jurists have looked to law as a body of authoritative material on judicial decisions and administrative interpretations. For them, law is something made consciously by law makers, i.e. either Judicial or Legislative. Also law is something which is obligatory not optional and the typical law is the statute. Lastly they propound the utilitarian principle which means law is essentially for the good of all and specially the good of the society.

b. The Historical School:

The Historical School proposed the comparative study of the origin and development of law, of different legal systems, legal doctrines and the legal institutions so as to derive some basic uniform principles for applying for the benefit of mankind. They depended more on human experience and this was slowly developed into legal precepts through the instrumentation of judicial and juristic interpretation. The main principle of justice was crystallized into human reason and this was the foundation for legal precepts.

The historical jurists confirmed themselves more to the study of the past rather than of present or future. It is reported that the historical method has created

some problems in a civil law countries, i.e. European countries regarding the interpretation of codes. This aspect has been well discussed by Dean Roscoe Pound and his analysis of the same is reproduced here below; as given in Vol II “In the interpretation of the codes, the analytical school asks, what do the several code provisions mean as they stand, applying the canons of genuine interpretations.

They assume that the whole code and all its provisions speak from one date, and endeavor to find by analysis the proper code pigeonhole for each concrete case, to put the case in hand into it by a pure logical process, and to formulate the result in a judgment. The historical school on the other hand, assumed that the code provisions are in the main declaratory of the law as it previously existed; they regarded the code as a continuation and development of pre-existing law. With them, all exposition of the code and of any provisions thereof must begin by an elaborate inquiry into the pre-existing law and the history and development of the competing juristic theories among which the framers of the code had to choose.

One might compare the same two modes of approach in teaching the common law from cases. The difference in the practical application of a code involved in that different approach is illustrated with us in the case of the Negotiable Instrument Law. In that case, the historical mode of approach in some

jurisdictions for a time to some extent defeated or threatened to defeat the object of the Act⁴.

The apparent conflict between the Civil Codes and the Historical School must have brought Portugal too under its ambit. However, in India we have not seen the historical development of Hindu Law and the enacted law in recent times. The Courts in India have so interpreted the law so as to harmonize the historical development with the legislative initiative in modern times.

c. The Sociological School:

The greatest difference we can notice in the application of law and the evolution of jurisprudence between Portugal and India is the application of the Sociological School of thought in India. Right from the time it became independent, Free-India looked upon law as an instrument of socio-economic change.

The Constitution of India with the Chapter on Directive Principles of State Policy has clearly spoken its mind on what India must do for its people. Hence, the evolution of sociological school of jurisprudence in some countries of Europe and in USA has had a salutary effect on the evolution of jurisprudence in India. The characteristics of Sociological School of Jurisprudence can be summarized as follows:⁵

⁴ Roscoe Pound, *Jurisprudence*, Vol. I, Part I, Pgs 81 to 86.

⁵ Lloyd, *supra* note 2 at 350 to 358.

1. Sociological jurists regard the working of the law (i.e. of the legal order, of the body of the authoritative guides to decision and of the judicial and administrative process) rather than the abstract content of the authoritative precepts. Here law is used in the sense of legal order, or to insist particularly on that sense where analytical jurist use 'law' in the sense of the precepts element in the body of authoritative guides to decisions and historical jurists use it in the sense of all social control.
2. Sociological jurists regard law as a social institution involving both finding by experience and conscious law making.
3. Sociological school lays stress upon the social purpose which the law has to fulfill rather than upon sanctions.
4. The sociological jurists use legal institutions and doctrines as instruments of social change.
5. Today's sociological jurisprudence is philosophically radical empiricism. They employ a pragmatist's method which is consistent with different metaphysical starting points.

1.3. Distinction between 'Rule' and 'Law'⁶:

Dias explains the details of the fascinating development between the history of Roman Law as developed over the centuries. According to him as the Law

⁶ This aspect has been discussed beautifully by Dias in *Jurisprudence*, Chapter III, Pg 47

developed in Rome, *Lex* (Law) meant declared Law (derived from *Lego*, I declare) as opposed to *Jus* which was a Customary Law crystallized out of this decision. In the course of time *Leges* became expression of popular will through enactment by the assemblies and their functions was prescriptive like modern legislation and ceased being declaratory of *Jus*. He further states the term *regula* (rule) came in via the Grammarians for whom it connoted 'guide' or 'standard'.

One of the most distinguished jurists of the early Principate, Labeo, a Grammarian turned lawyer, pioneered the use of *regula* for certain legal axioms which had prescriptive function. The association of *regula* with *Lex* evolved some time during the second century AD via imperial decrees, which had taken over the role of *Lex*. During this period Rule books, *Regulae*, named after the jurists who had been commissioned to prepare them, were issued under imperial authority to subordinate officials as manuals for their guidance. These *Regulae* thus had the force of *Lex*.

The *Regulae*, which had been worked out privately by certain of the great jurists during the second and third centuries AD, the classical period of Roman law, were later officially invested with the force of *Lex* by the Law of Citation in 426 AD. Finally, Justinian's Digest, which codified much of the writings of the Classical Jurists, was itself promulgated as a *Lex* by the emperor. It is significant that the finale of this monumental work, its concluding Title, Book 50.17, consists entirely of a collection of *Regulae*. The association of 'rule' and

'standard' was thus gradually completed and has formed the basis of legal thinking ever since.

From the above discussion of different schools of jurisprudence we can see that democratic India and today's Goa stand totally distinct from the dictatorial Portuguese regime which ruled over Goa before it became free. Hence any study on the functioning of the criminal law system in Goa must take into account the different schools of thought that prevailed when the Goa was a colony and thereafter when it gained freedom from the colonial rule.

1.4. Purpose of the study:

As we all know that Goa was under the Portuguese rule from the 25th November 1510 till 18th December 1961. By the 12th Amendment of the Constitution of India, Goa became part of Indian Union with effect from 20th December 1961. During the Portuguese rule administration of Criminal law was based on the Portuguese system which was inherited from the continental jurisprudence. This was based upon the inquisitorial system prevailing in Europe.

After liberation the criminal law applicable to the rest of India was made applicable to Goa. This was based upon the adversarial system followed under the Common Law. Here the accused is presumed to be innocent and the burden is on the prosecution to prove beyond reasonable doubt that he is guilty. The

judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused.

The study of application of Criminal Law in Goa during the colonial era and post liberation period is important for the following reasons:

1. Portuguese Criminal Law based on continental system was applied to Goa in pre liberation days and hence a study of this period will give an insight into the dynamics of criminal administration under that system.
2. Indian Criminal Law based on Common Law system was applied to Goa in post liberation period. The detailed study of this period takes us into an era of application of criminal law in a system based on democratic foundation.
3. The period 1962-1964 is particularly interesting as one really did not know which law to apply whether Portuguese or Indian. Hence meeting persons who have practiced law during this period was a very rewarding experience. Judges, lawyers, judicial officials and police officers who worked under both the system have provided useful information of the application of the criminal law in Goa.
4. Goa being a small territory, it has served as a model for application of different schools of jurisprudence in this territory. It has served as a model for the co-existence of different systems in one area.

5. It is hoped this study will provide useful information to the government as well as to the experts of the comparative law regarding the functioning of the criminal law in Goa.

1.5. Objectives of the Study

The objectives of the study are as follows:

1. To make a detailed study of the system of criminal administration in Goa during the colonial period.
2. To assess the impact of Indian legal system as introduced in Goa after the liberation.
3. To determine the problems that arose during the transition period when the Portuguese system came to an end and the democratic system came into existence.
4. To discuss the advantages and disadvantages of both the systems relating to the administration of criminal justice and the sentencing process.
5. To determine the salient policy points that can help tighten the criminal justice system so that the offenders do not escape.
6. To investigate the approach of Judges, lawyers, judicial officials and police officers in detection of crimes and the efficacy of the system during both the periods.

7. In view of changing society in Goa to investigate into the impact of the socio-legal laws on the system. This is in the context of the large number of non-Goans entering Goa i.e. persons from other parts of India and abroad who are planning to create an economic empire for themselves.
8. To suggest reforms in the criminal administration system specially keeping in minds the recent recommendations of Justice V. S. Malimath Committee.

1.6. Methodology:

The methodology used in this thesis is a combination of doctrinal as well as non doctrinal. The doctrinal methodology includes documentary sources that relate to the Portuguese criminal justice system as well as the India criminal justice. The statistical data available giving the extent of crimes reported has been analyzed. Relevant books, journals and reported cases have been referred to and cited where appropriate.

The non doctrinal methodology is related to the data collected through questionnaire and interviews with judges, lawyers and other officials who have worked in both the systems. Even litigants opinion has been taken for analysis. The questionnaire was also accompanied with interview of some eminent persons. This method has proved to be very useful for collection of original data which has greatly helped in drawing sound conclusions.

The history of courts in the judicial system in Goa occupies a very unique position which is not shared by another state in India. The following facts will prove the above statement right historically and socially.

The study of the occurrence of crime and the process of grating punishment to criminals has been quite interesting when we compare the Goa's colonial period and what happened after it was liberated. The issues that have been critically evaluated both in the free Goa and in the colonial Goa are centered around some basic questions involving the occurrence of crime, the process of sentencing and the general attitude of the rulers with regard to them.

The thesis revolves around the historical development and application of the criminal justice system in Goa. Goa lacked democratic institutions and hence the system tended to be highly dictatorial while India has been experiencing democratic functioning even fifty years after India became free. This aspect has been kept in mind while making this study.

The scholar has tested the theoretical concepts with the practical application of the legal system in Goa as well as in India. Being highly influenced by the European system the administration of criminal justice in Goa depended more upon the investigative machinery set up by the state and the courts would follow their findings in order to give suitable punishment, the complete dependence on government machinery and there was no scope to correct that even in case of error or manipulations. On the other hand the Indian system

treated investigation by the state as something distinct from the investigation by the prosecution.

The Indian courts would not give much credence to the investigation as the police department was not totally believed for doing an absolute and acceptable job. So the approach of the investigating machinery in both the systems differed and the burden was largely on the shoulders of the judiciary to come to conclusions on its own by examining the witnesses.

The scholar has also examined senior persons who had been judges and senior advocates regarding their experience before 1961 and their experience after regarding the procedures followed by the criminal courts. The conclusions they draw are very interesting and are found in this thesis. Also secondary data has been collected to draw conclusions regarding criminal cases occurring both before and after 1961 and patterns of sentencing followed by the courts.

The report submitted by Justice V.S. Malimath has come very handy to discuss and debate upon the different issues involved in the thesis. Justice Malimath's committee has thrown much light on the occurrence and control of crimes, much of which the author has accepted as legitimate conclusions to be drawn from his study of this type.

A number of Supreme Court decisions have been referred to as authentic illustrations to explain different issues that have arisen in this study. Many leading legal persons in Goa have appreciated the selection of this topic for a

detailed study and analysis. The result that will arise will certainly help in trying to understand the functioning of the criminal justice system in India as well as in pre-liberated Goa. This thesis is divided into eight chapters.

1.7. Scheme of the Thesis:

Chapter I gives a bird's eye view of the research problem. In this introduction to the thesis the scholar has discussed the basic difference between the European Law as developed under the Roman Law and English Law as developed under the Common Law. The study undertaken goes into the detailed application of European Law during the Portuguese Regime and the Indian Law after the Liberation of Goa. It also discusses the methodology and the application of the Sociological Theory to the development of the Law after Liberation.

Chapter II deals with the Evolution of the Judicial System in Goa over a period of Four Hundred years. The Portuguese had established their own system of justice delivery as prevailing in Portugal. The chapter examines the different divisions for jurisdictional purposes and also the different types of laws and procedures that were made applicable to them.

Chapter III describes the administration of Criminal Justice in Goa. It discusses the appointment of judges and the organization of the Judiciary specially dealing with the Criminal Courts, the prosecution and the Police. It also goes into the administration of prisons and the treatment of the prisoners. Lastly, it

discusses correctional services available for providing relief to certain categories of criminals.

Chapter IV discusses the system of sentencing in pre and post liberated Goa. It goes into the different theories of punishment and how punishment was rendered during the Portuguese time and after liberation. The significant aspect in this chapter is the role played by the Judiciary.

Chapter V deals with the detailed study of the occurrence of crimes in Goa. The Scholar has critically evaluated the different types of crimes committed during the Portuguese colonial era and in free democratic India. The statistical data has been examined and appropriate graphs are drawn to draw inferences. This chapter is highly mathematical/ statistical and provides useful information regarding crime occurrences.

Chapter VI deals with the evaluation of the opinions expressed by different personalities who have been Judges, Advocates and Public persons and officials who have had the experience of the Portuguese Law as well as the Indian Law. They have given comparative opinions regarding both the system of Law and this show the way the Law functioned during the different regimes. Their opinions are highly instructive and useful for drawing appropriate conclusions for this thesis.

Chapter VII deals with tackling different sectors in Goa which are prone to crime occurrence. The scholar has examined the different issues, both social as

well as economic, which Goa encounters. Each of these, if properly tackled can reduce or decrease the crime occurrence. The objective is to achieve a zero crime rate for Goa.

Chapter VIII lays down the conclusions arrived at and suggestions that have been made to tone up the Administrative System in Goa to ensure that the crimes are prevented and also to expediate punishment for those who commit crimes. This chapter provides the answers to the lacunae facing the Criminal Administrative System in Goa.

The scholar acknowledges that the material for this thesis was collected from the different libraries specially the Indian Law Institute Library, New Delhi; University College of Law Library, Dharwad; University Law College Library, Bangalore; National Law School of India University, Bangalore; Library of the Pune University, Pune; Library of Tata Institute of Social Sciences, Mumbai; Central Library, Goa; Archives and Archeological Library, Goa; Library of Goa Legislature Assembly, Porvorim; V. M. Salgaocar College of Law Library, Miramar, Panaji-Goa;

With the above detailed introduction, we now move on to the other chapters which discuss the issues in greater detail.

CHAPTER-II
EVOLUTION OF
THE JUDICIAL SYSTEM IN GOA

2. Evolution of Judicial System in Goa

2.1. Historical Background

It was in the year 1510 that the Portuguese conquered Goa by defeating the forces of Adil Shah of Bijapur. Before that, it was the Kadambas who had ruled Goa for a long time and were succeeded by the Yadava's of Devagiri. Goa initially consisted of Ilhas (i.e. Island of Goa) comprising of 31 villages called Tiswadi; between the two perennial rivers of Mandovi in the North and Zuari in the South.

On conquest of this island in the next three decades, the Portuguese added the territories of Bardez and Salcette including Marmugao then designated as the capital of *Estado da India*. *Estado da India* was a term designated for the Portuguese floating empire from Mozambique on the West Coast of Africa to Timor and Macau in the China Seas. The area consisted of small pockets, settlements, forts and factories all along the Asia Coast. As the floating empire shrunk in the next hundred years, *Estado da India* was reduced in size.

To the Old Portuguese possession in Goa, then known as Old Conquests, the Portuguese added new territories known as New Conquests. From around the third quarter of eighteenth century, the term Goa as applied to the territories found in the present boundaries¹.

¹ Carmo D'Souza, *Legal System in Goa*, Vol. I – Judicial Institutions 1510-1982, pg.2.

As we consider the field of research, we confine ourselves to the area occupied by Goa on the date of its Liberation in December 1961 and look behind to see what type of courts rendering criminal justice, how they were functioning and how they rendered justice.

Dr. Carmo D'Souza² states that, before the advent of the Portuguese in Goa. Adil Shah of Bijapur had a sway on the major part of the territory and it was but natural that Sultanate judicial system prevailed there. Under the system Sultan was the most powerful judicial authority presiding over the Royal Court of Justice assisted by his appointee, the Qazi.

Besides, the judicial authorities such as Vazirs and Amirs of the Court who were invested with the original and appellate powers to be judicial heads of their territories, the office of Tarafdar had his judicial jurisdiction over the *Atraf* or Taraf which included a group of villages. The Mokasi or the Havaladar also exercised judicial powers over the *Mokasa* territory, where it existed³.

Dr. Carmo has also graphically explained the type of legal system that prevailed over the Goa Territory. At the beginning no line seems to have been drawn between civil and criminal matters. There was a mix of both the jurisdictions and what were more important were the persons leading the system rather than the procedures.

² *Id* at 24.

³ P.P. Shirodkar "*Researches in Indo-Portuguese History*", Publication Scheme – Jaipur, , 1998,pg.72.

According to Dr. Carmo D'Souza⁴, the transition of this judicial system into the new system under the Portuguese was not very quick in succession. The Portuguese took years to apply the laws prevailing in Portugal with several alterations depending upon the circumstances and situation in this part of the world to the local population.

On 16th September 1526, they made the first attempt to codify the uses, rights and customs of the Gaunkars, residents and farmers of the island of Goa by introducing a charter which regulated the payment of the revenue, taxes on the inheritances and properties to the King thereby protecting their rights on reciprocal basis. Under this Charter, certain cases which were not grave enough were judged by the Thanadar or (Chief Thanadar) in consultation with some Gaunkars.

In the case of extremely grave cases of rights, the Chief Thanadar was supposed to report them to the Chief Captain and the Governor of *Estado da India* or to the Captain of the City of Goa or to the Revenue inspector, if the matter pertained to him, for the necessary action and punishment to the guilty as per the Statutes and laws of the Portuguese realm. 'The System of Father of Christians⁵' prevailed during the early days of the Portuguese rule. After conversion of natives to Christianity, they began to live in communities, may be to keep themselves secure and also strengthen their faith.

⁴ *Supra* note 2.

⁵ P.P. Shirodkar, *supra* note 3.

The Priest who was leading the unit becomes a natural arbiter of disputes. He was in a position to secure obedience to the system through spiritual pressure and the mighty sword of ex-communication, which would put the person outside the community into social isolation. In the closed society, social isolation was feared more greatly than sending to jail or other physical punishment, thus the 'Father of Christians', came to be accepted as a person dealing with administration of justice as also looking after the physical and moral welfare of the community.

Before the Portuguese conquered Goa, there were seeds of Panchayat system in the villages that came later under one rule. The Muslim Rulers had the institutions of Qazi, Vazirs, and Amirs in the Mohammedan tradition. A group of villages together was judicially administered by an official called Tarafdar. P. P. Shirodkar⁶ says in the initial period of the Portuguese regime, a judicial Dignitary called Ouvidor General i.e. Auditor General wielded civil and criminal powers in the newly established colonial pockets.

Subsequently, in 1544, a three man judicial body namely Relacao Das Indias i.e. High Court headed by a Chancellor was established with its headquarters in Goa but with the authority over all the Portuguese settlement in the East. This judicial body has undergone a metamorphosis in the course of time with several alterations in its constitutional structure. In 1587, it had 10 member panel of judges. By the turn of the 16th century, in 1617 it comprised of 10 appellate

⁶ *Ibid.*

judges with four more waiting in case of need. In 1628, it dwindled to five and went up again to six in 1748.

But at the village level there were village communities known as Gaonkaria, whose members were called Gaunkars formed a closed unit with plenty of autonomy and exercising economic, political, judicial, social and religious functions, the Gaonkaria settled most of the judicial disputes at this level.

The Gaonkaria was assisted by a village clerk known as Kulkarni, who gave expert opinion on the uses and customs as well as procedures of the village. He was of the learned caste. At the highest level where a number of villages were grouped together, the unit was called *Camara General*. It decided general cases and those having inter-village repercussions.

This unit was assisted by a Scribe known as Nadkarni who was an expert in the law, uses and customs of the area. There also existed an official called Chief Thanadar who was a link between the General Body (*Camara General*) and the Muslim rulers. The Chief Thanadar administered justice for the whole territory. It appears Alfonso-De-Albuquerque on conquest of Goa, appointed Timoja as Chief Thanadar who had also to administer the justice to the Hindus.

This aspect is supported by P. P. Shirodkar who states as follows⁷: This dynamic personality had not left untouched the judiciary in the colonial domains of Portugal which were in the state of extreme decadence during his

⁷ *Id* at 72-73.

times. The King supported this view that the malady of decadence resulting out of administrative confusions, unwanted relaxations, abuses and deformities which year by year were precipitating could be and should be rectified at the earliest to avoid the total ruin of the Portuguese empire.

He therefore envisaged judicial reforms in the East as one of the remedies. In pursuance to this, the Fundamental Law of 15th January 1774 abolished the Relacao de Goa (High Court of the City of Goa) declaring magistrates and the officials as extinct and ordered that their functions should be exercised by the Auditor General and Judge (*Juizo de Fora*) with a directive that this law should be observed strictly.

Marques de Pombal pursued the new judicial reforms because he as well as the King was convinced that the system had reached such a stage that it was impossible for it to be fruitful and practical. According to them, it had taken such a perverse form with several antiquarian laws that it was producing the contrary effects. As a result, the people in the East were forced to breathe the air of intolerable oppressions⁸.

Under the new reforms, the Governor-General was assigned the permanent responsibility of Regedor de Justica (Chief Justice) in his entire jurisdiction. The Auditor General of the State of India was empowered with the duties of Chancellor, Intendment-General of Police, Judge of the Revenue Instruments,

⁸. *Id* at 74-75.

Chancellery and Justifications, Purveyor of the Deceased, the Missing, Orphans, Chapels and the Residue, with residence in the city of Goa.

He was supposed to deal with the appeals against the sentences passed by the judges and appeals in the proceeding if the main law-suits and the legal cases of the incidents of capital punishments. The Auditor General was given wide scrutiny powers as regards the ships leaving the port of Goa for Portugal. In the similar vein, he was asked to deal with the appeals against the *Posturas* (Laws) made by the Municipalities and the punitive steps passed by them.

While he was supposed to keep watch over the Royal Securities, he was duty bound to make an inquest every year of all the officials of the Judiciary, Revenue and even the ecclesiastical personnel. He would act as the Judge of the Crown and the Revenue. He had one important humanitarian function also. It was to visit the prison of Goa, on the first day of the month along with the judges from Goa, Bardez and Salcete to inspect the conditions of the inmates⁹.

The judges (*Juizos de Fora*) of Goa, Bardez and the adjacent islands (Ilhas) were also the judges of Orphans, Customs and the Auditors of the War personnel. These judges had the cumulative jurisdiction in all the criminal cases. And the Judge of Goa would serve as the Attorney of Crown and the Revenue¹⁰.

⁹. *Ibid.*

¹⁰. *Ibid.*

For the Criminal acts, the punishment was well prescribed. All the criminal proceedings would be verbal. If the crime was major one, the proceedings would be placed by the judges before the Auditor General and the Bench consisting of himself and other judges (*Juizos de Fora*) of Goa, Bardez and Salcete in the presence of the Governor-General would pass the sentence. As for the cases of conspiracy, sedition or rebellions against the Royal State, in order to maintain tranquility such cases would be dealt with immediately without any privileges and appeals to the King or any Courts¹¹.

As for the civil law-suits, the proceedings were well regulated by the judicial order. The lawyers who tried dilatory tactics were fined and at times were professionally suspended. Further, the Palace of Jury was replaced by a Board which included the Governor of Estado da India, Auditor General and the Judges of Goa. Among several other matters, it would determine the number of advocates in Ilhas and adjacent provinces¹².

While regulating the judicial administration in Estado Da India, the King as well as Marques de Pombal expected all the Magistrates to promote and sustain the faithful execution of all the laws in order to do away with injustices meted out of the populace which on account of its own ignorance precipitated the malignity of the times. They directed all the officials to follow and adhere to the Fundamental Law strictly in defense of the Crown as well as the populace

¹¹. *Ibid.*

¹². *Id* at 76.

which was the victim mainly of the abominable Jesuits who misguided it through *Bulla de Goa* and Indices Expurgatorios which has been prescribed earlier by the law of 2nd April 1768¹³.

These radical reforms in judicial administration had far reaching effects in the General life in the East, supplemented by the other measures of reforms on the ecclesiastical front. They brought a great measure of relief to the public subjected for a long time to the inhuman treatment tinged with villainy and atrocity. Marques de Pombal has immortalized himself not only by his action of abolishing the Inquisition but also by the judicial formidable opposition of the clergy. It was he who allowed the slaves to breathe the air of freedom.

He was solely responsible for the emancipation of the Red Indians in Brazil. He put an end to the distinction existed among the Christians and non-Christians and among the Hindus and the Christians in Goa. His regulations pertaining to the police force brought tranquility in general. However, most of these reforms were short-lived. With the death of Dr. Jose I on 24th February 1777, Marques de Pombal went into oblivion facing humiliation at the hands of his ardent enemies and the gigantic work he put in during his 26 years of active life in the administration and politics was left behind only to be admired by the generations to come.

¹³. *Ibid.*

With the assumption of the Crown by D. Maria I on 04th March 1777, whatever reforms Marques de Pombal had introduced, including the judicial ones was made extinct and the *Relacao de Goa* (High Court) was re-established under the Law of 01st April 1778. His action of abolition of *Relacao de Goa* was not relished by many but considering the prevailing situation and circumstances it was a step towards social liberty¹⁴.

The newly re-established High Court comprised of a Chancellor and five Judges. However, later the office of the Intendent-General of the New Conquests was abolished and its powers were invested with the High Court.

During the Portuguese reign in Goa the system of Gaunkars continued till about the mid 19th century when, according to Dr. Carmo¹⁵; all local judicial authorities were swept aside in the succeeding years of various judicial reforms such as those of 4th August 1881, which modified Civil Procedure Code of 08th November 1876, a Penal reform of 14th June 1884, Penal Code of 16th September 1886, the Regiment of 20th February 1891 and the Decrees of the Provincial Government of the Republic of 10th October 1910 which revoked all the exceptional laws which forced the individuals to the exceptional judges for crimes.

The Decree of 31st October 1910 on succession which amended the Civil Code, the Decree of 03rd November 1910 on divorce and the Decree of 25th December

¹⁴. P.P. Shirodkar *supra* note 3.

¹⁵. Dr. Carmo D'Souza, *Legal System in Goa*, Vol. I, Pg 27.

1910 on family laws paved way for evolving a reformatory pattern of judicial system in the 20th century¹⁶.

During 1920's among the various decrees and laws passed, a special mention is necessary for the Decree of 21st October 1922 on the Register of Landed Property and the Decree of 18th September 1922 on Notaries¹⁷.

2.2. Evolution of Formal Judicial System during Portuguese Period

With a view to consolidate the political hold as well as judicial powers, Portuguese Republic introduced a new body namely Judicial Organization for Colonies by the decree of 20th October 1927, wherein the *Estado da India* (State of India) was made the part of the judicial District of New Goa, where Tribunal de Relacao de Nova Goa (Appellate Court of North Goa) functioned.

Under this decree, this court could decide upon the cases of second instance, of the Courts of the whole of *Estado de India*, Macao and Timor. This court comprised of five Judges, all Judicial Magistrates of Second Instance, one of them being President of Commission, nominated by the Minister¹⁸.

Besides this Court, Public Ministry in Portugal was represented by *Procurador da Republica* (Advocate General) who was the Judicial Magistrate of First Instance or Second of the Colonial Cadre, nominated in commission of judicial

¹⁶ P.P. Shirodkar *supra* note 3.

¹⁷ *Ibid.*

¹⁸ *Ibid*, Chapter III.

service of the minister. He was the head of Public Ministry of the Judicial District and represented executive powers especially with regard to *Fazenda Nacional* (National Exchequer) before the Appellate Court¹⁹.

It may be necessary to add here the special arrangement of municipal judges at Mormugao, Ponda and Diu. The special Municipal judicatures of Mormugao and Ponda had a Municipal judge each subordinate to the *Juiz De Direito* (Judge of Law) nominated by the Minister. The Judicature of Diu had a Municipal Judge who was nominated every two years by the Governor General.

It is interesting to note that in all these Municipal judicatures existed an agent of the Public Ministry namely *Sub-Delegado do Procurador da Republica* (Sub-delegate of the Advocate General). By the legislation of 08th May 1952, the judges of municipal judicatures especially of Mormugao and Ponda were empowered to deal with all the criminal acts at the first Instance which did not come under the cases of civil and commercial nature involving the sum of not more than 50,000 escudos (Rs. 8,333/- approx.). They could also intervene in the cases of the Orphanological inventory involving a value not exceeding 50,000 escudos. The Municipal Judge of Diu was similarly given wide powers to deal with Criminal and Orphanological inventory cases²⁰.

¹⁹ *Ibid.*

²⁰ *Id* at 80.

Thus we see what the judicial pattern that existed prior to the Liberation of Goa had been the result of the Judiciary's evolution that continued to progress in the metropolis of Portugal and its colonies. In the process, the system has left behind an immense collection of records in Goa as well as in Portugal. Though it is extremely difficult to make a survey of all records, it is necessary to highlight certain judicial records which are of immense importance to the history of the judiciary in the erstwhile Portuguese regime²¹. They are as follows:-

- 1) Procuradoria de Republica (296 Volumes),
- 2) Judicial Municipal, Diu (1,595 files),
- 3) Judicial Court of Salcete Inventariors Orfanologicos (7,500 files),
- 4) Processos Civeis (11,800 files),
- 5) Processos Criminais (13,800 files),
- 6) Policia Correccional (1,800 files),
- 7) Process Tribunal Militar (over 1,600 files),
- 8) Cartas de Juizes Pedancos (1 Volume),
- 9) Chancelaria (30 Volumes),
- 10) Contratos (2 Volumes),

²¹ *Id* at.80-81.

- 11) Feitoria,
- 12) Officios da Corte (6 Volumes),
- 13) Justica (15 Volumes),
- 14) Assentos Da Meza do Paco, i.e. Palace Table Proceedings (1 Volume),
- 15) Processos Judiciaes (17 Volumes),
- 16) Provedoria (92 Volumes),
- 17) Relacao de Goa (5 volumes),
- 18) Conselho de Justica (1 Volume).

All local judicial attributes were swept aside by the currents of judicial reform, based on European influence and pattern. The existence of different groups in the territory, like, Portuguese on deputation, members of the village community, the new-Christian converts, the Hindus, the Clergy and religions, had created for Goa multifaceted adjudicating machinery. Letters patent were issued giving detailed jurisdiction to the officials. The Viceroy and Auditor Judges were given well defined jurisdiction to decide civil and criminal cases. Their letters patent were having specified pecuniary limits in civil cases and limit of fine or punishment to be imposed in criminal cases.

This has been well explained by P. P. Shirodkar²², the Viceroy or Governor represented the King of Portugal in the Portuguese Eastern Empire. He enjoyed vast criminal jurisdiction, he could execute a sentence even without further appeal. He was the final authority in the administration of justice. To avoid criticism, the Viceroy appointed an Auditor Judge to look after the administration of justice, especially to deal with criminal matters.

The Auditor General (Judge) was the higher authority to the Auditor judges and acted as a coordinating and controlling official. More or less he acted as an appeal Judge. To take care of Criminal matters, the Post of Auditor General was bifurcated into two separate departments; there was an Auditor General for Civil Matters and an Auditor General for Criminal matters.

Dr. Carmo²³ mentions about a document of 1550 which describes the appointment of one Francisco as Auditor General for crimes. It was clearly laid down that he did not enjoy jurisdiction over revenue matters or matters pertaining to chancellery. Thus the criminal jurisdiction came into its own.

From the Criminal law point of view, the Post of Promoter of Justice is interesting. His main function was to set the judicial machinery in motion to meet the ends of justice²⁴. The report of criminal proceedings regarding deaths and other offences were to be submitted to the Promoter. The Promoter had to

²² *Id* at 73.

²³ Dr. Carmo D'Souza, *supra* note 15 at 32.

²⁴ *Id* at 34.

draw up a roll of names of those found guilty from the report and had to request the Auditor General to apprehend and prosecute them.

Also reports of inquiries conducted at various forts of India and at Ormuz, Mallaca and Soffala, concerning deaths, amputation of parts of human body and other such types of crimes were required to be forwarded to the Auditor General, who had to submit it in his turn to the Promoter of Justice. He had to decide on the prosecution of the accused. Revenue matters were kept out of jurisdiction.

The Promoter of Justice had to build up the suit on the part of justice before the Auditor Judge about the suits, where he had to act as an accuser on the part of justice. It can be seen that the Promoter was a very important official in the judicial machinery and had to facilitate the prosecution of the guilty. He represented the Arm of the Law.²⁵

There was also a post called the 'Judge Conservator of Christians'. He had criminal jurisdiction and had to deal with the problem of local Christians. He could use summary jurisdiction in matters, which did not involve the flow of blood. He was to be appointed from the secular and not ecclesiastical community. This seemed to be a very right move to keep the Church authorities out of the criminal justice system in Goa.²⁶

²⁵ *Ibid.*

²⁶ *Ibid.*

Then, there was a judge for the Hindus and the inhabitants of new conquests. Alfonse De Albuquerque had solemnly promised the Hindu inhabitants the preservation of their uses and customs which had culminated in the Charter in Charter of 1526. The prevailing judicial system consisting of ordinary, Auditor and High Court judges was available to the Hindu community as they were available to others, so also in criminal cases²⁷.

*2.2.1. The High Court*²⁸:

The establishment of the High Court in Goa on 03rd April 1544 was an important step in the direction of providing justice to the people especially through appeals. Dr. Francisco Toscano, who was appointed as the Chancellor as well as the Procurator of the cases of the dead and Simao Martins, who was appointed as the Auditor General as well as the judge of the matters of the Crown, together contributed towards the working of the High Court.

The Auditor General also dealt with criminal cases and was empowered to accept complaints, to conduct inquiries, to pass letters of Security or issue arrest warrants just like correctors of crimes of the Royal Court in Portugal and also heard appeals from lower officials.

The chancellor was the head of the court and had the power to check and review machinery of all legal and judicial material going out of the court. He

²⁷. *Id* at 36-38.

²⁸. Carmo D'Souza, *supra* note 15.

was also empowered to pass letters. He enjoyed all the powers that are Civil and Criminal Jurisdiction²⁹.

The second regiment of the High Court in 1548 laid down that in criminal matters, cognizance belonged to the Auditor General and the Judge of Revenue, they had to proceed with the case upto the end by themselves, and those contradicted and so on, were to be taken to the High Court bench and decided by at least 3 judges. In cases involving death, three conformable votes were required for decision.

The Auditor General had the power to order scourging for any captive slave or local without appeal or aggravation. The concern here was to maintain law and order at any cost. The regiment provided with a compulsory appeal against death sentences imposed by captains of Forts on Portuguese citizens³⁰.

In 1587, major changes were brought about in the functioning of the High Court. The number of Judges was increased to eleven. Separate duties were assigned to all of them. The Auditor General was given the jurisdiction in criminal matters so also the promoter of the cases of the Dead³¹.

The Viceroy was given full powers and the civil and the criminal judges of the High Court had to account to him. In important cases of imposition of death penalty on a person of status, the judges had to account to the viceroy

²⁹. *Ibid.*

³⁰. *Id* at 98 -101.

³¹. *Id* at 101 - 102.

personally before executing the sentence to avoid miscarriage of justice, he also had power to grant pardon and grant of mercy petition³².

In criminal matters the Auditor General had power to take at first instance cognizance of all the delicts committed in Goa. He was the Judge of first instance. He also heard criminal aggravations of cases decided by different judges in Goa. He enjoyed a dual function, he was for Goa what the corrector of the court was for the city of Lisbon and also he was appellate judge functioning in High Court for cases coming on appeal from the other areas not in Goa city jurisdiction³³.

Since the Portuguese maritime empire was based on trade and commerce this involved human personnel as Traders, Sailors, Soldiers, Administrators and Settlers. It was but fair that the interest and acquisition of the above personnel was protected by law in the eventuality of death. For this purpose special official was installed in the High Court called the Chief Promoter of the cases of the dead. The Promoter took cognizance at first instance of cases arising within the City of Goa and an area of 5 leagues around, it including the territories of Bardez, and Salcete, even though the last two areas were situated outside the radius. The duty of the Promoter was to enquire into the causes of death and record the same³⁴.

³². *Ibid.*

³³. *Id* at 105.

³⁴. *Id* at 107 -108.

Another important function of the High Court was the grant of pardon and the Condonation of sentences. This aspect was very important because the punishments were harsh and created a great deal of fear in the minds of the people. The application of Penal Law of Portugal to Goa produced anomalies in justice which had to be rectified. This required a flexible attitude for which this power to grant pardon became useful. There was also power to grant bail on financial security (*Alvaras de Fiancas*). Also High Court was empowered to allow prisoners to change prisons one place to another³⁵.

From the above discussion we can draw the following conclusion regarding the State of evolution of Criminal Judicial System in Goa in the earlier period of Portuguese rule:

- 1) The Portuguese created a very complex judicial system which was based on the Inquisitorial model coming down from the Roman Law System. This means the Judge had also inquisitorial powers to investigate crimes and come to conclusions. This is not so in the Indian system where the Judge only appreciates evidence and gives judgment while the police do the investigative part.
- 2) The Portuguese settlers who were responsible for selecting local Judges and safeguarding their interest. The village community members maintained the indigenous system of administration of justice by Village Communities.

³⁵ *Id* at 111.

- 3) The Letters Patent were given to the Judges which defined the jurisdiction of the Judges just as in the Portugal.
- 4) The Viceroy played an important role in the administration of the justice.
- 5) The High Court of Goa played an effective role to decide appeals and other matters according to the law.
- 6) The missionaries succeeded in having a special judicial set up for local Christians. Under this system Priest and some lay persons were appointed to grant Justice.
- 7) The Village Communities were strengthened by proclamations which maintained local uses and customs and indigenous judicial structure.
- 8) Even a Judge was appointed to dispense justice to the Hindu Community.
- 9) A system of Inquiry Officials were appointed with jurisdiction to rectify errors committed by the Judges and to Judge and punish the guilty.
- 10) To protect interest of Orphans Judges were appointed. They were also kind of executive magistrates for matters concerning the Orphans.
- 11) The Power of the Church to administer justice and that of the State sometimes conflicted and the attempt of the Church to encroach upon secular Judicial Authorities was condemned. There was Tribunal of

Inquisition established in Goa during the mid 16th Century and abolished in early 19th Century to try cases of Heresy³⁶.

2.2.2. *The Lower Courts*³⁷

The Portuguese Government ultimately issued a Decree which held good till the liberation of Goa took place. This Decree does away with the older regiment of administration of justice of 20th February 1894³⁸. It organized the Judiciary under a Superior Judicial Council of Colonies.

The main provisions of the decree are as follows:

- Art 1 : Approves the judicial organization of colonies.
- Art 5 : Civil and Commercial cases will be processed and judged in terms and forms as is done in the *Matropole* (Portugal) except in what is applied specially to colonies. Such special laws can be applied after publication in the Official Bulletin of the respective colony.
- Art 7 : Summary proceedings will be carried on for transgression or crimes which separately or cumulatively correspond to any of the following punishments.

³⁶. *Id* at 76 to 78.

³⁷. Decree No. 14.453 of 1927. See Ministerio das Colonias Organizacao Judiciaria das Colonias , Nova Goa, Imprensa Nacional, 1928.

³⁸. *Ibid*.

1. Correctional imprisonment, correctional work or banishment (*Desterro*) till 6 months.
2. *Multa* up to 6 months or 500 or 300 rupees or *patakas* when the law fixes the quantity.
3. Suspension from employment till 2 years.
4. Suspension from political rights up to 2 years.
5. Reprimand (*Repreensao*)
6. Censure (*Censura*)

Sole paragraph: In the judgment of this process will be observed, some articles of earlier decree of 1915 and 1916 are observed.

Art 8 : Refers to process of correctional police. As per Art 8 the crimes mentioned earlier in Art 7 Nos. 1 to 4 are judged under police correctional if the penalties are of higher order but of same nature.

Art 9 : Judgments under ordinary process (*de querela*) will be done without the intervention of Jury for all crimes which corresponds to penalties graver than those mentioned in Art 7 and 8.

Sole paragraph: In this process the judge will judge both the fact and law but without any appeal to *Relacao* (High Court).

Art 10 : When in the Criminal process, the parties have not renounced audition appeal, in that case at the audition of judgment will be written down only the alterations or postponement of statement of witnesses, if these are already recorded in *Corpus de delito*.

Art 11 : In the process of *querela* it is not permitted to renounce the appeal.

Sole paragraph: Appeal is compulsory on the part of Ministry of Justice for a sentence which condemns in penalties superior to 3 years of exile (*degredo*) or of public works.

Art 12 : The penalty of exile (*degredo*) applied by Civil Courts to accused who are non Europeans or non assimilated will always carry an alternative of equal time of public work except if it concerns dangerous accused.

Paragraph one : The penalty of public work will be done in the same colony.

Paragraph two : In colonies where there are no such proper establishment, the Governors will fix a place where they can fulfill their penalties.

Art 44 : In *Julgados* which is not the seat of Comarca, the jurisdiction is exercised by the Municipal Judge.

Art 45 : The Municipal Judge are nominated for 2 years by the Governor of the colonies from a triple list submitted by the President of *Relacao* (High Court), preferring those who have higher studies of special or secondary level.

Art 48 : Next to the Municipal Judge functioned an agent of procurator of Republic, designated as sub-delegate of Procurator of Republic.

Paragraph one : The sub delegates before Municipal Judges are nominated by the Governor of Colony over the proposal submitted by the Procurator of the Colony.

Art 50 : In the villages (*Freguesias*) there is a popular judge with his substitute both nominated each year by the Governor over proposal made in triple list by the respective District Judge (*Juiz de direito*).

Art 63 : Jurisdiction of High Court some of the areas of Jurisdiction among others are:

1. To take appeal of decision given by *Juiz de direito* or by the Arbitrator in all civil, criminal and commercial cases.
2. To take cognizance of appeals on decisions of arrest (*embargos e arrestos*) decreed or confirmed by the *Juiz de direito*.

3. To review sentences given by foreign courts and to confirm them if in order.
4. To decide appeal from the decisions of *Juiz de direito* on appeals of Conservators, Secretaries of Tribunal of Commerce and Notaries.
5. To decide appeal from decisions of Portuguese consular tribunals.
6. To decide appeals over electoral proceedings.
7. To decide positive or negative conflicts of Jurisdiction between *Juiz de direito* or other Judicial Authorities in the Comarca.

To advert (*Advertir*) on judgments (*acordoes*) and penalize on costs and *multas* in terms of law judges and other judicial functionaries of the district.

To advert (*Advertir*) , apply *multas* and suspended advocates and judicial procurators Judge matters about errors of office of all the judges (*de direito*) and members of Public Ministry was those judges as well as crimes which they commit within or outside of the exercise of their functions within the *Comarcas* of the judicial district.

To judge actions of losses and damages against judges and members of the Public Ministry mentioned in previous part.

8. To judge errors of office of *Juiz de dereito* and members of the Public Ministry before them.
9. To head the Criminal Registration in respective area of jurisdiction.

Art 77 : It is within competence of Municipal Judge to organize crime text. To Judge crimes and transgressions corresponds separately or cumulatively to:

- (a) Imprisonment or correctional work till 6 months.
- (b) Banishment up to 6 months.
- (c) *Multas* of 6 months or 500 Escudos or 300 Rupees or *Patacas*, when law forces the amount.

To pronounce on crimes which correspond to major penalty or to order to achieve respective process, when there are no sufficient indices for pronouncement.

Art 81 : Popular Judges

It is within competence of popular judges

1. To conciliate parties in the suit, writing it out in destined book.
2. To judge *ex aequo ed bono* and summarily up to 50 Escudos or 15 Rupees or *Patacas*.

3. To write the statement of Public Crimes (*corpo de dereito*) committed in the Village and sending it immediately to superior judicial authority with the imprisoned if any.

The Chapter VI of the Decree of 1927 has the following important features on sessions and audiences among others.

Art 113 : High Court: 2 audiences per week and extra-ordinary as required.

Art 114 : Judge the *dereito* – 2 sessions per week

Art 117 : Sessions and audiences are public unless contrary found necessary.

2.2.3. Judicial District of Nova Goa:

The Judicial District of Nova Goa was divided into five *Comarcas* given below:

| Comarca | Seat | Territorial Areas |
|---------------|----------|---|
| Bardez | Mapusa | Bardez with excepting Revora Assanora, Thivim, Nerul, Pilerne, Penha de Franca and Salvador do Mund (Reis Magos) Pernem (exception of Alorna and Ibrampur). |
| Bicholim | Bicholim | Sanquelim Villages of Alorna, Ibrampur from Pernem, Village of Orgao of Ponda, Village of St. Esteves, Narova, Islands of Goa, Revora, Assanora, Tivim. |
| Island of Goa | Panjim | Tiswadi, adjacent Island except St. Esteves, Narova, included Reis Magos, Nerul, Pilerne, Penha da Franca, Salvador the Mundo except Orgao. |
| Quepem | Quepem | Quepem, Sanguem, Canacona, Village of Assolna, Paroda Cuncoli, Velim of Salcete and Island of Anjadeva |
| Salcete | Margao | Salcete except Paroda, Assolna Cuncolim and Velim. |

Also the Comarca of Daman with a seat of Daman and Comarca of Macau with the seat at Santo Nome de Deus and Comarca of Timor with the seat at Dile came under the Judicial District of Nova Goa.

2.3. Legal Profession in Goa:

No Judicial System can work without the assistance of the legal profession. The legal profession in Goa during the Portuguese Rule was controlled by the Decree of 1927³⁹.

Article 84 of the Decree⁴⁰ inscribed those who could be inscribed as Advocates. There were two types of Advocates:

- i) Degree holders or with a courts of *Licentiate* in law.
- ii) Those who had a license to be Advocate

This article provides that the officials in the colonies who were remunerated by the State were not permitted to exercise the function of Advocate unless they obtained a special license from the Governor of a Colony, given annually or in complaints or in suits of their own either for being Bachelors or Licentiate in Law. However in no case these officers could advocate any suit against the state or against the Resolution and Acts of the Government of the Colony.

³⁹. *Ibid.*

⁴⁰. *Id* at Art 84, 1 and 2.

The Authority to practice was laid down in the following Articles:

Art 85 : In the High Court and before each (*Juiz de direito*) there will be special book on which will inscribed the names of all the those people who can exercise the profession of advocacy before the Courts of Judicial District or respective Comarca⁴¹.

Art 86 : To inscribe the names for Bachelor or licentiate in law in the book of Advocates, it is a sufficient if they show that the license (*Carta*) or Certificate in original or an attested copy⁴².

Art 87 : The Bachelor or licentiates in law can (exercise) practice before any Court of any instance or nature in the Judicial District in which they are inscribed⁴³.

Art 88 : The provisional Advocates (*de provisao*) can only practice before the Court which functions in the Comarca for which they have taken license⁴⁴.

Art 89 : The License for advocacy can be conceded or granted when the respective Comarca Judge, after hearing the delegate of Procurator of Republic, recognizes by a dispatch preferred in virtue of the

⁴¹. *Id* at Art 85 of Decree of 1927.

⁴². *Id* at Art 86.

⁴³. *Id* at Art 87.

⁴⁴. *Id* at Art 88.

application by the interested party, that it is necessary, as there is absolute lack of advocates who are Bachelor or Licentiate in law⁴⁵.

Solo one : From the judgment (*Dispacho*) by the Judge an appeal to the President of the High Court, can be preferred by the delegate of Procurator of Republic or by the interested parties from the Comarca⁴⁶.

Art 90 : The maximum number of advocates (*de Provisao*) in each Comarca will be fixed by High Court after hearing the respective Judges of *Juiz de direito*⁴⁷.

Sole para : This number can be altered by the Court on the proposal of the *Juiz de direito* of the respective Comarca.

Art 91 : Any person who deserve License for advocacy will apply to the President of the respective High Court attaching the following documents to his application⁴⁸.

1. Certificate which proves majority or emancipation of the applicant.

⁴⁵. *Id* at Art 89.

⁴⁶. *Ibid*.

⁴⁷. *Id* at, Art 90.

⁴⁸. *Id* at Art 91.

2. Certificate from criminal register to show that he is free of crimes.
3. Certificate of Probity or good conduct passed by Corporation or Administration of the respective area.
4. Certificate passed by Delegate of Comarca that maximum number of provisional advocates is not filled.
5. Certificate of final decision which is referred in Art 89.
6. Certificate which shows that the person has completed License Course or any Superior or Special Course.

Art 92 : The President of High Court will examine the documents submitted by the applicant and recognizing that he is satisfied with the requisites of the previous article, he will order the *Juiz de direito* of the respective Comarca to proceed with the examination of the Applicant or in contrary he will (*Indeferire*) reject the request.

- i. Exam will be about general notions, laws, terms and procedural formalities.
- ii. The exam will be conducted in the seat of respective Comarca before a jury formed by the *Juiz de direito* who will preside also by the respective delegate of Procurator of Republic and the Conservator of Registrar of Properties or in *Comarcas* where

there is no such person then by first substitute of the District Judge⁴⁹.

iii. In *Comarcas* of two Judges, the Jury will be constituted by the two Judges presided by the senior most and in the case of absence of any one of them, by Conservator of Registrar of Properties or when he is not there, by the first substitute of the Civil Judge and the Delegate of the Civil Judge and in the case of his absence, by the Delegate of the Criminal Judge.

iv. The Jury which is referred in the previous paragraph cannot function without the presence of at least two magistrate members.

Art 93 : The *Juiz de direito* will remit the Certificate of the proceedings of the exam to the President of the High Court which will be attached to the respective process, granting, if the applicant is approved unanimously.

Sole para : If the Applicant is approved by the majority, it will be at the discretion of the President of High Court to grant or to deny the license⁵⁰.

Art 94 : The provision of license for advocacy is given in the forms of a Certificate (*Alvara*) with previous payment of stamps and due

⁴⁹. *Id* at Art 92.

⁵⁰. *Id* at Art 93.

duties and must be registered in the Head Office of the High Court⁵¹.

Art 95 : Advocate is suspended

- i) When it is pronounced (*pronunciado*) and while the effects of pronouncement continued.
- ii) When condemned in the process of correctional police while the effects of condemnation continued.
- iii) When he has been suspended (*interdito*) of civil and political rights.

Sole para : This suspension is ordered or lifted by an order (*dispacho*) of *Juiz de direito* with appeal to the President of High Court⁵².

Art 96 : The license to advocate (*cassada*) can be cancelled if:

- 1) When he is condemned in ordinary criminal process (*provisionarios*).
- 2) When unfit to exercise his profession as displayed by his behavior or by his ignorance or it is demonstrated from his writing that he is unfit to exercise his profession⁵³.

⁵¹. *Id* at Art.94.

⁵². *Id*. at Art 95.

Art 97 : The cancellation of License is made by a dispatch by the president of the High Court with the previous audience of the concerned person and public ministry and can also be by the *Juiz de direito*.

Sole para : From the order of the *Juiz de direito* there will be an appeal to the President of the High Court⁵⁴.

The above description of the Lower Courts and of the High Court and also of the legal profession gives us a complete picture of the framework of the Justice Delivery System in Goa up to December 1961 when Goa was Liberated by India. In comparison between the system in Goa before and after Liberation, one can see the missing link and that is Freedom and Democracy. That is why, the comparison between pre Liberation and Post-Liberation era becomes essential and very interesting.

Apart from the Portuguese system being highly related to the Roman System of Justice Dispensation, the Portuguese Government lacked total appreciation of Democratic values. This aspect provides the Indian System a higher appreciation and consequent greater faith of the people in the established system of justice.

We now move to the next chapter which deals with the administration of Criminal Justice in Goa.

⁵³. *Id* at Art 96.

⁵⁴. *Id* at Art 97.

CHAPTER-III

ADMINISTRATION OF CRIMINAL JUSTICE IN GOA

3. Administration of Criminal Justice in Goa

3.1. Administration of Criminal Justice: Judicial Setup

1st December, 1866, was an important year for the administration of Criminal Justice in Goa. A novel effort was made to have a common system of criminal law in the province of Estado de India, Mozambique, Macau and Timor. The provinces of Mozambique, Macau and Timor continued to come under the jurisdiction of High Courts in Goa.¹

The provinces of Mozambique, Goa, Macau and Timor were grouped into one judicial division called the judicial division of Nova Goa. This district was divided into six Comarcas and three smaller independent judicial areas. The *Comarcas* were further sub-divided into Julgado and Barroughs and according to the availability of the population. The judicial division had one High Court, the Comarca had the service of a Comarca Judge where as an ordinary judge functioned at the level of judicial area and Justice of Peace at the level of Barroughs.

The High Court had its seat at Nova Goa and it comprised of four effective judges with a provision for three substituted judges to be appointed. The President of the High Court was nominated by the King in Portugal while three substitutes were Comarca judges of Ilhas, Bardez and Salcet and they came to

¹ Dr. Carmo D'Souza, Legal System in Goa, Vol. I Pg. 127.

the High Court whenever there was a need for a larger bench. The High Court jurisdiction not only in matters enumerated in the present regiment and the reforms but also took cognizance of appeals permitted to the Police Correctional Court from areas of Ilhas, Bardez, and Salcet.

The next important court was the Supreme Council of Military Justice. This court was located in Nova Goa and took cognizance of Crimes committed by military personnel in the State of India. It consisted of four members, one promoter, one secretary and one High Court judge as relator.

A Board of Justice was provided for Mozambique and Macau. It consisted of a president and seven members, i.e. the Governor of the province, the District Judge who functions as a relator, three senior most officials of the highest rank, Law members of Government council and a substitute of a District Judge. The Board had the jurisdiction to judge at first instance ordinary crimes and also to take cognizance of sentences given by the War Council. It also took appeals of crimes against the decision of the Judge of first instance².

i. Police Correctional Court:

These courts were set up in Quilimane, Daman, Diu and Timor. The courts settled appeals against the sentences delivered under procedures of Police Correctional Crimes by ordinary judges.

² *Ibid.*

ii. Judges of First Instance Court:³

The Comarca judge decided all civil and criminal cases not specifically left-out of its purview by the regiment or by the judicial reforms.

The above were the highlights of the decree of 1866. This decree also did away with the jurisdiction of the General Chambers in criminal matters and also elected judges which were replaced by Justice of Peace. This created a positive direction towards bringing about uniformity in the judiciary.

iii. Decree of 1869:⁴

Though it was a very small piece of legislations, it played a major role in bringing about uniformity and independence in the Judiciary. The objectives of the decree were:

- a) To raise the standard of judiciary in the Overseas by providing a qualified personnel.
- b) To secure certain guarantees and benefits to the Judicial Official who ventured out to go to remote and inhospitable climate.

This was a good incentive for judges to work in different situations and places.

We do not find such provision in any of the Indian laws.

³ *Ibid*

⁴ *Id* at 130

*iv. Decree of 1878:*⁵

According to this decree the Portuguese's possessions in Asia, Africa and Oceania were to constitute two judicial Districts as earlier, Eastern and Western, each with the HC at Goa and Luanda. The Eastern District was subdivided into eleven Comarcas. The decree abolished the independent judicial areas of Daman and Diu. It also created two *Julgado ordinarios* in Diu and Nagar Haveli.

*v. Regiment of Administration of Justice 1894:*⁶

This was a major judicial reform in matters of Criminal justice System. The regiment extensively laid down the jurisdiction of the High Court in Art 78. Some of the matters referred to were:

- 1) To accept appeals against the decision of the First Instance Comarca judge and Arbitrators.
- 2) To take up appeals made to the Crown against the decisions of Bishops and other ecclesiastical authorities on grounds of violence or illegal exercise of their functions.
- 3) To review sentences of foreign courts and to confirm them as per laws.
- 4) To decide appeal against electoral list.

⁵ *Ibid*

⁶ *Id* at Pg. 131.

- 5) The High Court judged errors of office and crimes committed by the First Instance Comarca judge and representative of Public Ministry whether in or out in course of duty.

There was special provision regarding Comarca Judges. In the head quarters of the Comarca there was a first instance Comarca judge nominated by the King. Next to the Comarca judge was a delegate of the Procurator of Crown and Revenue nominated from among the Law degree holders by the government. The jurisdiction of Comarca judge was both civil and criminal. The Comarca judge exercised the functions of the Chancellor for the Comarca.

vi. Organization of Judiciary of Colonies 1927:⁷

This decree had detail on profession of Advocates and Solicitors on their inscription, qualification and professional restrictions. The decree stressed upon the maintenance of the independence of the Judiciary. The other matters related to judicial efficiency, imposition of Penalties, censures etc. Article 183 in the decree lay down that Criminal Procedure Code for Portugal was made applicable to all their areas abroad.

To conclude we can say that the organization of judiciary in 1927 was very similar to the regiment of Administration of Justice of 1894 with regard to the basic framework of judicial structure. But 1927 decree produced a Superior

⁷ *Id at 135.*

Council of Judiciary of Colonies for regulating as well as for taking disciplinary measures against the judges of the colonial cadre.

vii. Special Judicial Set Up for New Conquests⁸:

Due to promises made to the inhabitants of New Conquests in mid –eighteenth century, a special set up resulted in the New Conquests and an idea of the system may be obtained from the Circular of 1840 and Regulations of 1853 which were later axed in favour of uniform judiciary

A circular of 1840⁹ clarifies the application of criminal procedure in the New Conquests. According to it criminal procedure was to be carried as per the uses, customs and practices given in edicts and laws. The procurator of the Crown and Revenue intervenes in grave crimes such as homicide and robbery. In crimes of less gravity, to set the judicial process in motion, there had to be a petition of complain by the offended party. In other cases were to be processed by correctional Trial by Grant. The clerk had to send a written report to the judge of the public crime committed within a period of 24 hours containing all the information such as circumstances, time, place, mode, names of persons present and so on.

Clause 20 incorporated the important principle of jurisprudence of that era, that no one was to be imprisoned without being accused of guilt nor was to be

⁸ *Id* at 138- 145.

⁹ *Id* at 138-140.

conducted to prison, if he had obtained security as per the prevailing uses and customs or if he gave suitable finances in terms of prevailing laws.

No official of justice could enter the house of any person except at the time and incases permitted by law and with express orders of the judge. No official was to accept any food, money or other items, except the allowances prescribed or recognized by practices which were already being legalized. However, these privileges were not available in cases involving crimes against the state or Governor General or Judges or military commander of the province.

Under the regulations of 1853¹⁰ certain clarifications were issued with regard to producers in criminal cases. Crimes of Correctional type or accusations were to be carried up to a certain stage in summary proceedings. According to the regulations bail was to be given to accused in most of the cases except those of serious nature like crime against Human or Divine Majesty, Sodemy, Counterfeit Currency, Death, Robbery of houses and so on. The Public Ministry had to say whether the crime committed was of public nature except of adultery or rape. In these two cases the procedure adopted in judicial reforms were to be followed.

In criminal cases by accusation, private cases after closing at the preliminary summary proceedings and the indictment, the whole process was to be prepared and submitted to the respective General Chamber for Judgement. The Chamber

¹⁰ *Id* at 140-145.

met once in three months. The Chamber could examine the witnesses, question the accused and do all acts necessary for decisions. The Chamber after formulating the sentence would hand over the deliberations to the clerk to be handed over to the Judge for judgement. Serious crimes threatening the very stability of the State was kept out of the sphere of General Chambers.

Given the above developments, Dr. Carmo D'Souza¹¹, draws the following conclusion which are very apt and provide us a bird's eye view of reforms conducted.

- 1) In Portugal in the post 1820's period, new concepts on judicial organization began to evolve as a result of influences of the other West European countries. These concepts and ideals were put into practice in the State of India by the decree of 1836.
- 2) In the beginning of the nineteenth century the judiciary in the State of India, was of rather complex nature and not in accordance with the juristic ideas propounded in Europe of those days. So the decree of 1836 provisionally organized the judiciary in the new lines. The decree of 1836 was skeletal and it gave the directional trend for the growth of judiciary. However it was not possible to implement a uniform pattern in the whole territory of Goa by the decree as the local system of administration of justice still prevailed in the new conquests.

¹¹ *Id* at 149-150.

- 3) The decree of 1836 was followed by others namely the decree of 1866 and 1894 in the nineteenth century and the decree of 1927 in the twentieth century. The decree of 1866 was comprehensive and consolidated the position of 1836. The decree of 1894 was a master plan organizing the judiciary in the nineteenth century. By this time uniformity in judicial organization had been achieved in the State of India.
- 4) Two legislative pieces namely the circular of 1840 and the Regulations of 1853 give an insight into local procedures of settling disputes both civil and criminal, which were prevalent in the new conquests. However the material that can be gathered from these pieces is rather scanty and needs to be corroborated by other documentary evidence. This is a fertile field for further research.

From the scholars point of view the rules framed to keep the judge on the right track and to deal with them very strictly, did help to maintain the sanctity of the law and to punish the wrong doer. It is probably these controls which were strictly enforced which ultimately helped in reducing the crimes with the territory and create a respect and fear for the law. Laws alone cannot bring justice. It is the judges who with strict interpretation of law and honest handling of cases can bring down the crime rate within the territory.

Though the Portuguese government was tough and strict and sometimes dictatorial, what is appreciable is that they created an independent judiciary

with the message. The message was, no corrupt, no careless or no indifferent judge will be tolerated. Everybody had to do their job according to the evidence available and only their conscience to guide them.

3.2. Criminal Courts¹²

1. Levels of Criminal Trials:

Art 62 of Portuguese Penal Procedure Code provides that there is a common process of

- i. Summary Trials¹³
- ii. Process Correctional¹⁴ (Offences punishable with imprisonment up to two years)

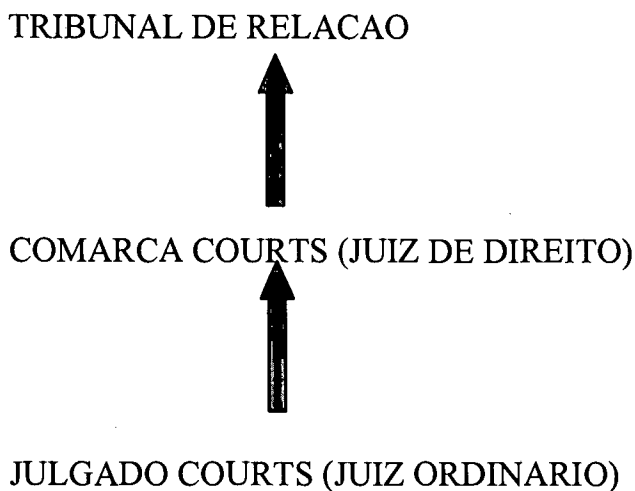
¹² Art. 35 of Penal Procedure Code refers to courts that have penal competence. All the courts mentioned were not there in Goa. They are : 1. Supreme Court of Justice, 2. The High Courts (Relacoes) 3. Collective Courts of “ comarcas”, 4. Juries , 5. Judges of direito of comarca, 6. Criminal Judges, 7. Assistant Judges (Juizes auxiliares) of criminal investigation . 8. Judges of transgressions, 9. Justices of Peace, 10. Especial courts that take cases related to minors, delict of contraband etc, military tribunals etc and other designated by laws. The competence (jurisdiction) is discussed under Title II of Book I, Arts. 35-61.

¹³ Art. 67 of Portuguese Penal Code, referred to Summary Process . It was applied to process of Transgressions for contraventions of regulations, bye laws (posturas) etc. i.e. regulametary in nature. Decree no. 16.489 of 15 February of 1929 approves the Codigo de Processo Penal . Decree no 19.271 of 24 January 1931 declares the Code of Penal Procedure in force in colonies. See also Antonio Simoes Correia, *Codigo do Processo Penal* , Livraria Ferin, Lisboa, 1947.

¹⁴ Art. 65 of Portuguese Penal Code, referred to Processo de Policia Correctional for the following cases: (a) Correctional imprisonment till 6 months, (b) Exile (Desterro) till 6 months , (c) Multa till 5000\$,later raised to 20.000\$00 by Decree no. 35.978 of 23 November 1946 , (d) Suspension of employment till 2 years , (e) Temporary suspension of Political rights, (e) Reprimand (Reprensao) , (h) Censure.

iii. Querela (for major crimes i.e. two years rigorous imprisonment and above).

2. *The Judicial Hierarchy*¹⁵:



3. *Committal Proceedings*¹⁶:

There were no provisions for committal proceedings as there were no district and intermediate courts.

4. *Examination of Witnesses*¹⁷:

- The list of witnesses was decided by the *Delegado*.
- The witnesses had to depose before a court of law.

¹⁵ *Criminal Justice India Series*, Vol. 9, Goa 2002, Pg. 138.

¹⁶ *Ibid*

¹⁷ *Ibid*

5. *Number of Witnesses*¹⁸:

- For minor crimes only three witnesses could be examined per fact.
- For major offenses, five witnesses could be examined per fact, subject to maximum of twenty witnesses.
- Witnesses could be asked questions only with respect to the facts of the case.
- There was nothing called cross examination.
- No suggestive or trick questions could be asked either by the prosecution or by the defense

6. *False Witnesses*¹⁹:

If two witnesses contradicted each other, the court was empowered to call both witnesses at the same time and both the contradicting witnesses were examined face to face and the judge decided the matter on the spot.

¹⁸ *Ibid.* See also Art 222 of Portuguese Penal Procedure Code. Proof by Witnesses and Declaration is discussed in Arts. 214 – 244 of Portuguese Criminal Procedure Code. Art. 240 on who have to be heard as witnesses, such as people indicated by Public Ministry, offender, accuser etc. Art. 215 that no one can refuse to be a witness except those expressly forbidden by law. Art. 215 on those, who are disqualified to be witnesses. Art. 217 on those who cannot be compelled to depose or give declaration. Art. 219 on Head of State, Ministers, Judges of Supreme Court or High Courts to be inquired at their residence if they have to give evidence or declaration. Art. 222 states that in *corpo delicto* the number of witnesses is unlimited. But the *sole para* permits the judges to restrict witness to particular numbers depending on the type of case provided he is satisfied on their sufficiency.

¹⁹ *Ibid*

7. *Witnesses not Included in the Charge sheet*²⁰:

Such witnesses could be examined as there was no restriction on the examination of such witnesses. The list of witnesses was prepared by the *Delegado*.

8. *Punishment*²¹:

Punishment for the various offences was enumerated in the Penal Code. The punishment was divided into Frames.

| | |
|--------------|--|
| First Frame | 2-8 Years |
| Second Frame | 8-12 Years |
| Third Frame | 12-16 Years |
| Fourth Frame | 16-20 Years (normally awarded for Homicide/Murder) |

In case of Homicide, the sentence could be increased by 1/4th in cases of

- i) Patricide
- ii) Matricide
- iii) Assassination of the President/Head of State

²⁰ *Id* at 139.

²¹ *Ibid*

Only in exceptional circumstances could the judges award punishment of a frame than that which was prescribed. This could be done by invoking section 96 of the Penal Code.

9. *Prosecution and Defence*²²:

- Prosecutors were permanent officials. The prosecutors in the Comarca Courts were called *Delegado* and their counterparts in the *Julgado* were designed as *Sub-Delegados*.
- A *Delegado* was essentially of the rank of the Comarca Judge. (That was the reason why the table of the *Delegados* in the Comarca Courts was at the same level or of the same height as that of the Judge). He was essentially a magistrate with accompanying magisterial powers. However, he was not vested with judicial powers. He did not have the power to convict and send a person to prison. The primary responsibility for the investigation of criminal cases was vested with the *Delegados*. *Delegados* were eligible to be promoted as Comarca Judges.
- *Sub-Delegados* were the counterparts of the *Delegados* at the *Julgado* courts. They were generally local advocates and did not belong to the permanent judicial cadre.

²² *Ibid*

- There were no restrictions in place on the right of the accused to appoint a lawyer of his choice for his defence.

- An accused could not himself plead his case. If the accused did not have the means to engage a lawyer, an obligation was cast upon the Court to appoint a lawyer for the unrepresented accused. The *Delegado*, Comarca Judge and *Conservador* (Sub-Registrar) constituted a committee which considered cases eligible for free legal aid. However, if the committee was of the view that the accused had no case, it would refrain from appointing a lawyer to represent the accused. In other words, if the committee felt that the accused was truly guilty, it was felt that he deserved no consideration in the matter of free legal aid.

3.3. Police Procedure²³

1. Investigation:

The powers of investigation were primarily vested with the *Delegado*, who could take the assistance of the Police in his investigation. Though the *Delegado* had the power to arrest, he had no power to detain a person.

2. Evidence:

- There existed no cumbersome Evidence Act.

²³ *Id* at 140.

- Judges were free to interpret the facts; they were also empowered with the freedom to evaluate the evidence as per their individual perceptions.
- Evidence could be accepted even without witnesses/panchas. However, if the court had the slightest doubt it would straightaway discard that particular statement/evidence. The system placed a lot of faith and trust in the Police.

3. Confessions:

- No plea was allowed.
- The confessions of the accused unaccompanied by any other corroborative evidence could not be used for the conviction of an accused.

4. Interrogation of Suspects:

- In principle the powers of interrogation of suspects were vested with the *Delegado*. However, in practice many powers of investigation and interrogation of suspects were delegated to the police.
- During interrogation, the suspect/accused was to be accompanied by a lawyer.

5. House Search²⁴:

- No house search was permitted from sundown to sunrise.

6. Recoveries, Arrest, Detention²⁵:

- The police were empowered to effect recoveries without a warrant and without independent and respectable witnesses.
- The police were empowered to keep a suspect under detention for thirty days. However, during this period the Court could call for the case concerning the person detained.

7. Military Court (Tribunal Militarario De Goa)²⁶:

This court had jurisdiction over the following matters:

- i) All offences by military and police personnel.
 - ii) Certain offences, which affected to keep a suspect under detention for 30days. However peaceful and non-violent in nature, committed by civilians were also tried by this court. These cases against civilians were investigated by the police before trial.
- The court comprised of two members who were military officers of the rank of Major/Captain.

²⁴ *Id* at 141.

²⁵ *Ibid*

²⁶ *Ibid*

- The Court was presided by the Comarca Judge of Panaji, the capital.
- The role of the Comarca Judge was to state the law and to draft and pronounce the judgment.

The procedure of this court was governed by *Codigo de Justica Militar* (Code of Military Justice). Cases before this court were presented, on behalf of the state, by an Army officer called Promoter de *Justica*. All crimes were tried summarily, though the accused could engage a civilian lawyer for defence in the Military Court. The punishment for political offences used to be long periods of imprisonment, sometimes coupled with exile and forfeiture of civil rights for a considerable period.

It is interesting to carry research into the trials of some of the *Satyagrahis* involved in peaceful and non violent methods. The records are made public today and some of them have been published as books earlier by P. P. Shirodkar. For instance trial of T. B. Cunha, Trial of Laxmikant Bhembre, Trial of J. I. Loyola, Trial of P. K. Kakodkar throw light on several issues.

3.4. The Prosecution

1. The Directorate of Prosecution²⁷:

The Directorate of Prosecution is the overall supervisory body of prosecution in the State of Goa.²⁸ The state takes over on behalf of the victims of the crimes

²⁷ *Ibid.*

and prosecutes the offenders to bring them to justice. The Directorate of Prosecution comes under the Department of Law. It is manned by qualified and experienced Public Prosecutors and supporting staff.

The post of Directorate of Prosecution was created by the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005) by which Sec. 25 A was inserted but in fact in State of Goa Directorate of Prosecution was created prior to this amendment.²⁹

2. Organizational Structure³⁰:

At present the senior most Public Prosecutor (PP), Panaji is holding the additional charge of Director of Prosecution.

There are two districts i.e. North Goa and South Goa. In each district there is one District Court and one or more Additional District Courts. The prosecution work in the District Courts and Additional District Courts is being looked after by Public Prosecutors whose offices are in the respective court buildings.

²⁸ The Directorate of Prosecution is appointed by the State Government under the Home department in concurrence with the Chief Justice of the Bombay High Court.

²⁹ Allocation of Business Rules 1987, Official Gazette 13-08-1987 Series 1 No.20

³⁰ *Supra* note 15.

Table 1 North Goa³¹

| | Name of the Court | Number | Public Prosecutor | Assistant Public Prosecutor |
|---|--|---------------|--------------------------|------------------------------------|
| I | High Court of Bombay Panaji Bench. | 1 | | |
| 1 | Court of District and Sessions Judge I (Principal) Panaji. | 1 | 1 | |
| 2 | Court of First Additional District and Sessions Judge II Panaji. | 1 | 1 | |
| 3 | Court of Second Additional District and Sessions Judge III Panaji.(Fast Track) | 1 | 1 | |
| 4 | Court of Additional and District Sessions Judge IV (NDPS) Mapusa. | 1 | 1 | |
| | Court of Judicial Magistrate First Class, Panaji. | 3 | | 3 |
| | Court of Judicial Magistrate First Class Mapusa | 6 | | 6 |
| | Court of Judicial Magistrate First Class Pernem | 1 | | 1 |
| | Court of Judicial Magistrate First Class Bicholim | 3 | | 3 |
| | Court of Judicial Magistrate First Class Valpoi (Sattari) | 1 | | 1 |
| | Court of Judicial Magistrate First Class Ponda | 4 | | 4 |

³¹ Table1 and 2 has been updated by the researcher as per the current position.

Table 2 South Goa

| | Name of the Court | Number | Public Prosecutor | Assistant Public Prosecutor |
|----|---|---------------|--------------------------|------------------------------------|
| 1. | Court of District and Sessions Judge (Principal) Margao | 1 | 1 | |
| 2. | Court of First Additional District and Sessions Judge I Margao | 1 | 1 | |
| 3. | Court of Assistant District and Sessions Judge II Margao | 1 | 1 | |
| 4. | Court of Assistant District and Sessions Judge III Margao | 1 | 1 | |
| 5. | Court of Assistant District and Sessions Judge IV Margao | 1 | 1 | |
| 6. | Court of Adhoc Additional District and Assistant Sessions Judge (Fast Track) Margao | 1 | 1 | |
| | Court of Senior Division Judicial Magistrate First Class | 3 | | 3 |
| | Court of Judicial Magistrate First Class | 4 | | 4 |
| | Court of Judicial Magistrate First Class Vasco Da Gama | 3 | | 3 |
| | Court of Senior Division Judicial Magistrate First Class Quepem | 1 | | 1 |
| | Court of Judicial Magistrate First Class Quepem | 1 | | 1 |
| | Court of Judicial Magistrate First Class Sanguem | 1 | | 1 |
| | Court of Judicial Magistrate First Class Canacona | 1 | | 1 |

The Assistant Public Prosecutors are appointed in each Taluka for looking after the criminal cases in the Courts of Judicial Magistrate First Class (JMFC). One Upper Division Clerk (UDC) and three Lower Division Clerks (LDC) are posted at Mapusa, Bicholim, Panjim and Madgaon to look after the general correspondence and Accounts work of all Public Prosecutors/ Assistant Public Prosecutors.

The roles and responsibilities of various members of the Directorate are given below.

3. Director³²:

- 1) Giving opinions: Police and other Government Departments of Goa approach the Director, Directorate of Prosecution, either through the Home Department or directly seeking opinion for filing appeal/revision against the orders of a trial court.
- 2) Overall supervision and control of the staff of the department.
- 3) Making prompt temporary arrangements for substituting a Public Prosecutor/Assistant Public Prosecutor in case he/she is on leave.
- 4) Process and forward to the Law Department leave application of Public Prosecutor/Assistant Public Prosecutor.

³² Id at. 91 to 92.

- 5) The Director suggests the transfers of personnel in the Directorate of Prosecution to the Law Department.
- 6) Any other matter pertaining to administration.

4. Public Prosecutor³³:

The basic functions of Public Prosecutor are to conduct cases in the Sessions Courts to secure justice for the victims. The functions of a Public Prosecutor are similar to those of Assistant Public Prosecutors except for the difference that Public Prosecutors handle cases in which the gravity of the offence committed is higher. They also give opinion, if requested, to the police in cases exclusively triable by a Court of Sessions.

5. Assistant Public Prosecutor³⁴:

Assistant Public Prosecutor conducts cases in the Court of Judicial Magistrates First Class (JMFC). The Assistant Public Prosecutors are also supposed to conduct cases before the District Magistrate and other Executive Magistrates. They also give opinion, to the police about cases referred by them

³³ *Ibid*

³⁴ *Ibid*

6. Steps in the Process of Prosecution³⁵:

- 1) Police frames suitable charges on the basis of FIR and investigation and lodges the cases in the court.
- 2) The Court registers the cases and a unique number is assigned to that case.
- 3) Police gives the supporting documents of that case to the Prosecution Department for further proceedings and arguments.
- 4) In the office of Public Prosecutor/Assistant Public Prosecutor, a case register is maintained in which the Police Orderly enters all the details.
- 5) Court sends summons to the person accused of the offence and intimates him about the date of hearing.
- 6) Concerned APP is also informed of the dates.
- 7) APP studies the case and on the date of hearing, advances arguments in favour of the complainant for framing charges against the accused.
- 8) After recording evidence of Prosecution Witnesses and Defense Witnesses, if any, arguments are heard and the Judge gives his decision on the same.

³⁵ *Ibid*

- 9) Public Prosecutor/Assistant Public Prosecutor sends back the investigation case papers to the concerned police station, along with his/her opinion as to the fitness of the case for filing appeal or otherwise and a copy of the same is submitted to the Director of Prosecution.
- 10) If the judgment given by the court is not satisfactory to the Public Prosecutor/Assistant Public Prosecutor, then he/she suggests to the police station to make an appeal in the higher court giving his/her observations and remarks.

3.5. Appeals & Withdrawals

1. Appeal against Decision given by Judicial Magistrates First Class/Session Judges³⁶:

- 1) If the judgment given by a JMFC is not satisfactory to the APP, then he suggests along with his observation and remarks to the Police to make an appeal in the appellate court.
- 2) Police studies the comments given by a Public Prosecutor/Assistant Public Prosecutor and decides to go or not to go to higher courts for appeal.
- 3) If the police decide to go for appeal then they send the file to the Home Department through the Superintendent of Police.

³⁶ *Id* at 93.

- 4) Home Department sends the file to the Director, Directorate of Prosecution to seek his opinion on the same.
- 5) Director studies the case and gives his opinion and sends the file back to the Home Department.
- 6) Home Department returns the file to the Superintendent of Police for further proceedings. Home Department can also reject the opinion.
- 7) Public Prosecutor lodges the case in the Court.

2. Withdrawal of Cases³⁷:

Whenever any complainant or accused wishes to withdraw the case filed in a court, he files an application to the Government for the same. The Government then seeks the opinion of the Director who in turn seeks the opinion of the concerned Assistant Public Prosecutor. The Government after considering the opinion of the Director of Prosecution decides on the acceptance or rejection of request.

- 1) Whenever any complainant or accused wishes to withdraw the case filed in a court, he files an application to the Government (Home Department).

³⁷ *Id* at 93 to 94.

- 2) Home Department sends the request to the Director, Directorate of Prosecution to seek his opinion on the same.
- 3) Director in turn sends this request to the concerned Public Prosecutor/Assistant Public Prosecutor to seek his comments on this request.
- 4) Concerned Public Prosecutor/Assistant Public Prosecutor gives his remarks on the request and sends it back to the Director.
- 5) Director examines the case and sends it back to the Home Department with his opinion.
- 6) Home Department decides about the request and if acceptable, conveys the same to the Director, Directorate of Prosecution for further proceedings. Home Department can also reject the opinion of the Director.
- 7) Director sends the same to the concerned Public Prosecutor/Assistant Public Prosecutor with request to file an application in the Court for withdrawal of the case.
- 8) Then finally the judge gives orders approving the withdrawal of a case.

3. The Prosecution Point of View³⁸:

At present there are no prescribed procedures/guidelines to the investigation authorities in the matter of filing Charge sheet before the Court of Judicial Magistrate First Class. There is also no uniformity in respect of filing appeals or revisions before higher courts in respect of judgments passed by the lower courts.

4. The Stages of Investigation³⁹:

Criminal law and Procedure is set in motion once the First Information Report (FIR) is lodged. A great deal of care is required to be taken at the time of recording a FIR by the Investigation Officer (IO). It is commonly known that the complainant who approaches the police for filling complaint/FIR is generally in a disturbed state of mind. Therefore, the recording officer should be sensitive. Members of the public are generally reluctant to approach the police for filing FIR on account of rumors of arrogant, rude and uncooperative behaviors of the police.

This is one of the causes of delay in filing FIR which ultimately may prove fatal to the case of the Prosecution. The police therefore should invariably to be courteous while dealing with the complainants. Sometimes the FIR is registered in great haste, in haphazard manner and thereafter, supplementary

³⁸ *Id* at 94.

³⁹ *Id* at 94 to 95.

statements are recorded to introduce facts which could and ought to have been recorded at the very first available opportunity. This practice should be avoided by every means.

Generally speaking, the prosecution agency does not come into the picture at the stage of investigation. The Investigation Officer is the master of the investigation subject to general or specific control and supervision of his superiors. However, in serious and complicated cases, in case the Investigation Officer faces some legal difficulty to proceed with the investigation, he may consult the Public Prosecutor or Assistant Public Prosecutor for discussion and guidance.

Individually, Investigating Officers approach the Public Prosecutor/Assistant Public Prosecutor frequently with written requests for piecemeal opinion during the course of investigation or sometimes even before the registration of the FIR. This practice is totally uncalled for. However, the Investigation Officer may approach Public Prosecutor/Assistant Public Prosecutor for consultation in case they want any guidance or advice during the course of investigation. Thereafter, the Investigation Officer should proceed with further investigation and complete the investigation after which a charge sheet/final report should be filed.

Sometimes serious offences are partly investigated by police officers of the rank of Head Constable or Assistant Sub Inspector. This procedure is highly objectionable and certainly not in the interest of administration of justice.

Offences triable exclusively by Court of Sessions should preferably be investigated by an officer of the rank of Deputy Superintendent of Police and in no event such offences should be investigated by an officer below the rank of Police Inspector.

The offences against women, particularly rape cases, should be investigated by lady police officers. If this is not practicable in each and every case, then a lady constable must remain present at the time of interrogation and recording of statement of rape victims.

5. Procedure for Filing Charge sheet/Complaints before the Magistrate by the Investigation Agency⁴⁰:

It is generally believed by the Investigation Officers that their job is over once the charge sheet is filed in the court of law. This is to overlook the duty of the investigating agency to keep in touch with the Public Prosecutor/Assistant Public Prosecutor from time to time to give material information and instructions to them.

The Investigation Officer should remain present in the court during important stages of the trial, particularly at the time of recording of evidence of important witnesses such as the complainant, Panch witnesses for attachment of property and other material witnesses. The presence of the Investigation Officer in the court at the time or recording evidence makes a lot of difference. The witnesses

⁴⁰ *Id* at. 95, 96, 97.

who are won over by the accused will not easily switch loyalties when the Investigation Officer who has recorded their statements is present in the Court.

The Investigating Officer should appear in the court for his own evidence without waiting for summons from the Courts. In fact many Investigating Officers do not turn up even after repeated messages by Public Prosecutor/Assistant Public Prosecutor. Generally the presence of Investigating Officer is secured by the Court by issuing summons to them. It is unfortunate that sometimes the Investigating Officer do not appear before the Court in spite of repeated summons from the Court, thus compelling the court to issue warrant of arrest against them. This process of securing the presence of police officer is extremely painful and pernicious. Senior officers should issue strict instructions to the Police Investigating Officers to get their evidence recorded by the Court without even waiting for summons from the Court. In any event, in case warrant of arrest is issued against the police officer to secure his presence, the Public Prosecutor/Assistant Public Prosecutor should bring this fact to the notice of the Superintendent of Police who in turn should initiate appropriate action against the defaulting officer.

Some Investigation Officer does not obtain any opinion at all from the concerned Public Prosecutor/Assistant Public Prosecutors before filing charge sheet. This is awkward for the Public Prosecutor/Assistant Public Prosecutors in case there is no prima facie case for the Prosecution or in case the prosecution is not maintainable on points of law. Therefore,

- 1) In all the cases concerned Investigating Officer should submit the papers of investigation to Public Prosecutor/Assistant Public Prosecutor for opinion before filling charge sheet/complaints. While giving opinion the Public Prosecutor/Assistant Public Prosecutor should point out the deficiency, if any, in the investigation which should be rectified by the Investigating Officer before filing charge sheet.
- 2) The Public Prosecutor/Assistant Public Prosecutor should give opinion as soon as possible. It should be the responsibility of the Investigating Officer/complainant to collect papers from the Public Prosecutor/Assistant Public Prosecutor after the opinion is ready as the Public Prosecutor/Assistant Public Prosecutor neither has the manpower nor machinery to return the papers to the Investigation Officer/complainants.
- 3) In case the Public Prosecutor/Assistant Public Prosecutor opines that the case is not fit for filing charge sheet and in case the investigating agency does not agree with the same they should submit the papers to the higher authority for further guidance that in turn may approach the Director of Prosecution for second opinion. In case the Director of Prosecution is also of the opinion that the case is not fit for filing charge sheet/complaints, no charge sheet or complaints should be filed.

6. Procedure for Filing Appeals from Lower Courts to Higher Courts⁴¹:

One of the main causes of delay in processing the files for filing appeals is the apparently unnecessary backward and forward movements of the files from one department to another.

Another reason is that there is no time frame in the concerned departments to clear files within a stipulated time

The third reason for delay is that whenever case papers of investigation/files are submitted for opinion it is generally found that either all the papers of investigation have not been made available for perusal or sometimes the photo copies supplied are not clearly legible. Sending the papers of investigation back to the investigation authorities inevitably results in wastage of time.

Yet another reason for delay is on account of the fact that either the investigating agency or Home Department refers the file to the Law Department even after obtaining opinion from the Director of Prosecution. There is no necessity to refer such files to the Law Department in criminal cases which amounts to seeking third opinion for filing appeal. The opinion of the Director of Prosecution in the matter of filing appeal should be final.

A proper system/procedure to ensure prompt processing of files by removing the above drawbacks would ensure that:

⁴¹ *Id* at 97, 98, 99.

- i) The Public Prosecutor/Assistant Public Prosecutor should apply for certified copy of the judgment on the same day on which the judgment is pronounced.
- ii) The Public Prosecutor/Assistant Public Prosecutor should forward the papers of investigation to the concerned investigating agency as early as possible after the receipt of certified copies from the court, along with his opinion. Public Prosecutor/Assistant Public Prosecutor should not take a casual and mechanical approach while giving opinion, but should make objective assessment of the judgments clearly indicating on what material points the trial court has gone wrong, by giving detailed opinion. All efforts should be made to forward the case papers within seven days. Delay, if any, in forwarding the papers should be recorded in writing.
- iii) In case the concerned investigating agency is interested in filing appeal against the judgment they should first take a clear decision that they desire to file an appeal and thereafter forward the papers of investigation along with the opinion of the Public Prosecutor or Assistant Public Prosecutor to the office of the Director as early as possible through higher officers. The file should be forwarded through superior officers not below the rank of Superintendent of Police. Every effort should be made to forward the papers to the Director within seven days after the receipt of the papers from the

Public Prosecutor/Assistant Public Prosecutor. Delay, if any, should be recorded in writing.

- iv) On receipt of the papers from the concerned Investigating Agency, the Director of Prosecution should clear the file as soon as possible. Endeavour would be made to clear the files within seven days. Delay, if any, should be recorded in writing. The file should then be forwarded by the Director to the Home Department under intimation to the investigating agency.
- v) On receipt of the file from the Director of Prosecution the concerned Secretary/Under Secretary to the government should process the file as early as possible. Endeavour should be made to process the file for approval of the government to file appeal within seven days. Delay, if any, should be recorded in writing. The concerned Secretary/Under Secretary to the Government, after processing the file, should convey the approval to the Government to file appeal or otherwise to the concerned investigating agency, under intimation to the Directorate.
- vi) On receipt of the file from the concerned Secretary/Under Secretary of the Government, the investigating agency should approach the Public Prosecutor in the High Court for filing appeal without delay. Endeavour should be made to approach the Public Prosecutor in

High Court for filing appeal within three days. Delay, if any, should be recorded in writing under intimation to this office.

- vii) On receipt of the papers from the Investigating Agency, the Public Prosecutor should file appeal in the High Court without any delay. In any event, the appeal should be filed within the period of limitation by the Public Prosecutor. Delay, if any, should be recorded in writing.

7. Procedure for Filing Revision before the Sessions Court or High Courts by the Investigation Agency⁴²:

- i. The Public Prosecutor/Assistant Public Prosecutor should apply certified copy of the interim order passed by Court of Judicial Magistrate of First Class/Session Court on the same day as the order is passed.
- ii. The Public Prosecutor/Assistant Public Prosecutor should forward the relevant papers to the concerned investigating agency as early as possible after the receipt of the certified copy from the court, along with the opinion in case he/she is satisfied that the case is fit to be challenged before the higher court. Endeavour should be made to forward the papers within four days. Delay, if any, should be recorded in writing.

⁴² *Id* at 99 - 100.

- iii. In case the investigating agency is interested in filing revision against the order, then the Investigation Officer should consult his superior officer and thereafter should submit the relevant papers along with the opinion of Public Prosecutor/Assistant Public Prosecutor and the certified copy of the order to the Director for approval through their higher officer for filing revision. The decision of the Director of Prosecution in the matter of filing revision against the interim order should be final. Endeavour should be made to forward the papers within four days after the receipt of the papers from Public Prosecutor/Assistant Public Prosecutor. Delay, if any, should be recorded in writing.
- iv. On receipt of the papers from the concerned investigating agency, the Director of Prosecution should either convey approval or otherwise as early as possible. Endeavour should be made to clear the file within 4 days. Delay, if any, should be recorded, in writing. The papers then should be returned to the investigating agency along with the approval or otherwise.
- v. In case the Director of Prosecution is of the opinion that the case is fit for filing revision then the concerned Investigating Officer, on receipt of papers, should contact the Public Prosecutor in the Session Court or the High Court as the case may be, immediately for filing revision. The Public Prosecutor should take steps to file revision

application as early as possible. In any event, the revision should be filed within the period of limitation. Delay, if any, should be recorded in writing.

It is pointed out that in case no satisfactory explanation is given for unreasonable delay in processing the files, persons responsible for delay should be made accountable for unexplained delay.

8. *The Police Point of View*⁴³:

The courts in Goa are putting in the cause list 20 cases in the morning session and 20 in the evening. Accordingly summonses are issued to 2 or 3 witnesses in each case. In actual experience, the Court is able to examine very few witnesses. The witnesses so summoned, therefore, will have to return without having done any work. This practice causes considerable wastage of time and money to the witnesses, besides embarrassment and inconvenience to them.

Frequent adjournments are major causes for considerable delay in disposing of the cases. The Public Prosecutor/Assistant Public Prosecutor should, therefore, ensure that only a few witnesses are called for examination after having thoroughly scrutinized the case file. Under no circumstances, the recording of evidence should be postponed once the witnesses are called for it. The judges also should attend the court in time setting an example to others.

⁴³ *Id* at 100 to 101.

According to the new format of FIR and other case papers introduced by the National Crime Records Bureau, the final form is the Court Disposal Form. This form is to be filled in by the Public Prosecutor/Assistant Public Prosecutor who has conducted the prosecution of the case wherein he notes down the reasons why the case ended in acquittal, e.g. hostile witnesses, improper Panchanama, lapses in investigation etc.

At present little effort is made to ensure filling up of these forms and thereafter correlating/analyzing the reasons for acquittal. If properly done, this would provide valuable data useful for introducing improvements/correctional measures. This data when analyzed would also offer insight into the current thinking of the judiciary and the current standard of prosecution of investigation. Regular scrutiny and analysis of the Court Disposal Form should be done at the Police Headquarters in coordination with the office of the Director of Prosecution for achieving better quality of investigation and subsequently better prosecution thereby enhancing the conviction rate.

9. Briefing of Witnesses (Minimizing memory lapses due to passage of time)⁴⁴:

It is an accepted fact that apart from offences which are triable in specially appointed courts, the time span between the date of cognizance of the offense and commencement of trial and its conclusion generally stretches to several

⁴⁴ *Ibid.*

years. This phenomenon results in several undesirable developments. Those affecting the witnesses can be broadly identified as:

- a) Lapse of memory of the witness due to passage of time.
- b) Disassociation or distancing of the witnesses from the crime and the Investigation Officer thereby creating apathy/indifference to the fate of the case.
- c) 'Approaching' of the witness by accused party.
- d) Change in location/address of witnesses resulting in non-availability.
- e) Death of a witness due to illness whereas timely action should have been taken to record statements under section 106 of CrPC.
- f) Creation of stock witnesses.

To combat these evils a record of the witnesses should be chronologically maintained and a system of briefing/refreshing the memory of the witnesses should be in place whereby the Investigation Officer and the Public Prosecutor/Assistant Public Prosecutor should maintain periodic contacts with the witnesses. This will prevent apathy on the part of the witness in the case. If it seems that such a system is impracticable in all cases, it can be limited only to grave and heinous crimes. If adopted, this will go a long way in ensuring the positive interest of the witnesses and thus increase the evidentiary value of his deposition.

10. Overburden of Case Loads on Public Prosecutors/Assistant Public Prosecutors⁴⁵:

It is seen that the Assistant Public Prosecutors on lower courts and the Public Prosecutors are tremendously overburdened with the case loads. For example, the Vasco JMFC Courts had in January 2008 over 1,500 cases pending trial but there were only three Assistant Public Prosecutors which meant that on an average each APP had to conduct prosecution of at least 500 cases. A person, however capable he may be, cannot do justice to such a work load. The result is predictably miserable performance. Appointment of more Public Prosecutors / Assistant Public Prosecutors is essential. The situation in other courts is more or less the same.

11. Transfer Policy of Officers⁴⁶:

A great amount of time of an officer posted at a police station is spent in courts. This is more so in the case of senior officers in charge of police stations who have to spend several hours almost on alternate days in the courts. It is but natural that an investigation Officer who has put in more than ten years of service will have a reasonably busy court schedule.

A stage is reached where the police officer cannot do justice to either cases in courts or his police station and the result is reduced performances in both the

⁴⁵ *Ibid*

⁴⁶ *Id* at 102.

areas. The transfer and posting policy, particularly at police station level, should be spaced so as to give a maximum of two years posting in other units i.e. non-executive postings. This will have certain salutary effects:

- A) Prevent an officer from being overburdened with pending trial cases.
- B) Allow him to concentrate on charge sheeted cases.
- C) During non-executive posting, an officer gets a chance to relieve physical and mental stress.
- D) Judicious spacing of posting promotes the overall development of the person as a police officer and increases his knowledge and improves his experience.

If officers are able to truly concentrate on their pending trial cases, the conviction rate will increase.

12. Interaction between Police and Judiciary by the way of Workshops and Conferences⁴⁷:

Today there is virtually no interaction on a regular basis with any level of the Judiciary. Purely personal relations between individuals may be there. The following present weaknesses are to be faced:

- a) Lack of a platform for interaction between the Police and the Judiciary.

⁴⁷ *Ibid*

- b) Lack of channel to view and assess the current trends of judicial wisdom.
- c) Lack of debates/discussion about use or misuse/misinterpretations of old existing laws and new laws. Another aspect is the applicability of new judgments pronounced by the higher judiciary in other parts of the country.
- d) There is no mode to gauge the judiciary's reaction to current policing or its opinions about methods of police investigation other than by reading judgments and strictures passed in them.

3.6. Functioning of Police Department in Goa

1. Structure of the Department⁴⁸:

The Director General of Police, with his headquarters at Panaji, heads the Department of Police. The Deputy Inspector General of Police assists him.

The offices in the Police Department can be broadly outlined as under:

- 1) Deputy Inspector General of Police, Goa.
- 2) Superintendent of Police, North Goa District, Porvorim.
- 3) Superintendent of Police, South Goa District, Margao.
- 4) Superintendent of Police, CID, Panaji.

⁴⁸ *Id* at 145

- 5) Superintendent of Police, Traffic & Security, Panaji.
- 6) Superintendent of Police, Training, Panaji.
- 7) Superintendent of Police, Headquarters, Panaji.
- 8) Superintendent of Police, Motor Transport, Panaji.
- 9) Deputy Commandant General, Home Guard/Deputy Director, Civil Defence, Panaji.
- 10) Principal, Police Training School, Valpoi.

The police Department primarily deal with the maintenance of law and order, prevention, investigation and detection of crime, VVIP/VIP security, management, control and regulation of vehicular traffic as well as attending complaints/grievances of the members of public.

The state of Goa is divided into two Districts, i.e. North and South.

2. Functions of the District Superintendent of Police⁴⁹:

The District Superintendent of Police, North Goa has his office located in the Police building at Porvorim. The District Superintendent of Police, South Goa has his office at Margao.

⁴⁹ *Ibid*

The overall supervision of the police stations in the two districts rests with respective District Superintendent of Police.

3. *Basic Functions of the Police Station*⁵⁰:

- i. The police stations take cognizance of the complaints lodged by the members of the public given in writing or orally. If the complaint discloses the commission of cognizable offense, a case is registered as envisaged under section 154 CrPC and investigation is taken up. These are cognizable offences. As regards the non-cognizable cases, action is taken u/s 155 CrPC and the complainants are advised to seek redress in the competent court of law.
- ii. The officer in charge of police station is to maintain law and order within his jurisdiction and to provide security to public within the community/locality.
- iii. Prevention, investigation and detection of crime are one of the important functions of the police.
- iv. Management, control and regulation of vehicular and pedestrian traffic are the other functions performed by the police station. Traffic offenders are booked and punished for offences committed by issue of challans on the spot. In case of road accidents, the injured is

⁵⁰ *Id* at 145 - 146

rushed to the hospital by Emergency Ambulance 108 for first aid and prompt medical treatment and action is taken against the offenders.

- v. Enquiries in arms licenses and renewal of arms licenses are also taken up and reports submitted within the time limit prescribed.
- vi. Tourist Police: Goa is one of the most popular tourist spots in the country. Due to its moderate climate, the tourists come to Goa round the year. It has become extremely popular after the CHOGM in 1983.

In view of interaction of the tourists with local population, the following needs had to be created for:

- a) Regulating at the Ferry Point, Inter State Bus Terminal.
- b) Information and guidance to tourists.
- c) Management of parking areas at tourist spots.
- d) Patrolling on the beaches to prevent
 - Crime
 - Proliferation of vendors and unauthorized massage boys
 - Unauthorized construction, etc.
- e) Check and control on suspicious foreigners.
- f) Control of the drug menace.

g) Prevention of the drowning cases.

The tourist regulations were part of the general management of the police stations. But due to increase in tourism trade, a separate wing, named as Tourist Police was created under the Tourism Department.

4. General Guidelines⁵¹:

- 1) Fixing service standards in terms of time limit for completion of particular jobs: time limit for furnishing information on action taken reports in all cases is one week. However, in respect of time bound matters, reports are dispatched within the time frame stipulated.
- 2) Improving quality of service for bringing about efficiency and police-public inter face: Policemen are advised to be courteous towards members of public approaching them with their complaints. Grievances/complaints are heard and action taken on merits of the case.
- 3) Avenues for grievance redressed in cases where commitment is not adhered: Members of public are free to meet any senior police officer in case their complaints are not looked into properly or delay is caused at the police station. Notice boards and complaint boxes are put up at every police station for the benefit of aggrieved public.

⁵¹ *Id* at 146 - 147.

5. Superintendent of Police, CID⁵²:

The office of the Superintendent of Police, CID, is situated in the Police Headquarters building at Panaji and he is overall in charge of the Crime Branch and Special Branch, CID.

6. Crime Branch⁵³:

Deputy Superintendent of Police heads the Crime Branch, CID. The Crime Branch deals with collection of criminal intelligence, investigation of cases entrusted to it, under the supervision of SP (CID). It also assists the other police stations in the investigation of the heinous offences.

The service rendered by the Crime Branch to the members of the public are grant of No Objection Certificates (NOC's) in respect of transfer of vehicles and enquiries into antecedents of individuals who apply for conductor badge license in connection with Motor Vehicle license. This is done within seven days.

7. Foreigners Branch⁵⁴:

The foreigners Branch is headed by Deputy Superintendent of Police, CID FB and functions under the overall supervision of SP (CID).

⁵² *Id* at 147.

⁵³ *Ibid*

⁵⁴ *Ibid*

The service rendered to the public by the Foreigner's Branch is:

- 1) Issue of residential Permits on registration: All the foreigners who enter India on the visas valid for a period exceeding 180 days are required to register themselves with the Foreigners Registration Office (FRO). A set of registration forms are issued for which a fee of Rs. 30 is charged and receipt issued. On submission of duly filled in forms, residential permits are issued within a week.
- 2) Processing of application for extension of visa: On receipt of the duly filled in forms along with the required documents for extension of stay, a report is submitted to the Home Department (Foreigners and Citizenship Division) within a week. A set of 3 extension forms are issued at the cost of Rs. 30/- and receipt issued. The FRO is not empowered to grant extension of stay in India to foreign nationals.
- 3) Passport Verification: On receipt of the passport application forms from the Passport Office, the same are dispatched for enquiry to the respective police station and CID, FB within 24 hrs. On receipt of reports from the police stations and CID, FB, consolidated reports are sent to the Passport office within two days.
- 4) Issue of PCC for Migration: On receipt of application for police Clearance Certificate (PCC) for migration aboard, the NOC's are issued

within 2 days after receiving the verification report from the police stations.

- 5) Inquiry into applications for grant of Indian Citizenship: On receipt of applications from the District Magistrate, the applicants' statement is recorded and a report is sent within 2 days.

On receipt of application from the Under Secretary (Home) the applicant is requested to furnish a sworn affidavit for grant of Indian Citizenship. After the sworn affidavit is furnished, a detailed report is sent to the Under Secretary (Home) within a week.

8. Superintendent of Police, Traffic and Security⁵⁵:

The Traffic Cell is headed by Deputy Superintendent of Police (Traffic) and Security Branch by Deputy Superintendent of Police (Security) under the overall control of SP (Traffic and Security).

The Security Branch provides security cover to the protected persons, VIPs/VVIPs etc. The Traffic Cell deals with the management, control and regulation of Vehicular traffic and takes action against offenders' violating traffic laws.

⁵⁵ *Id* at 148.

9. Superintendent of Police (Training)⁵⁶:

The Office of Superintendent of Police (Training) is situated in the Police Headquarters building at Panaji. Deputy Superintendent of Police (Wireless) and Deputy Superintendent of Police (Goa Reserve Police) are working under the overall control of Superintendent of Police (Training).

10. Wireless Section⁵⁷:

There are two Police control Rooms in Goa, one for North Goa and one for South Goa. Police Central Room of North Goa is situated at PHQ, Panaji while the South Goa, PCR is located at Margao. Police Emergency Telephone No. 100 is installed in both the Police Control Rooms. All emergency calls originating from anywhere in North Goa are received at Police Control Room, Panaji while all calls originating in South Goa are attended by the Police Control Room, Margao. Thereafter police assistance is provided to the people in need and distress by the quickest possible means.

In order to reach the affected/injured persons in minimum time possible, mobile vans are deployed for round the clock public service at Panaji, Margao, and Mapusa. The information regarding occurrence of any crime, accidents etc. are reported to the Police Control Room, which in turn passes the information to senior police officers. Deputy Superintendent of Police (GRP) provides

⁵⁶ *Id* at 148 - 149.

⁵⁷ *Ibid*

guards/police protection to vital installations like TV Centre, (All India Radio), Banks, Department of Telecommunication and VVIPs and at the residence of Ministers and other dignitaries visiting Goa.

11. Superintendent of Police, HQ⁵⁸:

The office of Superintendent of Police, HQ is situated in the Police Headquarters building at Panaji. SP (HQ) is the head of office for the administrative office under DGP and all administrative matters of this Department are handled by him.

DY. SP (HQ) functions under the overall supervision of SP (HQ). He monitors the deployment of PHQ Guard, escorts for prisoners to the various courts and hospitals for medical treatment and maintenance, cleanliness and upkeep of the entire PHQ buildings/complex.

12. Superintendent of Police, Maintenance⁵⁹:

Superintendent of Police (Maintenance) has his office situated in the Police Headquarters building at Panaji. He supervises maintenance, servicing, overhauling and repairs of all police vehicles. He also monitors the deployment of police vehicles for various law and order duties including security arrangements for VIPs/VVIPs visit.

⁵⁸ *Ibid*

⁵⁹ *Id* at 149 - 150.

13. Deputy Commandant General, Home Guards/Deputy Director, Civil Defence⁶⁰:

DCGHG/DDCD is the second in command in the Home Guards and Civil Defence Organization. The DGP Goa is the Ex-Officio Commandant General, Home Guards and Director, Civil Defense. The Home Guards organization is a voluntary organization and draws volunteers, both male and female, for enrolment as Home Guards. Home Guards are utilized by the Police Department as 'Auxiliary Force' to supplement the needs of District Police for meeting law and order situations, *bandobust* and for security duties.

14. The Police Training School, Valpoi⁶¹:

Principal, Police Training School is of the rank of Superintendent of Police, heads the police Training School, situated at Valpoi. Recruitment of police constables for Goa Police is done by the office of the Director General of Police. After initial appointment, the recruited police constables are deputed for basic training of 9 months duration to the Police Training School, Valpoi. Training is imparted to them in indoor and outdoor subjects.

Police drivers, after recruitment, are put through a crash course of police basic training for a period of three months. Refreshers/reorientation courses are conducted for Assistant Sub Inspectors, Head Constables and Police

⁶⁰ *Ibid*

⁶¹ *Ibid.*

Constables. The Police Training School has in the past imparted basic training to Customs Guards/Excise Guards/Forest Guards.

3.7. Prisons

*a. Origin of Prison*⁶²:

During the days of the imperialist Portuguese regime, the administration of the jails in the territory of Goa was entrusted to the *Procuradoria de Republica* i.e. Chief Prosecutor who also acted as the Legal Adviser to the government. For the administration of justice the entire territory of Goa was divided into 5 Divisions known as *Comarcas* which were in turn divided into sub-division called *Julgados*. The *Comarcas* having their headquarters at Panjim, Margao, Mapusa, Bicholim and Quepem respectively had a jail situated within their headquarters limits.

In addition the *Julgados* of Marmugoa and Ponda also had jails situated within their territorial limits. The *Delegados* (Public Prosecutors) looked after the Comarca Jails, whereas the *Julgado* jails were looked after by the Sub-*Delegados* (Assistant Public Prosecutors).

After liberation the office of the *Procuradoria de Republica* came under the administrative control of the Law Secretary and Assistant Public Prosecutors were appointed as ex-officio Superintendent of Jails. The office of the

⁶² *Supra* note 15 at 109.

Procuradoria de Republica from 1st March, 1968 was renamed as the office of the Inspector General of Prisons-cum-*Procuradoria de Republica*.

b. Organizational Set-Up⁶³:

The prison system in Goa today comprises of one Central Jail situated at Aguada, one sub Jail cum judicial Lock-up at Sada, Vasco-da-Gama, and three Judicial Lock ups situated at Panjim, Margao and Mapusa. The Home Department deals with matters relating to prisons in Goa. The Home Minister is the political head of the Department and the Secretary (Home) is the administrative head. The Inspector General of Prisons is the executive head of the Department of Prisons in Goa. In the absence of an independent and full-fledged Prisons Department, the Collector of the district of North Goa heads the department and holds charge as the ex-officio Inspector General of Prisons. He is assisted by an Additional Inspector General of Prisons who is a senior scale officer of the Goa Civil Service.

The central Jail situated at Aguada is headed by a Superintendent of Prisons who is an officer belonging to the junior scale of the Goa Civil Service. Soon this would be relocated in Colvale. State is planning to build a modern central jail with high security and facilities such as workshop for prisoners, library, hospital, meditation centre and recreation hall.

⁶³ *Ibid*

The Judicial Lock-ups at Panjim, Margao, Mapusa and Vasco are headed by the respective jurisdictional Deputy Collectors (sub-divisional Officers/sub-divisional Magistrates) who act as ex-officio Superintendent of their respective Judicial Lock-ups.

Panjim sub-jail is located at Panjim police station. Under trials and convicts of less than two years are housed in this jail. It also consists of judicial lockup. Similarly Sub-jail in Vasco – Sada houses under trials and convicts of less than two years preferably whose cases are in South Goa. Mapusa Sub-Jail is located at Mapusa police station, opposite Mapusa post office. Margao Sub-jail is located near to the District Court. Unlike other jails, it has a separate cell for women.

c. Recruitment⁶⁴:

Recruitment in the Goa Jail Service is done at the level of Jail Guard, Assistant Jailor and Jailor. Selection is on the basis of a written examination followed by an interview conducted by the office of the Inspector General of Prisons.

d. Training⁶⁵:

The training prescribed for jail guards is a three months Basic Training Course at the Police Training School at Valpoi. The course is similar to that imparted to the police constables with the difference that the duration of the course is

⁶⁴ *Id* at 113.

⁶⁵ *Ibid*

three months instead of the nine months prescribed for police constables. At present, a batch of newly recruited jail guards are undergoing their initial training at the Police Training School at Valpoi.

The training prescribed for Assistant Jailors and Jailors is a one-year course at the Regional Institute for Correctional Administration (RICA) at Vellore in Tamil Nadu.

e. Parole and Remission of Sentences⁶⁶:

Under the Jail Rules, there are provisions for the remission of sentences and parole, which may be granted to prisoners.

f. Women Prisons⁶⁷:

The women prisoners (convicts as well as under trials) in the state of Goa are usually housed at the Central Jail at Aguada which has a registered capacity of 25 for female convicts and under trials. Women prisoners comprise about 2% of the total prison population in Goa.

g. Jail Manual⁶⁸:

A Jail Manual is a complete compilation of the rules and regulations governing prisons and prisoners. Every jail is governed by it; every prisoner is bound by

⁶⁶ *Ibid*

⁶⁷ *Id* at 115.

⁶⁸ *Ibid*

it. Nearly every state has a Jail Manual of its own. However, till date, no Jail Manual has been prepared for the state of Goa. But there exists the 'Compilation of Rules' which is out of print for the last five years. One copy of this compilation is available at the library of the Central Jail, Aguada. It is not known whether prisoners have access to this copy.

h. A List of the Acts and the Rules in Force in the State Of Goa in Connection with Prisons⁶⁹:

Acts:

- 1) The Prison Act, 1894, in force since 6th February 1964
- 2) The Prison Act, 1900, in force since 6th February 1964
- 3) The Identification of Prisoners Act, in force since 6th February 1964
- 4) The Prisoners (Attendance In Courts) Act, 1955, in force since 6th February 1964
- 5) The Transfer of Prisoners Act, 1950, in force from 19th March 1965.

Rules:

- 1) The Goa Prisons (Remission) Rules, 1965
- 2) The Goa (Identification of Prisoners) Rules, 1966

⁶⁹ *Id* at 115 - 117.

- 3) The Goa Prisons (Visitor of Prisoners) Rules, 1968
- 4) The Goa Prisons (Furlough and Parole) Rules, 1968
- 5) The Goa Prisons (Petition and Appeal) Rules, 1968
- 6) The Goa Prisons (Punishment) Rules, 1968
- 7) The Goa Prisons (Admission, clarification and Separation of Prisons) Rules, 1968
- 8) The Goa Prisons (Convict Officers) Rules, 1968
- 9) The Goa Prisons (Employment of Prisoners) Rules, 1968
- 10) The Goa Prisons (Discipline) Rules, 1968
- 11) The Goa Prisons (Facilities to Prisoners) Rules, 1968
- 12) The Goa Prisons (Lunatics) Rules, 1969
- 13) The Goa Prisons (Classification of Prisons) Rules, 1969
- 14) The Goa Prisons (Prison Buildings and Sanitary Arrangements) Rules, 1969
- 15) The Goa Prisons (Prisoners Property and Documents) Rules, 1969
- 16) The Goa Prisons (Routine) Rules 1969
- 17) The Goa Prisons (Habitual And Hardened Criminals) Rules, 1969

- 18) The Goa Prisons (Staff Functions) Rules, 1969
- 19) The Goa (Civil Prisoners) Rule, 1969
- 20) The Removal of Prisoners Order, 1969.

3.7.1. Correctional Services

a. Probation Services⁷⁰:

The Probation service in the state of Goa comes under the purview of the Department of Women and Child Development. This subject is looked after by a troika of officers who constitute the cadre of the probation service consisting of:

- 1) The Probation Officer
- 2) The District Programme Officer
- 3) The Superintendent-cum-Probation Officer, Apna Ghar, Mercedes.
- 4) The Superintendent Protective Home cum Reception Centre.

However, the post of District Probation Officer has now been delinked from the purview of probation service and has been redesigned as Assistant Director (Scheduled Castes).

⁷⁰ The data has been collected from Department of Women and Child Development, Government of Goa.

b. Recruitment Training and Promotion⁷¹:

The three posts mentioned above are filled by direct recruitment done by the Goa Public Service Commission and by promotion from amongst the cadre of Child Development Project Officers (CDPO). The ratio between direct recruits and promotes is 50:50. The minimum qualification for a direct recruit is a Master's Degree in Social Work, Psychology or Sociology. 50% of the posts are reserved for Child Development Project Officers (CDPOs) having a Master's Degree along with the necessary seniority.

There is no initial pre-service formal training imparted to the probation officers, neither are they sent for orientation or refresher courses conducted by the National Institute Of Social Defence, New Delhi, the Regional Institute for Correctional Administration (RICA), Vellore and other related institutions.

The cadre of probation officers being an isolated cadre comprising of just three officers, no avenues for further promotion exist resulting in low morale and motivation among the officers in the cadre.

c. Pay scale⁷²:

The probation officers are appointed in the pay scale of Rs. 9,300-4200-34,800.

⁷¹ *Supra* note 15 at 123.

⁷² *Supra* note 69.

d. Role of Service Performed by the Probation Officer⁷³:

The main function of a probation officer is to investigate the social background of and supervision over the probationers referred to them by the Court. The legal framework for probation services in the state of Goa is provided by the Probation Of Offenders Act,1958; the Juvenile Justice (Care and Protection of Children) Act 2000; the Criminal Procedure code, 1973(Sec 360); the Goa Prevention of Begging Act, 1972; Prevention of Immoral Traffic in Women Act (PITA).

Under sec 13(b) of the Juvenile Justice (Care and Protection of Children) Act 2000,upon a juvenile being arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform the probation officer of such arrest so as to enable the probation officer to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of any assistance to the Juvenile Justice Board for making the enquiry.

The Juvenile Justice Board before passing an order under the Act with regard to the guilt of the juvenile shall obtain the social investigation report of the probation officer and it shall take into consideration the findings of such report.

⁷³ *Id* at 124.

*e. Reality Check*⁷⁴:

Probation services in the state of Goa are still in a stage of infancy. There exists no proper infrastructure for the conduct of probation services

The role of the probation officer in Goa as of now is just to act as a via media between the accused/convict and the courts. A large part of the probation officer's job entails providing information when requested by the court about the social and economic background of accused whose cases are being considered by the courts for the release on probation. At present the probation officer receives about fifteen requests per mensem for background information

There is no institutional treatment/rehabilitation programme for the juveniles and other probationers. It is a known fact that with respect to the probationers, the probation officer has nothing to do but to make a periodical contact with their homes and report to the courts.

The administrative head of the Apna Ghar, Merces has been designated as Superintendent-cum-Probation Officer. However, this designation is a misnomer as the aforesaid officer does not perform any probation services, which are in reality performed by the Chief Probation Officer.

In reality the Chief Probation officer is the one and only officer performing a semblance of probation work in the territory of Goa. As such the officer is

⁷⁴ *Id* at 124 to 125

overburdened with work, which has a telling effect on the quality of probation work. Further, lack of means of transport and the absence of supporting ministerial staff has worsened the situation resulting in the non-compilation of annual statistics and improper filing and maintenance of records.

3.7.2. Juvenile Correction in Goa- Authorities and Institutions

***a. Origin and Evolution*⁷⁵:**

After the liberation of Goa from the colonial Portuguese rule in 1961, there being no proper institutions to house juvenile delinquents in the Territory, they were sent to the 'Certified School' situated at Khanapur in the Belgaum District of the State of Karnataka. Such an arrangement continued till the 14th of November 1975 when the Bal Niketan, an institution to house juvenile delinquents, neglected and abandoned children was set up at Ribander. In October 1999, the Bal Niketan was shifted to new premises situated in the village of Mercedes. In September 2002, the Bal Niketan was renamed as Apna Ghar by which name it is known today.

***b. Apna Ghar (Bal Niketan)*⁷⁶:**

The Apna Ghar situated at Mercedes is the designated institution which functions as, 1) an Observation Home under section 8 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and 2) a Special Home under section 9 of the

⁷⁵ *Ibid*

⁷⁶ *Id* at 125 - 126.

same Act. The Apna Ghar is headed by an officer designated as Superintendent-cum-Probation Officer. It functions under the overall supervision of the Director, Department of Women and Child Development. The Secretary, Women and Child Development is the administrative head of the Department.

*c. Medical Facilities*⁷⁷:

The medical facilities available at the Apna Ghar are mainly in the nature of two full time staff nurses who have been brought on deputation from the Department of Health Services (DHS). In addition, once a week a medical officer from the Primary Health Centre situated at Corlim visits the institution and looks into the medical needs of the inmates. The institution has also been provided with an adequate stock of basic medicines. In case of serious ailments and emergencies the inmates are admitted either to the Primary Health Centre at Corlim of the Goa Medical College Hospital at Bambolim.

*d. Facilities for Formal and Vocational Education*⁷⁸:

A primary school has been established at the Apna Ghar at Merces wherein classes are conducted from class I to IV. Inmates who progress beyond class IV are sending to the nearest Government Middle and High schools.

⁷⁷ *Id* at 127.

⁷⁸ *Ibid*

The vocational education imparted to the inmates consists of tailoring classes conducted for girls.

***e. Security Facilities*⁷⁹:**

The Apna Ghar at Merces is located on a hillock away from any human habitation. The location provides a degree of isolation which by itself provides for a certain sense of security. In addition, there is a barbed wire fences around the outer perimeter of the complex. The location of the residential quarters of the staff around the building housing the inmates also, to a certain extent enhances the security of the institution. Recently the security of the complex has been handed over to a private security agency, which has deployed two security guards to the institution which prima facie seems to be insufficient.

***f. Juvenile Justice Board (Juvenile Court)*⁸⁰:**

Section 4 of the Juvenile (Care and Protection of Children) Act, 2000 confers on the State Government the power to constitute one or more Juvenile Justice Boards for exercising the powers and for discharging the duties conferred on such boards in relation to juveniles in conflict with the law. Accordingly, the Government of Goa in exercise of its powers under the above provision has constituted a Juvenile Justice Board which has jurisdiction over the entire state of Goa.

⁷⁹ *Id* at 127 to 128.

⁸⁰ *Ibid.*

The board sits at the Apna Ghar at Mercedes and its proceedings are conducted once a week (normally on Mondays). The board consists of a judicial officer normally of the rank of JMFC and two social workers of whom one must be a woman. The above functionaries constitute a bench which shall be vested with all powers conferred by the Criminal Procedure Code, 1973 on a Judicial Magistrate of the First Class. The judicial officer, who has been designated as the Principal Magistrates presides over the proceedings of the Bench.

g. Child Welfare Committee⁸¹:

The Government of Goa in exercise of its powers under Sec 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has constituted a Child Welfare Committee consisting of a chairperson and four members. The Committee has a bench of Magistrates and has been vested with all the powers conferred by the Criminal Procedure Code on JMFC.

The committee has the final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of children, especially neglected as well as to provide for their basic needs and protection of human rights. This Committee has the power to deal exclusively with all proceedings under the Act of 2000 relating to children in need of care and protection.

The above machinery for administration of Criminal Justice in Goa has been evolved over four centuries. The important aspect of it is the continuation of

⁸¹ *Id* at 128 -129.

the system with the Periodic Amendments made. There was some sense of permanence and there were also expectations among the people that those who do not obey the law would be severely punished. The chapter that follows on sentencing and criminal procedure will highlight how the Administration of Justice functioned during the Portuguese Rule and thereafter when Goa was liberated.

CHAPTER-IV

SENTENCING PATTERNS IN PRE AND POST LIBERATED GOA

4. Sentencing Patterns in Pre and Post Liberated Goa

4.1. Concept of Sentencing

It has been proved beyond doubt that during the period the Portuguese ruled over Goa, people were punished severely and consequently it is thought the numbers of crimes committed were very low. When we compare this with the post independence Goa we find there is a steep rise in the number of crimes being committed.

Hence, the question arises as to whether this is due to minimum punishment being granted by the judges on other causes. In view of this conflicting situation, the scholar has thought it fit to carefully examine the factors that have gone into the whole process of sentencing. Sentencing forms a very important aspect of criminal justice system.

Theories of Punishment¹:

It is believed and many have supported the fact that there are different theories of punishment. It is imperative that we go into all these theories because the policy of sentencing is directly linked with the theories of punishment. Punishment as we know, is to counter the wrong doing or criminal attitudes of a person. From age to age, every society has believed that there must be

¹ The discussion regarding purpose of Criminal Justice and the Punishment has been discussed beautifully by Salmond in, *Jurisprudence* Twelfth edition by P. J. Fitzgerald. Pgs. 94 to 100.

punishment for those who break the laws and also those who has commit crimes.

The first theory that has been widely proclaimed and enforced largely in pre-democratic era is the deterrent theory. According to Jeremy Tailor “a heard of wolf is quieter and more at one than many men, unless all have one reason in them or have one power over them. This is supported by Hobbs who says “without a common power to keep them all in awe, it is impossible for individuals to live in society, without it justice is unchecked and triumphant and the life of the people is solitary, poor, nasty, brutish and short”.

These two strong statements have created an opinion that punishment must be severe and should deter any person who commits a crime. The deterrent theory becomes very popular in countries ruled by dictators and religious fanatics. They used this method not to do justice but to create fear in the minds of the people that if they commit a wrong, they would be severely punished. Sometimes hands would be cut or they would be blinded or they would be put to severe strain so that they do not think of committing crimes again.

But as democracy flourished and Human Rights came to be accepted as foundations of democratic life, there was severe criticism regarding the application of deterrent theory of punishment. It was proved with facts that deterrence does not prevent totally the commission of crimes. In spite of threat of death, people still commit murders, grievous hurt, etc. Hence it would not be

right to say that mere deterrence would either eliminate or reduce the occurrence of crimes.

However, this theory fails to achieve the end in view. A hardened criminal becomes accustomed to the severity of the punishment and no amount of deterrence prevents him from indulging in crime. It fails to affect an ordinary criminal, too, for many of the crimes are committed in moment of excitement.²

The second method of looking at punishment is retributive where very inhuman methods have been used like incase of theft, fingers were cut and in case of robbery hands are cut. Various reasons for supporting for retribution may be summarized as follows³

1. Retribution connects the offender to correct values it sends the message to the wrongdoer that what he did was wrong. Retribution should, therefore, not be confused with revenge.
2. It would be unfair to victims if there is no retribution against the wrong doer.
3. It would also be unfair to the law abiding citizens if the offender get undeserved benefit through their criminal acts.

² Tandon Mahesh Prasad and Tandon Rajesh, The Indian Penal Code, 23rd Edition, Pg. 23, 24 (Allahabad Law Agency, Haryana 2005)

³ Ahmad Siddique, Criminology, Problems and Perspectives, 4th Edition, Pg.113(Eastern Book Co. Lucknow 2001)

This method seems to be totally out of touch with the causes for criminal behaviors in society. Crimes occur in society due to various reasons and to use retributive punishment to prevent them or stop them would be like placing the cart before the horse. The retributive theory of punishment is based on the fulfillment of moral justice. A good action deserves to be crowned with a good reward, and a bad action, on the other hand, meets its own fate.⁴ Hence most of the modern writers have discarded this method of punishing persons who have proud to have committed crimes.

Preventive philosophy of punishment is based on the proposition 'not avenge crime but to prevent it'. It presupposes that need for punishment of crime arises simply out of social necessities. In punishing a criminal, the community, protects itself against antisocial acts which endanger social order in general or person or property of its members.⁵

A number of writers came to support the preventive methods because they feel that just like medicine is used for prevention of certain diseases, punishment also could be used as a preventive techniques. Say for e.g.: hanging a person in public as a punishment for committing crime is a preventive method to discourage another from committing murder.

Researches like John Brite, William C. Bailey and Ronald W. Smith all American Sociologist have concluded that the cause of crime cannot be related

⁴ Sethna, M.J., *Society and the Criminal* Pg.238 (N.M. Tripathi Pvt. Ltd, Bombay 1971)

⁵ Paranjape N.V., *Criminology and Penology* Pg.157 (Central Law Publication, Allahabad 2001)

to either deterrence or prevention or retributive theories. One has to solve the root cause for criminal behavior and then only they will be able to determine the cause of the crime.

The three theories mentioned above have a strong historical background and content⁶. They were created as part of the evolutionary process starting with the most uncivilized societies to most democratic and Human Right based societies. We should consider them as important and give them the honour that is done keeping in mind the context in which they were created. They cannot be brushed aside as an abbreviation they had their importance and played their effective role at different times and different societies.

We may quote Justice Krishna Iyer⁷ who informs us that there are generally three kinds of murderers—those who kill on impulse and therefore do not consider the noose before committing the murder, those who are hardened criminals and are again unconcerned with their eventual punishment and lastly, those who kill because of belief and justification in what they are doing.

In all the three cases the eventuality of a death penalty does not deter the killer. If at all there is any other deterrent effect, it lies in the certainty of such punishment and not in its severity. Therefore even while referring other experts like Barnes and Teetens we can conclude that no external threat or pressure

⁶Fitgerard, P.J., Salmond Jurisprudence, 12th Edition, Pgs 94 – 100.

⁷ Krishna Iyer J., “*The State as Executor of the Death Penalty in India*” (1984).

could prevent a person from committing a crime. The three theories do not support a permanent analysis for committing crime by individual.

The reformatory theory remains as one of the most utilitarian theories, that can be accepted for a sound theory in the context of punishment. It is the positive schools which emphasis the concept of 'punishment fitting criminals'. This means each criminal must be looked at individually and he should be suitably reformed so that he does not go back on the wrong path. According to this theory the object of the punishment is to reform the offender. There is actually no punishment given but merely the criminal is rehabilitated so that the person gets accepted in society as a useful citizen.

There are five methods by which this theory could be applied. The first is that the person can be reformed if enough pain is inflicted on the offender. The second method is to change the criminal through mediation by isolating the person. The third method is religious treatment in the name of God, mother country, etc. The fourth method is asking the criminal to agree to give up the bad habits. The last method is by putting the prisoner to strong discipline so that there is change of heart.

From the above discussion we can conclude that punishment though necessary, must be just, human and that which is accepted by the society as reasonable, or would be ideal if we can make criminal repent and switch over to a new path. Every effort must be made that the criminal reconciles to the fact that what he has done is wrong and must change himself for the better. For this purpose,

doors of human rights must be prescribed for those managing prisons, remand homes and correctional centers.

Whatever may be the theory of punishment adopted, the most important aspect is that the citizens should not be taken for the ride. Having understood the importance of different theories of punishment. Let us now move over to the question as to what influences the judges when they punish the offender or what philosophy of sentencing they follow while delivering judgments.

4.2. Sentencing Patterns in Pre-liberated Goa

In any given democratic system there is essentially a court system which is given the task of imposing punishment. This is because no one should feel that a person is punished without proper procedures being evolved or observed. A country stands to gain a good name only if its judicial system is fair, just and procedurally correct. Keeping this in mind, let us see what types of punishment have been imposed under the Portuguese Penal Code and the IPC by way of comparison. The Penal Code prevailing in Goa during the Portuguese era was, “Codigo Penal Portugues”⁸.

⁸ *Codigo Penal Portugues* decreed on 16th September 1886.

Here is a brief summary of the Provisions of Portuguese Penal Code.

Book I

General Dispositions

Title I: Crimes in General and of Criminals

Chapter I : Preliminary Disposition

Chapter II : About Criminality

Chapter III : Agents of Crimes

Chapter IV : Criminal Responsibility

Title II: Of Penalties and its effects

Chapter I : About Penalties

Chapter II : Of effects of Penalties

Title III: Of Application and Execution of Penalties

Chapter I : Of Application of Penalties in General

Chapter II : Of Application of Penalties when there are aggravating or attenuating circumstances.

Chapter III : Application of Penalties in case of recidivism, successive or accumulation of Crime, Complicity delict and frustrated attempt.

Chapter IV : Of Application of Penalties in some special cases.

Chapter V : Of Execution of Penalties

Chapter VI : Of Extinction of Criminal Responsibility (Amended)

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⁹ Art.180 defines Assuada. This crime is committed when people gathered in public cases for committing acts of hatred, vengeance etc., against individuals or to impede or disturb free exercise of individual rights...

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Title V : Crimes against property

Chapter I : Of stealing, Robbery and Usurpation of Immovable Property

Sec 1 : Stealing

Sec 2 : Robbery

Sec 3 : Usurpation of Immovable Property and alteration etc. of boundary marks.

Chapter II : Bankruptcy and Fraud

Sec 1 : Bankruptcy

Sec 2 : Fraud

Sec 3 : Mistrust, Scam and other special frauds.

Chapter III : Of those who open letters or papers belonging to others and reveal the secrets

Chapter IV : Putting on fire and damages

Sec 1 : Putting on fire

Sec 2 : Damages

Sec 3 : Fire and Damages caused in violation of Regulations.

Title VI : Provoking public for crime¹⁰

Title VII : Of Contraventions of Police Regulations

¹⁰ This title has only one article concerning provoking public to crime. This can be done by speeches or words spoken publicly or in a loud voice or even by writing through which the public is provoked to commit a determined crime. (Art.483)

This is the last title in Book II of Portuguese Penal Code. It has three articles namely Articles 484, 485 and 486. These articles deal with contravention of byelaws, municipal regulations and police and administrative regulations.

The above was the outline of Portuguese Penal Code in force in Goa.

The punishments to which offenders are liable under the provisions of Portuguese Penal Code are:

The Punishment for aggravated Homicide (Murder) was imprisonment in Major Cellular Jail for 8 years followed by exile for 20 years along with imprisonment till 2 years at the exiled place or as per the opinion of the Judge or alternatively with fixed exile for 28 years with imprisonment at the place of exile for 8 to 10 years in cases such as: (a) premeditation (b) use of torture and cruelty to increase suffering, (c) when the crime had the object to prepare, facilitate, execute another crime etc. among others.

The punishment for voluntary Homicide (voluntarily kills other) that means one who voluntarily kills another will be punished with 8 years imprisonment in Major Cellular Jail followed by exiled for 12 years or alternatively with fixed exile for 25 years¹¹.

For Hurt a person would be punished for correctional imprisonment for 3 months¹². In case of grievous Hurt, the victim being deprived of reason or

¹¹ *Supra* note 8.

¹² *Id* at Art 359.

incapacitated to work for life punishment would be imprisonment in Major Cellular Jail from 2 to 8 years or in the alternative major imprisonment (*maior temporaria*). The same aggravated penalty will be applied if a person commits corporal offence voluntarily without intention of killing and yet occasions a death.

Theft or stealing was punished with 6 months imprisonment and additional (*multa*) one month if the value of the article was up to 500 Escudos and one more month if the value exceeded 500 Escudos. However if the value of the goods exceeds 500 Escudos up to 2000 Escudos, imprisonment would be one year and *multa* of 2 months and if exceeded 2000 Escudos but less than 5000 Escudos correctional imprisonment of 2 years and *multa* of 6 months.

If it exceeded 5000 Escudos but if not superior to 50,000 Escudos imprisonment of 2 to 8 years or in alternative temporary exile with fine up to one year. If the value exceeded 50,000 Escudos major cellular jail for 4 years, followed by exile of 8 years or in alternative, a fixed penalty of exile for 15 years.

The article also further provided for recidivism on first and second occasion etc. In case the value up to 50,000 Escudos, the punishment would be major cellular imprisonment from 2 to 8 years and incase it exceeds 50,000 Escudos,

major cellular Imprisonment for 4 years followed by exile of 8 years or alternatively fixed penalty of exile for 15 years¹³.

Art. 426 referred to qualified theft (*Furto Qualificado*) due to involvement of other persons or circumstances such as (a) Criminal/some criminals carrying arms open or hidden, (b) Being committed at night etc. (c) By two or more persons, (d) In inhabited houses, in public edifices, in places destined for religious activities, or cemeteries etc. (e) In street and highways etc. (f) Committed by usurping a title, uniforms, insignias etc. of any public official, civil or military or falsely alleging order of a public authority (g) Scaling or using false keys in houses not inhabited or not so destined.

As per Art 433 when robbery is committed or attempted, concurring with the crime of homicide, the punishment of major cellular imprisonment for 8 years will be applied, followed by exile for 20 years with imprisonment of 2 years in place of exile or without it depending on opinion of Judge or alternatively with a fixed penalty of exile for 28 years with imprisonment of 8 to 10 years at place of exile.

In the case of Rape (*Rapto violento or fraudulento*) and Kidnapping, the rape of any woman with dishonest intention through violent physical means or intimidation or fraud which does not amount to seduction or in finding the woman not in her senses. It will be punished as rape with violence (Art 395). Rape of a minor of 12 years with dishonest intention will be punished with

¹³ *Id* at Art 421.

major cellular imprisonment of 4 years followed by exile of 8 years, or alternative, a fixed penalty of exile for 15 years (Art 394).

We can compare the above with the Indian Law which was applied to Goa after liberation. In the case of Murder, a person shall be punished with death or imprisonment for life and may also be liable to pay fine¹⁴. Whoever commits culpable Homicide not amounting to murder shall be punished with imprisonment for life or imprisonment for 10 years along with fine¹⁵.

In the case of Death by Negligence that is who ever causes death of any person by doing any rash and Negligent Act not amounting to Culpable Homicide shall be punished with imprisonment of with description for a term which may be extended to 2 years imprisonment or with fine or both¹⁶.

In the case of a death of a women caused by burns or by bodily injury within 7 years of her marriage and she was treated cruelty and harassed by her husband or his relations in connection with demand for dowry, such death is called dowry death and such husband or relative shall be deemed to have caused her death for such persons the punishment is imprisonment of not less than 7 years which may be extended to the imprisonment for life¹⁷.

¹⁴ Sec 302 of the Indian Penal Code.

¹⁵ *Id* at Sec 304.

¹⁶ *Id* at Sec 304 A.

¹⁷ *Id* at Sec 304 B.

In case of attempt to murder the Punishment shall be for the term of 10 years imprisonment and also liable for fine. In the case of grievous hurt, the Punishment is for 7 years imprisonment or with fine or both¹⁸.

In the case of theft, the Punishment is 3 years imprisonment or with fine or both¹⁹. In the case of Robbery, the Punishment is 10 years and also fine and if the Robbery is committed on highway between sunset and sunrise, it may be extended to 14 years²⁰.

In the case of Dacoity, the Punishment is imprisonment for life or rigorous imprisonment for 10 years and also fine²¹. Further if murder is committed along with dacoity, punishment shall be the imprisonment for life or rigorous imprisonment for the term which may be extended to 10 years with fine²².

In the case of cheating, the punishment is of 7 years and shall be liable to pay fine²³.

In addition to the above provisions of the IPC and some other legislations, create special provisions for treating the convicted persons on the basis of the rehabilitative theory. These are covered under the Probation of Offenders Act, 1958, the Children's Act, 1960 and the Boston School Act.

¹⁸ *Id* at Sec 325.

¹⁹ *Id* at Sec 379.

²⁰ *Id* at Sec 392.

²¹ *Id* at Sec 395.

²² *Id* at Sec 396.

²³ *Id* at Sec 420.

Sec 3 of Probation of Offenders Act enables the Court to release certain offenders after admonition instead of sentencing them to any punishment.

Sec 4 provides for release of certain offenders on probation of good conduct.

Sec 5 empowers the court to require that offenders released under Sec 3 and 4 to pay compensation and cost if deemed proper.

Sec 6 puts certain restrictions on the court in passing the sentence of imprisonment on offenders under the age of 21 years.

Under the Children's Act certain provisions are made for treatment of persons between 7 years and 10 years where it is a boy and a girl who has not attained the age of 18 years. There is also provision for trying the children before Special Courts known as Juvenile Courts.

Under the Boston Schools Act, children are kept under close observation and are provided training which is suitable to them so that they could resort to more helpful and beneficial trade rather than resort to more criminal behavior. The 'young offender' is defined in the act as a person who is not more than 21 years of age.

Under the Suppression of Immoral Traffic Act there is a provision to send wayward and convicted woman to welfare homes and other corrective institutions. There are other legislations which prescribes certain punishment for white collar offences committed under the Essential Commodities Act,

Drug Control Legislation, Prevention of Corruption Act, the Forest Act and the Land Reforms Act.

i. Hierarchy of Criminal Courts

The Hierarchy of criminal courts under the code of Criminal Procedure is as follows.

- A. High Court
- B. Court of sessions
- C. In Metropolitan areas i.e. where the population exceeds one million, there are Chief Metropolitan Magistrate, Metropolitan Magistrate and in some cases, additional Chief Metropolitan Magistrate and special Metropolitan Magistrate.
- D. In non metropolitan areas, Chief Judicial Magistrate and Judicial Magistrate of the First Class, judicial Magistrate of second class and the special Judicial Magistrates.
- E. Executive Magistrate consisting of District Magistrate, Additional District Magistrate, sub-divisional Magistrate and special Executive Magistrate.

ii. Power to pass sentence:

The High Court can pass any sentence authorized by law. The Session Court is empowered to pass any sentence authorized by law. However in cases of sentences of death the sentence passed by the Session Judge and additional sessions Judge requires confirmation of the High Court²⁴.

The powers of Chief Judicial Magistrate and Chief Metropolitan Magistrates are wide. They contain in themselves all the powers of the former District Magistrate without his executive powers and judicial powers including passing of sentences of imprisonment up to 7 years the executive magistrates are not invested with any regular judicial work.

The first schedule annexed to the Code of Criminal Procedure 1973 gives in detail the courts which can try different offences in the IPC. We may specially mention sec 27 of the CrPC which provides the forum for the trial of Juvenile offenders. It states as follows: any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court specially empowered under the Children's Act 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

²⁴ Sec 366, Sec 367, Sec 368 of Criminal Procedure Code, 1973.

iii. Appellate Powers:

To ensure that not only justice is done but also seen to be done, provision is made in the Indian law for appeals. The powers of the Appellate court in this regard are shown in Sec 386 of CrPC. This section states as follows:

The code gives ample powers to the Courts to alter or amend a change. The Appellate Court has full power to review all the evidence upon which the order of acquittal. Now every designated court has power and discretion for awarding a sentence. It is decided by various courts in India including the Supreme Court that this discretion should not be interfered within the appeal court unless the discretion has been exercised arbitrarily or erroneously.

Similarly, though the Appellate court has the powers of reducing the sentence or enhancing the same with the due notice to the offender, it has no power of deleting the sentence while maintaining the conviction. Sentencing is in the description of the Trial court and the function of the appellate court comes in only by way of correction.

A review of the cases on this aspect show that courts will as far as possible respect the decision of the Trial court.

iv. Revisional Powers:

When appeal is provided under sec 377 simultaneously by using this provision one cannot use powers of revision for enhancement of sentence. However when

appeal is not available, revision lies either to the session court or to the High Court for enhancing the sentence.

v. Sentencing

The famous Latin phrase “*Nulla Poena Sine Lege*” meaning the essence of this principle of legality is limitation on penalization by the states officials affected by the prescription and application of specific rules. In a narrow sense, it concerns the sanctions of penal laws and that is no person may be punished except in pursuance of the statute which prescribes a penalty. According to a famous authority on criminal law Prof. Jerome Hall explains in his book ‘General Principles of Criminal Law’ that while applying the phrase “*Nulla Poena Sine Lege*” there is some incompatibility with the principle of legality and actual experience while applying the law.

This is in the context of intermediate sentence probation, suspended sentence, on pleas to misdemeanors, compromise, modified sentence, ‘Good times’ laws, Parole and Pardoned have almost completely transformed 18th century Law and penological ideas. He also refers to demands being made in U.S. notably by psychiatrists for complete elimination of prescribed penalties.

That sentence should be wholly indeterminate and ‘treatment’ should be given by an administrative board of experts who have ample opportunity to study the offender and presumably considerable knowledge concerning rehabilitation. Further ‘Anti Social’ persons would in some sort of proceedings be declared

‘dangerous’ and placed in the hands of experts, to be dealt with as they determined as according to their knowledge of psychiatry or sociology.

According to Prof. Hall, the above thesis was created by the positivist school first developed on the European continent. It was given a very illuminating application by 20th century, Neo-positivists who accepted the strictures on the legal limitation of official power and substituted not enlightenment and benevolence but calculated cruelty all in the unimpeachable cause of ‘social defense’.

Prof. Hall then explains the relation between politics and penal policy. According to him in penal law policy plays an important role in the interpretation of statutes and that penal policy is closely connected with political policy. He explains how in Germany the judge had been freed from ‘slavish adherence to the statute’ long before 1935.

He is only trying to emphasize that a judge has to use his discretion while delivering sentences. The policy of implementing reforms gives the judge the discretion to decide how he will apply the law. It is due to the persuasion of persons like Prof. Jerome Hall that criminal law gained a human face. Hence we justify the arrival of the reformatory theory to deal with criminals and to help enable them to go back to their normal life.

The Malimath Committee on Reforms of Criminal Justice System has said ‘Punishment must be severe enough to act as a deterrent but not too severe to

be brutal. Similarly punishment should be moderate enough to be human but cannot be too moderate to be ineffective’.

The Committee commenting for the needs for sentencing, guidelines states there is no guidance to the judge in regard to selecting the most appropriate sentence therefore each judge exercises discretion according to his own judgment. There is lack of uniformity which some judges are lenient. Some other judges are harsh; therefore the committee suggests that there is need for a law to minimize uncertainty in the matter of awarding sentencing. It also called for thorough examination of this issue by an expert statutory body.

4.3. Dimensions of Sentencing Process:

It is said that a dual system of sentencing is available in courts in India: one based on punitive reaction to offenders and the other which involves the modern individualized rehabilitative measures based on reformatory theory.²⁵ Hence the first major decision the court is called upon to make in the sentencing process is to choose between individualized rehabilitative system and the punitive tariff system having regard to the nature and circumstances of the case and the character and antecedent of the offender.

Sec 360 of CrPC gives the push for this process by providing for orders for release on probation of good conduct or after admonition. Under sec 255(2) in case of summons trial and where the magistrate does not proceed in accordance

²⁵ Sabahit, G.N., Sentencing by Courts in India, 1975, Pg.33

with the provisions of sec 325 or 360, he shall if he finds accused guilty, pass a sentence upon him according to law.

Sec 325 refers to the procedure when the magistrate cannot pass a sentence sufficiently severe. Further under sec 361 of the CrPC for reasons to be recorded, the court can pass an order regarding an accused person who is a youthful offender to provide for his treatment, training or rehabilitation. From this we can see the exercise of dual powers by the court, one of hearing the accused on the aspect of sentence and second of deciding to invoke rehabilitative measures instead of sentencing the offender to punishment.

But the tragedy of the courts in India very happily impose sentencing and hardly taking into account the provisions dealing with probation etc. Mr. Justice S. M. Sikri inaugurating the Probation Year in 1971 said ‘ not only the probation officers should be convinced of the advantages of the probation but the Judiciary and the Bar must become its votaries. Unfortunately, at present, very little serious attention is paid to this aspect by the judiciary or by the Bar²⁶.

Similarly Mr. Justice V. R. Krishna Iyer who was then a member of the Union Law Commission stated as follows. “The 20th century approach to crime and punishment is for us of Gandhian vintage but runs counter to the traditional theory of harsh deterrence writ large in the IPC and the CrPC. The ghosts of Mecauly men of his ilk haunt on criminal courts still, so much so probation

²⁶ See, Joshi N.C., *Readings in Social Defense* Allahabad Wheeler Publishing 1981.

still fares ill in the law courts. 25 years of freedom have not freed our judiciary from the obsolescent British Indian Penology, being on suppression of crime. And it is time our magistracy bends to the winds of socio-legal changes, which have been blowing for a long time now. Orthodoxy and ignorance die hard even among judicial personnel.

The awareness of the need to be educated in the current thought as the cases, syndrome and treatment of criminal and the crime is the beginning of the forensic appreciation of probation and allied methods. Indeed, modern criminal jurisprudence and allied social and psychiatric departments have gone so far ahead of the lagging Indian courts, cloistered in their outworn ideas, that a national training or refresher programme for the criminal judiciary from the lowest to the highest echelons, is an imperative need²⁷.

The Supreme Court too has expressed its disappointment about non use of the reformatory provisions in favour of the offender. In *Kishore Prasad v. State of Bihar*²⁸, the court observed thus 'the Probation of offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain category on probation or after due admonition and for matters connected therewith. The object of the act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of

²⁷ *Ibid.*

²⁸ AIR 1972 SC 2525.

mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.

The above object is in consonance with the present trend in the field of penology according to which efforts should be made to bring about correction and reformation of the individual offender was not to resort to retributive justice. Modern criminal's jurisprudence recognizes that no one is a born criminal and that a good many crimes are a product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reforms of young offenders not guilty of very serious offence and of preventing their association with hardened criminal.

The Act gives statutory recognition to the above objective, it is, therefore provided that youthful offenders should not be sent to jail except in certain circumstances. Before, however the benefit of the act can be invoked, it has to be shown that the convicted person even though less than 21 years of age is not guilty of an offence punishable with imprisonment for life.

We may now take into consideration the antecedent of the criminals for the purpose of sentencing. While imposing a sentence, the court does keep in its mind the character of the offender and his antecedents. According to Dr. Harisingh Gaur²⁹ for the purpose of consideration of awarding sentences, divided all criminals into three classes. The casual, the habitual and the professional.

²⁹ Harising Gaur, *Penal Law of India*, (N.M.Tripathi Ltd, 1972) Pg 384.

In the case of Casual, the court will be very synthetic and give away with minor sentencing. The Habitual criminal will get strict punishment but then the judge may have to command circumstances in which the crime was committed like the existence of famine, hunger and the desperate condition of the family. The professional is one who prepares systematically to commit crimes and will do anything to achieve his goal in such cases sentencing will have to be done by the judge keeping in mind how dangerous the offender can be to the society and it would be better he languish in jail rather than create tensions to the society.

Sometimes the judge may be placed in very peculiar situation where there are conflicting objectives and the judicious choice in sentencing would have to be made. An e.g. in this regard is found in *State of Maharashtra v. Nasein Khan and Others*³⁰. In this case the respondent in both the appeals were prosecuted in case no. 254 of 1964 in the court of sessions for Greater Bombay. They were charged with various offences. Respondents were members of a union known as B.E.S.T Union. In about the middle of August 1963, the union declared a strike. B.E.S.T was running a bus service in the city of Bombay. As a result of declaration of the strike several workers struck work.

It appears that some of the workers disregarded the call for strike and continued to work. On the third day of the strike, when a single Decker bus no. BMR 3561 was proceeding on the road, the respondent in criminal appeal No. 181 of

³⁰ AIR 1971 SC 381.

1967 threw burning petrol on the conductor, Abdul Khader, as a result of which Abdul sustained several severe injuries, and his face was practically burnt up. At the time of the occurrence one of the respondent's cause grievous hurt to the driver, Kamala Shankar Misra. During the cause of the incident, injuries were also caused to police constable Namdeo Arjun Kharat who was on *bandobust*, duty in the bus. Injuries sustained by the conductor and the driver were quite serious.

The conductor sustained boils on the face, left ear and in the arms and he had to be in the hospital for over 20 days. The drivers left ear was cut and the flap of the ear was hanging. Further there was fracture of cartilage. The offence committed by the respondent was very serious and the resulting damage to the bus was grave and also there was serious injury to the conductor and driver. The sentences that were imposed were to run concurrently and the maximum sentence given to the accused No. 1 amounted to 2 years and on the rest 1 year.

The accused appealed to the High Court and the High Court let them off on probation. When the matter went to the Supreme Court, the Supreme Court took the High Court to task. The court observed that it could not understand what the judge meant by saying that the accused did not belong to a regular class of criminals. It went on to say that the social wrongs are sought to be remediated in the street, and then these can be neither peace nor progress. It set aside the High Court order and allowed the sentence by the Trial Court.

It will be interesting to narrate here the case of Pancham Singh a dreaded dacoit who was the leader of a 60 member gang of hardcore dacoits in the Chambal Valley. He was wanted by the police for the crimes he had committed at and a reward of Rs. 1.30 lakhs was kept to receive information about him so that he could be arrested. He had committed offences like murder, kidnapping and dacoities, when he knew that it was difficult for him to escape, he surrendered with his gang and asked for pardon. The court which tried him sentenced him to death.

The late Shri Jaiprakash Narayan intervened and the government reduced their sentence to life imprisonment and after 8years they were released for good behavior. Pancham Singh joined the Brahmakumari Movement and all the money he had obtained by looting, he started spending for charitable purposes and constructed a school in Madhya Pradesh. He is now leading a peaceful life with his family and he has turned to agriculture by growing vegetables in 6.25 acres land allotted to him by the government under the ex-dacoit rehabilitation scheme³¹.

This case is a beautiful example of how the process of sentencing can be balanced between the judge, the government and the prosecution to enable the criminal to come out of his condemned life and turn a new leaf by becoming an honest citizen of the country.

³¹ *The Hindu* dt 3.2. 1996, Pg 4.

On appeal High Court found that the said articles were not only in the possession of the appellant but also were manufactured by him and they were below the prescribed standard.

In the Supreme Court the whole question revolved round whether the said articles came within the definition of drugs under Sec 3(b) of the Act. The Supreme Court without any hesitation confirmed the decision of High Court and said that the appellant was guilty of an anti social act of a very serious nature hence in its view of the punishment of rigorous imprisonment for 3 months given by the High court was more lenient than severe. Hence it felt there was no case for interference with the sentences.

When one considers the provisions for the Probation of Offenders Act, the role of the High Court to pass orders came to be scrutinized in the Supreme Court in the case *Rattan Lal v. State of Punjab*³³. In this case the question was whether the High Court had jurisdiction to exercise its powers under Sec 6 of the Probation of Offenders Act 1958 in respect of an accused who was convicted by the Trial court before the Act came into force.

In this case the appellant committed house trespass and tried to outrage the modesty of a girl aged 7years. He was convicted by the magistrate 1st class under Sec 451 and Sec 454 of the Indian Penal code and sentenced to 6months rigorous imprisonment and fine of Rs. 200/-. The appellant was 16years at the time of his conviction. The Act was extended to Gurgaon District on 1st Sept

³³ AIR 1965, SC 444.

1962 and therefore at the time appellant was convicted by the magistrate. The magistrate had no power or duty to make any order under the act.

The appellant preferred an appeal to the Additional Sessions Judge Gurgaon who dismissed the appeal but by this time the act had come into force in that area. The appellant went in revision to the high Court which was also dismissed. Finally the appellant filed a petition in the High Court under Art 134(1) (c) of the constitution for certificate for fitness to appeal to the Supreme Court.

The main argument before the Supreme Court was whether the High Court should have acted under Sec 11 of the Act and release the appellant on probation of good conduct instead of sending him to the prison. The state opposed any relief to the appellant in this regard. The court by majority held that the High Court should have used its powers under Sec 11 of the Act since a reading of Sec 6(1) of the Act along with Sec 11 would give sufficient power to the High Court to pass the order for putting the accused under the Probation of Offenders Act.

However Justice Raghuban Dayal gave a dissenting judgment against the majority and he stated that the High Court cannot interfere in such cases. The main thrust of the Supreme Court decision was that one should not go against the tide of reforms. Rather one should go out of the way to help it. Ratanlal had to be reformed and not put in jail for what he had done.

The question of High Court performing the functions of a trial Court came for discussion in a very interesting case coming from Goa decided by the *Judicial Commissioner v. Jetley*³⁴. In this case, the petitioner Babu Raghunath Naik was convicted by the learned Judicial Magistrate Vasco-Da-Gama of theft of a coconut tree, under Sec 379 of IPC and sentenced to rigorous imprisonment for 15 days and fine of Rs. 50/-.

The main charge against the accused was, he cut the coconut tree and used the wood to construct his cottage. But that was not the problem. The question was whether one who is found so guilty by lower Court can request the High Court to intervene under the Probation of Offenders Act, 1958.

The Court held that since the offence committed was not very serious, the accused should be released after admonition and was ordered to pay compensation for the loss of the tree. The court felt that though it did not had the power to reverse the decision of the Trial Court, it was reluctantly confirming the findings of the Trial Court by only reducing the sentence.

The question of sending young offenders to jail for commission of less serious offences came to be discussed in the Supreme Court in *Daulat Ram v. State of Haryana*³⁵. The facts of the case are that on Dec 20, 1968 at about 4pm, Smt Sardaro along with her mother in-law Smt Sarbati had gone to their Gitwar for taking fuel. Smt Surti, wife of Net Ram and mother of appellant Daulat

³⁴ AIR 1967, Goa, Daman and Diu, Pg 65.

³⁵ 1972, Vol. 2 SCC 626.

Ram came out of a residential house and went to her Gitwar through Smt Sardaros Gitwar. Smt Sardaro prohibited Surti to pass through her Gitwar. Surti abused Sardaro. There upon Net Ram and his son Daulat Ram armed with lathis rushed to her Gitwar and gave blow on her head which hit her cheek below her left eye.

Thereafter Net Ram and Daulat Ram were tried and convicted under Sec 325/34 and 323/34 of the IPC. In appeal the High Court upheld the conviction but the sentence was reduced. Now Daulat Ram on the date of his conviction was less than 21years. The question was whether he could be granted Probation. The Court decided to give the benefit of the Probation Act to Daulat Ram. The sentence of imprisonment was set side and he was released on a bond of Rs. 500/-. The court in doing so highlighted the laudable reformatory objects which legislature was seeking to achieve by enacting it.

There is another instance where the Supreme Court has gone in favour of reforms in sentencing process. Another important case decided by the Supreme Court and in which it gave full support for reformatory provision was *Abdul Qayum v. State of Bihar*³⁶. In this case the Supreme Court took the lower Courts to task for not correctly applying the Probation of Offenders Act for those below the 21years. It held that neither the Trial Court nor the High court applied their mind to the requirement and they completely misdirected themselves as to the essential requirement of Sec 6 of the Act. It held that the

³⁶ 1972, Vol. 1 SCC 108.

provisions must be viewed in the light of laudable reformatory object which legislature was seeking to achieve by enacting the legislation. The court allowed the appeal but the sentence was set aside with directions for the release of the appellant under Sec 4 of the Act.

In the above referred cases, the appellant was convicted under Sec 379 of the IPC and sentenced to rigorous imprisonment for 6 months. Abdul Qayum was found guilty of pick pocketing and since he was below 21 years of age, he had sought relief under the Probation of Offenders Act.

Payment of compensation to Victims of offences:

Apart from the case of the Probation of Offenders Act there has been another development in Indian scene and that is the question of Reparation to the victim of an offence. Under Criminal law a person who has done wrong gets punishment but the person who is wronged gets nothing. Keeping this in mind there has been a growing tendency to provide reparation to the victim of the wrong. Many world systems have provided compensation to those who are suffering. According to J. N. Sabhahit, there are 3 patterns of compensating the victims of a crime:

1. The state may take for itself this responsibility in defined classes of cases.

2. The offender can be sentenced to pay a fine by way of punishment for the offence and out of that fine compensation can be awarded to the victim.
3. The court trying the offender can, in addition to punishing him according to law, direct him to pay compensation to the victim of the crime or otherwise make amends by repairing the damage done by the offender.

The Law Commission in its 42nd Report has very strongly recommended payment of compensation to those affected by the Criminal Act. In Chapter III Para XVII the Commission explains this to say³⁷.

“From the above, we can conclude that there is a strong public opinion in India to provide compensation to the victims of crimes by the Criminals. It may not be before we see laws being passed to make this a reality. This will go hand in hand with reforming the sentencing system”.

Dr. Justice V. S. Malimath Committee in its **“Reforms of Criminal Justice System”** has made some important recommendations regarding sentences and sentencing procedure. The committee finds that the variety of punishments prescribed is limited. There is a need to have new forms of punishment such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without recommendation or remission.

³⁷ Law Commission 42nd Report 1971, Pg 216.

The committee also recommends that there should be statutory guidelines to regulate description of the judges and to that extent the committee feels that there must be permanent statutory committee being constituted for the purpose of prescribing sentencing guidelines. A further recommendation is a pregnant women with child below 7 years should instead of being sent to prison be ordered to be under house arrest. This is to protect the legitimate rights of the unborn and young children.

The Supreme Court of India has explained the role, the public prosecutor has to play. In *Habib Mohammed v. State of Hyderabad*³⁸, The Supreme Court laid down the need to have proper prosecutors who could independently function with regard to their work. Commenting upon the duty of prosecutor, the Court said, 'it is the bounden duty of the prosecutor to examine a material witness partly clarify when an allegation has been made that prosecuted he would not speak the truth, not only adverse effect would arise against the prosecution case from his non production of a witness in view of ill extraction (9) to sec 114 of the Evidence Act but the circumstances of his being withheld from the court casts a serious reflection on the fairness of the trial.

The Supreme Court in *S.B. Shahane v. State of Maharashtra*³⁹ has laid down a detailed judgment as what should be the powers and functions of the public prosecutor. In this case the appellant was police prosecutor appointed by

³⁸ AIR 1954 SC 51.

³⁹ AIR 1995 SC 1628.

Inspector General of Police in Maharashtra. On their appointment they became the personnel of Maharashtra State Police Department. The dual status they were occupying came to the question in the High Court for a Director to the government for the exclusion from its police department so as to free them from the administrative and disciplinary control of the Inspector General of Police.

When the application was rejected by the High Court they came before the Supreme Court in appeal. The Supreme Court taking support of the XIVth report of the Law Commission laid down the law in favour of complete separation of police department from the prosecutor department. The Supreme Court felt that it is absolutely necessary that Assistant Public Prosecutor is completely freed from the administration and disciplinary control of the Police Department.

This was in the best interest of Justice. In view of this and criticizing the judgment in the High Court, the Supreme Court allowed the appeal and directed the government of Maharashtra to constitute a separate cadre of Assistant Public Prosecutor either on state basis or district wise basis by creating a separate prosecution department for them and making the head to be appointed to such department directly responsible to the State Government for their discipline and conduct of all prosecutions conducted by them.

The Department of Prosecution:

In order to get clean conviction for offences committed, much would depend upon the investigation done by the police and the role played by the prosecution to place the evidence before the Trial Judge. One of the reasons why there are fewer convictions in India as well as in Post Liberated Goa is the lack of expertise and training among police as well as prosecutor to secure conviction in criminal matters. It has to be remembered that the public prosecutor is representing the state and a large burden is cast on him to do justice. Each of the prosecutors must be aware of his role and the expectation of the public to secure justice.

There have been instances where the prosecutors have done excellent job in presenting evidence even in very complicated cases. Even the police department has worked hard to ensure that the investigation is correctly done and sufficient evidence is collected to ensure that the wrong doers are brought to book. In the administration of criminal justice the public prosecutor and the defense counsel play the part in assisting the Magistrate and the Judge to come to the right conclusion in the matter of sentencing. Most of the states in India are having department of prosecution and this department is getting more and more professionalized.

The prosecution must place before the Court any material that helps to Mitigate the gravity of the crime and extenuates the severity of the sentence on the

accused. He should also place materials concerning the antecedents of the accused and the circumstances of the offence.

In view of the fact the Department of Prosecution has to be strengthened and made more effective, the suggestions made by Justice V.S. Malimath Committee are useful. Some of the relevant suggestions are given below⁴⁰:

- 1) Every state must have a Director of Prosecution who should be appointed from among suitable police officers of the rank of D.G.P. in consultation with the Advocate General of the State.
- 2) All Assistant Public Prosecutors and Prosecutors shall be subject to administrative and disciplinary control of the Director of Prosecution.
- 3) The Director must function under the guidance of the advocate general.
- 4) Assistant Public Prosecutors must be given intensive training both in theoretical and practical aspects.
- 5) The Director is empowered to call for reports especially in regard to the cases which lead to acquittal to ensure accountability.

There is one more problem in India and that is too many agencies are involved in investigation. There should be co-coordinators between them to ensure quick and effective results. Further, the complex and varied methods employed in the commission of socio-economic crimes do not admit of traditional methods of

⁴⁰ *Report of the Committee on reforms of Criminal Justice System 2003*, Chairman Dr. Justice V. S. Malimath Pgs 127, 128.

investigation rather we require new technique of investigation backed by latest scientific and technical expertise.

A critical analysis of the cases decided by the Supreme Court of India help us in understanding the problems involved in punishing persons who have committed Socio-economic crimes. Here below are given some of the examples which go to support the above given conclusions.

In *New Piece Goods Bazar Co. Ltd v. Commissioner of Income Tax*⁴¹. The Supreme Court had to consider the interpretation to “Capital Charge” and “Annual Charge”. This was an appeal against a judgment of the High Court of Bombay in an income tax matter and it raised the question whether municipal property tax and urban immovable tax are payable under the relevant Bombay Act. The Assesses Company was an investment company deriving its income from properties in city of Bombay.

The question before the Court was whether the municipal taxes paid by the applicant company were allowable deduction under the Income Tax Act. The High Court answered all the questions in the negative. The Supreme Court however reversed the decision of the High Court and allowed the appeal and permitted reduction.

⁴¹ AIR 1950 SC 165.

In the case of *Rahula Hariprasad Rao v. State*⁴², The appellant was the licensee of two petrol filling stations at Guntoor. He was also the Presidency First Class Bench Magistrate Shivala; he had managed, what has been described as a vast business at several places. In 1946, the applicant and his two employers were tried before the Sub-Division Magistrate at Guntoor and convicted in each of the cases.

The charge was that they had supplied petrol to 3 cars without taking coupons in contravention of clause 22 read with clause 5 of Motor Spirit Rationing Order which was promulgated under Rule 81(2) of Defense of India Rules and they had also accepted coupons relating to 2 other cars in advance without supplying petrol in contravention of clauses 27 of the order. Here also they had supplied petrol without issuing coupons.

The question to be decided in this appeal arose upon a plea taken by the appellant that he was First Class Magistrate at Shivala and he had issued orders to all his servants not to deviate from the rules under any circumstances and that he would not be made liable for the transaction of the rules committed by his employees.

The matter went up to the Privy Council on the single question whether mens rea was necessary to constitute an offence under rule 81 of the Defense of India

⁴² AIR 1951 SC 204.

Rules. It was argued that mens rea was essential element to convict a person under the rules and since that he was absent he could not be convicted.

The Supreme Court of India partly allowed the appeal stating that the clause was aimed specifically against the supplier but it was general in its language and it would hit the individual person who contributes the wrong and the only person also furnishes motor spirit contrary to the provision of the order will be affected by the contravention.

It was held that the master need not be held responsible for the acts of his servant and they only should be punished. This is an important case because it dwells upon the issue of vicarious liability of a master for wrongs done by his servants. In today's business employers have to rely much upon the character of the workmen to get certain things done but if the servants' let down their master they go beyond the permissible limits then the master will not be made liable. The case settles the issue of liability in socio-economic crimes committed by the servants in the existing master servant relationship.

The Supreme Court of India has over the years laid down guidelines as to who shall be finally responsible if one of the persons in the chain of Management defaults. In commercial transactions and in socio-economic situation the question does arise as on whom state shall take action in case of death or injury to persons. Such a situation arose in the case *Chief Inspector of Mines v.*

*Karamchand Thapar*⁴³. In this case there was a tragic accident in Amlabad colliery (coal field) in Manbhum District in the state of Bihar as a result of which 52 persons lost their life and one escaped with injury. The court of inquiry in its report found that the accident and the circumstances attending the accident was due to negligence and non observance of some of the regulations of the Indian Coal Mine Regulation 1926.

The government then constituted a Court of Inquiry into their conduct. Criminal proceedings were also instituted against 14 persons including Manager and the agent of the colliery. All the directors of the company were the owner of the colliery and the Directors of the Managing agents of that company. They were booked for the violation of several regulations made under the Indian Coal Mine Regulations 1926.

The sub divisional Magistrate took cognizance of the offences and issued processes against all the 14 persons. 6 of the accused persons including the appellant filed applications before the High Court of Patna for the issue of appropriate writs or orders quashing the criminal proceedings. The main ground for this was prosecution of all directors was not permitted by the Mines Act 1952. The Directors and Managing agents not being owners could into be prosecuted.

⁴³ AIR 1951 SC 838.

The High Court dismissed the applications of Manager and agents and allowed the applications of the Directors of the Managing Agent. In the two criminal cases the two directors obtained special leave to appeal against the direction of the High Court before the Supreme Court. The Court held that the very fact that in Sec18, 22 and 61, the owner, agent, and manager have been separately made responsible clearly shows that the Legislature did not think that Agent or manager would come within the definition of 'owner'.

The Managing agent company not being either agent or manager or owner of the mine, there was no question of contravention by that company or any of its directors of the Coal Mine Regulation can arise. The High Court had therefore rightly quashed the criminal proceedings against the directors of the Managing agent company. Thus the appeal was allowed.

From the above decisions, we can conclude that the Supreme Court has very carefully separated the issues when it came to deciding the question of liability for crimes committed in the socio-economic sector.

We may take another example where the Supreme Court resolved a socio-economic problem so as to avoid enlargement of a dispute which could lead to criminal consequences in future. The case at hand is *Alembic Chemical Works Co Ltd v. The Workmen*⁴⁴; in this case there was a dispute between the appellant that is Alembic Company and its workmen. This dispute related to a single

⁴⁴ AIR 1961 SC 647.

demand made by the respondents with regard to leave. Further this demand was split into 3 parts:

- a) One month privileged leave with full salary and dearness allowance on completion of 11 months service in a year with a right to accumulate for 6 months.
- b) One month sick leave with full salary and dearness allowance on completion of 11 months service in a year with a right to accumulate for the entire period of service.
- c) Every workman should be entitled to take leave in proportion to the number of days he is in service of the company at the time of his application for the same. The government referred the matter to the Industrial Tribunal.

The Tribunal, with regard to privilege leave ordered that leave should be granted to the staff members. It permitted only 15 days sick leave and refused to grant leave in proportion to service. The company appealed to the Supreme Court. The Supreme Court decided that the Tribunal acted within its powers. It further lay down that while industrial Adjudication seeks to do social justice, it cannot ignore the needs of National Economy.

Here it disagreed with the Tribunal especially with regard to leave or sick leave and decided that the Tribunal should not ignore the consideration that unduly, generous or liberal leave provision would affect the production but for that

court agreed with the Tribunal findings and dismissed the appeal. From the above case we can conclude that the court has shown high concern for the welfare for the workers and by helping the workers get their legitimate demands. The court thus indirectly, has maintained the balance in the society.

There has been a spurt of activities by anti social elements attempting to adulterate food for personal gain. They have not even spared babies in arms by selling fodder as baby milk. Such crimes cannot be pardoned and opportunity came to the Supreme Court of India.

In case of food Adulteration, all persons are prohibited from selling adulterated food and they can be criminally punishing the wrong doer. In the case of *Sarjoo Prasad v. State of Uttar Pradesh*, the appellant was convicted by the Magistrate First Class of an offence under Sec 7 of Prevention of Food Adulteration Act of 1954. He was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 2000/-.

The Allahabad High Court confirmed the sentence. He went to the Supreme Court for relief. The Supreme Court held that the prohibition of sale of adulterated food applies to all persons who sell adulterated food and for contravention of the prohibition all such persons are penalized because the legislature has sought to penalize a person who sells adulterated food by his agent, it cannot be assumed that it was intended to penalize only those who may act through their agent. The conviction was upheld as what the appellant was doing was highly dangerous to society.

A number of persons have committed criminal acts in the name of Import and export. In *Abdul Aziz v. State of Maharashtra*⁴⁵ the appellant was convicted under Sec 5 of the Imports and Exports (Control) Act, 1947. He was sentenced for 3 months rigorous imprisonment and a fine of Rs. 2000/-.

The appellant was the chairman of the Malegaon Power Loom Saree Manufacturers' Co-operative Association Ltd. He and the members of the association were prosecuted for committing offence under Sec 5 of the Act. They were acquitted by the Trial court. The state appealed against the acquittal of the appellant alone. The appeal was allowed and he was convicted of the offence under Sec 5 of the Act.

The Supreme Court confirmed the decision of the High Court. The chairman was aware that the association would not be able to utilize all the yarn to be imported under the license applied for and that case appears to be a deliberate case of securing import license with the view to misapply the goods imported.

In another case the Supreme Court of India had to deal with the problem of smuggling by a crew member in a ship. The problem was who should be punished for this offence. In *Indochina Stream Navigation Co. Ltd v. Jasjeet Singh*⁴⁶, the offence committed here was that certain alteration was done in the ship to hide gold and smuggle it into India. The Court felt that the mere fact that the master or the owners of the vessel were not shown to have been privy

⁴⁵ AIR 1963, SC 1470.

⁴⁶ AIR 1964, SC 1140.

to such alteration would not be sufficient to exclude them from the operation of Sec 52-A of the Customs Act 1878.

By deciding that the legislature intends by necessary implication, the exclusion of mens rea in dealing with contravention of Sec 52A, the Court upheld the conviction of the concerned so that illegal smuggling which has the effect of disturbing very rudely the national economy of the country should be stopped. Thus the persons involved in this smuggling activity were appropriately punished and appeal was dismissed.

We now have the example where the accused committed fraud causing loss to the government to the extent of Rs. 1000/-. The case was *Baidyanath Prasad Shrivastava v. State of Bihar*⁴⁷. In this case the Order of the Patna High Court setting aside the order of the acquittal passed by the second Additional Session Judge Muzaffarpur and convicting him for an offence under sec 467 of IPC and passing sentences of 3 months rigorous imprisonment.

The facts were for the relief and rehabilitation of people who had suffered in 1954 in heavy floods in Sitamarhi sub-division, the government of Bihar was granting loans to needy and suitable persons under the Agricultural Loan Act 1884. The appellant was Mukhtar practicing at Sitamarhi.

He forged signatures to secure the loan. This resulted in trial and conviction at the High Court. The session judge had acquitted the appellant because he

⁴⁷ AIR 1968, SC 1393.

admitted that he has done at the behest of somebody else. The Supreme Court reversed the decision of the High Court and upheld the decision of Session Judge acquitted the appellant.

In another case *Murlidhar Megaraj Loya v. State of Maharashtra*⁴⁸, Justice Iyer had the opportunity to comment upon Food Adulteration Law. Right at the beginning of the judgment he said “judicial fluctuation in sentencing and societal seriousness in punishing have combined to persuade parliament to prescribe inflexible, judge proof sentencing minima in the food adulteration law. This deprivatory punitive strategy sometimes inflicts harsher than deserved compulsory imprisonment on lighten offenders, the situation being beyond judicial desecrater even if prosecution and accused consent to an amelioration course”.

In this case the appellant was convicted for crushing Khurasani as well as Groundnuts in the same mill resulting in the presence of 30% groundnut oil in Khurasani oil. He was thus accused of adulterating Khurasani by mixing both. Confirming the sentence and dismissing the appeal the court held the appellant guilty for adulteration because the act did not give any scope for mitigating the punishment. The Supreme Court indeed very correctly interpreted the law to ensure that anti social elements in society do not escape punishment.

From the pattern of sentencing, let us now proceed to the next Chapter which deals with Crime Occurrence in State of Goa.

⁴⁸ AIR 1976, SC 1929.

CHAPTER-V

CRIME OCCURRENCE IN GOA

5. Crime Occurrences in State of Goa

This chapter deals with the crime occurrence in Goa and therefore, forms the crux of the thesis. It is the centre point of the whole investigation because we started with the hypothesis that the crime occurrence in Goa during the colonial period was very much less than the period after Goa was liberated from the Portuguese rule. We have discussed the indicators that must have affected the growth or rise of criminal behavior among the people.

We have specially considered the situation in Goa during the Portuguese rule that of less exposure to education and consequently less development of the region with the exercise of more control and the existence of very less freedom. These factors must have been responsible for a large number of persons to migrate from Goa to the neighboring states and especially to cities like Mumbai, Chennai, Kolkata and Karachi. Consequently the population left behind had to live with fear and deprivation.

In this chapter we are going to analyze with recorded and available data regarding the crime occurrence in Goa taking some years prior to liberation and some years after liberation just to examine how this pattern worked. We look into table 1: which gives us the occurrence of crimes; we may not go into all the crimes that are occurred but we will concentrate upon the major criminal activity and can be connected to Murder, Culpable Homicide, Grievous Hurt,

Dacoity, Robbery, Theft, Criminal breach of Trust, Threat, Mischief, Rioting, Unlawful Assembly, Kidnapping, Assault on Public servant and Rape.

5.1. Crime Occurrence in State of Goa Before Liberation

Table 1: Table of Cases reported in the year 1953

| Nature of case / Name of Crime | Imprisonment | | | | | | | | | | Destination | | | | | | | |
|--|--------------|------|-----|----------------------------|----|----------|-----|-------|-----|-----|--------------------|----|----------------------|-----|-----------|----|-----------------------------|----|
| | Accused | | | Existing from 1/01/1953 | | Captured | | Total | | | Common Tribunal | | Other Destination | | Left Free | | Existing from 31/12/1953 | |
| | M/F | M | F | M | F | M | F | M/F | M | F | M | F | M | F | M | F | M | F |
| Offences against public tranquility | 16 | 15 | 1 | 8 | 8 | 81 | 64 | 89 | 72 | 17 | 22 | 21 | 32 | 24 | 29 | 21 | 6 | 6 |
| Contempt of lawful authority of public servant | - | - | - | - | - | 10 | 10 | 10 | 10 | - | - | - | 1 | 1 | 1 | 8 | 1 | 1 |
| Disobedience | 1 | 1 | - | - | - | 13 | 12 | 13 | 12 | 1 | 12 | 11 | - | - | 1 | 1 | - | - |
| Offenses relating to coins | - | - | - | - | - | 2 | 2 | 2 | 2 | - | - | - | - | - | 2 | 2 | - | - |
| Forgery | 4 | 4 | - | 5 | 5 | 2 | 2 | 7 | 7 | - | 1 | 1 | 4 | 4 | - | - | 2 | 2 |
| False information / Declaration | - | - | - | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| Vagrancy / Beggary | 4 | 3 | 1 | - | - | 15 | 8 | 15 | 8 | 7 | 5 | 5 | 3 | 3 | 7 | - | - | - |
| Others | 7 | 7 | - | 3 | 3 | 38 | 29 | 41 | 32 | 9 | 3 | 3 | 24 | 16 | 11 | 10 | 3 | 3 |
| Homicide | 12 | 7 | 5 | 3 | 2 | 82 | 69 | 85 | 71 | 14 | 55 | 45 | 4 | 4 | 21 | 18 | 5 | 4 |
| Frustrated homicide | - | - | - | - | - | 7 | 6 | 7 | 6 | 1 | - | - | - | - | 5 | 5 | 2 | 1 |
| Abortion | 5 | 4 | 1 | - | - | 1 | - | 1 | - | 1 | - | - | - | - | 1 | - | - | - |
| Hurt | 1547 | 1365 | 182 | 26 | 25 | 110 | 105 | 136 | 130 | 6 | 40 | 38 | - | - | 74 | 71 | 22 | 21 |
| Threat | 160 | 141 | 11 | 1 | 1 | 5 | 4 | 5 | 5 | - | 1 | 1 | - | - | 3 | 3 | 1 | 1 |
| Molestation | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Rape | 2 | 2 | - | - | - | 2 | 2 | 2 | 2 | - | 2 | 2 | - | - | - | - | - | - |
| Defamation | 97 | 82 | 15 | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| Offenses against public morality | 1 | 1 | - | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| Others | 266 | 219 | 47 | 2 | 2 | 60 | 50 | 61 | 52 | 10 | 21 | 19 | 5 | 4 | 33 | 23 | 2 | 2 |
| Simple Theft | 429 | 382 | 47 | 61 | 58 | 286 | 261 | 319 | 28 | 129 | 118 | 32 | 31 | 186 | 115 | 58 | 53 | 31 |
| Qualified theft | 62 | 59 | 3 | - | - | 95 | 94 | 95 | 94 | 1 | 56 | 56 | 7 | 7 | 32 | 31 | - | - |
| Robbery | 262 | 261 | 1 | 6 | 6 | 28 | 27 | 34 | 33 | 1 | 19 | 18 | 8 | 8 | 8 | 8 | 4 | 4 |
| Others | 298 | 274 | 24 | - | - | 9 | 9 | 9 | 9 | - | 3 | 3 | 1 | 1 | - | - | - | - |

Source: ANUÁRIO ESTATÍSTICO 1953 (Índia Portuguesa – Repartição Central de Estatística e Informação)

Figure 1.1

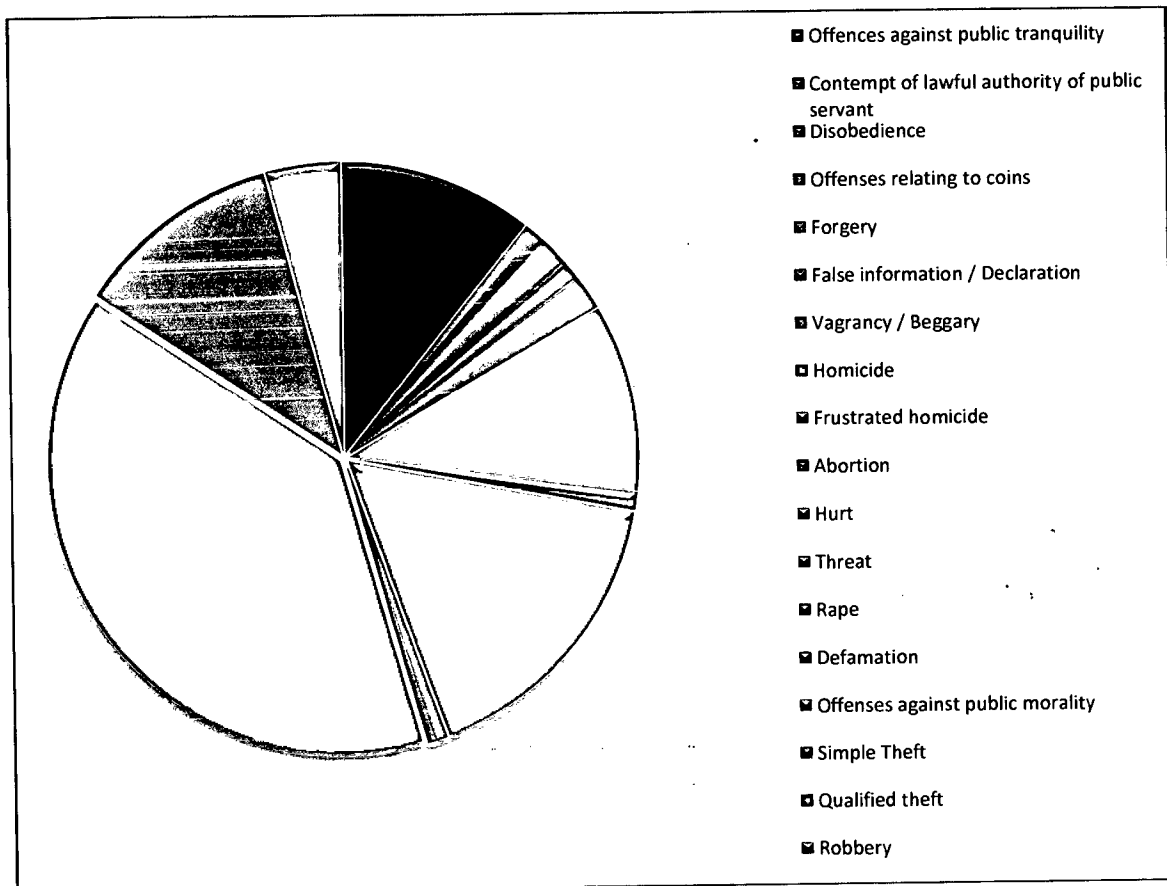


Figure 1.2

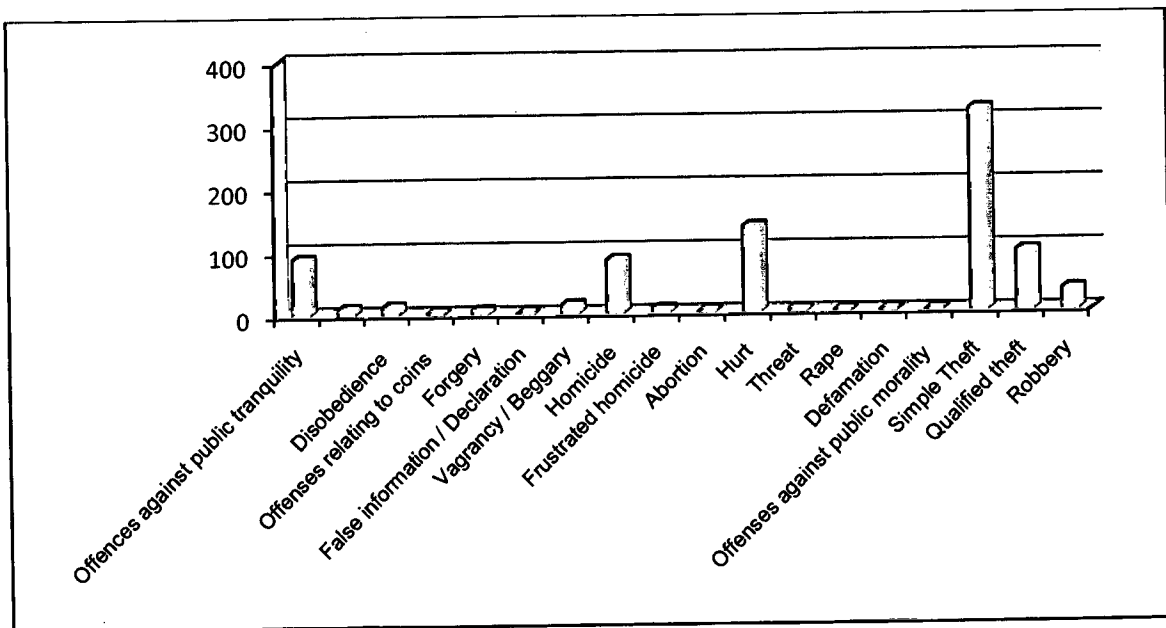


Figure 1.1 and 1.2., gives a complete picture of the above related crimes and we find that there were nearly 1547 cases of hurting the body. The second place regarding crimes is related to simple theft (429 cases) and other kinds of crimes deals with threat and robbery. There were only two cases of Rape, and there were about sixteen cases of Crimes against Public Tranquility. There was cases on qualified theft, 429 cases on simple theft, 262 cases on Robbery, 160 cases on Threat, four cases of Forgery and only one case of Molestation, 62 Proportionately the Crimes are very low and it appears that the public was concerned with maintaining peace and living in tranquility.

Table 2: Table of Cases reported in the year 1954

| Nature of Crime / Nature of Case | Imprisonment | | | | | | | | | | Destination | | | | | | | |
|--|--------------|-------------|------------|---------------------------|----------|------------|------------|------------|------------|----------|--------------------|------------|----------------------|-----------|-----------|-----------|--------------------------|----------|
| | Accused | | | Existing from 1/1/1954 | | Captured | | Total | | | Common Tribunal | | Other Destination | | Left Free | | Existing from 1/12/54 | |
| | M/F | M | F | M | F | M | F | M/F | M | F | M | F | M | F | M | F | M | F |
| Offences against Public Tranquility | 11 | 8 | 3 | 23 | 25 | 422 | 415 | 445 | 438 | 7 | 47 | 47 | 68 | 64 | 154 | 153 | 176 | 174 |
| Contempt of the lawful Authority of Public Servant | - | - | - | 1 | 1 | 6 | 6 | 7 | 7 | - | 7 | 7 | - | - | - | - | - | - |
| Disobedience | 7 | 4 | 3 | - | - | 6 | 6 | 6 | 6 | - | 4 | 4 | 2 | 1 | - | - | - | - |
| Offences Relating to Coins | - | - | - | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| Forgery | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| False Imprisonment | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Beggary | - | - | - | - | - | 8 | 8 | 8 | 8 | - | 2 | 2 | 1 | 1 | - | - | - | - |
| Others | 8 | 8 | - | 22 | 22 | 406 | 399 | 428 | 421 | 7 | 88 | 88 | 65 | 61 | 154 | 153 | 176 | 174 |
| Crime Against persons (Total) | 1335 | 1159 | 176 | 4 | 3 | 106 | 103 | 110 | 106 | 4 | 75 | 73 | 15 | 14 | 19 | 13 | 1 | 1 |
| Murder | 10 | 8 | 2 | - | - | 24 | 24 | 24 | 24 | - | 21 | 21 | - | - | 3 | 3 | - | - |
| Attempt to Murder | 1 | 1 | - | - | - | 2 | 2 | 2 | 2 | - | 1 | 1 | - | - | 2 | 1 | - | - |
| Abortion | 2 | 1 | 1 | - | - | 1 | - | 1 | - | 1 | - | - | - | - | 1 | - | - | - |
| Hurt | 887 | 782 | 105 | - | - | 25 | 25 | 25 | 25 | - | 21 | 21 | 2 | 2 | 2 | 2 | - | - |
| Threat | 109 | 96 | 13 | - | - | 4 | 4 | 4 | 4 | - | 4 | 4 | - | - | - | - | - | - |
| Molestation | 86 | 73 | 13 | - | - | 5 | 5 | 5 | 5 | - | 5 | 5 | - | - | - | - | - | - |
| Rape | 1 | - | 1 | - | - | 3 | 3 | 3 | 3 | - | 3 | 3 | - | - | - | - | - | - |
| Defamation | 37 | 30 | 7 | - | - | 3 | 3 | 3 | 3 | - | 3 | 3 | - | - | - | - | - | - |
| Public Morality | 1 | 1 | - | - | - | 1 | 1 | 1 | - | 1 | - | - | - | - | - | - | - | - |
| Others | 201 | 167 | 34 | 4 | 4 | 89 | 37 | 42 | 40 | 2 | 16 | 15 | 13 | 12 | 12 | 12 | 1 | 1 |
| Offences Against Property (Total) | 787 | 739 | 48 | 21 | 2 | 265 | 259 | 287 | 280 | 7 | 207 | 200 | 19 | 19 | 57 | 57 | 4 | 4 |
| Simple Theft | 143 | 126 | 17 | 15 | 1 | 107 | 104 | 112 | 109 | 3 | 81 | 78 | 7 | 7 | 23 | 23 | 1 | 1 |
| Aggravated theft | 33 | 27 | 6 | 3 | 4 | 61 | 60 | 64 | 63 | 1 | 60 | 59 | - | - | 1 | 1 | 3 | 3 |
| Robbery | 222 | 222 | - | 4 | 4 | 32 | 29 | 36 | 33 | 3 | 27 | 24 | - | - | 9 | 9 | - | - |
| Fraud | 26 | 24 | 2 | - | - | 6 | 6 | 6 | 6 | - | 4 | 4 | - | - | 2 | 2 | - | - |
| Breach of Trust | 86 | 79 | 7 | 2 | 1 | 12 | 12 | 14 | 14 | - | 6 | 6 | 1 | 1 | 7 | 7 | - | - |
| Damage | 198 | 190 | 8 | 6 | 6 | 13 | 13 | 19 | 19 | - | 4 | 4 | 10 | 10 | 14 | 14 | - | - |
| Others | 79 | 71 | 8 | 1 | 1 | 35 | 35 | 36 | 36 | - | 25 | 25 | 10 | 10 | 1 | 1 | - | - |

Source: ANUÁRIO ESTATÍSTICO 1954 (Índia Portuguesa – Repartição Central de Estatística e Informação)

Figure 2.1

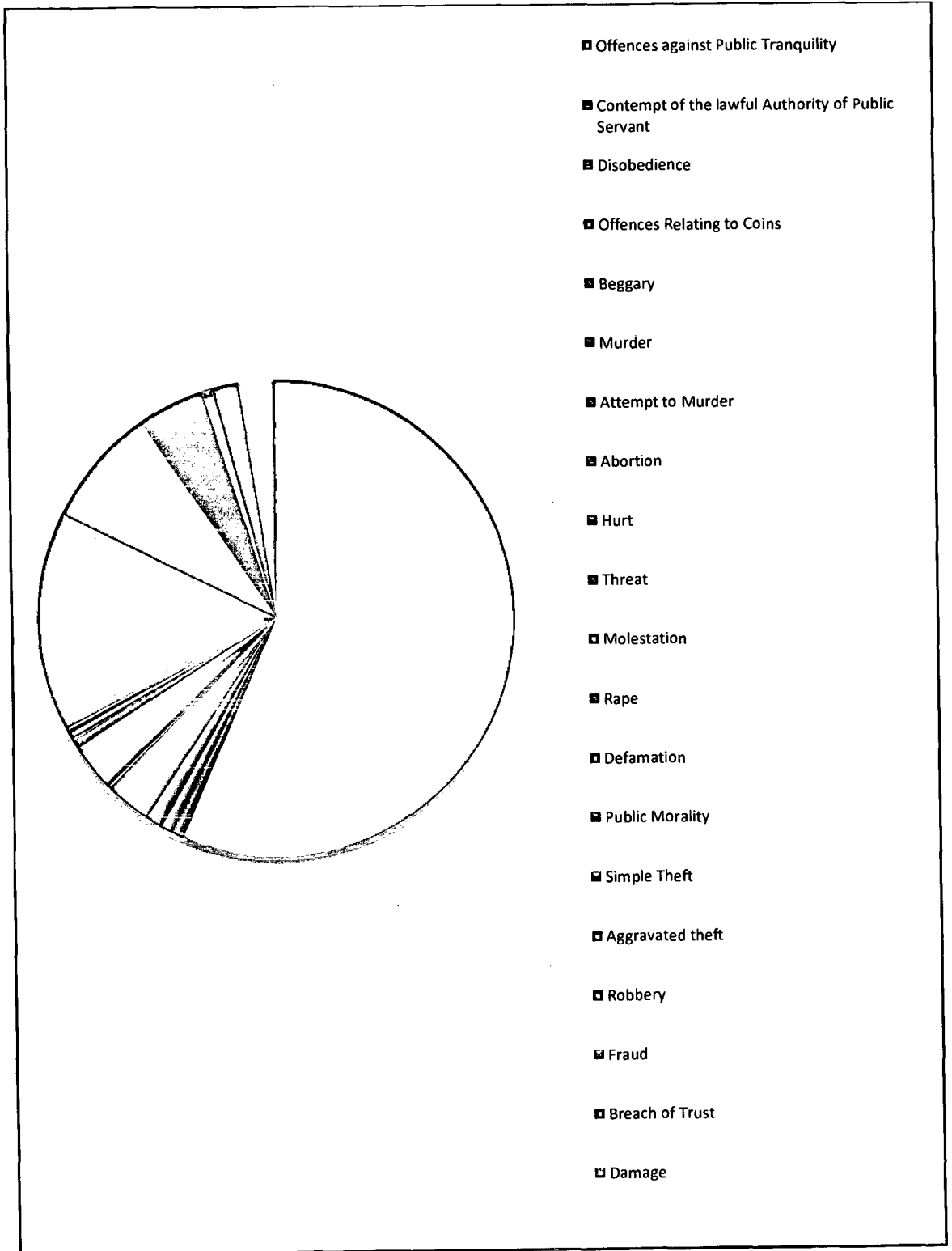
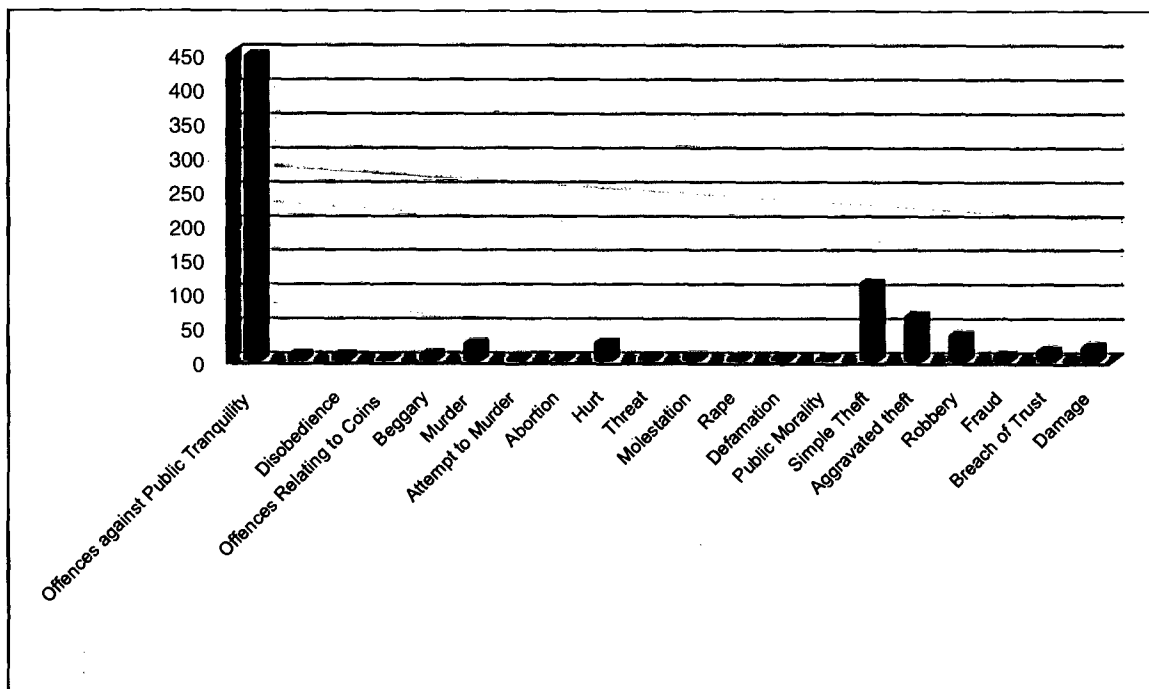


Figure 2.2



From figures 2.1. and 2.2., one can see that the crimes against person were 1335 out of which 10 were for murder that is voluntary Homicide and 1 was attempt to murder that is frustrated Homicide. There were 787 offences against the property, 143 in theft and 33 in aggravated theft, 222 cases of Robbery. Only one case of forgery was reported and 11 cases of offences against public tranquility. From this we can conclude that in 1954 the crime rate was quite low as compared with the population ratio in India.

Table 3: Table of Cases reported in the year 1956

| Nature of Crime / Nature of Case | Imprisonment | | | | | | | | | | Destination | | | | | | | |
|--|--------------|-----|----|---------------------------|---|--------------------------|-----|-------|-----|----|-----------------|----|-------------------|----|-----------|----|--------------------------|---|
| | Accused | | | Existing from 1/1/1956 | | Captured during the year | | Total | | | Common Tribunal | | Other Destination | | Left Free | | Existing from 1/12/56 | |
| | M/F | M | F | M | F | M | F | M/F | M | F | M | F | M | F | M | F | M | F |
| Offences against Public Tranquility | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Contempt of the lawful Authority of Public Servant | 4 | 4 | - | - | - | 6 | 5 | 6 | 5 | 1 | 5 | 4 | - | - | 1 | 1 | - | - |
| Disobedience Offences Relating to Coins | - | - | - | - | - | 6 | 6 | 6 | 6 | - | 5 | 5 | - | - | 1 | 1 | - | - |
| Forgery | 1 | 1 | - | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| False Imprisonment | - | - | - | - | - | 1 | 1 | 1 | 1 | - | 1 | 1 | - | - | - | - | - | - |
| Beggary | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Others | 13 | 13 | - | - | - | 101 | 99 | 101 | 99 | 2 | 3 | 3 | 45 | 44 | 44 | 43 | 9 | 9 |
| Crime Against persons (Total) | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Murder | 11 | 11 | - | - | - | 80 | 66 | 80 | 66 | 14 | 21 | 19 | 19 | 19 | 38 | 26 | 2 | 2 |
| Attempt to Murder | - | - | - | - | - | 4 | 3 | 4 | 3 | 1 | 4 | 3 | - | - | - | - | - | - |
| Abortion | 9 | 5 | 4 | - | - | 3 | 2 | 3 | 2 | 1 | 2 | 1 | - | - | 1 | 1 | - | - |
| Hurt | 559 | 507 | 52 | - | - | 55 | 54 | 55 | 54 | 1 | 29 | 28 | 1 | 1 | 24 | 24 | 1 | 1 |
| Threat | 48 | 45 | 3 | - | - | 7 | 7 | 7 | 7 | - | 5 | 5 | - | - | 2 | 2 | - | - |
| Molestation | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Rape | 6 | 6 | - | 2 | - | 10 | 8 | 12 | 8 | 4 | 6 | 6 | - | - | 5 | 1 | 1 | 1 |
| Defamation | 29 | 21 | 8 | - | - | 4 | 3 | 4 | 3 | 1 | 3 | 2 | 1 | 1 | - | - | - | - |
| Public Morality | 2 | 1 | 1 | - | - | 4 | - | 4 | - | 1 | 1 | - | - | - | - | - | - | - |
| Others | 73 | 68 | 5 | - | - | 90 | 71 | 90 | 71 | 19 | 16 | 15 | 17 | 16 | 56 | 39 | 1 | 1 |
| Simple Theft | 135 | 119 | 16 | 2 | 2 | 141 | 136 | 143 | 128 | 15 | 90 | 86 | 6 | 6 | 44 | 33 | 3 | 3 |
| Aggravated theft | 18 | 15 | 3 | 1 | 1 | 62 | 57 | 63 | 58 | 5 | 45 | 45 | - | - | 16 | 11 | 2 | 2 |
| Robbery | 22 | 22 | - | 8 | 8 | 7 | 6 | 15 | 14 | 1 | 9 | 8 | - | - | 6 | 6 | - | - |
| Fraud | 2 | 2 | - | - | - | 1 | 1 | 1 | 1 | - | - | - | - | - | 1 | 1 | - | - |
| Breach of Trust | 63 | 58 | 5 | - | - | 17 | 16 | 17 | 15 | 2 | 8 | 6 | - | - | 8 | 8 | 1 | 1 |
| Damage | 10 | 9 | 1 | - | - | 16 | 16 | 16 | 16 | - | 8 | 8 | 2 | 2 | 4 | 4 | 2 | 2 |
| Others | 24 | 21 | 3 | - | - | 8 | 7 | 8 | 7 | 1 | 5 | 4 | - | - | 3 | 3 | - | - |

Source: ANUÁRIO ESTATÍSTICO 1956 (Índia Portuguesa – Repartição Central de Estatística e Informação)

Figure 3.1

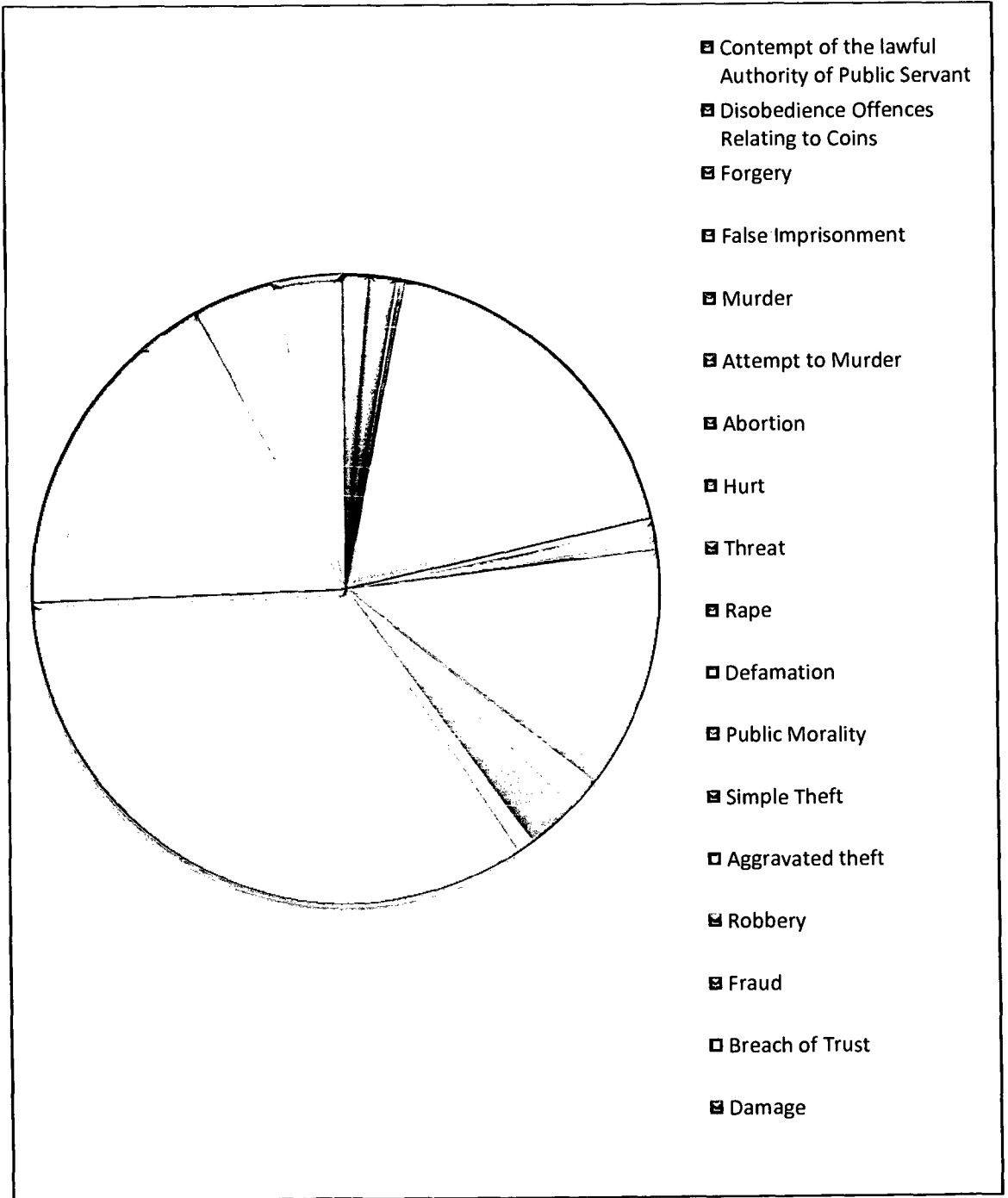
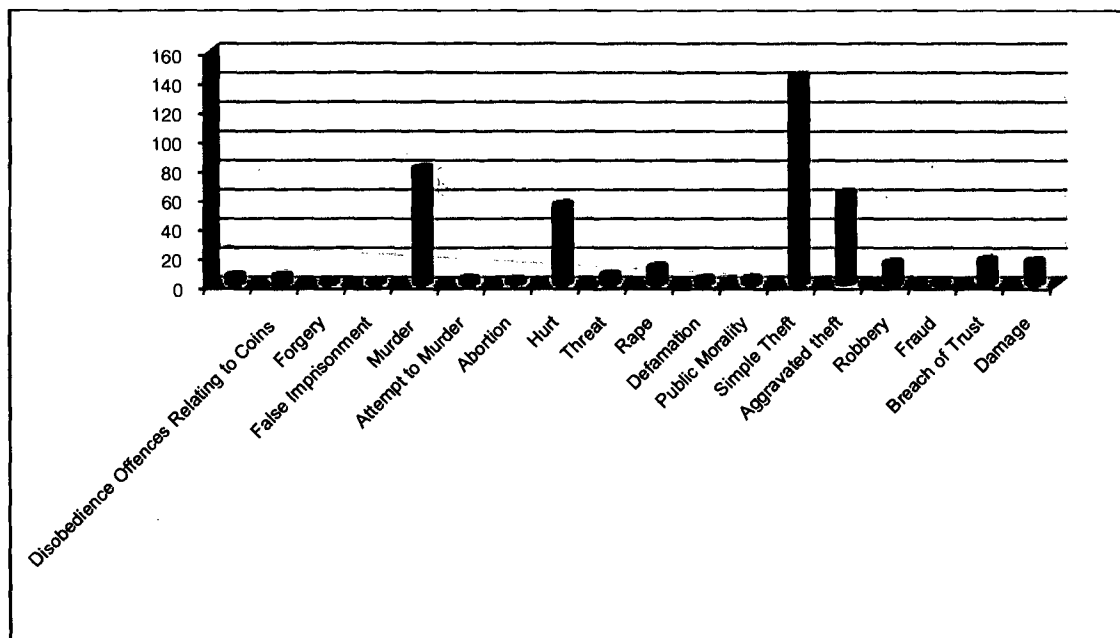


Figure 3.2



Figures 3.1. and 3.2., deals with persons accused and sentenced during 1956. During this period no major crimes have been recorded. Regarding crimes against property there were 135 male accused and 119 female accused. There were more cases in connection with defamation i.e. 29 and 21. There were about 22 cases of Robbery by males and 7 of them have been punished. This table also gives us indications about a very low account of crimes during the Portuguese period.

5.2. Crime Occurrences in State of Goa after Liberation

Table 4: Crimes in Goa in the year 1962

| Sr. No. | Heads | No of Crimes |
|---------|------------------------------|--------------|
| 1 | Murder | 19 |
| 2 | Attempt to Murder | 7 |
| 3 | Culpable homicide | 1 |
| 4 | Dacoity | 8 |
| 5 | Robbery | 50 |
| 6 | HBT by day | 29 |
| 7 | HBT by night | 264 |
| 8 | Theft | 495 |
| 9 | Receiving of Stolen property | 4 |
| 10 | Cheating | - |
| 11 | Cr. Br. Of Trust | 58 |
| 12 | Counterfeiting | - |
| 13 | Mischief | 67 |
| 14 | Rioting | 17 |
| 15 | Unlawful Assembly | 2 |
| 16 | Escape from Legal custody | - |
| 17 | Adm. Stup. Of Drugs | - |
| 18 | Hurt | 232 |
| 19 | Kidnapping | 11 |
| 20 | Assault on Public servant | 46 |
| 21 | Anti Corruption | - |
| 22 | Other Offences | 214 |
| 23 | Fatal Accidents | - |
| 24 | Other Accidents | - |
| 25 | Other IPC Cases | - |
| 26 | Rape | - |
| | TOTAL | 1525 |

Source: N.Dilip Kumar, Goa Police, History and Evolution, 1999.

Figure 4.1

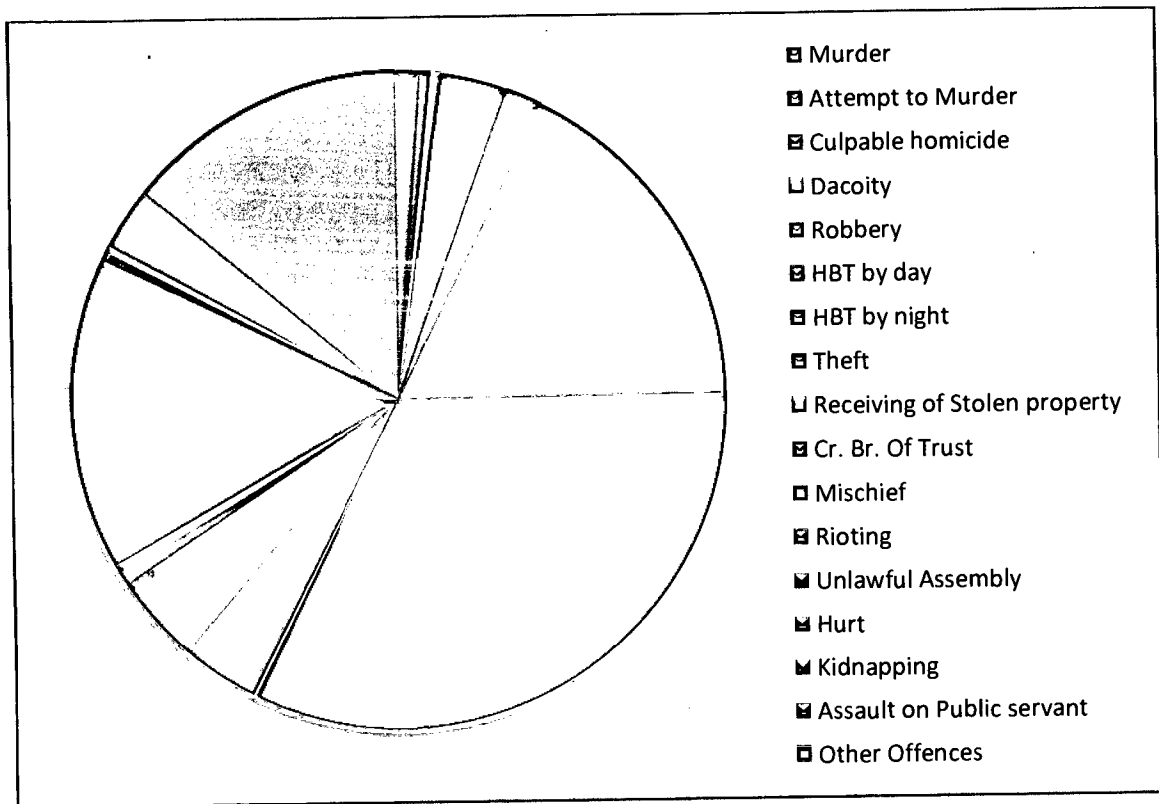
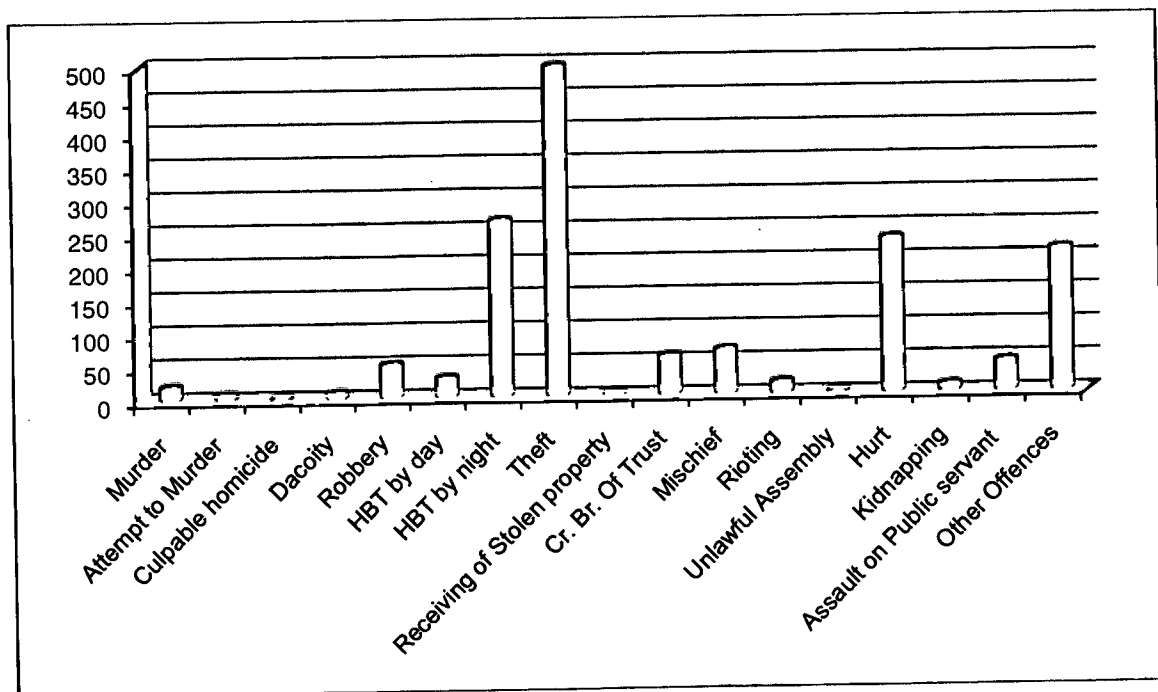


Figure 4.2



Crimes in Goa in 1962

The year 1962 is the watershed years for Goa since it was liberated from the Portuguese rule in December 1961. From the table of crimes committed as shown in Table III, we find that there is a sudden jump of 19 Murders being committed, 7 attempt to Murders, 1 Culpable Homicide, 8 Dacoities, 50 Robberies, 495 cases of theft, 2 cases of Unlawful Assembly, 11 cases of Kidnapping and 46 cases of assault on Public Servants.

This was a transition year for transforming the Portuguese ruled colony into an Indian Territory. There was a change in the system of Laws and as expected, there was plenty of Chaos and confusion. The Indian Officials were at sixes and sevens regarding the application of Laws. The people took advantage of the situation and mischief mongers had a heyday. This explains the sudden rise in crimes immediately after the Indian rule was introduced.

Table 5: Crimes in Goa in the year 1966

| Sr. No. | Heads | No of Crimes |
|----------------|------------------------------|---------------------|
| 1 | Murder | 10 |
| 2 | Attempt to Murder | 4 |
| 3 | Culpable homicide | 2 |
| 4 | Dacoity | 5 |
| 5 | Robbery | 28 |
| 6 | HBT by day | 88 |
| 7 | HBT by night | 316 |
| 8 | Theft | 675 |
| 9 | Receiving of Stolen property | 7 |
| 10 | Cheating | 22 |
| 11 | Cr. Br. Of Trust | 69 |
| 12 | Counterfeiting | - |
| 13 | Mischief | 43 |
| 14 | Rioting | 35 |
| 15 | Unlawful Assembly | 9 |
| 16 | Escape from Legal custody | 9 |
| 17 | Adm. Stup. Of Drugs | - |
| 18 | Hurt | 188 |
| 19 | Kidnapping | 6 |
| 20 | Assault on Public servant | 2 |
| 21 | Anti Corruption | 5 |
| 22 | Other Offences | 414 |
| 23 | Fatal Accidents | - |
| 24 | Other Accidents | - |
| 25 | Other IPC Cases | - |
| 26 | Rape | - |
| | TOTAL | 1962 |

Source: N.Dilip Kumar, Goa Police, History and Evolution, 1999.

Figure 5.1

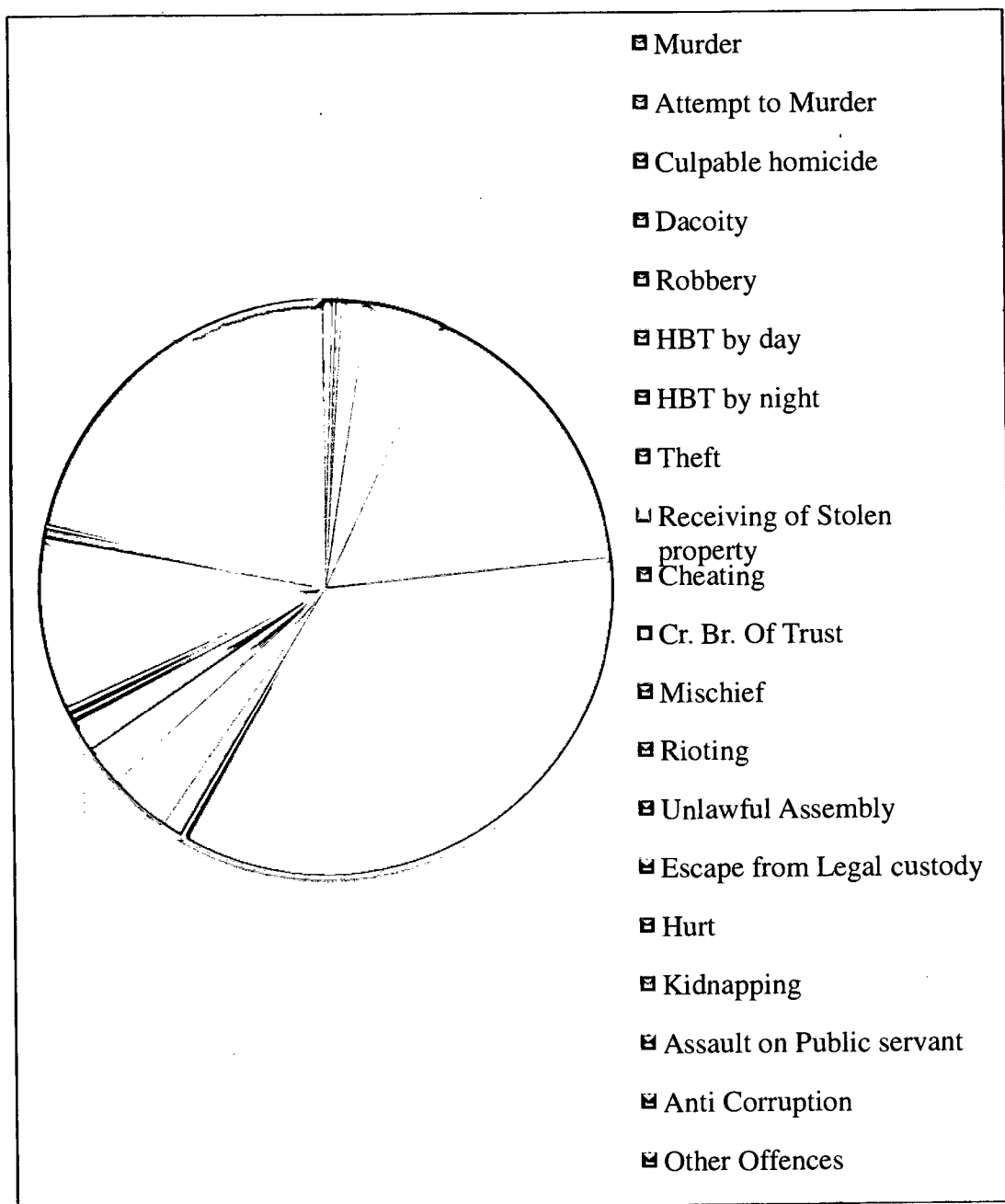
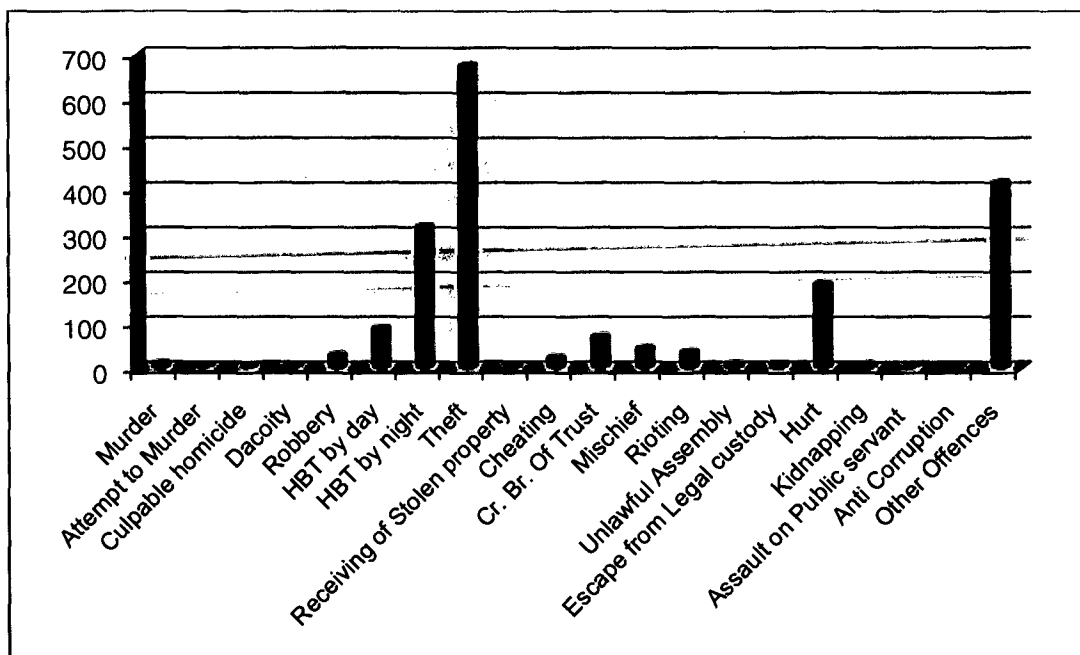


Figure 5.2



Figures 5.1. and 5.2., shows a decrease in the number of Murders compared to the earlier table. There were only 10 Murders which have been reported. There were 4 attempts to Murder, 2 Culpable Homicide, 5 Dacoities, 28 Robberies, 675 cases of Theft, 22 Cases of Cheating, 69 Criminal Breach Of Trust, 43 cases of Mischief, 35 Rioting and 6 cases of Kidnapping with only 2 cases of Assault on Public Servant.

Table 6: Crimes in Goa in the year 1975

| Sr. No. | Heads | No of Crimes |
|----------------|------------------------------|---------------------|
| 1 | Murder | 11 |
| 2 | Attempt to Murder | - |
| 3 | Culpable homicide | 3 |
| 4 | Dacoity | 3 |
| 5 | Robbery | 38 |
| 6 | HBT by day | 71 |
| 7 | HBT by night | 426 |
| 8 | Theft | 739 |
| 9 | Receiving of Stolen property | 2 |
| 10 | Cheating | 32 |
| 11 | Cr. Br. Of Trust | 51 |
| 12 | Counterfeiting | - |
| 13 | Mischief | 43 |
| 14 | Rioting | 73 |
| 15 | Unlawful Assembly | 1 |
| 16 | Escape from Legal custody | 5 |
| 17 | Adm. Stup. Of Drugs | - |
| 18 | Hurt | 222 |
| 19 | Kidnapping | 11 |
| 20 | Assault on Public servant | 19 |
| 21 | Anti Corruption | 4 |
| 22 | Other Offences | 690 |
| 23 | Fatal Accidents | - |
| 24 | Other Accidents | - |
| 25 | Other IPC Cases | - |
| 26 | Rape | - |
| | TOTAL | 2444 |

Source: N.Dilip Kumar, Goa Police, History and Evolution, 1999.

Figure 6.1

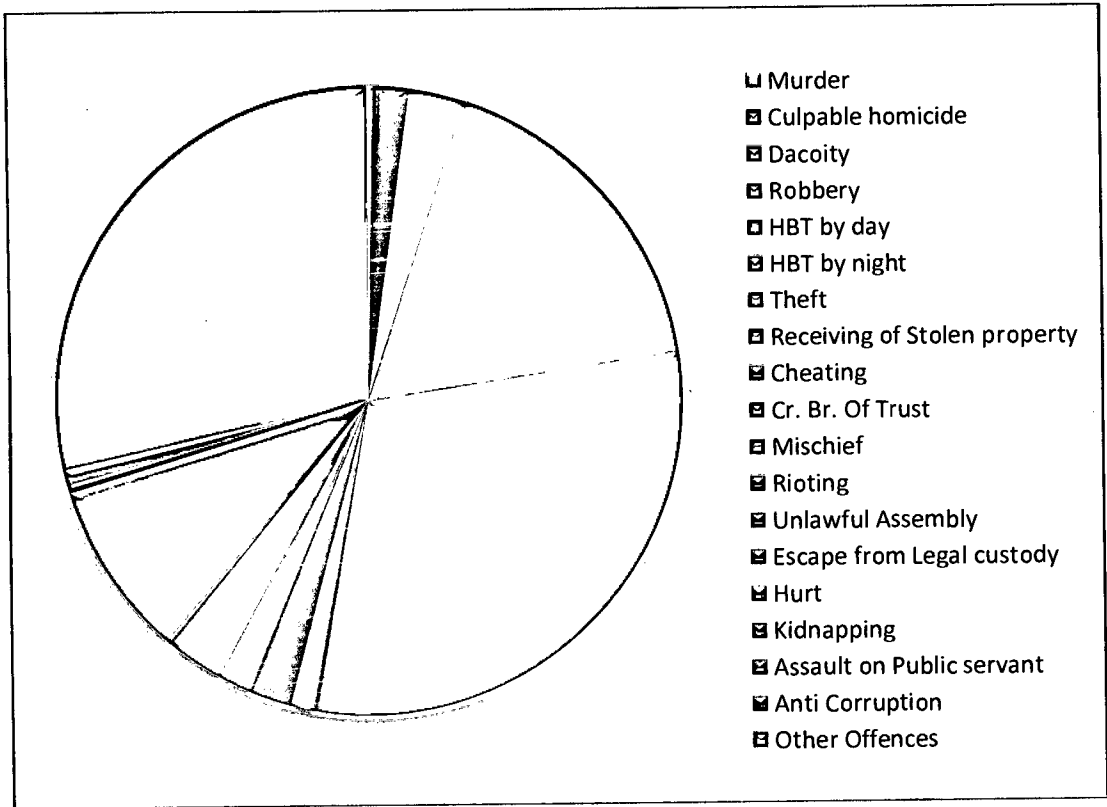
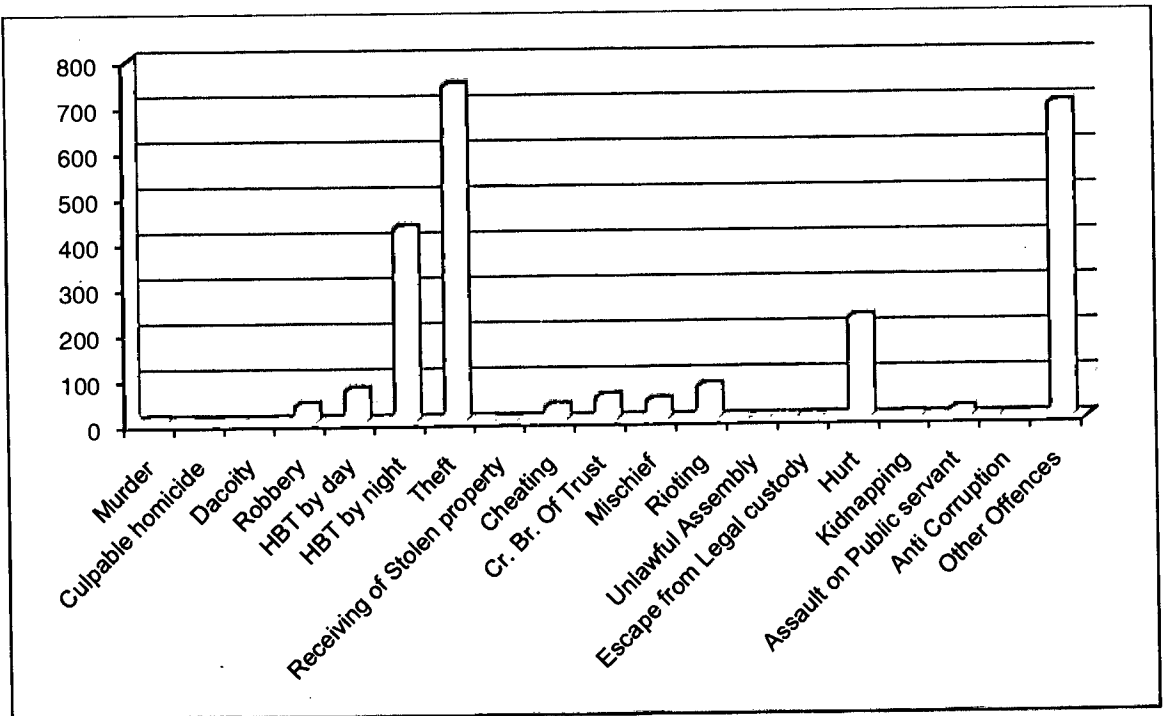


Figure 6.2



The analysis of figures 6.1. and 6.2., indicates that the numbers of Murders are more or less the same as in the earlier table. There were 3 cases of Culpable Homicide, 3 cases of Dacoity, 38 cases of Robbery, 739 cases of Theft, 32 cases of Cheating, 51 cases Criminal Breach of Trust, 43 cases of Mischief, 73 cases of Mischief, 11 cases of Kidnapping and 19 cases of Assault on Public Servant.

From the Table – 6 we can conclude that the cases of theft have been steadily increasing. This may be with regard to the coconut crops or burglary in houses as very few houses had grills for windows or even strong doors were not available as people were not used to living in such conditions. They had faith in each other and depended on each other for support in times of crisis. Liberation of Goa suddenly brought into the challenge of protecting once property and as many of the persons who had locked their doors and who were away from Goa found nothing left when they returned. We may mention here that for centuries Goan Culture and tradition was such that no one would take away things that belong to others and even if gold articles were found, every effort was made to locate the true owner.

Table 7: Crimes in Goa in the year 1986

| Sr. No. | Heads | No of Crimes |
|----------------|------------------------------|---------------------|
| 1 | Murder | 27 |
| 2 | Attempt to Murder | 11 |
| 3 | Culpable homicide | 8 |
| 4 | Dacoity | 16 |
| 5 | Robbery | 59 |
| 6 | HBT by day | 50 |
| 7 | HBT by night | 595 |
| 8 | Theft | 1218 |
| 9 | Receiving of Stolen property | - |
| 10 | Cheating | 54 |
| 11 | Cr. Br. Of Trust | 50 |
| 12 | Counterfeiting | 12 |
| 13 | Mischief | 81 |
| 14 | Rioting | 450 |
| 15 | Unlawful Assembly | 36 |
| 16 | Escape from Legal custody | 7 |
| 17 | Adm. Stup. Of Drugs | - |
| 18 | Hurt | 373 |
| 19 | Kidnapping | 14 |
| 20 | Assault on Public servant | 107 |
| 21 | Anti Corruption | 2 |
| 22 | Other Offences | - |
| 23 | Fatal Accidents | 135 |
| 24 | Other Accidents | 462 |
| 25 | Other IPC Cases | 875 |
| 26 | Rape | 8 |
| | TOTAL | 4650 |

Source: N.Dilip Kumar, Goa Police, History and Evolution, 1999.

Figure 7.1

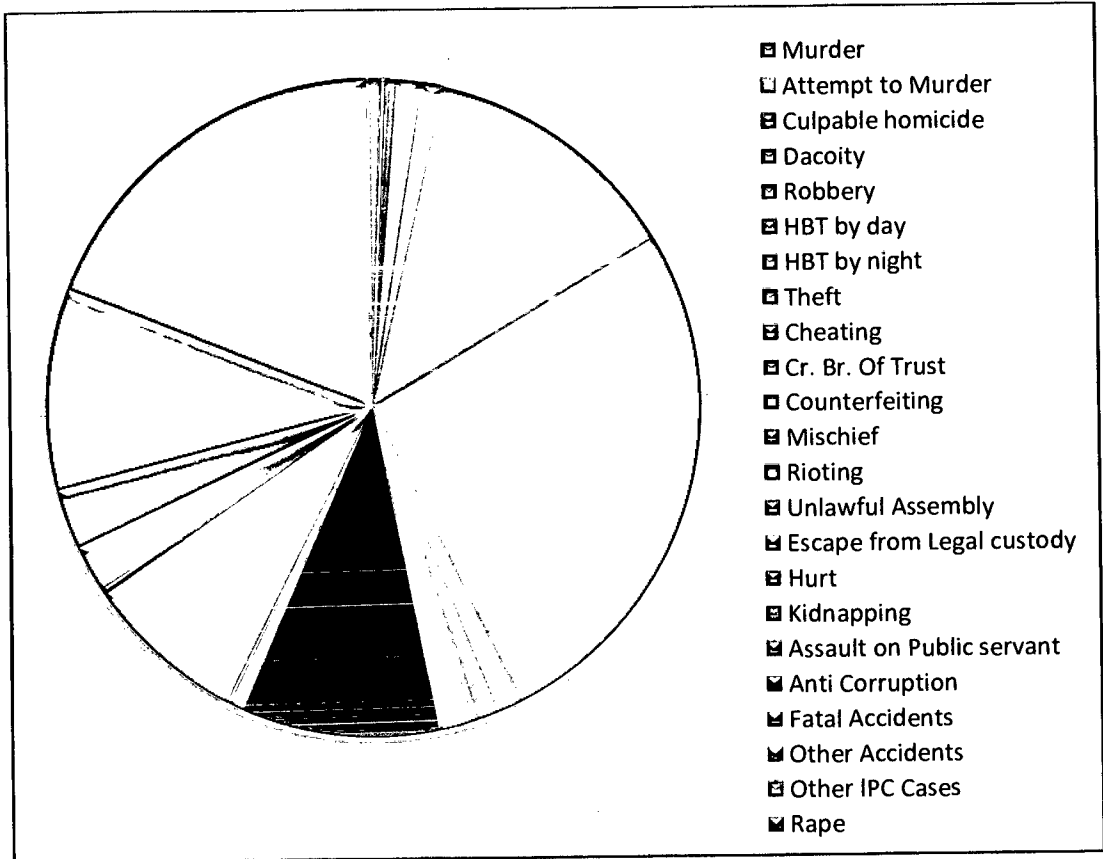
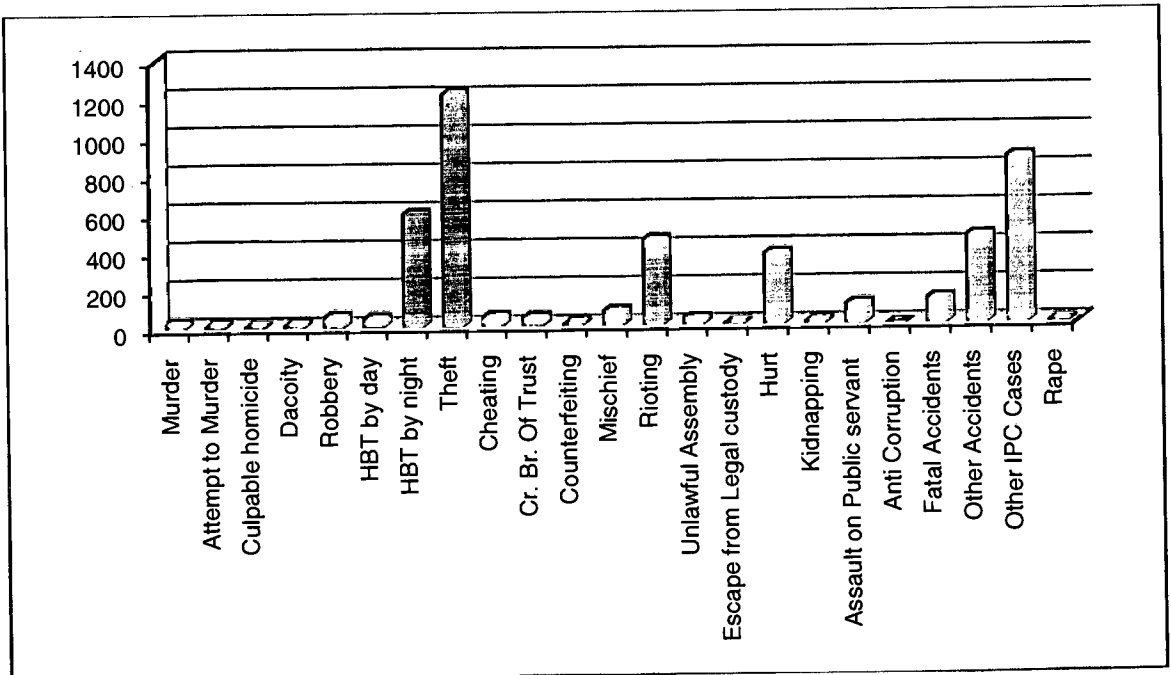


Figure 7.2



The year 1986 saw the stabilizing and functioning of the democratic process in Goa. With the development and progress, came persons from other states into Goa. This period witnessed the rise of crimes. Figures 7.1. and 7.2. reveals the increase in number of Murders to 27, 11 attempts to Murder, 8 culpable homicides, 16 cases of Dacoity, 59 cases of theft, an all time high of 1,218. 54 cases of Cheating, 50 cases of Criminal Breach Of Trust, 81 cases of Mischief, 450 cases of Rioting, 107 cases of Assault on Public Servants and for the first time 8 cases of Rape were reported. The most remarkable development during this period is the increase of Assault on public servant. One cannot explain the development unless one concludes that the public servants were not responsive to the public demands. The increase in murders and cases of attempt to murder set the tone for criminalization of Goa.

Table 8: Crimes in Goa in the year 1990

| Sr. No. | Heads | No of Crimes |
|----------------|------------------------------|---------------------|
| 1 | Murder | 30 |
| 2 | Attempt to Murder | 6 |
| 3 | Culpable homicide | 9 |
| 4 | Dacoity | 1 |
| 5 | Robbery | 18 |
| 6 | HBT by day | 69 |
| 7 | HBT by night | 445 |
| 8 | Theft | 1047 |
| 9 | Receiving of Stolen property | 4 |
| 10 | Cheating | 68 |
| 11 | Cr. Br. Of Trust | 78 |
| 12 | Counterfeiting | 15 |
| 13 | Mischief | 67 |
| 14 | Rioting | 137 |
| 15 | Unlawful Assembly | 74 |
| 16 | Escape from Legal custody | 5 |
| 17 | Adm. Stup. Of Drugs | - |
| 18 | Hurt | 347 |
| 19 | Kidnapping | 27 |
| 20 | Assault on Public servant | 110 |
| 21 | Anti Corruption | - |
| 22 | Other Offences | - |
| 23 | Fatal Accidents | 151 |
| 24 | Other Accidents | 563 |
| 25 | Other IPC Cases | 457 |
| 26 | Rape | 10 |
| | TOTAL | 3738 |

Source: N.Dilip Kumar, Goa Police, History and Evolution

Figure 8.1

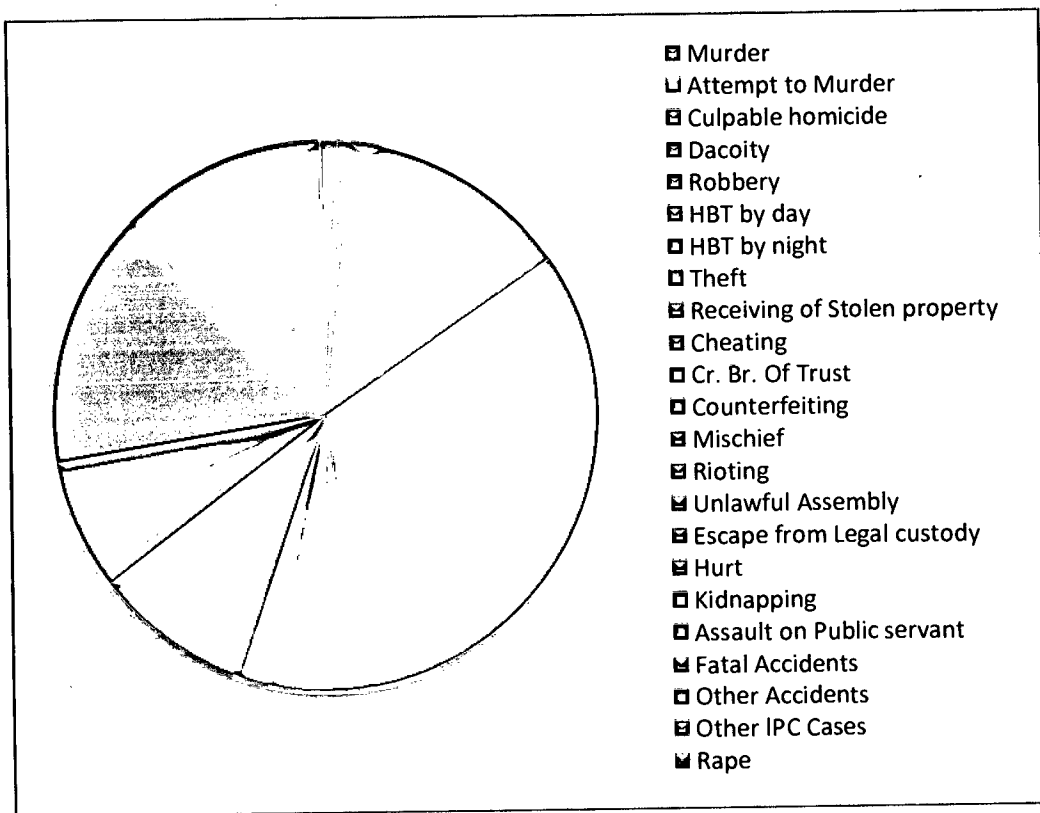
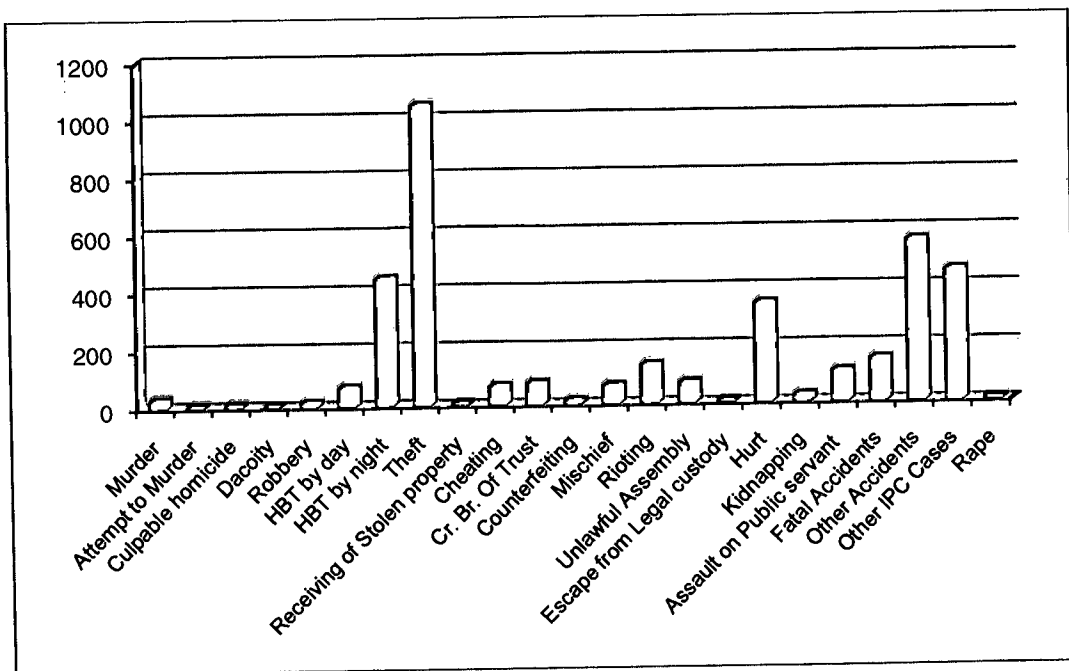


Figure 8.2



By a closer look at the figures 8.1. and 8.2., one can see a further increase of murder cases to 30 and 9 cases of culpable homicide. There was 1 case of Dacoity, 18 cases of Robbery, strangely theft cases decreased to 1047. Cheating cases increased to 68, Criminal Breach of Trust increased to 78, Mischief cases decreased to 67 and Rioting cases to 137. Kidnapping cases increased to 27 and Assault on Public Servant increased to 110. There was increase in Rape cases numbering 10. This table also shows increase in Criminal Behaviour and increase on assault on public servant leaves us compressed.

Table 9: Crimes in Goa in the year 1994

| Sr. No. | Heads | No of Crimes |
|----------------|------------------------------|---------------------|
| 1 | Murder | 38 |
| 2 | Attempt to Murder | 8 |
| 3 | Culpable homicide | 2 |
| 4 | Dacoity | 5 |
| 5 | Robbery | 19 |
| 6 | HBT by day | 53 |
| 7 | HBT by night | 235 |
| 8 | Theft | 875 |
| 9 | Receiving of Stolen property | - |
| 10 | Cheating | 57 |
| 11 | Cr. Br. Of Trust | 46 |
| 12 | Counterfeiting | 18 |
| 13 | Mischief | 47 |
| 14 | Rioting | 133 |
| 15 | Unlawful Assembly | 43 |
| 16 | Escape from Legal custody | 6 |
| 17 | Adm. Stup. Of Drugs | 1 |
| 18 | Hurt | 267 |
| 19 | Kidnapping | 16 |
| 20 | Assault on Public servant | 88 |
| 21 | Anti Corruption | - |
| 22 | Other Offences | - |
| 23 | Fatal Accidents | 158 |
| 24 | Other Accidents | 370 |
| 25 | Other IPC Cases | 437 |
| 26 | Rape | 8 |
| | TOTAL | 3130 |

Source: N.Dilip Kumar, Goa Police, History and Evolution

Figure 9.1

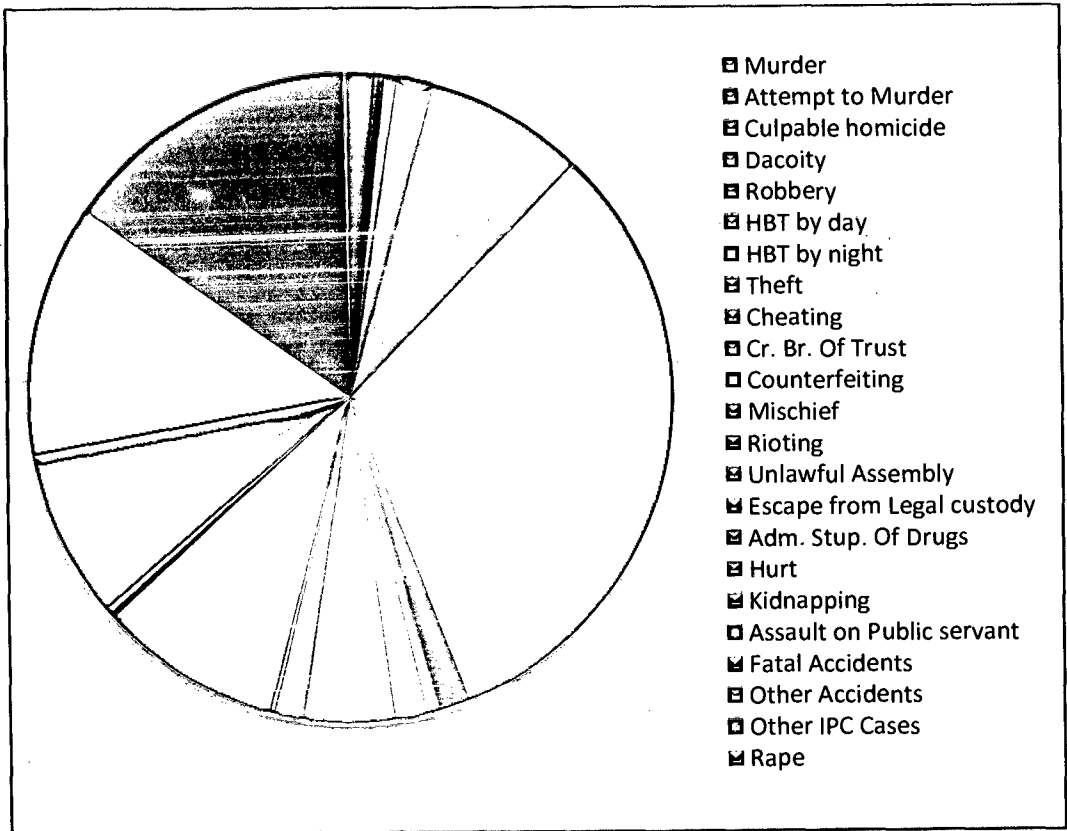
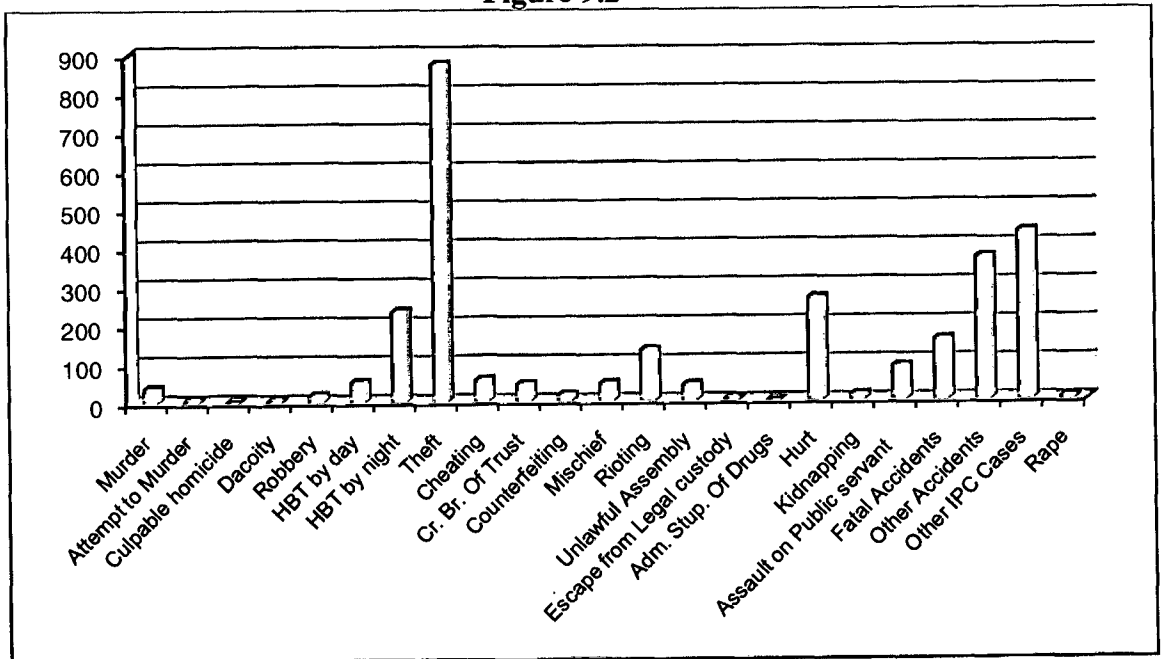


Figure 9.2



Figures 9.1. and 9.2., shows that during the period 1990-1994 there is an increase in Murder cases going up to 38 with 8 cases on attempt to Murders. There are 5 cases in Dacoity and 19 cases in Robbery. Numbers of Cases in theft are reported at 875, cheating cases came to 46, Mischief down to 47 and Rioting down to 133. Kidnapping got reduced to 15 and Assault on Public Servant reduced to 88 and rape cases reduced to 8.

Table 10: Statements of Crimes in Goa from the year 1998 – 2001.

| Sr. No. | Head of Crime | Year 1998 | | Year 1999 | | Year 2000 | | Year 2001 | |
|---------|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| | | Reported | Detected | Reported | Detected | Reported | Detected | Reported | Detected |
| 1. | Murder | 45 | 34 | 38 | 32 | 72 | 35 | 36 | 21 |
| 2. | Attempt to commit Murder | 36 | 34 | 33 | 31 | 27 | 24 | 29 | 29 |
| 3. | Culpable Homicide not amounting to Murder | 8 | 7 | 6 | 5 | 6 | 6 | 5 | 5 |
| 4. | Rape | 16 | 14 | 18 | 18 | 21 | 20 | 12 | 12 |
| 5. | Dacoity | 11 | 8 | 5 | 4 | 4 | 4 | 7 | 4 |
| 6. | Robbery | 72 | 35 | 52 | 31 | 33 | 15 | 25 | 11 |
| 7. | Burglary by day | 69 | 21 | 49 | 12 | 50 | 17 | 32 | 12 |
| 8. | Burglary by night | 487 | 84 | 377 | 60 | 386 | 70 | 326 | 62 |
| 9. | Theft | 870 | 213 | 754 | 172 | 668 | 155 | 577 | 177 |
| 10. | Receiving Property | 1 | 1 | - | - | 3 | 3 | - | - |
| 11. | Cheating | 93 | 62 | 75 | 57 | 48 | 32 | 62 | 51 |
| 12. | Criminal Breach of Trust | 33 | 17 | 30 | 14 | 30 | 15 | 39 | 26 |
| 13. | Counterfeiting | 5 | 3 | 3 | 1 | 7 | 4 | 2 | 1 |
| 14. | Mischief | 38 | 13 | 32 | 18 | 24 | 16 | 20 | 13 |
| 15. | Rioting | 134 | 115 | 58 | 42 | 52 | 47 | 49 | 45 |
| 16. | Unlawful Assembly | 26 | 19 | 19 | 16 | 18 | 12 | 13 | 12 |
| 17. | Escape from legal custody | 5 | 5 | 5 | 5 | 14 | 12 | 11 | 9 |
| 18. | Adm. Stup. of drugs | - | - | - | - | - | - | - | - |
| 19. | Hurt | 199 | 173 | 215 | 193 | 193 | 168 | 174 | 159 |
| 20. | Kidnapping/Abduction | 25 | 16 | 11 | 6 | 11 | 4 | 9 | 5 |
| 21. | Assault on Pub. Servt. | 63 | 61 | 54 | 49 | 40 | 37 | 36 | 35 |
| 22. | Fatal M. V. Accident | 167 | 153 | 150 | 127 | 186 | 163 | 186 | 168 |
| 23. | Oth. M. V. Accident | 329 | 310 | 330 | 313 | 339 | 317 | 356 | 342 |
| 24. | Oth. Misc. IPC | 387 | 290 | 275 | 195 | 220 | 184 | 335 | 297 |
| | Total | 3,119 | 1,688 | 2,589 | 1,401 | 2,422 | 1,360 | 2,341 | 1,496 |

Source: Criminal Justice India Series, Vol.9, Goa 2002.

Figure 10.1

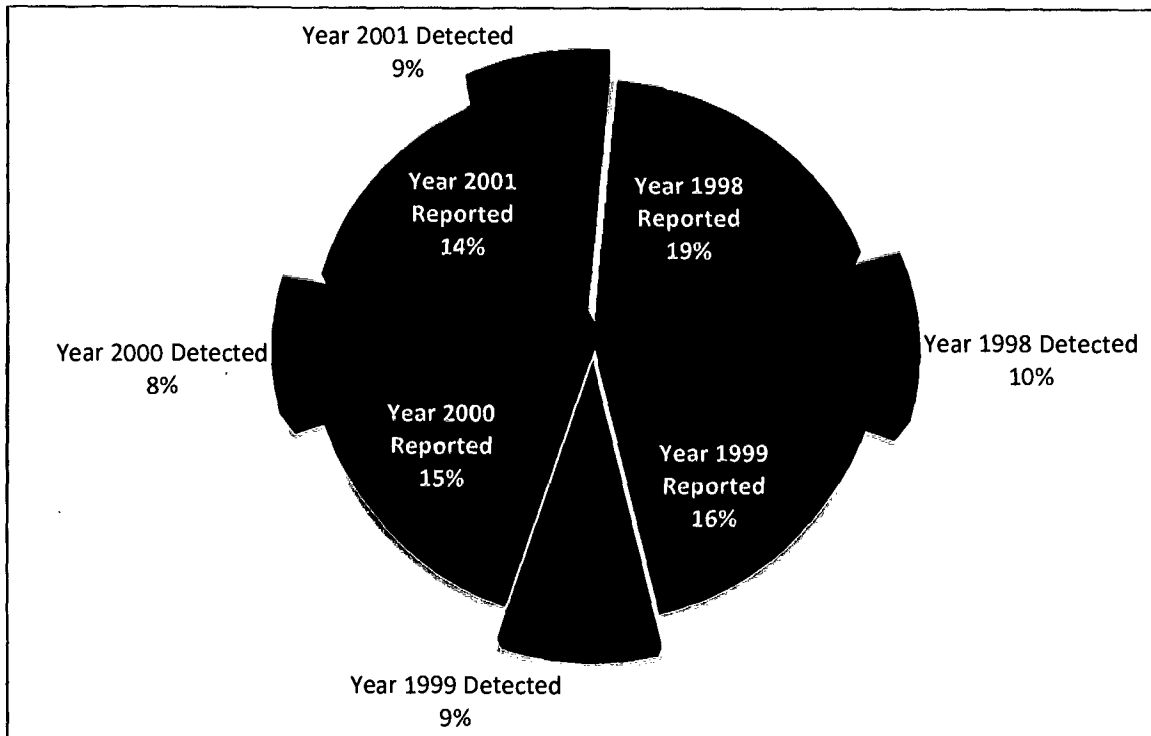
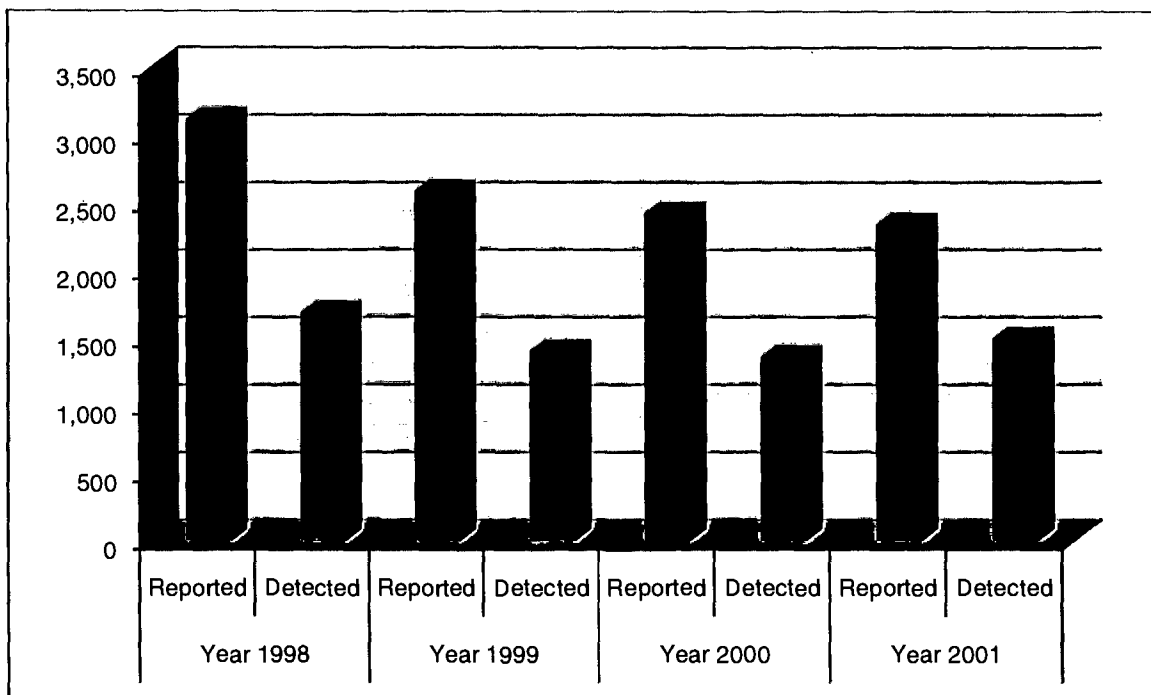


Figure 10.2



The analysis of the figures 10.1 and 10.2., discloses that the Murders reported from the year 1998 one can see that on an average for these 4 years about 35 to 36 cases are reported and among this about 30 cases detected. This indicates that Police Department has done a good job with nearly 80% detection. The no. of cases wherein attempt to commit murder was reported. It was 36 in 98, 33 in 99, 27 in 2000 and 29 in 2001.

While the no. of cases detected about 30 for all the 4 years. Culpable Homicide not amounting to murder has been on an average 5 but the strange things is the no. of Rape cases increased to 16 in 1998 of which 14 were detected, 18 reported cases in 99 out of which all 18 were detected and 12 were reported in 2000 of which all 12 were detected.

This is again excellent work done by Police Department. The no. of decoities were very low averaing about 5 while cases involved in robbery shows an increase of 72 in 1998, 52 in 1999, 33 in 2000 and 25 in 2001. The Theft cases are as usual very high with 870 in 1998, 754 in 1999, 668 in 2000, 577 in 2001. These has been also an increase in rioting cases. There is increase to 134 in 1998 out of which 115 were detected; others are rendered low.

According to the table to percentage of detection ranges from 54 to 63% while 1998 shows increase in crimes, 1999, 2000 and 2001 shows decrease in crimes.

Compared to the earlier tables the figures shown immediately after liberation have stabilised and there has been a marked improvement in the no. of criminal cases happening in Goa.

Table 11: Statements of Crimes in Goa from the year 2002 – 2008.

| Sr. No. | Head of Crime | Year 2002 | | Year 2003 | | Year 2004 | | Year 2005 | | Year 2006 | | Year 2007 | | Year 2008 | |
|---------|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | | REP | DET | REP | DET | REP | DET | REP | DET | REP | DET | REP | DET | REP | DET |
| 1 | Murder | 30 | 23 | 34 | 24 | 40 | 32 | 45 | 36 | 38 | 26 | 33 | 23 | 49 | 34 |
| 2 | Attempt to Murder | 21 | 17 | 25 | 24 | 6 | 5 | 15 | 14 | 14 | 11 | 22 | 20 | 25 | 23 |
| 3 | Culpable Homicide not amounting to Murder | 3 | 3 | 6 | 5 | 5 | 3 | 5 | 4 | 2 | 2 | 8 | 7 | 11 | 11 |
| 4 | Rape | 13 | 11 | 31 | 28 | 37 | 36 | 20 | 18 | 21 | 19 | 20 | 20 | 30 | 25 |
| 5 | Dacoity | 5 | 2 | 5 | 3 | 5 | 3 | 2 | 1 | 6 | 3 | 7 | 6 | 2 | 1 |
| 6 | Robbery | 24 | 18 | 21 | 13 | 18 | 11 | 28 | 14 | 17 | 10 | 22 | 16 | 24 | 10 |
| 7 | Burglary | 377 | 93 | 257 | 117 | 261 | 100 | 265 | 74 | 252 | 68 | 292 | 77 | 302 | 107 |
| 8 | Theft | 495 | 135 | 465 | 198 | 503 | 209 | 495 | 181 | 495 | 175 | 495 | 166 | 601 | 219 |
| 9 | Receiving Stolen property | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| 10 | Cheating | 78 | 51 | 106 | 81 | 61 | 39 | 58 | 41 | 55 | 36 | 55 | 34 | 105 | 69 |
| 11 | Cr. Br. Of Trust | 27 | 17 | 59 | 45 | 49 | 29 | 50 | 30 | 35 | 19 | 36 | 25 | 47 | 32 |
| 12 | Counterfeiting | 3 | 2 | 3 | 1 | 0 | 0 | 6 | 2 | 9 | 1 | 10 | 0 | 22 | 5 |
| 13 | Mischief | 27 | 16 | 22 | 15 | 12 | 6 | 20 | 8 | 41 | 23 | 26 | 7 | 32 | 16 |
| 14 | Rioting | 55 | 46 | 41 | 36 | 30 | 27 | 46 | 43 | 66 | 42 | 69 | 56 | 102 | 76 |
| 15 | Unlawful Assembly | 20 | 14 | 16 | 14 | 13 | 9 | 7 | 4 | 13 | 8 | 32 | 21 | 30 | 19 |
| 16 | Escape from Legal custody | 5 | 4 | 2 | 1 | 5 | 4 | 6 | 6 | 12 | 8 | 3 | 3 | 7 | 6 |
| 17 | Adm. Stup. Of drugs | 4 | 1 | 2 | 0 | 1 | 0 | 2 | 1 | 1 | 0 | 5 | 0 | 2 | 1 |
| 18 | Hurt | 236 | 214 | 194 | 177 | 169 | 144 | 155 | 132 | 171 | 146 | 151 | 144 | 185 | 168 |
| 19 | Kidnapping | 9 | 6 | 14 | 13 | 13 | 11 | 17 | 16 | 16 | 12 | 12 | 9 | 36 | 27 |
| 20 | Assl on Pub. Servt. | 42 | 36 | 53 | 50 | 41 | 34 | 37 | 32 | 24 | 24 | 32 | 27 | 54 | 49 |
| 21 | Fatal M.V. Accident | 198 | 178 | 164 | 142 | 206 | 156 | 202 | 149 | 224 | 177 | 237 | 198 | 213 | 193 |
| 22 | Oth. M.V. Accident | 506 | 489 | 466 | 440 | 428 | 384 | 461 | 380 | 462 | 387 | 549 | 491 | 530 | 492 |
| 23 | Oth. Misc. IPC | 262 | 230 | 258 | 211 | 223 | 173 | 177 | 130 | 230 | 158 | 362 | 265 | 333 | 220 |
| | TOTAL | 2440 | 1606 | 2244 | 1638 | 2127 | 1416 | 2119 | 1316 | 2204 | 1335 | 2479 | 1616 | 2742 | 1803 |

Source: Primary Data.

Figure 11.1

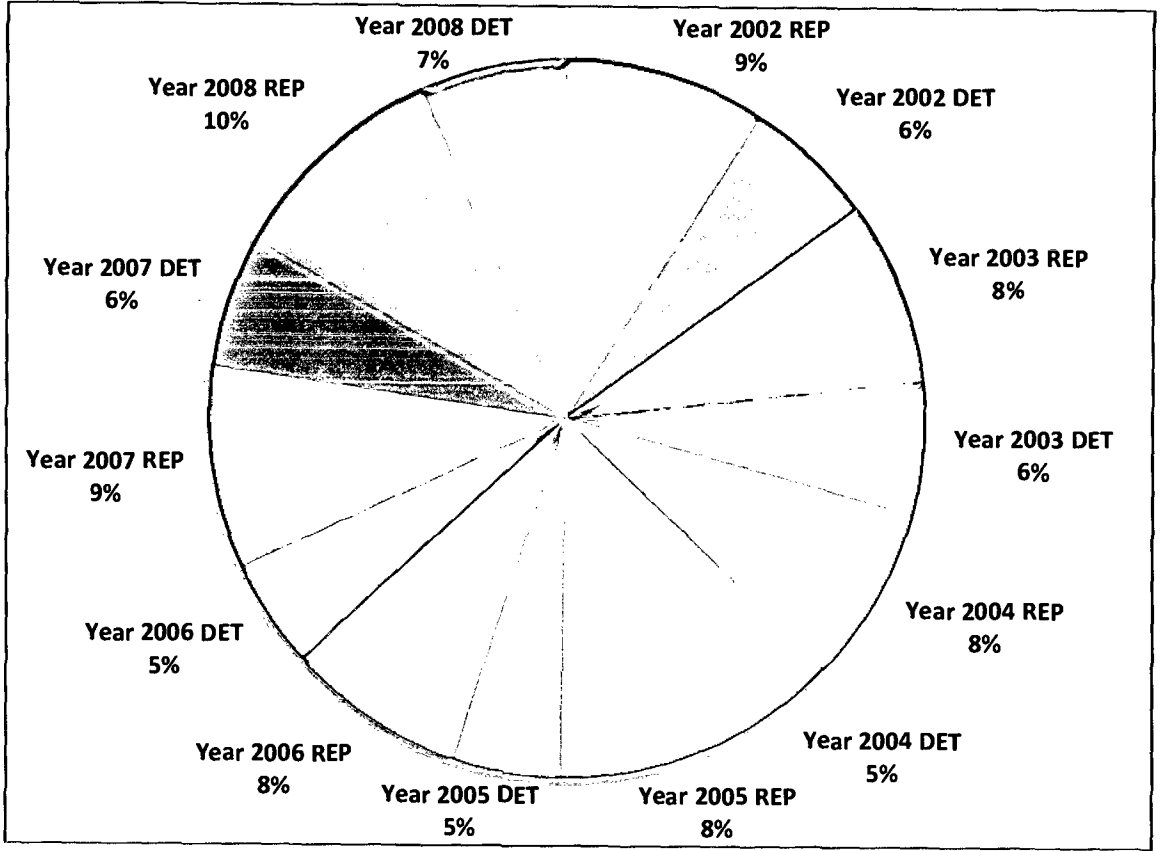
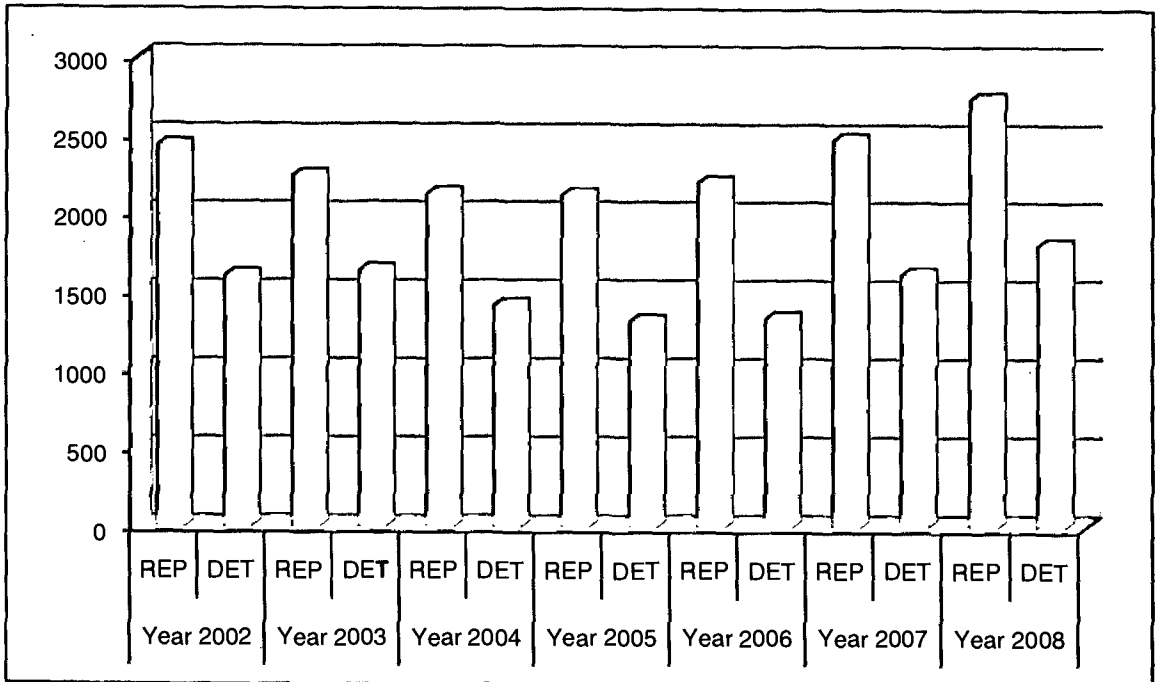


Figure 11.2



The Criminal scene as shown in the figures 11.1. and 11.2, explains that in this decade, there is no substantial decrease in Crime occurrence in Goa. So far as murder is concerned number of cases reported in average about 35 and detection is about 30. There has been a constant maintenance of a ratio. The attempt to commit murder shows constant increase. Over the years the reported cases in rape have shown an increase 31 in 2003, 37 in 2004, 30 in 2008. Theft remains on the high note of 495 in 2002, 465 in 2003, 503 in 2004, 495 in 2005, 495 in 2006, 495 in 2007 and 601 in 2008. Cheating too shows on the rise, 105 in 2008, 106 in 2003 and 78 in 2002. So far as assault on public servant is concerned compared to the earlier statistics there is considerable decrease of 42 in 2002, 53 in 2003, 41 in 2004, 37 in 2005, 24 in 2006, 32 in 2007 and 54 in 2008.

From the calculations there is a decrease in crime in 2003, 2004 and 2005 but there is increase in crimes in 2006, 2007 and 2008. The above figures go to prove the connection between crime occurrence and developmental strategies. As Goa develops more and more there is likely to be an increase in crime occurrence. We have suggested steps to achieve zero level for crime occurrence and if they are properly implemented, Goa will be the first State in India to be totally crime free.

Table 12: Incidence of Crimes in different States of India.

| Sr. No. | States | 2002 | 2003 | 2004 | 2005 | 2006 | Quinquennial Average (2002-06) | 2007 | % Change in 2007 Increase/Decrease over | |
|---------|---------------------|----------------|----------------|----------------|----------------|----------------|-----------------------------------|----------------|--|------------|
| | | | | | | | | | 10 | 11 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 1 | Andhra Pradesh | 143610 | 156951 | 158756 | 157123 | 173909 | 158070 | 175087 | 10.8 | 0.7 |
| 2 | Arunachal Pradesh | 2228 | 2061 | 2256 | 2304 | 2294 | 2229 | 2286 | 2.6 | -0.3 |
| 3 | Assam | 36346 | 38195 | 40675 | 42006 | 43673 | 40179 | 45282 | 12.7 | 3.7 |
| 4 | Bihar | 94040 | 92263 | 108060 | 97850 | 100665 | 98576 | 109420 | 11 | 8.7 |
| 5 | Chhattisgarh | 37950 | 38449 | 41927 | 43633 | 45177 | 41427 | 45845 | 10.7 | 1.5 |
| 6 | Goa | 2440 | 2244 | 2127 | 2119 | 2204 | 2227 | 2479 | 11.3 | 12.5 |
| 7 | Gujarat | 106675 | 103709 | 105469 | 113414 | 120972 | 110048 | 123195 | 11.9 | 1.8 |
| 8 | Haryana | 40152 | 38612 | 39096 | 42664 | 50509 | 42207 | 51597 | 22.2 | 2.2 |
| 9 | Himachal Pradesh | 12243 | 12011 | 12326 | 12345 | 13093 | 12404 | 14222 | 14.7 | 8.6 |
| 10 | Jammu & Kashmir | 19967 | 21233 | 21191 | 20115 | 20787 | 20659 | 21443 | 3.8 | 3.2 |
| 11 | Jharkhand | 31439 | 32203 | 31439 | 35175 | 36364 | 33324 | 38489 | 15.5 | 5.8 |
| 12 | Karnataka | 113699 | 112405 | 114440 | 117580 | 117710 | 115167 | 120606 | 4.7 | 2.5 |
| 13 | Kerala | 104200 | 98824 | 104025 | 104350 | 105255 | 103331 | 108530 | 5 | 3.1 |
| 14 | Madhya Pradesh | 191799 | 191078 | 196867 | 189172 | 194711 | 192725 | 202386 | 5 | 3.9 |
| 15 | Maharashtra | 165462 | 164306 | 176302 | 187027 | 191788 | 176977 | 195707 | 10.6 | 2 |
| 16 | Manipur | 2584 | 2537 | 2535 | 2193 | 2884 | 2691 | 3259 | 21.1 | 13 |
| 17 | Meghalaya | 1664 | 1669 | 1757 | 1880 | 1935 | 1781 | 2079 | 16.7 | 7.4 |
| 18 | Mizoram | 2820 | 3456 | 1515 | 2156 | 2073 | 2404 | 2083 | -13.4 | 0.5 |
| 19 | Nagaland | 1114 | 976 | 984 | 1049 | 1103 | 1045 | 1180 | 12.9 | 7 |
| 20 | Orissa | 47728 | 47281 | 48739 | 51685 | 52792 | 49645 | 54872 | 10.5 | 3.9 |
| 21 | Punjab | 28794 | 28756 | 25630 | 27136 | 32068 | 28477 | 35793 | 25.7 | 11.6 |
| 22 | Rajasthan | 151248 | 145579 | 154859 | 140917 | 141992 | 146919 | 148870 | 1.3 | 4.8 |
| 23 | Sikkim | 485 | 443 | 631 | 552 | 703 | 563 | 667 | 18.5 | -5.1 |
| 24 | Tamil Nadu | 166942 | 157186 | 166606 | 162360 | 148972 | 160413 | 172754 | 7.7 | 16 |
| 25 | Tripura | 3075 | 3514 | 3081 | 3356 | 3940 | 3393 | 4273 | 25.9 | 8.5 |
| 26 | Uttar Pradesh | 146037 | 95073 | 130181 | 122108 | 127001 | 124080 | 150258 | 21.1 | 18.3 |
| 27 | UttaraKhand | 7976 | 7923 | 8634 | 8033 | 8412 | 8196 | 9599 | 17.1 | 14.1 |
| 28 | West Bengal | 58962 | 61174 | 69350 | 66406 | 68052 | 64789 | 81102 | 25.2 | 19.2 |
| | Total States | 1721679 | 1660111 | 1769458 | 1757428 | 1811098 | 1743943 | 1923363 | 10.3 | 6.2 |

Source; National Crime Research Bureau (NCRB)

Figure 12.1.

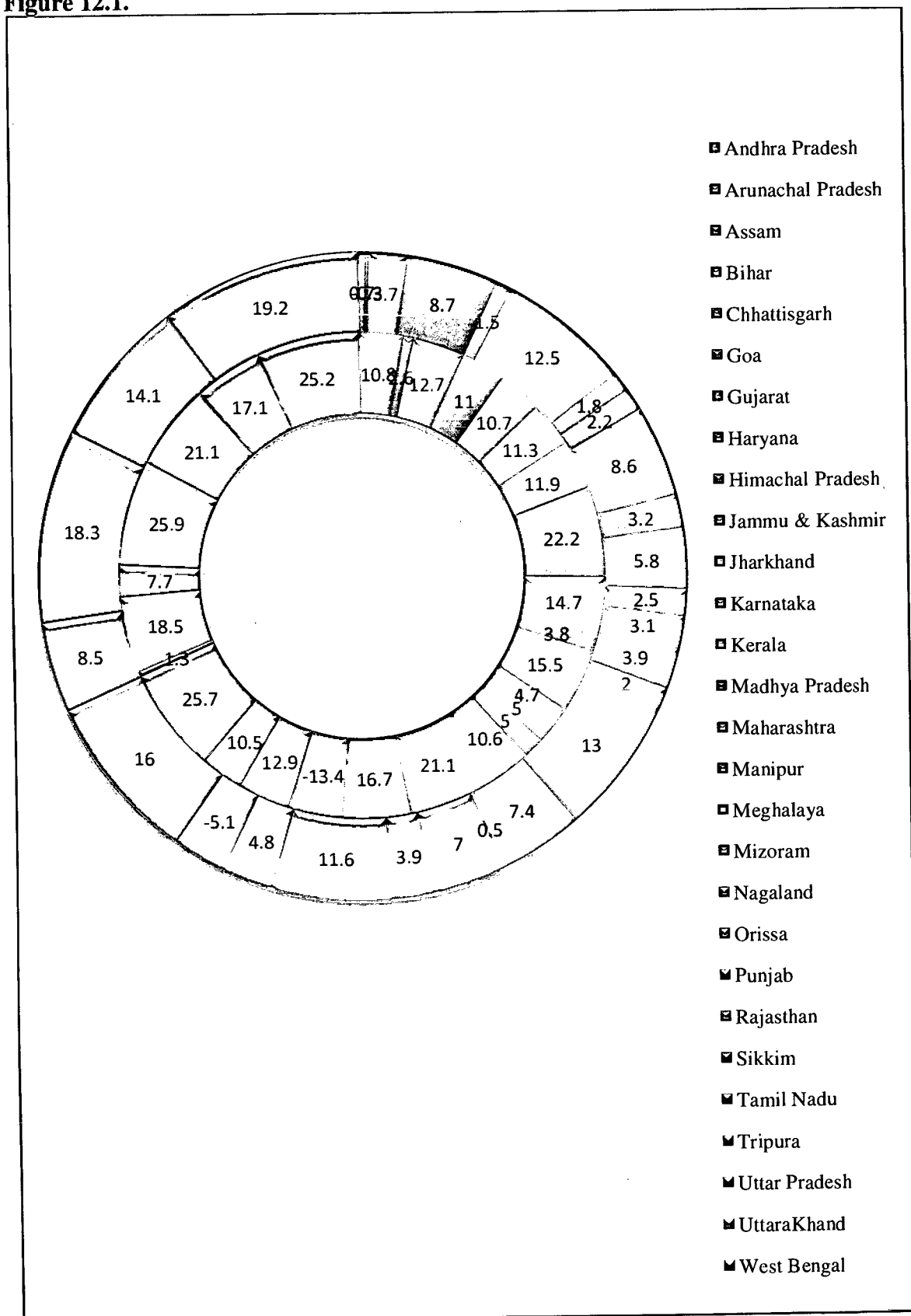
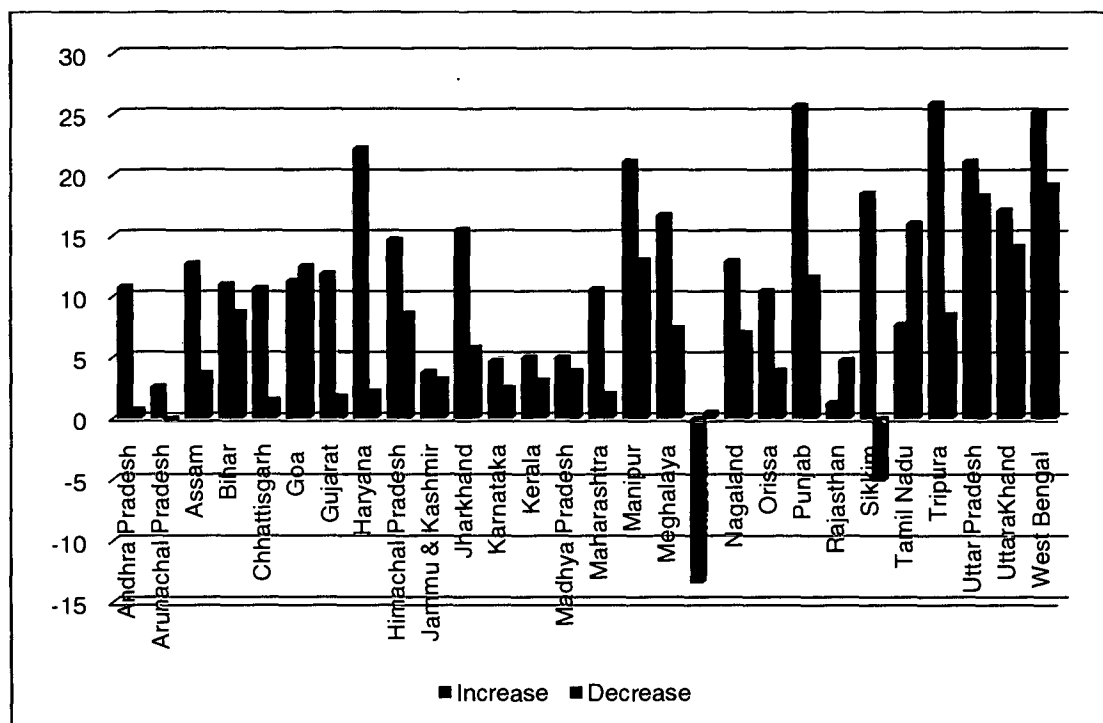


Figure 12.2



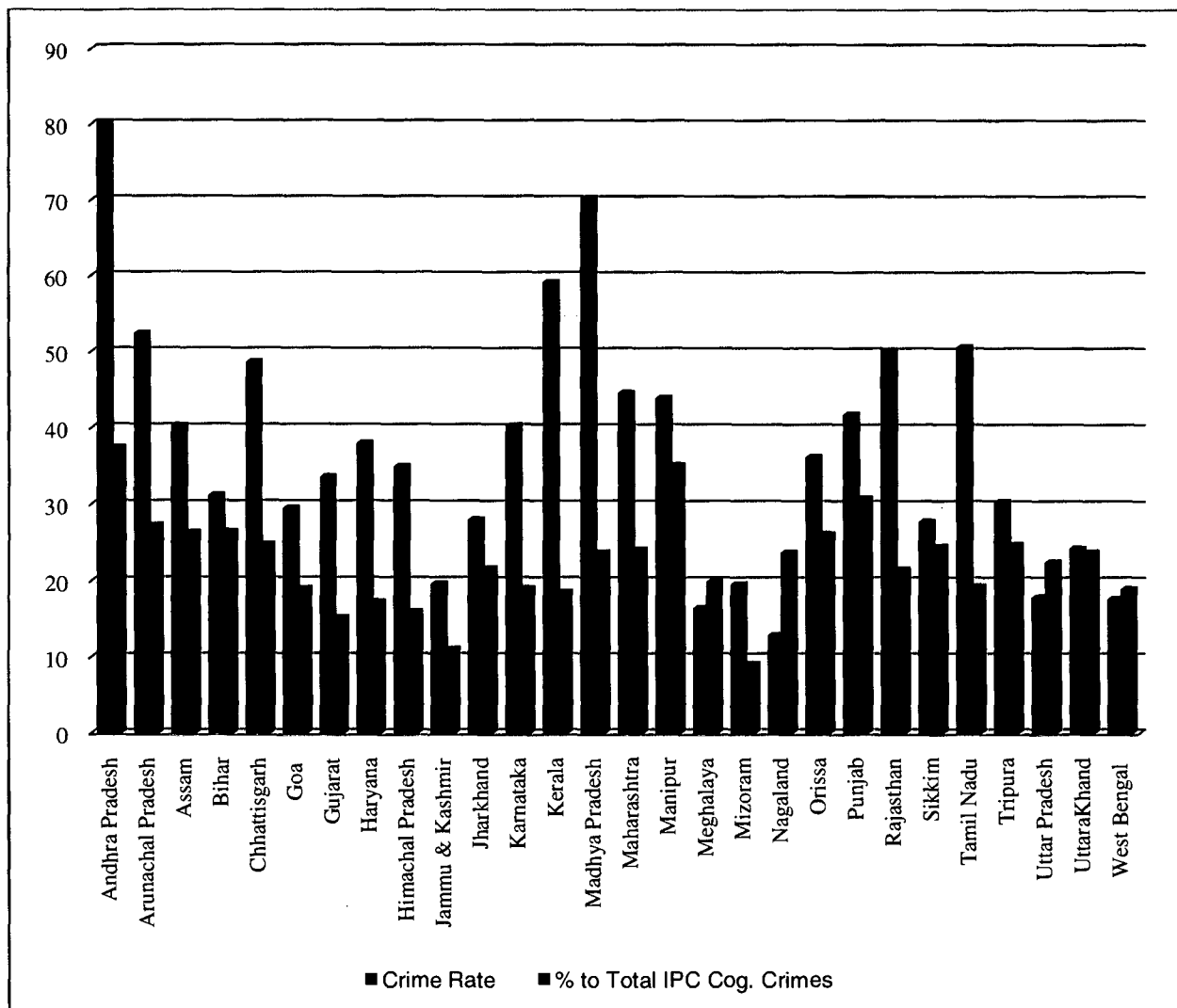
Though the above Figures 12.1., and 12.2, gives incidence of Crimes in all the states of India, we have decided to compare the incidence of crimes in Goa for the year 2002 to 2007 with Maharashtra, Karnataka and Kerala as these three States are either bordering Goa as also Kerala being a coastal State, comparison between Kerala and Goa will not be out of place. During the year 2002 Goa recorded 2440 crimes while Maharashtra has 1,65,462 and Karnataka has 1,13,699 and Kerala has 1,04,200 when one compares the statistics of crimes of 2006 and 2007, there is an increase of 11.3% in Goa, there is an increase of 4.7% in Karnataka, 10.6% increase in Maharashtra and 5% increase in Kerala. This shows, though the population of Goa is very less as compared to the other states mentioned, it has the highest increase in crimes between 2006 and 2007. This is a matter of great concern for the Goa Administration as well as, the people of Goa who desire to live in peace.

Table 13: Incidence of Crimes in different States of India under IPC.

| Sr. No. | States | Murder Sec 302-303 | Attempt to commit murder Sec 307 | C.H. not amounting murder Sec 304/308 | Kidnapping & Abduction Sec 363-369, 371-373 | Hurt Sec 323, 335-338 | Death by Negligence Sec 304A | Total Crimes against Body | % share | Crime Rate | % to Total Cog. Crimes |
|---------|---------------------|--------------------|----------------------------------|---------------------------------------|---|-----------------------|------------------------------|---------------------------|--------------|--------------|------------------------|
| 1 | Andhra Pradesh | 2665 | 1185 | 135 | 2097 | 46122 | 12629 | 65533 | 14.54 | 80.31 | 37.43 |
| 2 | Arunachal Pradesh | 68 | 29 | 2 | 68 | 375 | 82 | 624 | 0.14 | 52.44 | 27.3 |
| 3 | Assam | 1374 | 451 | 109 | 1971 | 5175 | 2875 | 11955 | 2.65 | 40.36 | 26.4 |
| 4 | Bihar | 3034 | 3113 | 257 | 2530 | 16288 | 3789 | 29011 | 6.44 | 31.25 | 26.51 |
| 5 | Chhattisgarh | 1097 | 747 | 26 | 244 | 6801 | 2476 | 11391 | 2.53 | 48.71 | 24.85 |
| 6 | Goa | 33 | 23 | 7 | 12 | 150 | 247 | 472 | 0.1 | 29.57 | 19.04 |
| 7 | Gujarat | 1166 | 494 | 21 | 1312 | 10989 | 4831 | 18813 | 4.17 | 33.67 | 15.27 |
| 8 | Haryana | 911 | 592 | 72 | 801 | 5031 | 1545 | 8952 | 1.99 | 38.05 | 17.35 |
| 9 | Himachal Pradesh | 127 | 57 | 9 | 171 | 1318 | 597 | 2279 | 0.51 | 35.01 | 16.02 |
| 10 | Jammu & Kashmir | 318 | 669 | 23 | 758 | 374 | 243 | 2385 | 0.53 | 19.71 | 11.12 |
| 11 | Jharkhand | 1617 | 1076 | 92 | 762 | 3783 | 1019 | 8349 | 1.85 | 28.08 | 21.69 |
| 12 | Karnataka | 1538 | 1251 | 55 | 680 | 18963 | 514 | 23001 | 5.1 | 40.37 | 19.07 |
| 13 | Kerala | 367 | 402 | 92 | 255 | 18975 | 59 | 20150 | 4.47 | 59.24 | 18.57 |
| 14 | Madhya Pradesh | 2244 | 2423 | 155 | 922 | 36643 | 5754 | 48141 | 10.68 | 70.33 | 23.79 |
| 15 | Maharashtra | 2693 | 1615 | 113 | 1312 | 29622 | 11946 | 47301 | 10.49 | 44.64 | 24.17 |
| 16 | Manipur | 240 | 377 | 2 | 150 | 377 | 1 | 1147 | 0.25 | 44.03 | 35.19 |
| 17 | Meghalaya | 114 | 49 | 8 | 52 | 124 | 68 | 415 | 0.09 | 16.5 | 19.96 |
| 18 | Mizoram | 43 | 21 | 4 | 4 | 85 | 34 | 191 | 0.04 | 19.65 | 9.17 |
| 19 | Nagaland | 111 | 50 | 8 | 17 | 52 | 43 | 281 | 0.06 | 12.96 | 23.81 |
| 20 | Orissa | 1210 | 1105 | 22 | 801 | 7478 | 3771 | 14387 | 3.19 | 36.31 | 26.22 |
| 21 | Punjab | 760 | 893 | 170 | 760 | 5663 | 2801 | 11047 | 2.45 | 41.86 | 30.86 |
| 22 | Rajasthan | 1303 | 1772 | 64 | 2177 | 19720 | 7069 | 32132 | 7.13 | 50.28 | 21.58 |
| 23 | Sikkim | 9 | 14 | 3 | 9 | 95 | 34 | 164 | 0.04 | 27.84 | 24.59 |
| 24 | Tamil Nadu | 1633 | 2078 | 28 | 1270 | 16967 | 11485 | 33461 | 7.42 | 50.68 | 19.37 |
| 25 | Tripura | 138 | 58 | 2 | 113 | 546 | 203 | 1060 | 0.24 | 30.45 | 24.81 |
| 26 | Uttar Pradesh | 5000 | 4424 | 1616 | 4478 | 10694 | 7655 | 33867 | 7.51 | 17.96 | 22.54 |
| 27 | UttaraKhand | 268 | 228 | 50 | 253 | 886 | 608 | 2293 | 0.51 | 24.38 | 23.89 |
| 28 | West Bengal | 1652 | 877 | 394 | 1800 | 6909 | 3803 | 15435 | 3.42 | 17.71 | 19.03 |
| | TOTAL STATES | 31733 | 26773 | 3539 | 25779 | 270205 | 86208 | 444237 | 98.55 | 39.78 | 23.1 |

Source; National Crime Research Bureau (NCRB)

Figure 13.1



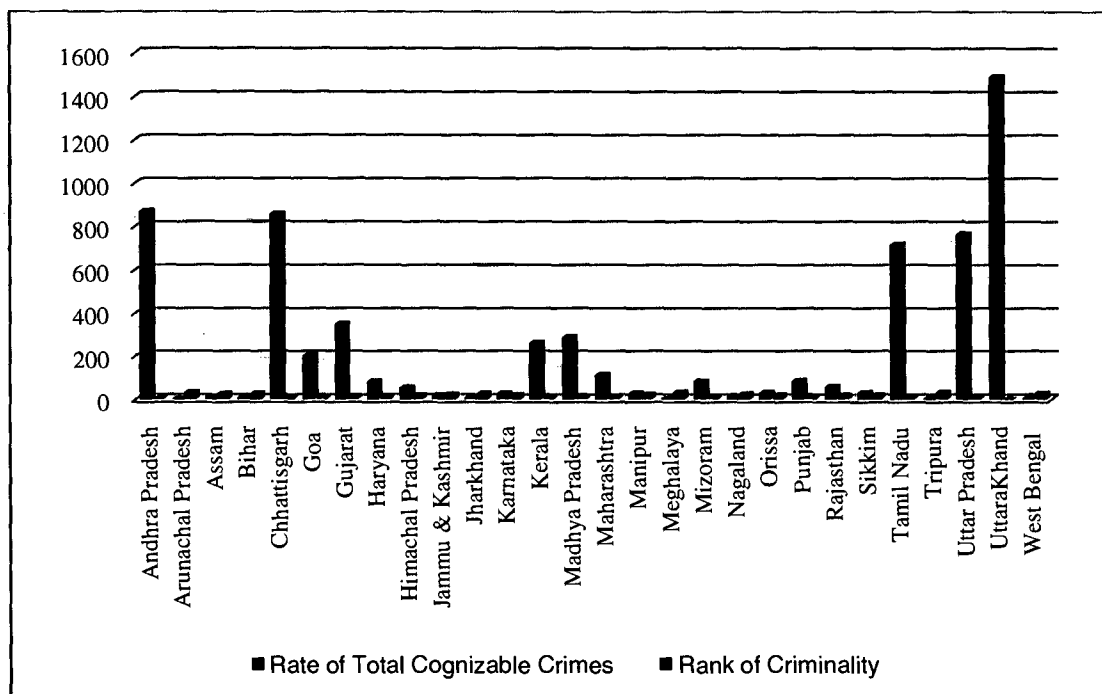
In comparison, the percentage share and cognisable crimes rate in different State of India, Crime rate in Goa is 29.57, Maharashtra 44.64, Karnataka 40.37 and Kerala 59.24. The figure 13.1 shows that with respect to cognizable crimes, crime rate is very low in the state of Goa when compared to other neighbouring states like Maharashtra, Karnataka and Kerala.

Table 14: Incidence and Rate of Total Cognizable Crimes in different States of India.

| Sr. No. | States | Total Cognizable Crimes | % Contribution All India Total | Estimated Mid-Year Population (in Lakhs) | Rate of Total Cognizable Crimes | Rank of Criminality |
|---------|---------------------|-------------------------|--------------------------------|--|---------------------------------|---------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 | Andhra Pradesh | 711946 | 19 | 816 | 872.5 | 3 |
| 2 | Arunachal Pradesh | 56 | 0 | 11.9 | 4.7 | 35 |
| 3 | Assam | 3831 | 0.1 | 296.2 | 12.9 | 27 |
| 4 | Bihar | 9479 | 0.3 | 928.3 | 10.2 | 28 |
| 5 | Chhattisgarh | 200889 | 5.4 | 233.9 | 859.1 | 4 |
| 6 | Goa | 3253 | 0.1 | 16 | 203.8 | 10 |
| 7 | Gujarat | 194751 | 5.2 | 558.8 | 348.5 | 7 |
| 8 | Haryana | 19526 | 0.5 | 235.3 | 83 | 16 |
| 9 | Himachal Pradesh | 3665 | 0.1 | 65.1 | 56.3 | 19 |
| 10 | Jammu & Kashmir | 2382 | 0.1 | 121 | 19.7 | 24 |
| 11 | Jharkhand | 2697 | 0.1 | 297.3 | 9.1 | 29 |
| 12 | Karnataka | 16046 | 0.4 | 569.8 | 28.2 | 23 |
| 13 | Kerala | 88726 | 2.4 | 340.1 | 260.9 | 9 |
| 14 | Madhya Pradesh | 196849 | 5.3 | 684.6 | 287.6 | 8 |
| 15 | Maharashtra | 120310 | 3.2 | 1059.7 | 113.5 | 12 |
| 16 | Manipur | 753 | 0 | 26.1 | 28.9 | 22 |
| 17 | Meghalaya | 123 | 0 | 25.2 | 4.9 | 34 |
| 18 | Mizoram | 824 | 0 | 9.7 | 84.8 | 15 |
| 19 | Nagaland | 305 | 0 | 21.7 | 14.1 | 26 |
| 20 | Orissa | 12162 | 0.3 | 396.2 | 30.7 | 21 |
| 21 | Punjab | 22612 | 0.6 | 263.9 | 85.7 | 14 |
| 22 | Rajasthan | 37631 | 1 | 639.1 | 58.9 | 18 |
| 23 | Sikkim | 190 | 0 | 5.9 | 32.3 | 20 |
| 24 | Tamil Nadu | 474963 | 12.7 | 660.2 | 719.4 | 6 |
| 25 | Tripura | 175 | 0 | 34.8 | 5 | 33 |
| 26 | Uttar Pradesh | 1444342 | 38.6 | 1885.4 | 766.1 | 5 |
| 27 | UttaraKhand | 140428 | 3.8 | 94 | 1493.3 | 1 |
| 28 | West Bengal | 6453 | 0.2 | 871.8 | 7.4 | 30 |
| | TOTAL STATES | 3715367 | 99.2 | 11167.97 | 332.7 | - |

Source; National Crime Research Bureau (NCRB)

Figure 14.1



It is regrettable to note from the above figure 14.1., which provides the Rank of Criminality for the year 2007, Goa Stands at number 10. State standing number 1 is Uttarakhand, Uttarpradesh is number 5, Maharashtra number 12, Karnataka 23, and Kerala number 9. Standing of number 10 seems to be quit high in commission of cognizable crimes as compared to other small states.

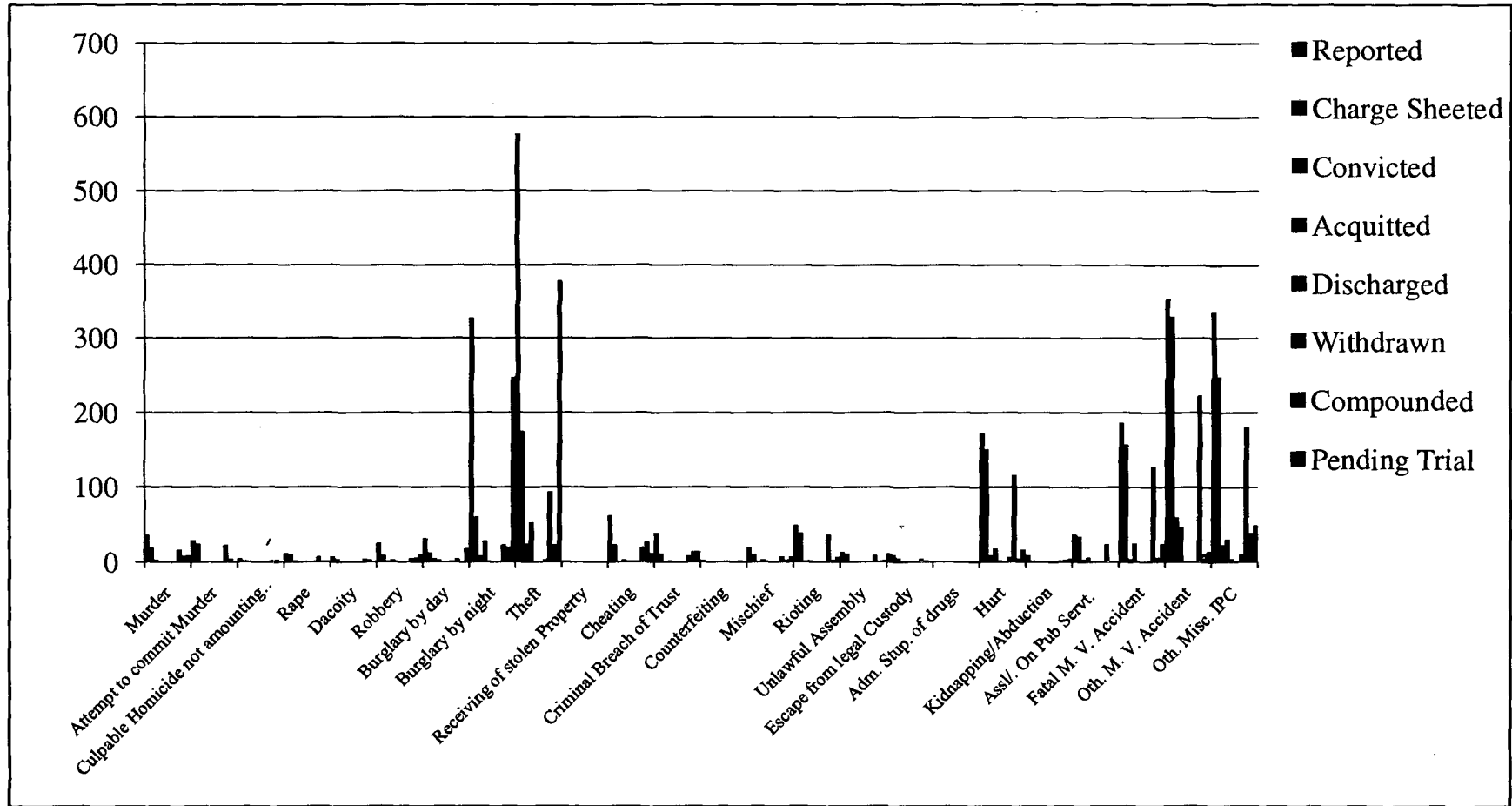
Many persons in Goa may think that Goa is very peace loving and peaceful state. Looking at the figures of Crimes committed, Goa stands in a dangerous zone of higher criminal behaviour. This must make the Goa administration think seriously of concentrating on those areas which are prone to criminal behavior. The disposal of cases also needs to be speeded up.

Table 15: Statement of disposal of IPC Cases for the Year – 2001

| Sl. No | Head of Crime | Repor- -ted | Charge Sheeted | Convic ted | Acquit ted | Dis charged | With drawn | Compo unded | Pending Trial | Under Investigation | Final Report |
|--------|---|----------------|-------------------|---------------|---------------|----------------|---------------|----------------|------------------|------------------------|-----------------|
| 1. | Murder | 36 | 19 | 3 | 0 | 0 | 0 | 0 | 16 | 8 | 9 |
| 2. | Attempt to commit Murder | 29 | 24 | 0 | 1 | 0 | 0 | 0 | 23 | 4 | 1 |
| 3. | Culpable Homicide not amounting to Murder | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 0 |
| 4. | Rape | 12 | 10 | 2 | 1 | 0 | 0 | 0 | 7 | 1 | 1 |
| 5. | Dacoity | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 3 | 0 |
| 6. | Robbery | 25 | 9 | 1 | 3 | 0 | 0 | 0 | 5 | 6 | 10 |
| 7. | Burglary by day | 31 | 12 | 5 | 3 | 0 | 0 | 0 | 4 | 1 | 18 |
| 8. | Burglary by night | 327 | 60 | 8 | 28 | 0 | 0 | 1 | 23 | 20 | 247 |
| 9. | Theft | 577 | 175 | 24 | 53 | 1 | 0 | 3 | 94 | 23 | 379 |
| 10 | Receiving of stolen Property | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 11 | Cheating | 62 | 23 | 0 | 3 | 0 | 0 | 1 | 19 | 27 | 12 |
| 12 | Criminal Breach of Trust | 39 | 11 | 0 | 2 | 0 | 0 | 1 | 8 | 14 | 14 |
| 13 | Counterfeiting | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 |
| 14 | Mischief | 20 | 10 | 0 | 3 | 0 | 0 | 0 | 7 | 3 | 7 |
| 15 | Rioting | 49 | 39 | 1 | 2 | 0 | 0 | 0 | 36 | 3 | 7 |
| 16 | Unlawful Assembly | 13 | 11 | 1 | 1 | 0 | 0 | 0 | 9 | 0 | 2 |
| 17 | Escape from legal Custody | 11 | 9 | 5 | 0 | 0 | 0 | 0 | 4 | 2 | 0 |
| 18 | Adm. Stup. of drugs | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 19 | Hurt | 173 | 151 | 9 | 18 | 2 | 0 | 6 | 116 | 5 | 17 |
| 20 | Kidnapping/Abduction | 9 | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 4 |
| 21 | Assl/. On Pub Servt. | 36 | 34 | 3 | 6 | 0 | 0 | 1 | 24 | 1 | 1 |
| 22 | Fatal M. V. Accident | 187 | 157 | 4 | 25 | 0 | 0 | 0 | 128 | 6 | 24 |
| 23 | Oth. M. V. Accident | 355 | 330 | 60 | 47 | 0 | 0 | 0 | 223 | 11 | 14 |
| 24 | Oth. Misc. IPC | 336 | 248 | 23 | 30 | 4 | 0 | 10 | 181 | 39 | 49 |
| | Total | 2,341 | 1,340 | 149 | 226 | 7 | 0 | 23 | 935 | 185 | 816 |

Source: Criminal Justice India Series, Vol.9, Goa, 2002

Figure 15.1.



The number of cases finally decided in 2001 compared to be very less in respect to reported cases. That means the decided cases do not match with the reported cases thereby showing delay in the investigation and disposal of cases. This is amply displayed by the Figure 15.1.

Table 16. Incidence and Rate of Total Cognizable crimes (IPC) in the States during 2008

| S. No. | States | Total Cognizable Crimes | % Contribution All India Total | Estimated Mid-Year Population (in Lakhs) | Rate of Total Cognizable Crimes | Rank of Criminality |
|--------|---------------------|-------------------------|--------------------------------|--|---------------------------------|---------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 | Andhra Pradesh | 179275 | 8.6 | 824.61 | 217.4 | 11 |
| 2 | Arunachal Pradesh | 2374 | 0.1 | 12.04 | 197.2 | 16 |
| 3 | Assam | 53333 | 2.5 | 300.79 | 177.3 | 18 |
| 4 | Bihar | 122669 | 5.9 | 943.06 | 130.1 | 27 |
| 5 | Chhattisgarh | 51442 | 2.5 | 237.74 | 216.4 | 12 |
| 6 | Goa | 2742 | 0.1 | 16.44 | 166.8 | 19 |
| 7 | Gujarat | 123808 | 5.9 | 566.65 | 218.5 | 10 |
| 8 | Haryana | 55344 | 2.6 | 238.90 | 231.7 | 8 |
| 9 | Himachal Pradesh | 13976 | 0.7 | 65.71 | 122.7 | 13 |
| 10 | Jammu & Kashmir | 20604 | 1.0 | 125.02 | 164.8 | 20 |
| 11 | Jharkhand | 38686 | 1.8 | 301.44 | 128.3 | 28 |
| 12 | Karnataka | 127540 | 6.1 | 576.02 | 221.4 | 9 |
| 13 | Kerala | 110620 | 5.3 | 343.40 | 322.1 | 3 |
| 14 | Madhya Pradesh | 206556 | 9.9 | 696.83 | 296.4 | 4 |
| 15 | Maharashtra | 206243 | 9.9 | 1073.47 | 192.1 | 17 |
| 16 | Manipur | 3349 | 0.2 | 26.37 | 127.0 | 29 |
| 17 | Meghalaya | 2318 | 0.1 | 25.47 | 91.0 | 33 |
| 18 | Mizoram | 1989 | 0.1 | 9.84 | 202.1 | 15 |
| 19 | Nagaland | 1202 | 0.1 | 21.96 | 54.7 | 35 |
| 20 | Orissa | 56755 | 2.7 | 400.33 | 141.8 | 23 |
| 21 | Punjab | 35314 | 1.7 | 266.89 | 132.3 | 25 |
| 22 | Rajasthan | 151174 | 7.2 | 649.94 | 232.6 | 7 |
| 23 | Sikkim | 730 | 0.0 | 5.96 | 122.5 | 30 |
| 24 | Tamil Nadu | 176833 | 8.4 | 665.76 | 265.6 | 4 |
| 25 | Tripura | 5336 | 0.3 | 35.24 | 151.4 | 21 |
| 26 | Uttar Pradesh | 168996 | 8.1 | 1920.49 | 88.0 | 34 |
| 27 | UttaraKhand | 8856 | 0.4 | 95.43 | 92.8 | 32 |
| 28 | West Bengal | 105419 | 5.0 | 882.07 | 119.5 | 31 |
| | TOTAL STATES | 2033483 | 97.1 | 11327.87 | 179.5 | |

Source: National Crime Research Bureau

Figure: 16.1

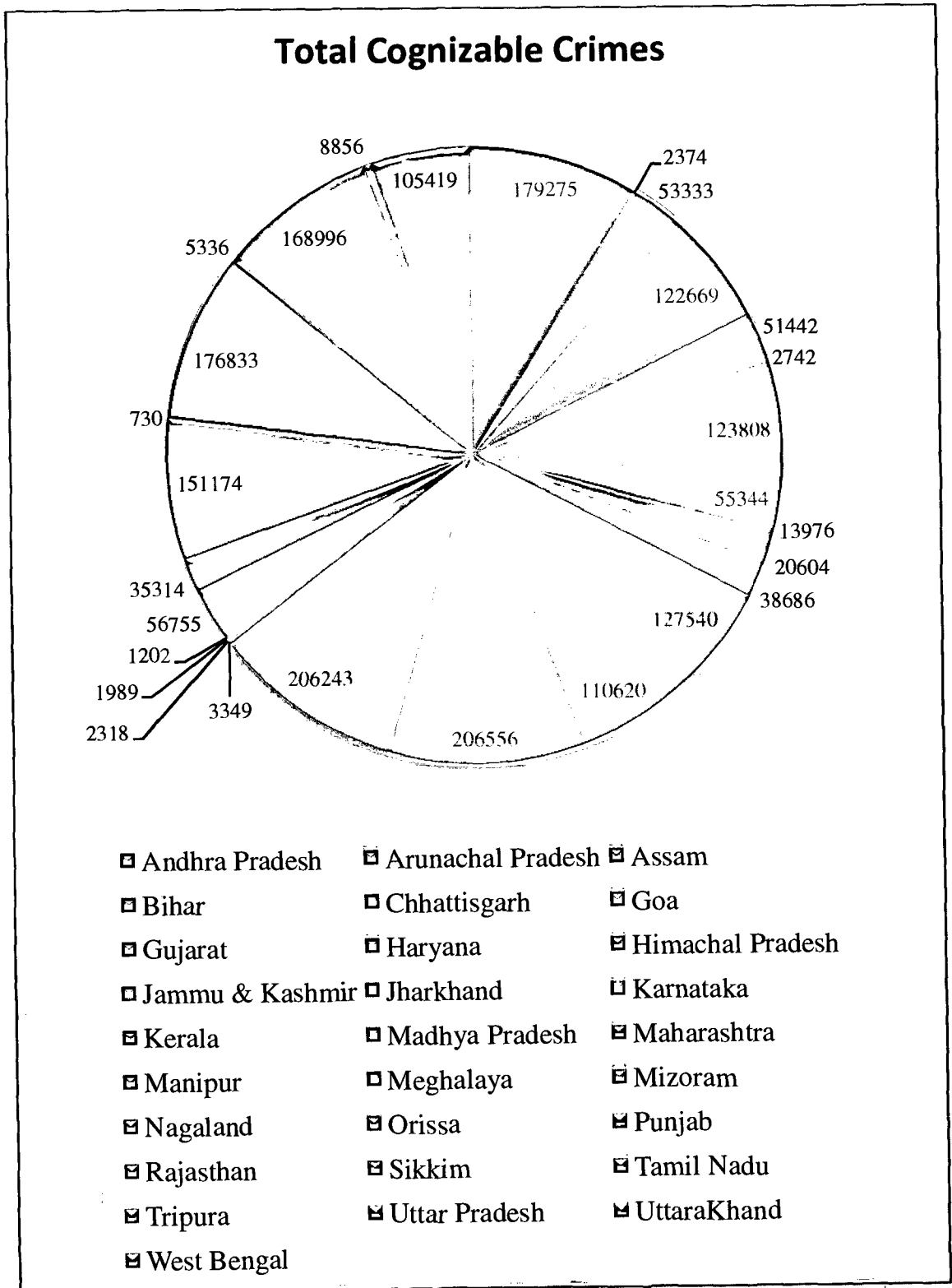
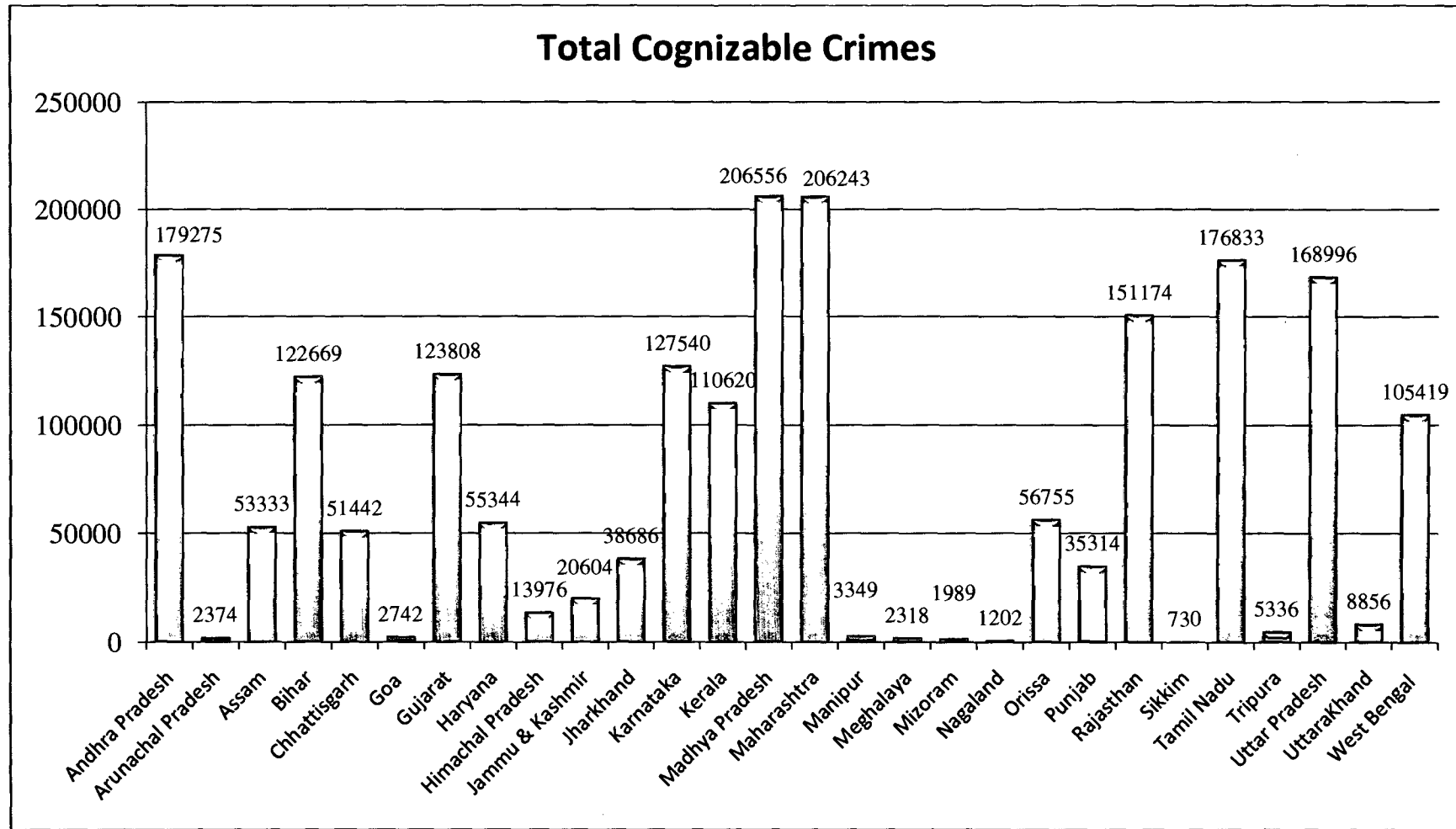


Figure: 16.2.



Figures 16.1 and 16.2 indicates relation to indices and the rate of cognizable crimes on all India basis. The contribution of State of Goa is 0.1 which is meager with respect to other three states such as Maharashtra, Karnataka and Kerala which contributes around 7% during 2008.

Further, the above figures also indicates ranking of the states in criminal matters. Goa occupies 19th rank in criminality in entire India. Other states Karnataka on 9th Place, Kerala 3rd place and Maharashtra 17th place. Out of four states Goa's ranking proves the cognizable crimes are very less on all India basis.

Table 17: Incidence of Crimes in different States of India.

| Sr. No. | States | Quinquennial Average (2003- 07) | 2008 | % Change in 2008 Increase/Decrease over | |
|---------|---------------------|---------------------------------------|----------------|---|------------|
| | | | | Q.A. | 2007 |
| 1 | Andhra Pradesh | 164365 | 179275 | 9.1 | 2.4 |
| 2 | Arunachal Pradesh | 2240 | 2374 | 6.0 | 3.8 |
| 3 | Assam | 41966 | 53333 | 27.1 | 17.8 |
| 4 | Bihar | 101652 | 122669 | 20.7 | 12.1 |
| 5 | Chhattisgarh | 43006 | 51442 | 19.6 | 12.2 |
| 6 | Goa | 2235 | 2742 | 22.7 | 10.6 |
| 7 | Gujarat | 113352 | 123808 | 9.2 | 0.5 |
| 8 | Haryana | 44496 | 55344 | 24.4 | 7.3 |
| 9 | Himachal Pradesh | 12799 | 13976 | 9.2 | -1.7 |
| 10 | Jammu & Kashmir | 20954 | 20604 | -1.7 | -3.9 |
| 11 | Jharkhand | 34734 | 38686 | 11.4 | 0.5 |
| 12 | Karnataka | 116548 | 127540 | 9.4 | 5.7 |
| 13 | Kerala | 104197 | 110620 | 6.2 | 1.9 |
| 14 | Madhya Pradesh | 194843 | 206556 | 6.0 | 2.1 |
| 15 | Maharashtra | 183026 | 206243 | 12.7 | 5.4 |
| 16 | Manipur | 2826 | 3349 | 18.5 | 2.8 |
| 17 | Meghalaya | 1864 | 2318 | 24.4 | 11.5 |
| 18 | Mizoram | 2257 | 1989 | -11.9 | -4.5 |
| 19 | Nagaland | 1058 | 1202 | 13.6 | 1.9 |
| 20 | Orissa | 51074 | 56755 | 11.1 | 3.4 |
| 21 | Punjab | 29877 | 35314 | 18.2 | -1.3 |
| 22 | Rajasthan | 146443 | 151174 | 3.2 | 1.5 |
| 23 | Sikkim | 509 | 730 | 21.8 | 9.4 |
| 24 | Tamil Nadu | 161576 | 176833 | 9.4 | 2.4 |
| 25 | Tripura | 3633 | 5336 | 46.9 | 24.9 |
| 26 | Uttar Pradesh | 124924 | 168996 | 35.3 | 12.5 |
| 27 | UttaraKhand | 8520 | 8856 | 3.9 | -7.7 |
| 28 | West Bengal | 69217 | 105419 | 52.3 | 30.0 |
| | Total States | 1784280 | 2033483 | 14.0 | 5.7 |

Source; National Crime Research Bureau (NCRB)

Figure: 17.1

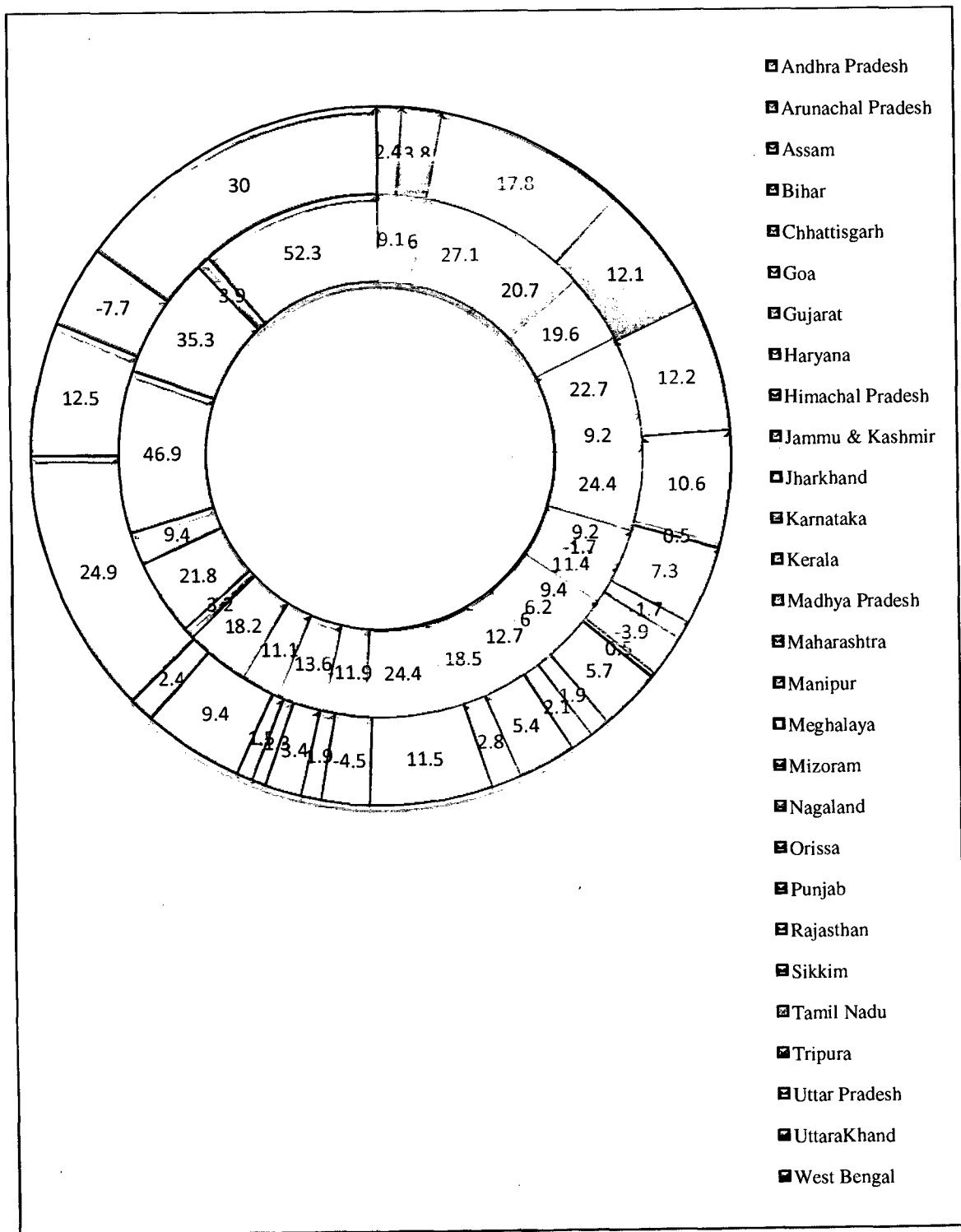
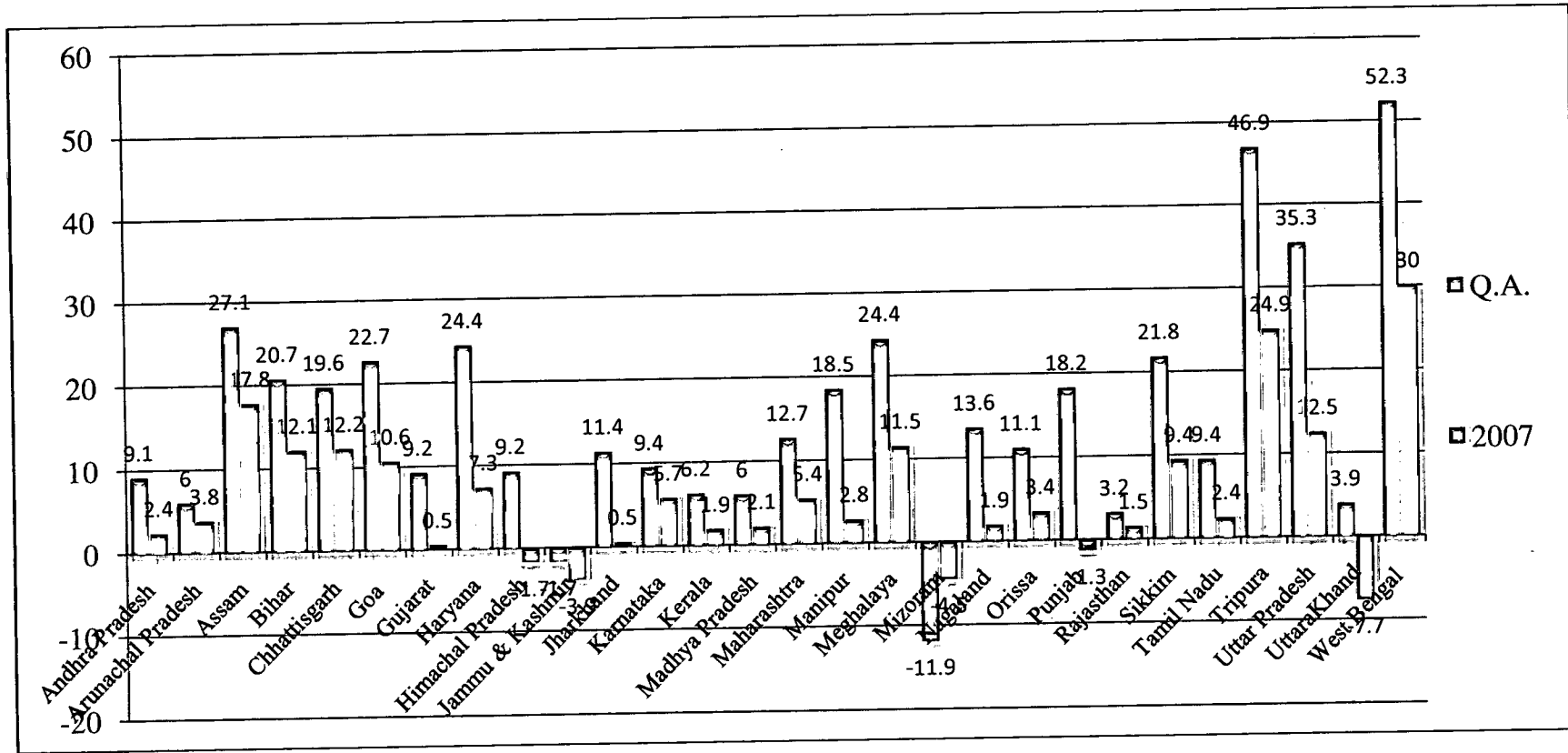


Figure. 17.2



Figures 17.1 and 17.2 highlights the total number of cognizable offences during 2003 to 2008. As per these figures there is no consistency in State of Goa. But there is an increase in these offences from 2003 to 2007 onwards. In other States there is increase in cognizable offences from 2003 to 2007. The figures also depicts the incidences of cognizable offences and percentage of increase which is 10.6. This increase rate is less in other State as compared to Goa which is in Karnataka 5.7, Kerala 1.9 in Maharashtra 5.4.

Though Goa is a small state, the increase in crime rate is around 10% where as in the other three States the percentage of increase of crime rate is around 5%. The steep increase in crime rate in Goa may be due to migration of labourers from the other States, and foreign tourist who indulge in drug trafficking.

From this data analysis it is worth now going to the legal experts to get their opinion on the administration of criminal justice in Goa.

CHAPTER-VI

**EMPIRICAL EVALUATION OF
ADMINISTRATION OF CRIMINAL JUSTICE
SYSTEM IN GOA**

6. Empirical Evaluation of Administration of Criminal Justice System in Goa

It is submitted that this thesis involves a comparison between the Inquisitorial and Adversarial Systems of Enquiry into criminal wrongs, it was felt appropriate to have a Survey Conducted to determine the opinions of Legal Experts, and specially those who have gone through the Portuguese colonial era and the free and Democratic Liberated Goa: In Consultation with the Guide, a questionnaire was prepared and circulated to leading Advocates, Retired Judges and Legal Academicians for their opinion and assessment¹.

In the questionnaire opinion was sought on the following basic questions;

- 1) Which system is better, Inquisitorial or Adversarial.
- 2) The opinion of the experts on the functioning of the Criminal Courts during the Portuguese period.
- 3) The role of Public Prosecutor.
- 4) Protection of witnesses.
- 5) Procedures before these Courts.
- 6) The Relevance of Precedents and other matters before the Criminal Courts.

¹A copy of the questionnaire circulated is given as Annexure "I" and included in the thesis.

- 7) The Role of the Police Department in Investigation of Criminal Cases.
- 8) A comparison with the Indian and Portuguese procedural system for achieving justice.

Not many persons are with us today who have had experience of practising and also experiencing the application of Portuguese Law as applied in Goa as well as under the Indian democratic system. Fortunately, this scholar had the privilege to call upon two great personalities, one is Mr. Justice Eurico Silva and the other is Senior Advocate Manohar Usgaocar. They showed their greatness and love for academics by permitting this scholar to discuss with them issues involving the application of Portuguese Criminal Law and also the application of Indian Criminal Law in Goa.

This scholar is extremely grateful to them and others for the interest they have shown and ideas they have expressed during the different sittings pertaining to the questionnaire. It would now be appropriate to discuss the views of these eminent persons in the context of issues identified earlier. Advocate Vasco Ferreira too was very kind and helpful.

We may now take the issues separately for discussion.

6.1. Preference between Inquisitorial and Adversarial System²

Senior Advocate Manohar Usgaocar who has been practicing Law for more than fifty years has seen the functioning of the Criminal Justice System during the last decade of the Portuguese rule and there after the transformation into the Indian Legal System. According to him he is in full agreement with Justice P. B. Sawant, former Judge of Supreme Court of India, in the opinion expressed by his Lordship that the rigors of the Adversary system followed in India, continuing Common Law System have to be given a go-bye and a blending of Inquisitorial System of the Continent, which was in force in Goa Law has become necessary.

These views were brought forth by Advocate Usgaocar in an article written in 1989³. Thus Advocate Usgaocar is firmly of the view that that Inquisitorial system where the Judge plays an active role to get to the truth of the matter is far better than the Adversarial System where the Judge merely sits as an Umpire.

According to Advocate Usgaocar, the common law lawyers have an aversion to the Inquisitorial System and to support it, he gives illustration quoting Bryan A. Garner, who says⁴, “Accusatorial, denoting the common law system of Criminal procedure, may be contrasted with the civil law term Inquisitorial which describes ‘a system of Criminal Justice ... in which the truth is revealed

² Refer Question ‘A’ – 2 of the qAnnexure - I.

³ *Goa Law Times*, 1989, Vol. I, Pg 60.

⁴ Bryan A. Garner, *Modern Legal Usage*, 1987, Pg 12.

by an inquiry into the facts conducted by the Judge' [CDL = Concise Law Dictionary].

Despite its neutral sense in civil law, common law writers frequently use inquisitorial, as contrasted with accusatorial, in pejorative senses". He has said emphatically that it was not with public interest to transfer the investigating agency of "*Ministerio-Publico*" of the Continental Law to the Police Department. In his view the Inquisitorial System really delivered results.

On this issue Justice Eurico Silva felt that the Portuguese System did produce results in terms of convictions. For petty offences, the judge dealt the matter quickly only on the basis of oral evidence but in case of major offences, investigation of the Crime was done by special police trained under the supervision of the Magistrate.

The head of Police Investigations was of the rank of the judge of High Court. Both the above gentlemen had one thing in mind and that is a criminal should not go unpunished. According to them the Continental System ensured proper investigations under the supervision of the judges and this itself was a great deterrence to avoid doing Criminal Act. They found this missing in the India System.

Advocate Vasco Fereira who has been a renowned practitioner of Criminal Law, also gave his views. In his opinion, the Inquisitorial System is a better system because criminal cases were decided quickly. He also gives an opinion

in favour of Combined Courts, that is Courts having Civil and Criminal Jurisdiction.

6.2. Functioning of the Criminal Courts during Portuguese Period⁵

According to Advocate Usgaocar there is some times a misconception that under the Portuguese system it is for the accused to prove his innocence. He opines that this is not the correct understanding of the Law. According to him, it is always the prosecution which has to prove the charge against the accused failing which the accused will be discharged or acquitted.

To support this, he cites Art. 174 of the Portuguese Penal Code which states that, the confession of the accused unaccompanied by any other proof is not sufficient to frame any charge against the accused. The duty of the Criminal Court here is to direct the production of all available evidence, to find the truth and to investigate all the data available whether the confession is true or not.

Advocate Usgaocar is also of the opinion that the Judges who presided over the Criminal Courts were highly experienced persons in the field of investigation of Criminal Cases and also judging such cases. This helped in providing a very high rate of conviction, since the cases were well investigated and relevant evidence was brought on record.

⁵ Refer Question A – 1 of the Annexure – I.

Justice Eurico Silva stresses more on effective investigation. Every case after due investigation was sent by the Delegado who was investigating to the Concerned Judge. The Judge would go through the entire case and sent back to the Delegado to complete the loopholes and re-submit the proposal. According to him this helped in fixing the Criminal regarding the Commission of the Crime. There was no fixed time period for investigation. However the Criminal Court Judges were very strict in imparting punishment which helped in bringing credibility to the Criminal Law System.

According to Advocate Vasco Ferreira there should be no distinction between Civil and Criminal Courts. Any Judge should be able to decide both Civil as well as Criminal matters. This he felt was essential for efficient disposal of cases.

6.3. The Role of Public Prosecutor⁶

From the opinion given by all the three experts Justice Eurico Silva, Advocate Manohar Usgaocar and Advocate Vasco Ferreira, the position of the Prosecutor was most important. He should have had a degree in Law called *Licenciado* for appointment as Prosecutor. According to them there was no distinction between a Prosecutor and a Judge. Sometimes the Prosecutor became a Judge and other times a Judge became a Prosecutor. This shows a strong link between

⁶ Refer Question A – 3 of the Annexure – I.

the criminal process and decision making. There was also the necessity to appoint honest and upright persons as Prosecutors.

6.4. Protection of Witnesses⁷

Under the Indian System of Law witnesses play a very important role. The fate of the Criminal Case ultimately depends upon what witnesses say in the Courts but looking at the Portuguese Law one finds that no such importance is given to witnesses, since the matter is documented at investigation stage itself. Advocate Vasco Fereira expresses his opinion that there was no protection to witnesses under Portuguese Law and even there was no witness box in the Courts. The faith of the Judge in the Prosecutor was such that he would believe him and whatever he had submitted, he would accept it. This aspect has been fully supported by Justice Eurico Silva and he confirms that there is no need to have a provision to protect the witnesses.

6.5. Procedures before the Portuguese Criminal Courts⁸

The Criminal Proceedings before the Court were very brief. Much of the work was already completed by the Prosecutor. Matters which were correctional or which were of the accusational nature were disposed of in a summary way. The experts have informed that regulations dealing with Bail were freely to be provided to the accused but in cases against Human beings or the State, or in

⁷ Refer Questions A – 4 of the Annexure – I.

⁸ Refer Questions A – 5, 6, 7 of the Annexure – I.

case of Sodemy, Counterfeit Currency, Death, Robbery, etc. Bail was not to be granted. The Criminal cases by accusation were disposed off by General Chamber which examined witnesses and disposed off in a quick manner. In the serious cases, special procedure were laid down which was subjected to the detailed investigation.

According to Advocate Manohar Usgaocar the courts were working in three ladders:

- i) The Court of first Instance, which is known as Trial Court under the English System.
- ii) The High Court called the Relacao and finally.
- iii) . The Supreme Court in Lisbon.

The system of filing appeal with higher courts was different. From the Trial Court, the Memorandum of Appeal was to be presented within Eight days to the Trial Court itself from the date of communication of the Judgment. The Judge could admit the appeal and at the same time he would pass orders granting stay or refusing stay. Thereafter the appellant would submit the grounds of appeal with synopsis and conclusions within twenty days and next twenty days the respondent would file his counter. Thereafter the proceedings would be sent to the appellate court. Appeal would proceed in the same original proceedings and after the file was remitted to the appellate court, there was no

oral hearing but judgment would be passed by Division Bench of three Judges. The procedure of delivery of Judgment was done in following manner.

One Judge would be the relater. He would deliver his opinion in writing. Then the file would be sent to another Judge who expresses his opinion in writing either concurring or differing. Then it would go to the third judge. The Court of *Relacao* Constituted of five Judges so that no decision would be rendered without a minimum of three judges out of five agreeing with one opinion.

6.6. The Relevance of Precedents and other matters before the Criminal Courts⁹

Advocate Usgaocar gives a very detailed account of the relevance of Precedent in the Criminal Courts. According to him the views of Commentators who were professors and members of teaching faculty, had greater value than the Courts. The system of precedent was not applicable and even a Trial Court Judge could distinguish and differ from a decision given by the High Court that is the Court of *Relacao* or the Supreme Court. There was only one solitary exception in the event of their being a Divisions between Two Benches of the same Court then the full Court would take a final decision and this was known as "*Assento*" and had the force of Law.

The other experts have opined that books and other reference materials were available in the Courts for reference. This indicates that the Government took

⁹ Refer Question A – 8 of the Annexure – I.

the responsibility of making the Law available to the practitioners as well as to the litigants. The Judges too would have easy reference to decide the cases from the material available in the Court itself. When compared with the Indian System one finds that the Judges find it very difficult to find the Law as material will not be easily available. They have to depend more on the Legal Profession for getting reference material. In this respect the Courts in Goa were at an advantage.

6.7. The Police Department and Criminal Courts in Goa¹⁰

The Police Department is expected to be a very efficient arm of the Criminal Justice System. The experts interviewed were of the opinion that the Police Department in Goa worked very efficiently, especially with regard to the investigation of crime there was a separate cell of the Police Department which was controlled by the Prosecutor and the Judiciary.

This was because the investigation of crime had to be carefully monitored to ensure that the criminals do not escape under political or social pressures. This process would create a greater efficiency on the part of the Police Department and also would increase the faith of the people in the Criminal Justice System. If an Investigation was conducted honestly the esteem of the Police in the eyes of the Public would also increase hence the Police Department in Goa did play

¹⁰ Refer Questions A – 10, 11, 12, 13, 14 of the Annexure – I.

a very effective role in the whole process of recording a crime, investigation and punishing the criminal.

In free India such a system has been introduced in investigating violation of Human Rights. The National Human Rights Commission and the State Human Rights Commissions do have Police Cells functioning under them for investigation of Human Rights Violation and submitting the same before the respective commissions. Probably, this was done keeping in mind the Goa experience.

6.8. A comparison with the Indian and Portuguese Procedural System for achieving Justice¹¹

The following persons have responded to the Questionnaire submitted to them. Advocate Ramchandra Ramani, Advocate Narahari Keni, Advocate Joe Antao, Advocate Menino Teles and Eminent Academician, Dr. Marian Pinheiro. The first four persons mentioned above are Senior Advocates practicing law in different parts in Goa. While the last mentioned is the Principal of V. M. Salgaocar Law College, Panaji, Miramar, Goa and former Dean of the Faculty of Law, Goa University.

All of them have responded positively to the functioning of Criminal Law in Goa after Liberation. They have also kept in mind the issues of conflict

¹¹ In this para a brief comparison is made by way of introduction to the issues identified in Part – B of the Annexure – I.

between the former Portuguese Law and the present Indian Law while giving their opinions. We have already discussed the responses given by Justice Eurico Silva, Sr. Advocate Manohar Usgaocar and Advocate Vasco Ferreira regarding their views on the functioning of the Portuguese System in Goa. They have also contributed their views regarding the functioning of Indian Law in Goa after the Liberation of Goa.

We will discuss the opinions of the above experts under the following issues.

1. Increase or Decrease of Crimes in Goa after Liberation¹²

According to Advocate Narahari Keni there has been an increase in Criminal Cases specially pertaining to Theft, Murder, Physical Assault and Motor Accident offences.

According to Advocate Joe Antao there is an increase in Criminal Cases and he feels this is because of the following reasons:

- i) Administration of Criminal Justice is ineffective.
- ii) There is political interference with police investigation.
- iii) The investigating machinery is incompetent
- iv) When persons are acquitted, they are encouraged to commit more crimes.

¹² Refer Question B – 1 of the Annexure – I.

According to Advocate Ramchandra Ramani there is an increase of Criminal Cases after Goa's Liberation is because most of the Criminal cases end up in acquittals. The reason for this:

- i) Investigating agencies are not properly trained or equipped.
- ii) Delay in Proceedings.
- iii) Rampant Corruption.
- iv) Political interference with Police Machinery.

According to Dr. Marian Pinheiro, there is an increase in Criminal Cases reported in the recent past.

According to Justice Eurico Silva the reasons for the increase in Crimes is as follows:

- i) There is disrespect for authority.
- ii) Interference by Politicians in Police Investigation of crimes.
- iii) The Society itself is not taking a serious note of these issues.

According to Advocate Menino Teles, there has been a great population increase in Goa and along with that increase in corruption and Criminal activities. Hence, there is possibility of increase in crimes and criminal behaviours.

2. *Are Criminal Courts today more or less efficient than the Criminal Courts during the Portuguese Period*¹³

According to Dr. Marian Pinheiro the efficiency of the Criminal Courts is much lower today than expected or desirable. He has no opinion about the Criminal Courts during the Portuguese period. Advocate Ramani has no opinion on this aspect.

Advocate Keni, under present system too many facilities are made available to accused person. There are many acquittals and that has affected the functioning of the Criminal Courts.

Advocate Antao feels that the Prosecution witnesses turn hostile because of influence of Money, Lack of Security to them and threats they have to face.

According to Justice Eurico Silva there is total Lack of Accountability on the part of all concerned. He feels there must be strict inspection by superior courts and promotion of Judges must be done on the basis of merit. There must be proper regulation for promotion, transfer and fresh appointment.

3. *Making Criminal Justice System more efficient*¹⁴

On this issue Justice Eurico Silva opines that:

- i) Punishment must be strict.

¹³ Refer Question B – 2 of the Annexure – I.

¹⁴ Refer Question B – 3 of the Annexure – I.

- ii) Right to Bail must be regulated.
- iii) Powers be given to Judges to Punish Persons.
- iv) There should be accountability of Judges.

According to him being a Judge is a mission and not a profession.

Dr. Pinheiro feels that:

- i) There should be a proper time limit fixed for every trial.
- ii) The investigating official must be made liable and punished in the same trial if conviction is not possible because of faulty investigation.

According to Advocate Ramani:

- i) There must be independent autonomous body constituted to investigate Crimes.
- ii) Delays in prosecution should be avoided.
- iii) Only efficient persons must be involved in investigation procedure.

Advocate Keni has no opinion on this issue.

Advocate Antao opine that

- i) Independence to be given to the Police Department and they should be allowed to work without interference.

- ii) Police officials must be better trained.

Advocate Menino feels that it takes a very long time to complete Criminal trials. The Murder cases take three to four years. It is his opinion that the case should be taken up the day after the charge sheet is filed and within a maximum period of six months the trial should be completed.

4. Impressions on Provisions of Criminal Law¹⁵

According to Justice Eurico Silva everything should be done to protect the dignity of the Courts and the Judges should use their discretion so as to command respect. He finds the Indian Evidence Act is too Technical and Criminal Procedure Code must limit the number of adjournments.

According to Dr. Pinheiro:

- i) Punishment must be made more severe.
- ii) The Public Prosecutor should guide the case from the beginning to the end.
- iii) Procedure must be made more simple.
- iv) Where there is no conviction, explanation must be called for from the investigating and presenting officer.

¹⁵ Refer Question B – 4 of the Annexure – I

According to Advocate Ramani:

- i) The Indian Evidence Act requires further Amendments.
- ii) The Criminal Procedure Code must be so amended to face the challenge of terrorism, Cyber Crimes and Economic Offences.
- iii) The Indian Penal Code must also requires to make up to date to cover Kidnapping, Gang rapes, Highway Robberies, etc.

According to Advocate Keni:

- i) There is too much leeway given to the accused and defendant and not the Plaintiff and Complainant.
- ii) There is less chance of success in case of Complainant or Plaintiff and more chance of success if you are defendant or accused.

According to Advocate Antao; He is of the opinion that Legislation are very good but their implementation must be done very strictly.

According to Advocate Teles; The Indian Penal Code is more than hundred years old. Looking at today's conditions the amount of compensation to be payable to the affected should be increased. Also the fine that is charged should be increased considerably. He proposes amendment to Sec 324 and Sec 325 of the Indian Penal Code so that the law is made more stringent. Further the

Police Department should not be carried away by what the press or the Media says. They should make honest investigation so that the real culprit is punished.

5. Equipment of the Judges to decide Criminal matters¹⁶

According to Justice Eurico Silva much would depend upon the legal education received by the Judges.

Dr. Marian Pinheiro feels that Judges are not properly equipped. They should be made answerable for delay in completion of proceedings.

According to Advocate Ramani; It is difficult for Judges to decide effectively in view of lax investigation and the witnesses turning hostile.

According to Advocate Keni; The Judges are well equipped to decide criminal matters.

According to Advocate Antao; He is fully satisfied with the Judiciary in Goa.

Advocate Menino Teles is of the opinion that the judges should know the Law well, be very cool and patiently hear the Advocate. They are quite competent to Judge Criminal matters.

¹⁶ Refer Question B – 5 of the Annexure – I.

6. Powers of the Prosecutor¹⁷

Justice Eurico Silva states that the Prosecutor is the representative of the State. He feels the role of Prosecutor should be only for conducting the Prosecution. The matter of Evidence should be left to the Court.

Dr. Marian Pinheiro is of the contrary opinion. He feels more powers should be given to the Prosecutor and he should guide the process of investigation.

Advocate Ramani feels that the Prosecutor is the Officer of the Court and must act independently in the interest of Justice. His job is to present the facts correctly.

According to Advocate Keni the Prosecutor need not be given more powers. The present Powers sufficient to investigate the matter thoroughly. So also Advocate Antao feels that the present powers are sufficient.

Advocate Usgaocar is in favour of giving more powers to the Prosecution as under the Continental System.

Advocate Teles; The job of the defense Advocate as well as the Prosecutor is to assist the Court in finding out the truth. The Prosecutor honestly must place all the facts before the Court and the defense lawyer has to do all he can to free the defendant.

¹⁷ Refer Question B – 6 of the Annexure – I.

7. Police Department and Criminal Investigation¹⁸

According to Justice Eurico Silva the Police Department is not conducting investigation efficiently. The Department is not functioning honestly and with integration. He is not in favour of accepting confession made to a Police Officer.

Advocate Usgaocar is highly concerned about discovery of weapons under Sec 27 of the Evidence Act. He feels a lot of mischief is done by the Police under this Section. He is not in favour of accepting confession made to a Police Officer.

Dr. Pinheiro is of the opinion that the Police should undergo specialized training in Criminal investigation. He also feels that Confession made to a Police Officer should be admissible as evidence but not as conclusive evidence of the guilt.

Advocate Ramani also feels that the Police are not properly trained for this type of job. He feels that there should be an autonomous institution to conduct investigation. He is not in favour of accepting confession made to Police Officer.

¹⁸ Refer Question B – 7 of the Annexure – I.

According to Advocate Keni much is required to be done to tone up the investigation process. He is against accepting confession made before Police Officer.

According to Advocate Antao; He is not satisfied with the way the Criminal Investigation are conducted. He suggests better training to the Investigating Officers. He is against accepting Confession before Police Officer.

According to Advocate Teles Police Officers are creating false evidence and create false witnesses. He is not in favour of confessions made to Police Officers be accepted.

8. *Hostile Witnesses*¹⁹

Justice Eurico Silva feels that this issue revolves around the moral integrity of the witness.

According to Dr. Pinheiro the witness must be properly protected. Further the statement given by the witness at the investigation stage should be treated as binding.

Advocate Ramani also feels that the witness should be properly protected.

According to Advocate Keni the real question is to bring before the Court real offenders.

¹⁹ Refer Question B – 8 of the Annexure – I.

Advocate Antao also request for proper security and the Police are helpless when witnesses are purchased.

Advocate Teles; Feels that witnesses become hostile if there is some relationship with the accused or because of money power or there are artificial witnesses.

9. Sentencing Policy of the Courts²⁰

Justice Eurico Silva is of the opinion that the courts are following proper sentencing policy. However in case of Rash and Negligent Driving and incase of Rape cases more stringent punishment should be given.

Dr. Pinheiro feels that the sentencing policy of the Courts is not appropriate. The sentencing is based on 19th century Legislation and the system of punishment must be changed.

According to Ramani there should be equity in granting punishment. This means all similar offenders must be given similar punishment.

Advocate Keni feels that the sentencing policy of the court is appropriate.

Advocate Antao is of the opinion that the Court should follow Deterrent theory of Punishment.

²⁰ Refer Question B – 9 of the Annexure – I.

Advocate Teles recommends that fine amount should be increased in all the cases.

10. Role of High Courts and Supreme Court²¹

Justice Eurico Silva is highly satisfied with the role played by the higher courts in India.

Dr. Pinheiro is of the opinion that the High Courts should play more effective role and pass appropriate strictures against erring officials.

Advocate Ramani is also satisfied with the role played by the higher Judiciary.

Advocate Usgaocar, Advocate Antao and Advocate Keni have expressed no opinion.

Advocate Teles is of the opinion that it is the duty of the Higher Courts to verify facts and issues. Then only they can play an effective role in rendering Criminal Justice.

11. Grant of Pardon²²

Justice Eurico Silva and Advocate Usgaocar feel that the right to Pardon should be continued in the Constitution.

²¹ Refer Question B – 10 of the Annexure – I.

²² Refer Question B – 11 of the Annexure – I.

According to Dr. Pinheiro this right should be exercised for justifiable reasons only.

Advocate Ramani and Advocate Antao agree that this right should exist but Advocate Keni disagrees. He feels such right can be misused by political persons.

Advocate Teles submits that all the power should vest with the Judiciary and not with the executive.

*12. Precedent in Criminal Law*²³

According to Justice Eurico Silva one should distinguish on facts. By blindly following precedent one may hamper the healthy development of the Law.

Advocate Usgaocar is in full agreement that precedent be applicable in Criminal matters.

Dr. Pinheiro also agrees that precedents should be followed since it helps the Judiciary to maintain uniformity and consistency.

Advocate Ramani, Advocate Keni, Advocate Antao all agree that the precedent is an important aspect of the legal system and should be followed.

Advocate Teles feels that, it is better if the Courts go by the Principle of the case rather than the precedent. He recommends the application of facts and the circumstances of the particular case.

²³ Refer Question B – 12 of the Annexure – I.

Along with other Advocates, Advocate Teles is for a strong democratic setup and every Criminal Court must be a custodian for implementing human rights enshrined in the constitution of India, as well as in Universal Declaration of Human Rights as proposed by the United Nations.²⁴

From the above opinions given by experts practicing law or teaching law or who have been in the Judiciary, one can come to different conclusions, which will be done in the later chapters. While considering issues in Part A dealing with the Portuguese System, we thought it relevant to take only Eight issues which have a bearing on legal system and Criminal Justice System in Goa for the future. However, in discussing issues in Part B we have considered all the issues so that one can discuss opinions which will be useful for the future development of the Law. One of the objectives and hypothesis being worked out in this thesis is to suggest measures to bring down crime rate in Goa to zero level. In this direction any suggestion made would be welcome²⁵.

We will now proceed to the next chapter which deals with the pre-emptive action to be taken by the Government and concerned to bring down the crime rate.

²⁴ Refer to United Nations Declaration on Human Rights, 1948.

²⁵ See Chapter VIII dealing with conclusions and suggestions.

CHAPTER-VII

CHALLENGES BEFORE GOA FOR MAKING IT AS A MODEL STATE IN ADMINISTRATION OF CRIMINAL JUSTICE

7. Challenges before Goa for making it as a Model State in Administration of Criminal Justice.

As already been described, Goa is a state blessed by nature. That is why it has attracted large number of persons to come to Goa and enjoy its scenic beauty as well as its culture. The people of Goa are very peaceful, very friendly and by and large very honest. Given these parameters one wonders why there should have been occurrence of crimes within the territory of Goa State. We have seen the earlier chapters that there has been a steady growth of crimes in Goa. In this Chapter we wish to highlight the basic principles which are necessary to ensure that the extent of Crimes decrease and also how it could reach the zero level making Goa State one of the best administered State.

7.1. Revisiting the Causes for Criminal Behaviour

Before we suggest a remedy, we wish to highlight the causes that lead to criminal behaviour. Once we know what exactly is the root cause of criminal behaviour we can then suggest the remedy which will help to eliminate the cause of such behaviour.

Firstly, Criminal tendency must be identified in the early childhood. Experts have reported that there are certain indicators which can be identified and have to be properly remedied to avoid later criminal tendencies and criminal behaviour. These include repeated temper tantrums, days functional family life, poor intra familial relations, tardiness and inability to confirm in the classroom

setting, low measured intelligence and academic difficulty in School, Childhood accident, poor peer relations and early and frequent use of tobacco and alcohol¹.

The author further concludes on the basis of examining different theories that children who are found to have high rates of misbehaviour in early childhood in comparison to other children are likely to have higher rates leading to criminal behaviour in life also. Therefore, what is required is that the State should provide appropriate disciplinary practices. The state has to adopt a positive policy to create appropriate environment for the children to grow. It is said that the children who have strong attachment to parents, to friends, to school and other conventional institutions are much less likely than the others to become delinquent as children or criminal as adult².

Second theory that explains criminal behaviour is the co-relation between delinquency and peers. It is reported that a very considerable amount of delinquency is committed in the company of others and also delinquent. Individuals are much more likely than others to report having delinquent friend. This theory is based on the common adage "Birds of same feather flock together"³. This means individuals select friends and companions in part on the basis of delinquent proclivities and impart on the basis of availability.

Research on these aspects have shown that delinquent gangs suggest that they tend to loose networks with highly unstable membership and the members do

¹ Rajpal Kaur, *Criminal Psychology – New Trends and Innovations*, Pg 58.

² *Id* at 59.

³ A famous English Proverb.

not trust and even tend to dislike the other members. This means the groups of adolescents will tend to be relatively homogenous on the tendency to engage in delinquency⁴.

The relationship between age and crime is said to be one of the most significant and well established general correlates in criminology. According to it crime rates rise dramatically in early adolescence, peak sharply in the late teens and early twenties and then decline precipitously and continuously throughout life. Such tendencies are found in assaulted offences like homicide, rape, aggravated assault, in theft offences such as burglary, Auto theft fraud and drug offences which includes hard and soft drugs and alcohol⁵.

The next theory connects gender and crime. It is reported that males commit more offences than females⁶.

Keeping the above theories in view we shall now take up for discussion the below mentioned pertinent issues to help eliminate the occurrence of crimes keeping in mind the situation in the State of Goa.

7.2. Toning up the administrative machinery in Goa- Making it responsive to crime prevention

In any given democratic system the people look upon the administration to provide appropriate leadership so that peace and tranquility prevails. The politicians instead of providing an ideal leadership today, they have turned

⁴ Rajpal Kaur, *supra* note 1 at 62 - 63.

⁵ *Ibid*,

⁶ *Id* at 64.

prevention possibilities for the problem behaviour implicated in low self control may be desirable”.

From the above one can conclude that the Police Department in Goa will require a totally new approach and method to prevent the occurrence of crimes. The old method of simply arresting person and giving them limited punishment will not help in today's condition. What is required is educating the youth in and making them understand the long term consequences of criminal behaviour.

Goa is faced with the problem of large scale consumption of Alcohol and youth have to be properly educated regarding the evils that follow alcoholic consumption. So also with regard to drugs. There must be proper educational programmes in schools, colleges and places of work where youngsters can be taught not to involve in taking drugs or even if they are involved the process by which they can be taken off the drug menace. Thus crime prevention programme must occupy the highest priority with the police rather than punishment after the crime is committed.

This will require a restructuring the police organization in Goa so that there is a closer interaction between law enforcement and the community. They should interact with the department of education, health and social welfare so that all the sectors that deal with the formation of the youth can interact and support. The programmes put forth by the police department to help prevent the occurrence of crimes.

7.3. Challenges in crime Prevention in State of Goa

7.3.1. *Challenges in Tourism Trade In Goa*

We have already seen that Goa's income largely depends upon the tourist trade. Over the years the number of tourists visiting Goa have increased in leaps and bounds. The reason for this is large coastline and lovely beaches with bright white sand supported with large number of hotels located very close to the sea shore. The Goa government observes the tourists season throughout the year though maximum tourists come to Goa between September and February.

There are also tourist coming in April- May and the monsoon season with the difficulties experienced in the North, the advantage has been for Goa to receive north Indians as well as south Indians during all the seasons of the year. Goa is fully supportive of this tourism phenomenon. It has 2501 hotels having room strength of 22,472 and with 42,145 beds. This is more than sufficient to accommodate different types of tourist and meet their demands. The statistics showing a rise in tourism trade during the last six years is indeed phenomenal⁸.

It is also expected that by 2012 the number of flights entering Goa with tourist is 4000 and the projected beds capacity is likely to increase to 6000. The different types of tourism in Goa are⁹ (a) Beach Tourism (b) Hinterland Tourism (c) Leisure Tourism (d) Cruise Tourism (e) Eco Tourism (f) Discovery and Adventure Tourism and (g) Medical Tourism.

⁸ Department of Tourism, Government of Goa, Tourist Statistics 2008.

⁹ *Id* at Point 24.

The above indicated increase in tourist trade has directly affected the culture and the wellbeing of Goa. No doubt there is increase of Revenue but along with this there is increase in crimes committed. This we have seen in Chapter V where there are sufficient indicators to show the increase in criminal behaviour. But we cannot say that increase in tourism and entry of foreign tourists is the sole cause for this increase. But then tourism and specially the foreign tourists have to be properly controlled so that their actions do not cause adverse effects on the youth of Goa.

The Government of Goa should have restricted the movement of the foreign tourists on the beaches into definite secluded areas. Sun bathing, swimming and enjoyment of foreign tourists should be done in closed zones instead of now, being permitted them to do so on open beaches where the youth are likely to be misled and get mentally corrupted. Also it is widely believed that the foreigners bring drugs with them which gets into the hands of youngsters who easily get succumbed to the drug trade and consumption of drugs. There have also been increase in cases of HIV Aids which are also related to the tourism trade.

There have been cases of murder, extortion, rape, robbery, fraud etc, related to tourists. Hence, to a large extent tourism trade has had a negative impact on the culture and wellbeing of the people of Goa.

To prevent the occurrence of criminal behaviour in so far as it is related to tourism, it would be appropriate for the education department to prepare the

youth right from the school curriculum, to the dangers that are inherent in the tourism trade like Alcoholism, Drugs, and Aids, Gambling, Prostitution and such other evils. It would be most appropriate if the foreign tourists are kept in secluded areas where Indians are not allowed to participate in tourism programme.

This will help prevent the Indians from getting involved with foreign tourists and will greatly help in the reduction of trafficking in drugs etc. it may be mentioned that in many countries of the world though Gambling, Alcoholism, etc is forbidden for tourist, there are special centers which are exclusive and local citizens are not allowed entry and to participate. Hence there is nothing wrong in making rules for the conservation of ones culture and tradition and at the same time promoting tourism as important source of revenue for the state.

The recent case of Scarlett Kelling's, brutal rape and murder is an example of Goa increasingly overrun by sex and drug crimes. Ajit Sahi¹⁰ writing for Tehelka Magazine has explained the details regarding how tourists are fooled by agents and in the process loose their life. The report published by Ajit Sahi in Tehelka Magazine must be admitted as authentic evidence of what actually happens to the tourists when they innocently come and become victims of operators. Following is the excerpt from the article.

“White Girls are easy to bed. They come to Goa for quick fun with no commitments and men like me give them that, says Rocky, a

¹⁰ Ajit Sahi, Tehelka Magazine, dated 29th March 2009.

cashier at a booze-n-food shack on north Goa's Anjuna Beach, the shore most preferred by foreign tourists for nude sunbathing. Up on a cliff, behind the string of Anjuna's straw and bamboo shacks, is the Nine Bar. This entire area, where Rocky works and hangs around, is Anjuna Village-notorious for its drugs, sex and crime. It is 9pm on Saturday, the fourth since British Teenager Scarlett Eden Keeling was drugged, raped and murdered at a shack named Lui, just half a kilometer from Nine Bar. Tonight, Nine Bar throbs with techno-trance music as 200 bodies move in rhythm on a patch the size of basketball ground, overlooking the beach. Many eyes are glazed in the smoke-filled haze. Hashish is being puffed; hiding behind a juttred tree, cocaine is quickly snorted. Couples and groups pass Ecstasy around quietly. Presently, Rocky charms a lissome, stoned Westerner and walks away with her. These are times of caution though, even within this subculture, which is increasingly all that the world knows of Goa. The music will stop at 10pm and the motley crowd will have to disband. The tenacious fight for justice by Fiona MacKeown, the mother of 15year old Scarlett Keeling who was mercilessly raped and left for dead by at least two Goan men at Lui's shack in the early hours of February 18, has forced a defensive Goa government to pretend enforcement against the drug trade and turn the loudspeakers off at the scheduled time at Nine Bar and similar haunts".

7.3.2. Mining Industry, Migrant workers and Social Unrest

For many years down Goa has achieved its economic status by exporting Iron ore, to developed countries. It is commonly said that the iron ore industry is the backbone of Goa's economy. The Industry began as a private sector initiative. Whatever little Goa earned by way of foreign exchange before 1961 was from exporting Iron Ore.

Today iron ore mining remains as the biggest contributor to Goa's foreign exchange earnings, even exceeding the revenue's earned through tourism. The latest data reveals that more than 88% of Indian Iron ore which reached world markets during the last decade of 20th Century was from Goa. The state has earned more than 62% of the total foreign exchange of the National Iron ore sector during this period¹¹.

The entire Iron Ore production of Goa is exported. In the global export trade commodity because of the Goan Exporters, India has been able to keep a steady 5% to 6% share in the world market. This Goa has been able to achieve by adopting the cluster approach. The Goan Iron ore cluster is made up of numerous small, medium and large sized firms simultaneously competing with each other and collaborating to equip the collective with infrastructure. The maintenance of Berth No. VI in Marmugoa Harbour is a fine example of this cooperative approach. The social profit on 16 million tones of iron ore exports from Goa works out to Rs. 300 Crores.

¹¹ Report of National Council of Applied Economic Research, New Delhi, 2002.

According to International Industry experts, Goa is likely to maintain its lead in the world market as found useful for blending with the Australian and Brazilian varieties. Many industrialists in Goa have evolved a strategy for long term alliances with International Companies.

Though above figures create hope for the development of Goa the question remains whether the industry has taken measures to offset the problems that may arise out of employment of migrant labourers and imbalance in Environment because of destruction of the forest and pollution due to transport of iron ore.

The second situation also has a bearing on the occurrence of crime and unless the state government has taken measures to maintain the balance, there may be increase in criminal behaviour. Let us then, discuss each of these issues and see how Goa can march ahead with its economic development and at the same time maintain the environmental balance and give justice to the migrant workers.

i. The Environmental Impact of Iron Ore Mining in Goa.

The earlier mentioned Report¹² of NCAER submitted in 2002 in chapter VI has given a detailed account of the environmental impact of iron ore mining in Goa. According to the report main iron bearing zones is divided into four separate areas they are Bicholim- Pale area, Sancorde area, Shirgao-Kaley area, Sanguem-quepem area. The greatest advantage for Goa is its rivers Mandovi,

¹² *Ibid*

Zuari Terekhol and Chapora which flow from the hills on the east to the Arabian Sea to the West.

Thus ore exports from Goa are totally safe and unloading done mechanically. The environmental problems arise when ore is extracted from the ground and unwanted material is separated from it. Then there is in-depth exploration which involves drilling, digging of trenches and building access roads. This involves environmental imbalance depending upon the size of the installation and the building technique.

Most of the mines in Goa are open ground water level. As a result 10m of water is to be pumped out for every one tonne of iron mined. This also results in removal of material which is dumped on the slopes, road sides and valleys which is a major source of land and water pollution. However the following legislation has been strictly enforced to ensure that the damage of environment does not exceeds the limit laid down. The application of these acts and laws can be explained in the following mining processes.

Steps in mining process and its potential environment impact

| Mining Process | Process Waste | Air Emissions | Other Waste | Land/ Habitat/ Wildlife |
|-------------------------|---|---|--|---|
| Site Preparation | Erosion due to removal of vegetation. | Exhaust from construction , vehicles, fugitive dust. | Run- Off sediment | Deforestation, loss of fertile soil cover and habitat loss from road and site construction. |
| Blasting/ Excavation | Acid Rock drainage, erosion of sediments, petroleum wastes from trucks. | Dust blown to surrounding area, exhaust from heavy machinery. | Non- refuse over burden, waste rock. | Loss of habitat; increase in erosion; loss of plant population from dust & water pollution; reduction in localized ground water recharge resulting from increased runoff; nearby structural damages from vibration & settling competition for land use. |
| Crushing/ Concentration | ARD from tailings. | Dust created during transportation. | Additional waste rock tailing. | Increase turbidity of lower pH making it unfit for irrigation and drinking. |
| Transportation | | Effluents released by vehicles, dust released due to non coverage of the ore. | Oil, other effluents released by barges, ore spillage on the road. | Pollutes air, water. |

The statutory regulations dealing with the above are as follows:

1. The Water Pollution Act, 1974
2. The Air Pollution Act, 1981
3. The Forest (Conservation) Act, 1980
4. The Environment Protection Act, 1986.

Apart from this the Mining Department implements The Mines and Minerals Regulation Act and also the Environment Clearance from Ministry of Environment. In all these activities the mining industry has taken steps to prevent water pollution by discharge of mine pit water, waste water from wet beneficiation plants, Rain water run off from dumps, acids drainage, effluents from Barges and workshops and leaching solution.

About 20 beneficiation plants have been installed for purification of water. Also a proper supervision over the barges is attempted. There are 130 barges currently in Goa, 75 are with private operators while 55 are with exporters. Constantly barges bleed their engines. This process of replacement of engine oil is done in the workshops.

Pollution of land by mining is done by dumping and mine excavation. Dumping kills vegetation resulting in depletion of forest. The mine owners compensate to the damages caused to the agricultural fields by annual payments made to the farmers for removal of silt from their farms and for loss

of production. The mining industry has introduced social forestry in mining areas by planting caju, acacia and eucalyptus trees.

Noise pollution is reduced by introducing high capacity, eco- friendly Ripper Dozers, which rips the hardest of the laterite. The use of explosives in Goa has been reduced by 10%. The measures taken by mine owners to reduce pollution are given below

Abatement measures taken by the mine owners to reduce pollution

| Type of pollution | Pollutants | Sources | Measures taken by the mine owners to reduce pollution |
|--------------------------|--|--|--|
| Air | Fugitive dust Carbon monoxide Nitrogen oxide Silica | Overburden Drilling, moving of machinery, blasting exhaust from diesel engines blasting agents, vehicles and domestic stoves Vehicle movement on unpaved roads. | Spraying water on roads building of tar roads proper ventilation of work place covering trucks with tarpaulin Cleaning of ore spillage if any with brooms. |

| Type of pollution | Pollutants | Sources | Measures taken by the mine owners to reduce pollution |
|-------------------|--|---|---|
| Water | Silt Waste minerals Tailings Yellow Boy (Hydrated iron Oxide) | Rain water run off from dumps Pit water Wet Beneficiation plants Effluents from workshops, barge movement Leakage or spillage of leaching solution Spills from ruptured pipes. | Refilling of oil in barges only when parked Processing of waste oil/used oil Proper maintenance of bunds Drying of tailings Building of series of laterite bunds Settling pits |
| Land | Silt deposition Degradation Loss of forests Fertile Soil cover | Dumping, mining Building of roads, buildings, Beneficiation plants Pit water, run off water from dumps. | Aforestation of rejected dumps with Acacia etc Up gradation of low grade ore in dumps using magnetic concentration to reduce waste in dumps. |
| Noise | Noise | Blasting during drilling Machinery used in mining activities. | Reduced use of explosives Introduction of high capacity and eco-friendly ripper dozers. |

The annual recurring/ maintenance cost likely to be incurred by the industry estimated at Rs 87, 00,000. The details are given below

| | Rs. Lakh |
|---|----------|
| 1. Dust Suppression | 25 |
| 2. laterite wall construction | 05 |
| 3. Desilting setting pond and construction of bunds | 10 |
| 4. tailing treatment | 20 |
| 5. Aforestation | 05 |
| 6. Erosion control/ Pitching Geotextiles | 06 |
| 7. Environment monitoring | 08 |
| 8. Socio economic programme | 05 |
| 9. Environment regulation compliance | 03 |

The question still remains as to whether the action taken by the mining industry is sufficient to meet the demands of the workers as well as persons affected through pollution. It is time that the govt. play an effective role to supplement the action taken by the industry by providing a matching grant which will help restore the confidence of the people in the steps taken to minimize pollution arising out of the mining industry.

ii. The Problem of Migrant Workers Resulting From Industrial Development.

Compared to the other states in India, the state of Goa is relatively small in population as well as in area. In 1961 when Goa was liberated the population of Goa was only 5, 89,997 which included both the natives and settlers. There were hardly any influxes of migrants. But with the dawn of independence, there was rapid increase of persons coming from Maharashtra, Karnataka and Kerala in search of employment in Goa.

A number of industrialists set industries in Goa and native Goans hardly had the training or skills to step into the new jobs. The industrialists had to fill in the jobs to show productivity and hence migration of workers to Goa became a reality and they have been increasing year by year. In the late 1980's and 1990's there was huge increase in economic activity in the form of construction boom, expansion of tourism industry etc.

The peculiar thing was many Goans were migrating out of Goa in search of foreign Jobs and Government. Jobs in neighboring states hence there was no reason whatsoever to stop migration of workers into Goa. Their population increased in "Metes and bound". The 2001 census shows total population of Goa as 13, 00,000 of which 4, 00,000 are supposed to be migrant workers.

The different types of migrant workers are classed as (i) **Contract Workers:** who work mainly in industry and construction. (ii) **Casual Workers:** these are labourers who are involved in plumbing, gardening, repairs, carpentry, masons

and their woman folk work as housemaids. (iii) **Small Vendors:** they sell vegetables, fruits, cloths, artificial jewellery, toys, books etc. (iv) **Seasonal Workers:** who are employed on fishing trawlers, small fishing boats and agriculture.

These migrant workers are found in following places

Salcete: Ambelim, Housing- Board Margao, Chhota Bazaar, Kare college-
Margao, Moti Dongor, fatorda, Cuncolim, Panzarconim, Chinchinim,
Betalbatim, Betul, Davorlim, Bandar, Dando.

Tiswadi: Altinho-Panaji, Indiranagar- Chimbhel, Bambolim, Camara Bhat, Dona
Paula.

Bardez: Betim, Baga, Colvale, Porvorim, Anjuna, Britona, Mapusa, Duler,
Assagao, Aradi, Giriwaddo

Ponda: Bethora, Ponda

Bicholim: Bicholim, Muslimwaddo, Gaonkarwaddo

Sattari: Honda

Pernem: Arambol, Nagzar

Canacona: Palolem, Dabamoll, Bagvada, Chandrapur¹³

¹³ Prashanti Talpankar, *Shadows in the Dark: Status of Migrant Working Community in Goa.*

The local Goans detested the arrival of migrants. They have been labeled as “*Ghantis*” or “*Bhaille*”. In North Goa they are called as “*bhingtakars*”. This has created frustration and resentment among the migrant workers. The native Goans blame the migrants for all the ills, they blame them for rise in crimes, spread of disease especially HIV Aids, unemployment, corruption and everything bad that happens in Goa.

The purpose of discussing this topic here is to determine to what extent migrant workers are responsible to the increase in crimes. According to survey made by Prashanti Talpankar, there is no evidence to show that increase in crimes can be connected to migrant workers¹⁴. They are very peace loving and carry on their duties since they are in Goa for more than 40 years. They have been studying in Goa and speak Konkani language.

But then there is a danger that if the government does not protect the migrant workers and improve their living conditions, they may in future resort to criminal behaviour. Mr Datta Damodar Naik¹⁵, who has written a forward to the study by Prashanti Talpankar, suggests that these migrant workers need to be educated regarding consumption of liquor, buying exotics and non nutritious food, smoking, chewing tobacco and gambling.

She also feels that it is necessary for the government to provide houses for migrant workers. Further the children of the migrant workers should be given

¹⁴ Ibid.

¹⁵ Mr. Datta Damodar Naik, Forward to *Shadows in the Dark – Status of Migrant Working Community in Goa*.

free primary education in their mother tongue and should be provided with medical benefits¹⁶.

The migrant working community is an essential requirement for Goan economy. The mining industry, tourism industry including hotels, fishing and construction industry requires migrant labours for their progress. It is time the government comes up with plans and projects for the care and development of these persons. Only by this, migrant workers will, build a great confidence within themselves and become responsible citizens and avoid crimes and anti-social behaviour.

Mr Nandakumar Kamat in his article¹⁷ “Goa’s Inevitable Demographic Engineering”, concludes as follows “However, in the coming years, Goans would have to step aside and be compelled by circumstances to make space for the new settlers”. He calls for Demographic Engineering as a deliberate state policy which the government must follow to avoid discrimination and bias as we have already said that the Government of Goa must recognize the new situation and the matter treated on a scientific and humanitarian platform.

7.3.3. The Problem of Alcoholism:

As has already been narrated, Goa derives large revenue from Tourism Industry. If one goes deep into the subject one finds that Goa has been a popular tourist centre for two reasons:

¹⁶ Prashanti Talpalkar, *supra* note 13.

¹⁷ Nandakumar Kamat, see Navhind Times dated 10th December 2007.

One is the natural beauty and lovely beaches all over the Goan coast and second, the easy availability of Indian made foreign liquor as well as locally manufactured Caju and Coconut Feni which is accepted as a very popular drink by Goan people. There is a large consumption of liquor in Goa and to match this there is also high production. At the end of the last century 11.31lakh litres of coconut Feni was produced and a 7.63lakh litre of Caju liquor was produced. Regarding Indian made Foreign Liquor that is Whisky, Brandy, Rum etc the manufacture was 124.98 Lakh litres and Beer was 242.65 Lakh litres. But liquor was also imported from other states to the extent of 22.55 lakh litres¹⁸.

The number of coconut trees under tapping is more than 0.95 lakhs. This figure indicates that Goa state is a high consumption zone for liquor of all varieties. It is reported that India is one of the largest producers of alcohol in the world and there has been a steady increase in its production over the last 15years. Further Alcoholism is the big social problem and needs to be tackled before more homes are destroyed, warns a longtime member of Alcohol Anonymous (AA) in Goa¹⁹.

He further states that Goa is a small state with a population of 15 lakhs; it has 10,000 plus alcohol shops. It is also reported that 423 deaths (9.14%) were related to alcohol diseases. There are many cases where the parents have resorted to alcoholism due to family problems²⁰. In view of this, the burden is

¹⁸ Excise Department Publication, Government of Goa.

¹⁹ Dr. R. G. W. Pinto, Prof and Head, Pathology Department, Goa Medical College.

²⁰ *Ibid.*

on the state government to ensure that high consumption of liquor does not lead to a higher rate of crimes in the State.

To add to the problem, traditionally Goa State has imposed either minimum or no tax on the sale of Liquor thereby making Goa state the most attractive in terms of the lowest rate of liquor sold in India, tourist are surprised that they can buy liquor at throw away prices and that is probably what makes them consume more liquor.

There are many studies made on consumption of liquor and occurrence of crimes. Mr Kai Pernanen²¹ gives the theoretical aspect of the relationship between alcohol use and crime. The author comes to the conclusion that use of Alcohol increases the probability of criminal behaviour. The chronic excessive use of alcohol leads to Temporal Lobe Dysfunction which leads to violent crimes. Hence what is advised is either non consumption or less consumption of alcohol. (“Theoretical Aspects of the Relationship between Alcohol Use and Crime”) as published in *Drinking and Crime* by James J. Collins, Jr.

Mr. Paul M. Roman of Department of Sociology, Tulane University, New Orleans, Louisiana, USA, in his Article²² in the same book describes State of Art linking situational factors to drinking and criminal behaviour. He says “that ethanol consumption is disinhibiting and usually occurs in normative circumstances in which controls are relaxed in an anticipation of the

²¹ Mr. Kai Pernanen, in “Theoretical Aspects of the relationship between Alcohol use and Crime” as published in *Drinking and Crime* by James J. Collins Jr.

²² Paul M. Roman of Department of Sociology, Tulane University, New Orleans, Louisiana, USA Published in *Drinking and Crime* by James J. Collins Jr. under Article “situational factors in the Relationship between Alcohol and Crime”.

disinhibition, that range of forms of aggression is likely to accompany drinking events and increase in frequency with the blood, alcohol concentration obtained; and that through a series of systematic social reaction, some proportion of these deviant subsequently come to be defined as criminal behaviour”.

The above authoritative opinions must alert the Government of Goa about the possible increase in crimes that could be connected to alcohol consumption. This specific question could be taken up as a Post Doctoral Research work which this scholar could take up as a socio-legal project.

In the mean time Government of Goa, through its social welfare department should document incidents of criminal behaviour that lead beatings of wife and children in the house after consumption of Alcohol; Rash and Negligent Driving which may lead to death and causing other injuries on the highways and roads and also cause disturbance in the neighborhood which may ultimately lead to crime.

In all these, Role of Law will be very effective. Offences coming within these areas should be treated on Par with other offences with the Indian Penal Code and the Police Department should be made responsible for the legal enforcement of the law. There should be mobile squads and every effort should be made to educate adults and children's on the ill effects of alcohol.

To add to the above problems we have news published in the Navhind²³ Times about large scale illegal trade in liquor. The dense forest bordering Goa and Karnataka are used as a cover to smuggle liquor from Goa, both country made as well as Indian made foreign liquor since there is a great demand for Goan liquor in the other states because of its good quality and uniqueness.

The price is much lower as already mentioned earlier the tax on the liquor manufactured in Goa is minimum. According to Mr. Mahadev Gaonkar, former Sarpanch of Cotigao village Panchayat, “besides using the sea route, the liquor from Goa is also smuggled via Partal- shishegal and the dense forest route of Marlem- Tivral through Cotigao Wildlife Sanctuary”. He has also charged the authorities for indirectly helping the smugglers in this trade.

7.3.4. Protecting the Ramponkars:

For the last three decades, there has been a major problem arising in Goa and which is yet to find a solution. It has created a potential for criminal behaviour and violence. The matter was rather very simple but has reached complicated proportions due to the indifference of the government. Goa has a population of about 70,000 fishermen. Due to modernization of fishing trawlers, fishing has become very popular and many of the fishermen were given loans, grants and subsidies to go in for modernize fishing. However out of this number about 18,000 continued to carry out the traditional method of fishing, they have been called as “*Ramponkars*”.

²³ *The Navhind Times*, Panaji, Tuesday 7th April 2009.

They work in clusters or groups and use manual labour to pull fish on to the shores. They use large nets. The process is very slow and the result, the fish catch is not very satisfactory. On the other hand, mechanical trawlers can fish in deep and shallow waters and after nights outing come with good catch. The *Ramponkars* began agitation against the trawler fishing boat owners as they were depriving them of their catch because they were fishing in shallow waters as a result the government laid down a set of values under which the trawlers fishers could fish in waters only beyond 1,200 nautical miles along the shore.

The waters from the coast to 5kms limit were the area in which the *Ramponkars* could fish. However the supervision and enforcement of the rule has not been very effective. The trawler fishermen are found fishing in the area meant for *Ramponkars*. This is a question of the livelihood of thousands of families of poor fisherman who depend on their labour for collecting fish.

The trawler fishers are much better off with a greater income and the better financial stability. This conflict of Economic Interest may explode into violence and create criminal tendencies. In order to attain a zero – crime level, the Government of Goa, must discipline the trawler fisherman and the coast guard supported by Goa Police should ensure that the trawler fisher do not interfere with the *Ramponkars* fishing zone. The *Ramponkars* have the Right to Survive and all others must ensure that no body interferes in their rights.

We have already seen areas of conflict in similar situations ‘Vandana Shiva’ in this Article “the violence of blue revolution” has explained how in Andhra

Pradesh, the villages of Kurru attacked the agricultural forms uprooting pumps used for drawing sea water, the author explains how, in order to promote shrimp farm, a large area of land and forest was destroyed thus upsetting the ecological balance and giving rise to criminal behaviour and desperation among the fishermen. To support the above we wish to cite the famous case, *S Jaganath v. Union of India*²⁴.

In this case the problem was conversion of 80,000 hectares of land to shrimp farming cultivation. The petitioner filed the petition under Art 32 of the Constitution of India in public interest. The petitioner S Jaganath was the chairman of Gram Swaraj movement and he requested the court to direct the Government to enforce the coastal zone regulation notification date 19/2/1991, issued by the Government of India for stoppage of intensive and semi intensive types of prawn farming in the ecologically fragile coastal areas.

The famous public interest litigation lawyer M.C Mehta argued the case for the petitioners. He vehemently argued that the shrimp culture industry is prohibited activity under para 20(i) of the CRZ notification. On the other hand the counsel for the respondent argued that the shrimp farm is an industry which is directly related to water front and cannot exist without foreshore facilities. The Supreme Court decided that the purpose of CRZ notification to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and the uses of sea coast.

²⁴ AIR 1997 SC 811.

The setting up of Modern Shrimp Aqua Culture Farm right on the sea coast and construction of ponds and other infrastructure there on is per se hazardous and is bound to degrade the marine ecology, Coastal environment and the aesthetic use of the sea coast. It further laid down that before any shrimp industry or shrimp pond is permitted to be installed, in the fragile coastal area, it must pass through a strict environmental test.

In this direction the government must conduct an environmental Impact Assessment before the permission is granted to install commercial shrimp farm. Hence the petition was allowed and this was a great victory for the environmentalists and for the protection of the sea coast from being misused to create dollar economy.

One cannot forget the helpful intervention the Supreme Court of India in 1994 which after hearing from the State Government report passed an order banning mechanized fishing within 5 kms from the shore.

According to Pascal Dias, President GRE, the 5 kms zone has been violated again and again and there is no support from the government²⁵. The question here is how long the Government of Goa will test the patience of the “*Ramponkars*”. Goa must be recognized as a model state. This will only help in increasing its revenue when people from all the cultures of the world will come to Goa as a state where total peace prevails and without any crimes.

²⁵ Pascal Dias, *Souvenir published on Goenchea Ramponkarancha Ekvott*, 1975 – 1995.

7.3.5. Protecting Goa's Forests:

Apart from having beautiful beaches and lovely rivers, Goa has vast areas of forest land rich in timber and wildlife. It is indeed fortunate that the small state like Goa has so many benefits. The total geographical area is 1424sq.kms. Out of this the state owns 1224.38sq.kms and private parties own 200sq.kms. The State government had earned in the year 2000 from cane 23, 04,000, from Bamboo Rs 1, 00, 00, from timber 13, 00,000. The basic question is to preserve the forest to maintain the ecological balance.

Irresponsible persons should not be allowed to cut or burn the forest land at the same time to maintain, enhance the beauty of forest area to promote tourism and the wildlife sanctuary. If strict vigil is not maintained in the forest area there is likely to be mini wars between gangs trying to deprive the State of the forest wealth by the sheer use of muscle power.

The case of Veerappan in Karnataka is an excellent example in spite of a huge Forest Department employing thousands of officers and other personnel for nearly 30 years Veerappan was unquestioned king of the jungle. He cut sandalwood trees, for which the jungles of Karnataka are famous, he killed elephants and exported their ivory and many a forest produce was sent out of Karnataka earning him Crores of Rupees while the State suffered heavy losses. He killed forest Guards as well as policemen on duty including Sub- Inspectors of Police.

The whole forest was a crime zone and it was a challenge to capture Veerappan. It was only when he was killed by an officer of the Special Task Force, peace came back to the forest zone. There must be strict supervision and any wrong doer must be immediately booked and punished. No politician must be allowed to interfere in the issue of the protection of the forest wealth which includes preservation of the wildlife and timber. Forest helps us to maintain the ecology and also helps us to get rainfall on which the whole flora and fauna are dependent upon, for the development of the state.

The recent news appearing in the Times of India²⁶ is highly disturbing. In the dense forest of Collem, four dead bodies were found in 14 months in the forest. According to the Ponda Dy. SP Serafin Dias, “the murderers have taken advantage”²⁷.

From the above issues discussed, in order to ensure zero-crime rate for the State of Goa, we wish to state that a concerted effort made by the government to achieve the goal will definitely help in achieving the results. For centuries, Goa has been a very peaceful State. The Whole State is dotted with the ancient temples and more important among them are Mallikarjun of Canacona, Bhagwati of Pernem, Damodar of Zambaulim, Betal of Amona, Shantadurga of Fatorpa.

The occupation of Goa as a colony of Portugal did not much disturb the religious worship. There are important Churches like Bom Jesus Basilica and

²⁶ *The Times of India*, Goa Edition, Tuesday, 7th April, 2009.

²⁷ *Ibid.*

Se Cathedral at Old Goa, Milagres Church at Mapusa and to every town and village there has been Christian worship which has added to the peaceful culture of Goa. As statistics have shown, there was very less criminal activity during the Portuguese rule. No doubt, the level of development was very low during this period, there was a great deal of respect for Law and Order. May be because of the fear of severe punishment and also the strict enforcement of rules and regulations.

But after the Liberation of Goa in 1961 we have seen a rapid development in the State of Goa and also a dangerous increase in the crime rate. Law alone cannot help the prevention of crime. What is required is an all round effort by all the stake – holders in the democratic process to ensure the crime rate is kept at the minimum level; the above discussed indicators, if properly understood and are dealt with, the increase in crimes can be drastically reduced. The approach must be socio-legal and not legal alone.

Goa being a tourist destination faces numerous problems such as preservation of the environment, shortage of natural resources, disposal of solid waste and sewage, and the depletion and deterioration of groundwater. The tourist inflow resulted in the growth of rapid and uncontrolled coastal tourism. Further, the environmental diversity and sensitivity of Goa with its complex mixture of customary rights, and land ownership further complicates the situation.

In spite of such threat looming large on the Goan society, the legislative response to such a problem is appalling. The Goa, Daman and Diu Registration

of Tourist Trade Act, 1982 and Rules made there under 1985 only focuses on registration of people who intended to involve in trade in Goa²⁸. There is no comprehensive legislation dealing with the problems relating to tourism particularly on the increase of tourism related crime. The tourism in Goa being seasonal in nature the unemployed during the non seasonal days results in anti social activities.

Similarly, mining industry causes migration and results in concentration of labour forces. This concentration creates several problems such as development of slums, outbreak of epidemics and health related issues. However, massive loss of employment due to closing the mining industry results in social unrest and increase in the crime rate. Passive social protection measures by the employers and flouting the regulations of social security norms further results in difficult living conditions to redundant workers and create more hurdles in finding new jobs. Absence of coherent development strategies aimed to generate new economic alternatives and to mitigate the social impact of loss of jobs would further deteriorate the crime situation.

Therefore, the state should aim at reducing exacerbate social and economic implications of mining such as training the retrenched workers in developing multi-professional specialization and increasing educational level of labor force. The lack of jobs and lack of involvement of authorities in the economic

²⁸ Registration of Dealer in tourist trade is provided under Sec. 3 of The Goa, Daman and Diu Registration of Tourist Trade Act, 1982 (Act No 10 of 1982) (14.11.1982) published in Official Gazette, series 1 No. 36 dated 2.12.1982

Sec 7 deals with registration of hotels.

Sec 14 deals with registration of travel agents.

revitalization programs are labeled as main problems of mining related crimes. Hence, there is a need to relook at the legislations dealing with mining activities to incorporate the provisions for economic revitalization.

Likewise, alcohol abuse results in crimes such as domestic violence, prostitution, marital violence, theft, rioting, nuisance and motor vehicle accidents. There are three types of crimes associated with alcohol abuse.

1. Use-Related crime: They results from the effect of the alcohol consumption particularly in their behavior part. Examples of such crimes are nuisance, domestic violence and violence against family members.
2. Economic-Related crime: Addiction to alcohol often results in economic crimes such as theft, prostitution and sale of girl child to fund their habit.
3. System-Related crime: Alcohol addiction may also result in system related crimes such as illegal manufacturing, transportation, and sale of liquor. Often they result in gang wars and rioting.

Tackling alcohol related crimes requires multi pronged approach. These include:

1. Minimum age requirement for sale of liquor needs to be strictly observed²⁹.
2. Restrictions on sale of liquor near the educational institutions and religious places need to be followed.
3. De-licensing liquor outlets in case of violation of above requirements should be strictly enforced³⁰.
4. Police patrolling particularly in Goa being a tourist destination need to be round the clock to stop driving by a drunken person or by a person under the influence of drugs issues³¹.

²⁹ Sec 19 of The Goa Excise Duty Act, 1964 (No. 5 of 1964) [27th October, 1964] published in the Government Gazette, Series I No. 46 (Supplemento) dated 13-11-1964 and came into force w.e.f. 01-12-1964, deals with Prohibition of sale etc., to certain persons. Under the section, no licensed vendor or a manufacturer and no person in the employ of a vendor or a manufacturer and acting on his behalf shall sell or deliver any excisable article or foreign liquor to any person apparently under the age of 21 years, or to any person of unsound mind.

Sec. 98 deals with the Prohibition of employment by the licensee.— No licensed vendor shall employ on his licensed premises person

- (a) Under the age of 18 years, or
- (b) Suffering an infectious disease.

³⁰ *Ibid* See sec. 16. Power to cancel license.— license under this Act may be cancelled by the Commissioner for good and sufficient reasons to be recorded in writing, after giving an opportunity to the person concerned for making any representation on the following grounds

- (a) non-payment of fee or duty; or
- (b) if there is any breach by the holder of such license or permit of any of the terms or conditions of such license
- (c) if the holder thereof is punished for any offence against this Act, or of any cognizable or non-bailable offence; or
- (d) if the conditions of the license or permit provide for such cancellation or suspension.

³¹ Sec 185 deals with Driving by a drunken person or by a person under the influence of drugs. If a person is found guilty he shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

5. Amend the Motor vehicles Act and Indian Penal Code to incorporate stringent punishments such as canceling the driving licenses and increasing the punishment for accidents where the driver found under intoxication³².

Therefore, traditional criminal laws such as Indian Penal Code would be ineffective in dealing such issues. Further the absence of any clear and firm policy relating to the tourism and mining, ineffective institutional and political structures necessitates a comprehensive legislation.

Though environmental legislation and regulatory mechanisms are in place in Goa the special geographical and cultural setup in state of Goa requires a special treatment. Therefore, the active participation of all stakeholders in the planning and drafting of a comprehensive legislation is the need of the hour to strike a balance between tourism development and protecting the natural and social environments. Such legislation however, must also address the issues of

³² Presently the law provides for following punishments for the rash and negligent driving

1. Sec 304A of Indian Penal Code (45 of 1860) deals with punishment for causing death due to rash and negligent driving. The punishment prescribed is imprisonment for a term which may extend to two years or fine or both.
2. Sec 184 of Motor Vehicles Act (Act No 59 of 1988) (14th October, 1988) deals with the driving dangerously, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.
3. Sec 140 of Motor Vehicles Act, deals with death or permanent disablement of any person due to a motor vehicle accident, the owner of the vehicles shall, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section
4. Sec 183 of Motor Vehicles Act, deals with Driving at excessive speed, etc. Under the section over speeding driver violating the speed limits referred in section 112 of the same Act, shall be punishable with fine which may extend to four hundred rupees, or if the driver is previously convicted under the same section, for second offence, shall be punished with fine which may extend to one thousand rupees.

land use, shortages of resources, such as land water, and damage to coastal aquifers.

Based on the above observations the next chapter focuses on Conclusions and Suggestions.

CHAPTER-VIII

**CONCLUSIONS
AND
SUGGESTIONS**

8. CONCLUSIONS AND SUGGESTIONS

The State of Goa, as we have already said is an area on the surface of the earth which is blessed by nature. It has an unbroken coastline with lovely beaches and packed with greenery specially created by towering coconut palms and a variety of lush green trees. In such a place, one expects there should be peace and tranquility. The people of Goa have lived in communal harmony and in a state of brotherhood for many centuries.

It has common culture, common language and highly appreciative value system. In such a place there should not be any scope for crime and disturbance of public tranquility. In this thesis this scholar has tried to go deep into the problems of crime occurrence and Administration of Criminal Justice in Goa. Both, during the pre-liberation period, when Goa was a colony of Portugal for four hundred and fifty years and post-liberation period, when Goa became part of India and has experienced the values of Democracy and Freedom.

In the Chapter that has preceded, the scholar has discussed the short comings which if properly identified and rectified, it won't be long before Goa becomes a State with Zero Crime Occurrence. In view of Goa being attracted to the whole world as a place for holidays, enjoyment and recreation, it has become essential for the Government of Goa to take urgent steps to tone up the Criminal Justice System in Goa. To achieve the Goal and in view of the research conducted in pursuance of this thesis, the following conclusions are attempted for converting them into plans of action.

8.1. Criminal Justice System in Goa:

With the liberation of Goa the Indian Laws dealing with the Administration of Criminal Justice like Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act were made applicable to the territory of Goa. It is amazing to see that the replaced Indian System was readily and willingly accepted and the Advocates and the Judges very comfortably applied the Indian Law.

As has been explained, the Portuguese System was a mixed attempt of giving powers to the Judiciary to also investigate into Criminal Behavior and for this elaborate machinery was created. This Inquisitorial System had its advantages and inspite of it the Adversarial System as practiced in India came to be easily accepted as a replacement of the Portuguese System. Both in the Portuguese as well as the Indian System, highly qualified and experienced persons were appointed as Judges.

The trials were conducted very seriously and evidence was adduced by the way of proof so that the person who was convicted knew why he was being convicted. Hence the first conclusion we can draw is that Goa had a fine and a very serious system for delivery of Criminal Justice. As stated by Dr. Carmo D'Souza¹. "The Legal History of Goa during 16th and 17th centuries assumes international dimensions as Laws attempted to regulate Trade, Commerce and Navigation in Indian Ocean The Portuguese believed in the right and duty

¹ Dr. Carmo D'Souza, *Legal System in Goa*, Vol. I, Judicial Institutions, Pg 5.

on the part of their sovereign to Administer Justice in Goa. As such Administration of Justice was the business of the King of Portugal right from 1510”, from this we can conclude that though Goa was colony of Portugal, the question of maintaining Law and Order was given the highest priority. In this respect we can see no difference between the Portuguese and the British attitudes so far as maintenance of the Criminal Justice System was concerned.

8.2. Benefits of applying the European Pattern for purpose of investigation

Portugal being highly influenced by the Roman Law, just as most of the countries in Europe, thought it fit to apply the Inquisitorial System for investigating into Crimes. This system had the advantage of the Judiciary Supervising over the investigation process. Under the British / Indian System the State takes up the duty to apprehend the person who is guilty and put him on trial and punish him if he is found guilty. Here the accused is presumed to be innocent and the burden is on the prosecution to prove beyond the reasonable doubt that the accused is guilty.

The accused also enjoys the right to silence and cannot be compelled to reply. The aim of Criminal Justice System is to punish the guilty and protect the innocent. In the Adversarial System truth is supposed to immerge from the respective versions of the facts presented by the Prosecution and the Defense before a neutral Judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused.

According to Justice V. S. Malimath Committee Report the system is heavily loaded in favour of the accused and is insensitive to the victims plight and right². On the other hand in Inquisitorial System, the accused is presumed to be innocent and it is the responsibility of the Judge to discover the truth³.

The standard of proof required is the inner satisfaction or conviction of the Judge and not proof beyond reasonable doubt as in the Adversarial System⁴.

The Malimath Committee points out that, “another important feature of the Inquisitorial System is that, in respect of serious and complex offences investigation is done under the Supervision of an Independent Judicial officer - the Judge of Instructions, who for the purpose of discovering truth collects evidence for and against the accused the accused does not get a fair opportunity of testing the evidence tendered against him which is one of the essential requirements of a fair trial”⁵, ultimately the Committee concludes that fairness of trial is better assured in the Adversarial System⁶.

The Scholar has discussed this issue with very senior advocates who have had the opportunity of practicing Law both under the Inquisitorial as well as the Adversarial Systems. They are unanimous of the view that the Inquisitorial System prevailing under the Portuguese Law was highly efficient, under this

² Chapter on Adversarial System, *Justice V. S. Malimath Committee Report*, 2001, Para 2.3, Pg 24.

³ *Id* at 2.6, Pg 25.

⁴ *Id* at Para 2.7.

⁵ *Id* at Paras 2.8 and 2.9

⁶ *Id* at Para 2.11.

system they felt that the trial took very less time and the rate of conviction was higher as well as the respectability for the system was much greater⁷.

These experienced Advocates and Judges have further felt that the test of an efficient Criminal Justice System depends upon honest investigation and conviction. The Indian System, they feel, does not come up to their expectations because investigation is done only by the Police Department which was not properly trained for this type of work as well as there are greater chances of corruption, nepotism and other issues playing a bigger role thereby derailing the whole Criminal Justice System.

On the issue of the adoption of the Investigative System, we feel that some aspects of Inquisitorial System should be incorporated in the Indian Law. Specially, with regard to heinous Crimes like Murder, Mass Murder, Grievous hurt, Dacoity, Robbery, Mass Rape, etc. there must be investigation done under Judicial Supervision. The Malimath Committee Report admits⁸ in its recommendations that. "The Inquisitorial System is certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in high rate of conviction. The Committee on balance felt that a fair trial and in particular, fairness to the accused are better protected in the Adversarial System. However, the Committee felt that some of the good features of the

⁷ Refer Chapter VI of this thesis.

⁸ Malimath Committee Report, *supra* note 2 at 265.

Inquisitorial System can be adopted to strengthen the Adversarial System and to make it more effective.

This includes the duty of the Court to search for truth, to assign a pro-active role to the Judges to give directions to the investigating officers and Prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on Justice to the victim". We suggest that the recommendations made by the Malimath Committee in this regard⁹ may be tried and experimented in the State of Goa since it already had a tradition and experience of Inquisitorial System being applied for centuries. This will help in expediting the Criminal Trials as well as ensuring that those who commit crimes do not escape by taking advantage of the loop holes in the procedures.

8.3. Sentencing Patterns

We can draw from the research work done is the question of sentencing for offences committed, we have discussed this aspect in detail in Chapter IV of this thesis¹⁰. Under the Indian System of Law a Judge exercises wide discretion given the statutory limits and there are no guidelines laid down to regulate the discretion of the Judge. This leads to a lot of differences and also discrimination because one Judge will give severe Punishment for the same offence committed. Such attitudes creates doubt in the minds of the people

⁹ *Id* at 266 to 267.

¹⁰ See Chapter IV of this thesis.

regarding the application of Criminal Law. In the opinion Survey conducted by this scholar¹¹, a number of persons have suggested that there should be severe punishment given by the Judges.

The question of fine should be radically increased and the quantum of punishment by way of imprisonment be increased so that people are dissuaded from Committing Crimes. The High Courts should be given powers to review the sufficiency of punishments given by the lower Courts to ensure that there is due respect shown by the Judges to the sentencing process.

In this regard we would like to suggest that the High Court of Bombay which has jurisdiction over Goa state may be given powers to review sentences given in major offences, which have already been identified above, to ensure proper sentencing procedures. A Criminal should not get away with light Punishment by influencing the Judiciary. It is only the High Court which can exercise its appropriate Jurisdiction to ensure that the correct sentence is passed keeping in mind the seriousness of the offence.

Similarly under the Probation of Offenders Act, the Court should exercise the Jurisdiction to ensure that the provisions of this Act are properly implemented. We have already seen in Chapter IV how the Supreme Court has intervened in number of cases to ensure that provisions of the Act are correctly carried out.

¹¹ See Chapter VI of this thesis

8.4. Increase in Criminal Behaviour

The fourth conclusion we have arrived at that there is definitely a steep rise in the number of crimes committed in Goa following Liberation from the Statistics available regarding crimes committed in Goa before liberation¹² shows that a minimum of murders and offences regarding grievous hurt were committed.

No doubt there were large number of thefts but that was limited to the theft of coconuts and other fruits. When we compare this with statistics after Goa's Liberation and specially in the last ten to fifteen years, we find that the crime rate has increased considerably. But then we have also shown that with the introduction of Democracy, Liberty and Freedom, there has been a surge of developmental activities which have given rise to economic inequality consequently leading to increase of crimes.

Compared with all the developing states this is but a natural phenomenon but when we compare the crime rate in Goa with the National Crime Rate, we find that it is quite high and is higher than Maharashtra and Karnataka which are the neighbouring states. This is inspite of the fact that Goa State has less population and Territorial Jurisdiction compared to these states. This is alarming and the Government of Goa is required to have new policy Guidelines for determining the causes e.g. the serial killer Mahanand Naik has now

¹² Chapter V of this thesis.

confessed to have committed sixteen murders of women in a very similar fashion.

He used to lure them promising to get married, taking them to secluded places and removing all their gold and strangling them with their duppatta and disposing of their dead bodies. In a period of three to four years he had fooled and killed all these women and their could be more, with the Government being clueless regarding the Commission of the Crimes. It was only accidentally he was arrested and the truth came out from him thereafter¹³. The killer has been now nicknamed as “Duppatta Killer”.

It is unfortunate that so many murders have gone unnoticed with the Governmental Investigating Machinery failing to perform its duties. Such crimes are a result of a new urge in the people to become rich quickly and on the part of women to find a husband at any risk or cost. This is a dangerous trend and unless there is vigilance on the part of the Government and the Public, it will be difficult to prevent the occurrence of such crimes.

It is suggested that the Goa Government should set up an autonomous investigating machinery as suggested by the Legal Practitioners who were interviewed by this scholar and as reported in Chapter VI of this thesis. The experts unanimously feel that the Police cannot act independently and they are influenced by politicians, gang leaders, etc. Hence they have suggested and we fully support the setting up of Independent and Autonomous body to

¹³ Times of India, Wednesday, May 20th, 2009, Goa Edition.

investigate all crimes and submit their report to the concerned Judge for taking appropriate action. As already suggested above, the Judge should have further discretion to conduct further investigation in special and severe offences.

8.5. Training and Orientation to concerned:

What we have arrived at after conducting research on this topic is that, there is lack of training and appropriate orientation at all levels of Criminal Justice Administration. The importance of continuous training in any system of Governance cannot be underestimated. In Chapter VI we have seen most of the person who have given their opinion have said that there is a total lack of training of investigating officers for properly detecting crimes. Crime investigation is a special type of work which requires expertise, competence and above all absolute honesty.

There have been exceptionally brilliant Police Officers but they are rare. What is required is all concerned in the investigation process must be adequately trained Justice V. S. Malimath Committee report informs us¹⁴ there are three central detective training schools, at Kolkata, Chandigarh and Hyderabad. It is absolutely necessary that one such central training school be located in Goa State in view of the importance of Goa in National and International sphere as a tourist centre. This school should also include courses in Forensic Science. The importance of training for Crime investigation has been highlighted by the

¹⁴ Malimath Committee Report, *supra* note 2 at Para 7.15, Pg 101.

Malimath Committee¹⁵. The Committee is of the view that adequate number of training institutions should be set up by the State Governments as also by the Central Government for initial training.

This suggestion of the Committee if properly implemented will help in proper detection of crimes and bringing the culprits to book.

Judges dealing with Criminal proceedings required to undergo orientation courses regularly so that they are upto date with the latest types of crimes committed with the newest technology used by Criminals. They must develop an investigative mind and ensure that all steps are taken to see that major offences, fully investigated before the accused is let-off. We are not sure about in-service training being given to Judges in Goa but earlier it is done, it is better in the interest of Administration of Justice.

It is the duty of the High Court to ensure that the Judges of the Lower Courts function in a free and confident manner. For this, regular meeting with the Judges of the Lower Courts by the Administrative Judge and giving them suitable guidance and advise, will greatly help in the proper functioning of the Lower Judiciary. All allegations made against the Judges in the Media either Press or Electronic, must be properly investigated by the High Court. This will help in building the public image of the Judiciary.

¹⁵ *Id* at 7.15.2.

8.6. Making Goa a Model State:

In Chapter VII the scholar has visualized certain areas for Governmental action. The areas identified are those highly connected with the developmental process of Goa and also linked to the future of Goa. In order to achieve all around progress, Goa must reduce the crime rate to zero level. In achieving this target, the burden is mainly on the government. The other segments of the society like N.G.O.'s, the media and other social groups have a key role to play in ensuring that the target is achieved.

Tourist from all over India and also from all over the world flock to Goa for the reasons already mentioned in Chapter I¹⁶. But to sustain this, Governmental agencies must go all out to keep drugs and drug trafficking out of Goa and also to ensure that Alcoholism does not destroy the health of the inhabitants. The Forest of Goa must be protected and its beaches secured. The establishment of "Dhrusti" life guards on Goa beaches to save people from drowning is a welcome measure introduced since last one year.

The Educational Institutions must include in their syllabi the dangers involved in smoking, consumption of Drugs and Alcohol. All these three are related to and connected with Tourism Trade. The Education Department must have a programme to build the character of the children and encourage them to take to sports and other physical exercises. These suggestions are made to ensure a proper educational build up to prevent future adverse effects on the young

¹⁶ See Chapter 1 of the thesis.

generations. The rights of the Ramponkars must be protected and so also the Rights of Migrants. The Migrants have come to Goa from different States of India and are helping with process of its development. Their interest and the interest of their children must be protected.

We wish to state that if these and other recommendations made in Chapter VII of this thesis are properly implemented, Goa will be an Ideal and Model State in India in so far as bringing down the Crime Rate is concerned.

8.7. Maintaining the Cultural Ethos of Goa:

This conclusion deals with the maintenance of the separate identify of Goa and its cultural ethos. Goa is the only state in India which had an opinion poll conducted to decide whether it would like to merge with another state or maintain its separate identity. Goans decided by 55 – 45 majority to stay as a separate unit¹⁷. This means the Goans had voted for separate identity as well as maintenance of their separate culture.

To do this, the Government must ensure that the rights of all concerned are preserved and protected. This will also help in creating an atmosphere of peace and mutual co-operation which will help reduce the crime rate. In pursuance of this, and for greater efficiency, Goa must have its own High Court with its own people as Judges. This will help understand Goas peculiar problems and prevent occurrence of disputes and differences. Just as the Konkan Railway has

¹⁷ The Opinion Poll was conducted in January 1967 under the Goa Daman and Diu (opinion poll) Act, 1966.

helped bring the Konkani people together, such institutions which will integrate the Konkani speaking people will help in greater progress as well as creating bonds of friendship.

8.8. Need for an Institution of Comparative Law in Goa:

This Conclusion deals with the proposal to create an institute of Comparative Law in Goa. We have already mentioned in Chapter I that Goa is an arena where conflicting Jurisprudential theories have come into play. From centuries of the Portuguese Rule, Goa experienced the application of Civil and Criminal Law as applied and practiced in European countries, much influenced by the Roman Law and the Codes.

One can find advantages and disadvantages in that system. We have also seen in Chapter VI all those who practiced Law during the Portuguese era thought that, that system was better than the Common Law System. In a way, after Liberation, the Indian System was rather forced on the people of Goa and also the people of Pondicherry where the French system had prevailed. The people of Goa have now accepted the total application of Indian Laws.

But it will be in the best interest of the growth of the Law to systematically study the effect of the European System as well as the Indian System on the Institutions as well as on the people of Goa. To do this we feel there must be an Institute of Comparative Law maintained by the Union Government to research of these continuing problems arising in Civil and Criminal Laws. Additionally even the problem arising in Pondicherry could be studied because of the

common background of the European System of Laws and their conflict with Common Law / Indian Systems of Law. One may ask why such a recommendation is being made.

We wish to reiterate the recommendations in Justice V. S. Malimath Committee Report on Reforms of Criminal Justice System that “the Inquisitorial System is certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in a high rate of Conviction”¹⁸. We have repeated this citation only to support our suggestion that an institute of Comparative Law, if created by the Central Government, would help in the future development of the Legal System in places like Goa which have experienced different Systems of Law.

The above conclusions and suggestion are made keeping in mind the fast rate of development and progress taking place in Goa and the great future it has in projecting Indian image to the thousands who come to its shore. It is commonly accepted that “small is beautiful”¹⁹. In population and territory, Goa is a small State but it has the potential to be the best governed and the most beautiful State in India.

¹⁸ *Id* at 265.

¹⁹ Schumacher, E.F., *Small is Beautiful*.

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ANNEXURE – I

QUESTIONNAIRE

A. Administration of Criminal Justice during Portuguese Period.

1. Kindly give your opinion about the functioning of the Criminal Courts during the Portuguese period.
2. Which, according to you is a better system, Inquisitorial or adversarial? Kindly give reasons for your answer.
3. What according to you was the role of Prosecutor during the Portuguese period?
4. Was sufficient protection given to the witnesses?
5. What was the qualification for the appointment of a Judge in the Criminal Court?
6. Was it possible to transfer Criminal case from one Court to another?
7. What were the procedures adopted for Criminal Appeals?
8. What was the material in the form of books, cases, etc. available to the prosecutor and Defence?
9. What was the role of the Military Tribunal? Did its powers encroached upon Civil-Criminal Courts?
10. What was the role played by the Government in the prosecution of cases?
11. What authority the courts in Portugal had over the Criminal Courts in Goa?

12. What was the role played by the Police Department in the Investigation of an Prosecution of Criminal cases?
13. What was the normal time period required for completing the Murder Trial?
14. Do you think during this era the Human Rights of an individual were protected?

B. Administration of Criminal Justice in Goa after Liberation.

1. What is your opinion about the Criminal cases after Goa was Liberated? Do you think Criminal cases were Increased or Decreased.
2. Do you think the systems of Criminal Courts functioning today are more efficient or less efficient that the Criminal courts during Portuguese period?
3. What would you suggest to make Criminal Justice system more efficient so that the offender or wrong doer is punished.
4. What is your impression about the Indian Evidence Act, the Criminal Procedure code and the Indian penal code?
 - a)
 - b)
 - c)
5. Are the Judges today properly equipped to decide the Criminal matters or cases?

6. What do you think should be the role of the prosecutor? Should he be given more powers?
7. a) Do you think our Police Department is conducting Criminal investigations efficiently and effectively?
b) Confession made before Police Officer, Should it be admissible as Evidence?
8. How is it possible for the prosecution to prevent witnesses becoming hostile?
- 9) Is the sentencing policy of our courts appropriate?
- 10) What do you think the role of HIGH Courts and SUPREME Court in the Criminal matters?
- 11) Do you think the President / Governor should continue to have Right to Pardon,
- 12) Should the law of precedent be applicable in Criminal matters?
- 13) For preventing Crimes, do you think a Dictatorial Regime is better of democratic setup.
- 14) What role an advocate should play when he/she is handling the Criminal matters and specially when the accused confesses to the crime?
15. Does the Criminal Law today effectively protect the Human Rights of an Individual?