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Introductory Note

The Editor is pleased to present No. 19 of the Resource Material Series carrying papers produced during the 54th International Seminar on the Institutional Treatment of Adult Offenders and the 55th International Training Course.

Part I contains materials from the 54th International Seminar on the Arrest and Pre-trial Detention held from 12 February to 15 March 1980.

Section 1 consists of papers contributed by two visiting experts. In the paper "Protecting Rights and Status of Defendants, Citizens and Investigating Officials," Professor B.J. George, Jr., New York Law School, U.S.A., examines the basic theory, assure, concepts and alternatives of exclusionary rules developed in the United States, and discusses protection of victims and witnesses, special proceedings to aid criminal investigation with emphasis on the judicial orders for the acquisition of evidence, encouraging or enforcing citizen cooperation and grants of immunity to needed prosecution witnesses. Another visiting expert, Hon. Xavier Connor, Judge, Supreme Court of Australian Capital Territory and Federal Court, Australia, in his paper on "Some Aspects of Arrest and Pre-trial Detention," discusses such essential issues as criteria for arrest, action after arrest, custodial investigation, right to silence and confessions in the light of Australian court practice.

Section 2 comprises the papers by the participants of the Seminar, and Section 3 the Report of the Seminar.

Part II contains materials from the 55th International Training Course on the Institutional Treatment of Adult Offenders held from 15 April to 5 July 1980.

Section 1 contains papers written by two visiting experts, i.e. Mr. J.P. Delgoda, Commissioner of Prisons, Sri Lanka and Dr. Knut Sveri, Vice-Dean, Faculty of Law, Institute of Criminal Science, University of Stockholm, Sweden. Mr. Delgoda, in his paper on "Some Practical Problems in Asian Corrections" points out several contemporary problems commonly confronting correctional administrators in the Asian region and warns that changing attitudes of prisoners as well as prison officers may well lead to violent outburst unless some appropriate countermeasures are immediately taken. Dr. Sveri, in his paper on "Recent Changes in Correctional Policies and Practices in Sweden" discusses in detail the Swedish criminal law reforms from 1940 to 1979, with special emphasis on the new trends in correctional philosophy in his country.

Section 2 contains the papers of the participants of the Course, Section 3 the Report of Group Workshops and Section 4 the Report of the Course.

In both courses, many excellent papers were submitted to the Institute. It is regrettable, however, that all the papers cannot be printed, because of
limited space of this volume. The Editor would like to add that, owing to lack of time, necessary editorial changes had to be made without referring the manuscripts back to their authors. The Editor asks for their indulgence for having to do it in this way since it was inevitable under the circumstances.

In concluding the Introductory Note, the Editor would like to express his gratitude to those who so willingly contributed to the publication of this volume by attending to the typing, printing and proofreading, and by assisting in various other ways.

November 1980

Minoru Shikita
The Editor
Director of UNAFEI

PART I

Material Produced During
The 54th International Seminar Course
On the Arrest and Pre-trial Detention
SECTION 1: EXPERTS' PAPERS

Protecting Rights and Status of Defendants, Citizens and Investigating Officials

by B.J. George, Jr.*

Sanctions against Unconstitutional or Illegal Investigatory Acts

A. Basic Theory of Exclusionary Rules

In common-law jurisdictions, many if not all unlawful investigatory acts by law enforcement officials gave rise to civil liability in favor of citizens whose rights had been impaired, and perhaps criminal responsibility as well. Activities which violated the law also expressly or implicitly contravened police agency regulations and could be made a basis for departmental disciplinary proceedings. In practical application, however, such remedies were ineffective: civil litigation was expensive to pursue and might well result in unenforceable judgments against police officers without personal resources. Unless death or very serious physical injury resulted under clearly inexcusable circumstances, prosecutors were loath to pursue criminal proceedings against members of police agencies upon which they relied for criminal investigations. Administrative disciplinary proceedings were a closed world to citizens who lacked legal standing to require that they be instituted.

Consequently, American courts, particularly the United States Supreme Court, developed the remedy of banning the use in court or before other governmental agencies of evidence obtained unlawfully by governmental agents or employees, as well as evidence derivative from it ("fruit of the poisonous tree"). The underlying assumption was that officers acted chiefly if not exclusively to gather evidence on the basis of which criminals might be convicted. If evidence which was the objective of their unlawful actions were to be rejected by courts and agencies because of the methods through which it was obtained, the primary motivation for official misconduct would be eliminated. Even if that were not so in particular instances, it nevertheless was important that courts have nothing to do with unlawfully obtained evidence lest they themselves become contaminated, a concept characterized as "the imperative of judicial integrity." An exclusionary rule in some form has been fashioned judicially in every context in which constitutional standards have been set forth to guide criminal investigations; such rules also have been made binding on the states through the due process clause of the fourteenth amendment. Until modifications in the several rules began to appear from 1974 onward, exclusionary rules seemed to rest directly in the federal constitution itself and thus were subject to change only through altered judicial interpretations by the Supreme Court alone or constitutional amendments.

B. Nature of the Rules in Specific Contexts

The first exclusionary rule directly affecting police investigation methods was based on the fourth amendment prohibition against unreasonable searches and seizures. Although in its original form it did not govern the states, that was changed by the 1961 decision of Mapp v. Ohio. State courts had discretion to evaluate facts to determine whether a constitutional violation had occurred, but if they concluded it had they were allowed no discretion whether or not to exclude the evidence thus obtained.

Exclusion went only to evidence; defendants subjected to unlawful arrest did not thereby become immune to prosecution once they were physically produced before a court with territorial and subject-matter jurisdiction. In terms of legal

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concept, therefore, the development of a new approach to entrapment based on due process is interesting because it immunizes from prosecution defendants within its protection. The same result seemingly flows from delayed commencement of proceedings, not justified by legitimate investigative needs, which causes actual prejudice to a suspect. Otherwise, however, whether successful invocation of the fourth amendment's exclusionary rule forecloses trial turn on a pragmatic prosecution judgment whether, after a suppression order has been complied with, sufficient uncoerced evidence remains to carry a case to the trier of fact (i.e., past the stage of prima facie proof).

As indicated, primary and derivative evidence falls within the exclusionary rule once a fourth amendment violation has been ascertained. Derivative evidence includes testimony from witnesses discovered through unlawful search and seizure, provided such witnesses have not reached a free-will decision to cooperate with the prosecution. In instances of real or documentary evidence, the principal issue appears to be whether a causal relationship can be perceived between discovery of derivative evidence and the original unlawful source, namely, official misconduct and its primary results. Accordingly, the prosecution can defeat application of the derivative evidence rule by subsequently obtaining evidence if it can establish an independent source for that evidence. This has been expanded in some decisions to an "independent discovery" rule, under which evidence becomes admissible if police had other untainted evidence thus far to present. 44 The logical underpinnings of the doctrine require that it apply to civil actions to which government is a party; there is precedent to that effect. However, there is little if any rational basis to require exclusion of evidence in purely civil actions to which government is not a party, since the deterrence impact on law enforcement officers would be minimal and the harm potentially great to litigants unable to control official investigative activities.

There seems to be one exception to the prohibition against use of unlawfully obtained evidence during criminal proceedings: such evidence may be used to impeach a defendant who testifies by choice at trial. Action by employees or agents of government is required before the constitution is violated and the exclusionary rule is violated, unless the employee or agent has the consent of the party against whom the evidence is directed. The exclusionary rule traditionally has extended to all phases of a criminal proceeding: the only breach in the tradition has appeared recently in the context of bail, sentencing, and probation and parole revocation, and even there some courts continue to invoke the exclusionary rule. It also governs forfeiture proceedings. 45 The legal underpinnings of the doctrine require that it apply to civil actions to which government is a party; there is precedent to that effect. However, there is little if any rational basis to require exclusion of evidence in purely civil actions to which government is not a party, since the deterrent impact on law enforcement officers would be minimal and the harm potentially great to litigants unable to control official investigative activities.

Turning to the field of confessions, all the rules affecting interrogation techniques require exclusion of confessions obtained in violation of their requirements. The only exception appears to be that confessions, otherwise voluntary, obtained after noncompliance with the details of the Miranda rules, may be used to impeach a witness who later decides to testify in court in personal defense. If, however, a confession is constitutionally involuntary it cannot be used lawfully for any purpose. 48 Although the Supreme Court has not decided the point thus far, it would seem a similar analysis perhaps should underlie the impeaching use of confessions obtained in violation of the right to counsel, although the case for that conclusion is not as strong as when a confession is involuntary.

It might be noted (and has been maintained) that if a first confession is legally invalid, later confessions also should fall because, if a first confession has been given, the will to resist giving later statements has been weakened. This "cat out of the bag" 49 rationalization has been accepted in principle by a majority of the Supreme Court and occasionally is encountered in state and lower federal court decisions. Usually, however, courts have looked to see whether circumstances invalidating an earlier confession continue in force to affect the validity of a later. That in practical effect constitutes an application of the independent source test, the source in such an instance being a free decision of the individual to give a new statement despite the more recent improper interrogation by officers.

The Supreme Court decreed a general derivative evidence rule under Miranda a short while after that case was decided; 71 if, for example, the contents of a confession should lead officers to a weapon or other evidence which they would not have discovered through alternate sources available to them, all such evidence would be inadmissible. It is probably in this dimension, however, that the Court has most sharply revised its exclusionary rule analysis, a matter discussed below.

Several forms of eyewitness identification procedures are governed by constitutional principles. As in the other contexts discussed in this paper, violation of these special rules can result in inadmissibility of evidence. However, there, is no "true" exclusionary rule prohibiting witnesses from testifying to the identity of a defendant as perpetrator of a crime even if an identification procedure is fundamentally unfair. It is reversible error to allow a witness to testify directly that he or she identified a defendant during an unconstitutional identification procedure or to use a police or other witness to confirm that fact. 29 Such testimony is considered the direct product of unconstitutional investigative activity. However, a witness is not barred from giving in-court identification evidence unless a court concludes that the witness's impressions on which such testimony is founded go back only to the identification procedure and not to the criminal transaction itself. In the latter instance, identification testimony is not considered to have been derived from unconstitutional activity.

C. Changing Concepts of the Exclusionary Rule

Almost from their inception exclusionary rules have drawn sharp criticism from various quarters. A chief objection has been that unlawfulness on the part of one person, an officer, may in practice make it impossible to convict another lawbreaker: "because the constable has blundered, the
assumed must go free.42 A corollary to that is the assurance that only guilty persons benefit from the exclusionary rule; innocent citizens subjected to illegal police acts must resort to civil, criminal, and administrative remedies which the Supreme Court thought inherently inadequate. To innocent citizens, any benefit from the deterrent impact of exclusion of evidence against criminals in other cases is theoretical and abstract, and not the characteristic of concrescent reproof. Moreover, judicial concentration on exclusionary rules has generated legislative and administrative inattention to the matter of developing remedies beneficial to all citizens, in the process warping the concept of separation of powers. Also, granted the stated objective of the exclusionary rules, i.e., deterrence of police misconduct, they have been couchcd in excessively broad terms, in that they extend to police actions undertaken in good faith and with an intent to act lawfully, later characterized, perhaps by a slim majority of an appellate court, as objectively in nonconformity with constitutional requirements. Classic penal law theory assumes intentional or reckless (c.f. Roman law dolus eventualis) action to be the only activity to which the deterrent remedial properly may be applied; since it is in relation to such activity alone that a focused exercise of free will can be observed. To apply a deterrence-based exclusionary rule to both wilful and unintended law enforcement acts, i.e., to impose a strict liability to which the fourth amendment is to be determined. Deterrent effect rests upon an assumption "that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right—whether the trial testimony of a witness, the eighth amendment-violative evidence, the admission of erroneous testimony by the police to the ascertainment of truth.'44 As it ruled in favor of the petitioner, it was noted that a consequence of the exclusionary rule is that the focus of the trial, and the attention of the participants therein, are diverted from the ultimate question of guilt or innocence that should be the central concern in a criminal proceeding.45 A companion result is that "the disparity in particular cases between the error committed by the police and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice," which may well have the opposite effect of generating disrespect for the law and administration of justice.46 Such an effect is exacerbated when "a criminal conviction is sought to be overturned on collateral review on the ground that a search-and-seizure claim was erroneously rejected by two or more tiers of state courts."47 That analysis was carried forward in another 1976 decision, United States v. Jaramillo, in which the issue was whether the admission of audio recordings to which the police had access, recorded by the police officers themselves, constituted a violation of the fourth amendment. The police officers had seized the recordings in the course of an illegal arrest. The Court held that the admission of the recordings was a violation of the fourth amendment because the police officers had "engaged in a deliberate and flagrant violation of the fourth amendment," and that the admission of the recordings was a violation of the fourth amendment because the police officers had...
riters of judicial integrity appears largely to have dropped from the picture; the abstract pursuit of the judicial system "has limited judicial integrity as a justification for the exclusion of highly probative evidence."

It has mellowed weight when exclusion is ordered. A declaratory official misconduct: "When there is a close causal connection between the seizure and the confession, not only is exclusion of the evidence more likely to deter similar police misconduct in the future, but use of the evidence more likely to compromise the integrity of the court." (14)

The long-range impact of this altered jurisprudence has yet to be felt. The more attenuated the causal relationship between primary unlawfulness and acquisition of particular evidence, the less delicate the balancing test under Tucker can apply only to derivative evidence; there is no indication that the doctrine of the prophylactic rules set in Miranda can ever tolerate admission of a primary confession, for to hold so would work a reversal of the Miranda doctrine. There is no special counterweight to the balancing test to be found in the area of eyewitness identification law, although it is not so clear that the same effect has been wrought by the Court's ruling that there is no per se exclusionary rule applicable to identification testimony even though an identification procedure has violated due process. Instead, the question is whether a claim of misconduct is true the source of a witness's identification testimony, and not impressions received at the time a witness's identification testimony, and not impressions received at the time a

D. Alternatives to the Exclusionary Rules

Development of alternatives to the exclusionary rules consists essentially of identifying and remedying defects in traditional concepts criticized by the courts against which the exclusionary rules first were laid down. In considering whether criminal prosecusions against some offending officials are possible, a survey of criminal code provisions is a prerequisite. In most American jurisdictions there is little or no need for new criminal statutes governing official misconduct because a sufficient array now exists. Culpability or mens rea is required to violate them, precluding a strict liability approach, but that seems not to be a defect in light of the Supreme Court's emphasis on the deterrent function as a dimension of the exclusionary rules themselves. It might be noted that one remedy against excessively zealous law enforcement efforts bringing about the commission of crimes which one cannot probably would not have occurred (i.e., entrapment) is to apply accomplice liability concepts to those offenses and send them to prison along with the perpetrators, which perhaps is as direct a deterrent as can be envisioned.

Unwillingness of prosecutors to levy criminal charges against erring police officers has been an important dimension of the American response. It is unlikely that American constitutions and statutes will be amended to eliminate prosecutorial discretion during the charging process. One response, however, is to provide for the appointment of special prosecutors in cases involving misconduct of federal officials. There is federal legislation of that nature, and an analogue is found in the Japanese procedure allowing institution of prosecution through special judicial orders in certain cases involving abuse of public office, and the appointment of a special prosecutor for the private bar.

It is unlikely that criminal prosecution of offending officers ever will play a large role in the control of law enforcement misconduct. The most serious instances of abuse of power are either likely or appropriate to be reached in that manner. Are civil actions generally a more efficacious response? Granted the fact that the American legal system does not subsidize private litigation; there are provisions for recovery of costs and expenses of defending both FTC and private civil actions. Damage actions against local and state governmental units for violations of the Federal Civil Rights Act by their employees are possible, but plaintiffs must establish actual damages or else be content with nominal damages of one dollar. Because of the nature of federal-state relationships under the Eleventh Amendment, a state (as opposed to its political subdivisions) cannot be sued for damages based on civil rights violations. However, it is possible for the state or federal office or its employees can be sued for injunctive or declaratory relief, provided there is no current state avenue for relief which has not been pursued to completion.

Litigation, while important to the delineation of legal rights and scope of official powers, cannot directly benefit large numbers of citizens even under a system of subsidies for civil actions. More citizens probably will benefit from a system of administrative remedies, particularly those based on discipline of offending officers. Many police departments in fact have developed machinery whereby, for example, citizens who have suffered physical or property injury are reimbursed their costs, and apologies tendered for trespasses against civil rights. Perhaps the principal
motivation for such redress has been a desire to avoid federal or state litigation, the likelihood of which is much greater now than even a decade ago. Nevertheless, an important contemporary issue is whether special rules and regulations should be promulgated so that citizens may know clearly the administrative remedies they may pursue for either monetary relief or departmental discipline of erring employees.

It is clear that under an administrative procedures act or on a theory of implied powers, any governmental unit can promulgate appropriate regulations. Indeed, the United States Supreme Court has confirmed the desirability of such rules as a means of safeguarding citizen rights by refusing to construct exclusionary rules of evidence on good faith failure to comply with them, lest administrative safeguards not be provided.66 If disciplinary proceedings are provided for, an important policy question is the degree to which, if any, citizens should be able to institute and pursue administrative action against individual employees. Police and other administrative procedures understandable are reluctant to allow outsiders to precipitate charges; they feel that should be an agency matter. Nevertheless, at least in urban areas or in instances involving alleged abuses against minority groups or individuals, citizens are increasingly concerned about disciplinary proceedings under the exclusive control of public officials. In considering amendments to the Federal Tort Claims Act, referred to earlier, the Department of Justice, as a compensatory position to its insistence that individual federal law enforcement officers be immune to civil suit, has endorsed an ability on the part of aggrieved citizens to demand departmental disciplinary proceedings and eventually lodge a special civil action in a federal district court alleging abuse of official discretion in the disposition of the complaint. The approach appears to have merit, at least in the contemporary United States. As a practical matter, many citizens will be satisfied if they feel their complaints against police and other governmental officials have been inquired into by some independent device to assure that the office to accomplish this is the office of ombudsman. Australia has seen the institution of this device in some of the States and has established, particularly in the Scandinavian nations. It is also well to stress that in the long run police entry and inversee education is vital to effective protection of both public security and citizen's rights. Funding is necessary, but the key decisions about eligibility for and contents of training lie with each police agency.

Protecting Victims and Witnesses

An inherent defect in a legal system which concentrates on police misconduct and its impact on criminal defendants, as has the United States, is that the protection of victims, witnesses and other citizens necessary to the effective administration of justice is lost sight of.67 Hearings conducted by the American Bar Association Section of Criminal Justice Committee on Victims on June 4-5, 1979, revealed a discouragingly high frequency of violence, threats of violence or intimidating activity towards victims or witnesses in over 50% of the cases, on the part of defendants, their relatives and friends. Although acts of overt physical violence often can be made prosecution, the latter may be of much practical benefit in resolving the underlying problem if a victim or witness is dead, has moved from the jurisdiction to avoid harassment, or simply fails to appear in court. In August 1980 the American Bar Association adopted several recommendations by the committee concerning criminal justice system modifications which might ameliorate the problem.68 From a pragmatic viewpoint, the principal responsibility to protect against victim and witness harassment rests with law enforcement agencies. Because instances of intimidation are reported first to the police, larger departments should establish special units (perhaps denominated a victim/witness protection unit), the primary role of which is to provide immediate effective protection against the possibility of assault and to investigate for prosecution acts of intimidation which already have occurred. If no activity yet has been noted but there is a significant potential for intimidation or retribution, the unit should be alerted to commence protective surveillance and other effective measures. A protective unit, and the agency of which it is a part, should advise victims and witnesses about the forms of harassment which their reprimals or intimidation might take and about methods of communicating with the unit and agency, and should be prepared to offer an array of services to meet any threats which present.

Such services should be wide-ranging. They include "hotline" numbers, separate from "911" or "110" numbers, direct to the protection unit itself, personnel of which should always be on duty. In some instances, necessary protection can be accomplished through increased foot or motor patrols, or the stationing of police personnel at premises during a period of danger. Transportation in police vehicles may need to be provided to and from work. In extreme cases, it may be necessary to relocate a victim or witness in the community,69 or to provide security conditions preserving anonymity. The federal government has had such a program covering witnesses to organized crime, and several thousand people have been accommodated in that way, some of them living on government stipends. A few metropolitan governments, using federal funds, have developed similar programs for particularly vulnerable crime victims and witnesses.

The inherent power of a court to regulate conduct of witnesses and parties and to protect the integrity of its precincts and activities is obvious. The inherent power to control proceedings before it and to protect the integrity of its precincts and activities should be a sufficient legal basis for such orders, violations of which can be charged as civil or criminal contempt. If an important prosecution witness fails to appear and there is a possibility that intimidation is the cause, a court should grant a reasonable continuance at prosecution's insistence so that the matter can be investigated and suitable protection accorded the missing witness. Courts also have a responsibility to provide secure waiting areas for witnesses, including toilet facilities, to forestall confrontations, accidental or otherwise, between witnesses and bailed defendants or their relatives and friends; in-trial intimidation frequently is facilitated because witnesses
and speculations are forced to confine itself in the courts adjacent to courtrooms.

There may well be scope for amendment of criminal statutes as they bear on victims with witness intimidation. For example, extortion or intimidation statutes may not extend to efforts by essentially unlawful means to dissuade victims or witnesses from reporting victimization to authorities, seeking or cooperating in the institutional formal charges, or aiding in the arrest of those responsible for harassment; a special statute, which the ABA recommends, the judiciary, may not extend to efforts by essentially unlawful means to dissuade victims or witnesses from reporting victimization to authorities, seeking or cooperating in the arrest of those responsible for harassment; a special statute, which the ABA recommends, the judiciary, might well advise such organizations, present at a courthouse or courtroom, also might help witnesses find their way to the proper place at the correct time.

To this point, the principal focus has been on prosecution of victims and to a lesser extent on defendants. There also can be, in the nontechnical sense, harassment of witnesses by counsel. This occurs most frequently in the United States in the form of cross-examination of victims of sex offenses about their previous sexual conduct. Some recent state statutes do not acquit inquiry into or proof about a victim's sexual conduct unless it was with the defense or is offered to establish the source of semen, pregnancy or disease. Even then, a trial court must find the probative value of the evidence not to be outweighed by the inflammatory or prejudicial impact of the evidence. These rape shield laws have been sustained as not violative of the constitutional right to a fair trial, even though there is a claim that they unconstitutionally limit the defense in showing possibly exculpating or mitigating evidence of a prior criminal conviction. But it is possible for prosecutors as well as harass defense witnesses in any sort of case by threatening them or their relatives or friends with prosecution. That is an unpunished offense.

Intimidation aside, victims may be deterred from bringing the facts of crimes committed against them to the attention of police and prosecutors because they do not know where to go and whom to speak. The ABA advocates that community organizations as well as courts provide for the protection of victims in cases of possible crime.

In legal systems influenced by Roman law, judicial activity is essential to the gathering of witness statements, real, demonstrative and documentary evidence and forensic (expert) data. This tradition continues in Japan. For example, before public prosecution has been instituted, a public prosecutor, etc., can invite a person to make an expert opinion, if a physical or mental examination of a suspect is necessary for that purpose, a request for submission to a judge for an order authorizing the necessary determination. If a person other than an expert refuses to cooperate and is believed to have

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corridors of a public building. If witness fees and travel expenses are paid, the rates usually are based on a schedule rendered abused by time and inflation. Various reforms have been experimented with to ease the burdens on citizens as witnesses and jurors, including dockets and calendars which are updated daily through use of computers, telephone notification to witnesses to be available at identified telephone numbers for further notice of the expected time for testimony, prompt notification of adjournments or continuances and explanation about the length of cases in which their testimony may be required. In civil cases, and to some extent in criminal, videotaped depositions (in the presence of defendant and defense counsel in criminal cases to meet confrontation requirements) are being used for professional or expert witnesses in order to control demands on their professional time. Some court buildings have been renovated to create pleasant waiting rooms for potential jurors and witnesses, including sufficient rooms that witnesses in a single case can be segregated from one another. There is general agreement that jurors and witness fees should be increased substantially, but legislatures are reluctant to show in appropriating the needed public funds.

Special Proceedings to Aid Criminal Investigations

A. Judicial Orders for the Acquisition of Evidence

In legal systems influenced by Roman law, judicial activity is essential to the gathering of witness statements, real, demonstrative and documentary evidence and forensic (expert) data. This tradition continues in Japan. For example, before public prosecution has been instituted, a public prosecutor, etc., can invite a person to make an expert opinion, if a physical or mental examination of a suspect is necessary for that purpose, a request for submission to a judge for an order authorizing the necessary determination. If a person other than an expert refuses to cooperate and is believed to have information essential to a criminal investigation, an application can be made to a judge for a witness examination conducted by the judge. The same procedure is followed if a witness at a deposition fails to produce information and then appears to be under pressure to withdraw or change earlier statements. Applications can be made as well to a judge for warrants or orders for search, seizure, inspection or examination of places or physical examination of persons, including suspects. Like investigative acts can be conducted after institution of public prosecution, before the first day of public trial a suspect, defendant or counsel for either can apply to a judge (not a court) for similar orders to preserve evidence which otherwise may not be available for trial use at a later time.

The traditional American system is not as flexible. Search warrants can be obtained at police request at any time; on occasion, identification evidence like fingerprints or photographs can be obtained in that way. If a search warrant is used, the usual probable cause must be established. In dictum, the United States Supreme Court indicated that judicial orders on less than probable cause might be issued against citizens who may be suspects, requiring them to submit to fingerprinting. A few jurisdictions appear to have taken advantage of that suggestion. Grand jury investigations sometimes permit acquisition of real, demonstrative and identification evidence, although the fact that defendants and counsel do not participate in these proceedings usually renders witness statements unusable because of the confrontation clause. In federal practice, a United States Attorney cannot go directly to a court for an order to produce evidence, but instead must work through a grand jury to have a grand jury subpoena issued. After a grand jury has issued an indictment, its process cannot be used to develop additional evidence for the prosecution. American courts differ over whether there is inherent power to order suspects, not under arrest, detention or preconviction release, to attend a lineup proceeding. Some say there is such inherent power.
that magistrates before whom preliminary
Privacy Act, federal investigating
jurisdictions as a means of preserving
through issuance of a search warrant or
to participate in any phase of a criminal
may be contested within a brief period of
must comply with such process.
privilege against self-incrimination so that
financial records are sought so that
proceeding.
suspects as custodians and persons acting
defendant is constitutionally competent
parallel legislation governing them. After
formal charges have been filed, subpoenas
produce documents and records in
court. Granted the lacunae in existing American methods of gathering and preserving evidence before and after the filing of preliminary and formal charges, it would be desirable if something resembling the Japanese pattern were developed by statute or rule. A model rule which, if adopted, would achieve substantially that end has been promulgated.97
B. Encouraging or Enforcing Citizen Cooperation
Citizens against whom summons or subpoenas are issued have no legal ability to resist them; it is expected that they will comply.98 Criminal defendants aside, receipt of process does not create a basis for a self-incrimination claim; that must be asserted with reference to specific questions or (to the extent privilege can be violated through production of documents) identified documents or portions of documents. Should, however, police or prosecutors be given compulsory powers to require citizen cooperation? American prosecutors have advocated a prosecutor's summons which, in case of refusal by a recipient to comply, could be made the basis for a prosecution request for a judicial order requiring appearance in court for preliminary examination. It seems likely that legislative authority to prosecutors to issue such a summons would violate the federal constitutional requirement that warrants be issued by neutral and detached magistrates;99 in any event, a recipient of such a summons could assert as a defense that the warrants issued by the grand jury on which the summons were based were invalid because the grand jury was not independent of the prosecutorial power.100

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While other courts require enabling legis-lation,101 deposits may not be taken until after formal criminal charges have been filed; however, the right to confrontation requires that defendant and defense counsel participate if the resulting transcript or videotape is to be admissible at trial. A preliminary examination hearing can be used in many jurisdictions as a means of preserving witness testimony in case of death or non- appearance102; confrontation rights are satisfied because defendants must be present with counsel (unless representation by the latter is validly waived) at such proceedings.103

After formal discovery, discovery practice in most jurisdictions allows for the performance of expert examinations, including physical and mental examinations, on court order. It is doubtful, though, that magistrates before whom preliminary charges are pending have similar powers to aid either prosecution or defense. Statutes are increasingly widespread, however, which allow court-ordered mental examinations to determine whether a defendant is constitutionally competent104 to participate in any phase of a criminal proceeding.

Before formal criminal charges are filed, documentary evidence usually is acquired through issuance of a search warrant or grand jury subpoena; there is only the most limited coverage of documents by the privilege against self-incrimination so that suspects as custodians and persons acting on their behalf must comply with such process.105 However, under a 1975 Right to Financial Privacy Act, federal investigating authorities, including grand juries, must give notice to noncorporate suspects that their financial records are sought so that privilege of the examination of such records may be contested within a brief period of time. State investigations are not covered, although Congress has been considering parallel legislation governing them. After formal charges have been filed, subpoenas duces tecum are used to require custodians to produce documents and records in court.106

92 The basic policy question is whether a stated citizen duty to cooperate with a police investigative inquiry is a moral duty only, or is a legal obligation supported by penalties for noncompliance. Granted the fluidity of street encounters and the probability of a swearing contest in court between police officers and citizens about what actually occurred, it may be that the most appropriate resolution is in favor of a moral duty or obligation only, with criminal penalties reserved for those who actively obstruct legitimate police inquiries. But the issue certainly is open to legitimate debate.

Legislatures also may wish to consider whether rewards should be given to those who supply law enforcement or prosecution officials with useful information. Allowing those who facilitate prosecutions or civil actions for unpaid taxes or customs duties to share the proceeds with the government (traditionally denominated as actions qui tam) has for centuries been a useful enforcement device; many tax inquiries also are the result of anonymous tips leading from disgruntled spouses or employees. However, experience with the use of such informers, for example, in controlled substance investigations in which cooperating criminals are allowed to keep the proceeds of narcotics or barbiturates, may suggest that a reward system relating directly to "making" individual cases is too subject to abuse to be allowed as a routine law enforcement technique. Public confidence perhaps is legitimately to be encouraged only in those cases in which an immunity statute establishes that the use of a cooperating witness is governed by the principles of equitable power. Otherwise, the issue certainly is open to legitimate debate.

100;101 Special immunity legislation is a desirable enforcement device; many tax proceedings. But the issue certainly is open to legitimate debate.

C. Grants of Immunity to Needed Prosecution Witnesses
Police officers or prosecutors, in order to encourage cooperation, may promise suspects or even defendants that they will not be charged or that charges will be dismissed if they cooperate in the investi-
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1. Violations of the privilege against self-incrimination by courts or agencies long have been visited with an exclusionary rule, prohibiting direct use of incriminating responses and also covering introduction of evidence discovered as a result of primary testimony. Counselman v. Hitchcock, 142 U.S. 349 (1892); Counselman v. Hitchcock, 142 U.S. 349 (1892); Miranda v. Arizona, 384 U.S. 436 (1966); Beach v. United States, 431 U.S. 519 (1977) (interstate commerce is a derivative evidence rule, prohibiting direct use of incriminating responses and also covering introduction of evidence discovered as a result of primary testimony).


31. Neil v. Biggers, 409 U.S. 188 (1972); Gilbert v. California, 388 U.S. 263 (1967). Unlawful arrest or detention does not render a person’s facial characteristics suppressible derivative evidence, because a contrary holding would eviscerate the Court’s holding that personal jurisdiction is not affected by unlawful arrest or custody. United States v. Crews, 100 S.Ct. 1244 (1980); see note 4 above.


35. Most recently, Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211 (1979) (access to grand jury transcripts in civil litigation).


37. Most notably, Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211 (1979) (access to grand jury transcripts in civil litigation).


39. Ibid.


41. Ibid.

42. United States v. Payner, 100 S.Ct. 1449, 1450 (1980). In United States v. Payner, 100 S.Ct. 1449, 1450 (1980), the Court remarked, "[a]fter all, it is the defendant, and not the constable, who stands trial." Stone v. Powell, 428 U.S. at 490-91.

43. Id. at 491.

44. 428 U.S. 433 (1976).

45. 435 U.S. 268 (1978). The Court balanced essentially the same factors in a decision, not of constitutional weight, allowing a spouse to choose to cooperate with the prosecution in a case against the other spouse; the issue was "whether the privilege against adverse spousal testimony promotes sufficiently important interests to outweigh the need for probative evidence in the administration of criminal justice."


47. Id. at 277.

48. Id. at 278.

49. Id. at 279, quoting McGuire v. United States, 273 U.S. 55, 59 (1927).

50. Id. at 279.

51. Id. at 280.


54. See, e.g., Oregon v. Hass, 420 U.S. 714 (1975); Hathorn v. New York, 401 U.S. 222 (1971). It also is no violation of privilege against self-incrimination to ask why an exculpatory version of a transaction was not reported to authorities before arrest. Jenkins v. Virginia, 231,603 P.2d 100 S.Ct. 1885 (1979), and the Court thought it was "far more likely to frustrate justice than to foster family peace." Truitt v. United States, 100 S.Ct. 906, 913-15 (1980). See also United States v. Gillock, 100 S.Ct. 1185 (1980) (no "speech or debate" privilege affecting state legislator tried for federal crime in federal court, because of the need for relevant evidence).


56. Id. at 277.

57. Code arts. 262-269; Rule arts. 169-175.


63. The counsel fee cases cited in note 61 above are an exception because U.S. Const. amend. XIV, § 5, allows Congress to enforce the due process and
equal protection clauses through appropriate legislation, which qualifies the 11th amendment.


67. On investigation of citizen complaints in England, see Police Act (1964) (c.48), 49.


71. The American Code of Criminal Procedure was amended in 1964 to meet this problem. Art. 89 (5) allows bail to be set if a defendant may injure a complainant or witness; art. 96 (1) (d) authorizes revocation of bail or suspension of execution of a detention order if actual efforts are made to acquire or intimidate such person. No conviction of an offender is a prerequisite to denial or revocation under this section.

72. The constitutional issue is whether the only objective of bail or other forms of preconviction release is to assure appearance of defendants in court when required. If that is the only lawful purpose, then defendants with the community and other indicia of reliability must be released even though there is reason to believe they will intimidate, assault or kill witnesses or destroy evidence. The Supreme Court has indicated the issue to be one reserved for future determination. Bell v. Wolfish, 441 U.S. 520, 534 n.15 (1979). Case questions obviously arise from jurisdictions which by state constitutional revision, e.g., Const. art. 1, § 15(b) (as amended in 1978), or legislation, e.g., D.C. Code §§ 23:1-1232 (1974), have allowed probable cause of future crimes to be taken account of in preconviction release determination. The question is to be addressed in a pre-arrest setting.

73. Under Japanese law, a court may resolve such disputes by requiring the defendant, but not defense counsel, to withdraw from the courtroom while a possibly intimidated witness testifies; after the witness has testified the defendant is returned to the courtroom, informed of the substance of the witness's testimony and afforded an opportunity personally to examine the witness further. Code arts. 281-2, 304-2. Under the similar amendment right of confrontation, defendants cannot be excluded from the courtroom unless they disrupt trial proceedings by overt misconduct. Illinois v. Allen, 397 U.S. 373 (1970).

74. A defendant who threatens a witness and thus persuades the latter not to testify waives sixth amendment confrontation rights concerning the prosecution use of the witness's testimony given in an earlier proceeding. United States v. Balano, 618 F.2d 624 (10th Cir. 1980); United States v. Carlson, 547 F.2d 1346 (9th Cir. 1976); it violates first amendment rights of press representatives and members of the public to exclude them from the courtroom, even though with the express consent of prosecution and defense. Richmond Newspapers, Inc. v. Virginia, 100 S.Ct. 2814 (1980). A Japanese prosecutor may request a judge to interrogate a witness subjected to pressure, before the first day of public trial. Code arts. 227-228.

75. Under Penal Code art. 105-2, punishment is imposed whether or not a witness actually is intimidated, provided a defendant endeavors to force an intimidating interview. See S. Danbo, Juubunryaku: Kakuron (Textbook of Penal Law: The Special Part) 79 (1964); 54 Chishaku keihon (Announced Penal Code) 136-42 (S. Danbo ed. 1965). Under Shouninto no higai ni tsuite kyofu ni kansens hiritsu (Law Concerning Compensation to Witnesses for Injury or Damage) (Law no. 109 of 1963), public funds are available for witness compensation based on injuries brought about by defendants.

76. The objection is that the inability to cross-examine a complaining witness about past sexual activities infringes the sixth amendment right of confrontation. The weight of authority rejects this under Davis v. State, 590 S.W.2d 297 (Ark. 1979) (no equal protection denial through improper legislative classification); Marion v. State, 590 S.W.2d 288 (Ark. 1979); People v. Dorff, 77 Ill. App. 3d 883, 396 N.E.2d 827 (1979) (retroactive application to defendant not ex post facto); State v. McCoy, 261 S.E.2d 159 (S.C. 1979), but there is a contrary holding. People, Williams, 95 Mich. App. 2, 189 N.W.2d 863 (1979). See generally U.S. Nat'l Institute of Law Enforcement & Criminal Justice, Forensic Rapes: An Analysis of Legal Issues ch. 3 (1978).


78. Code arts. 223-225.

79. Code arts. 223 (1), 226, 228; Rule art. 160.

80. Code arts. 223 (1), 227, 228. Public prosecu­ tors also may conduct or authorize inquiries into the cause of death apparently brought about under unnatural circumstances. Art. 229.

81. Code arts. 99-127 (evidence and seizure), 154-14 (evidence by inspection or examination), 143-164 (witness examination), 165-174 (expert or forensic examination), 175- (interpretation and translations). These processes are separate from requests for the trial examination of witnesses and evidence. Art. 298.

82. Code art. 179. A public prosecutor and defense counsel may inspect evidence items gathered in such a way (defense counsel may copy such items only with the permission of a judge), art. 180 (1), and so accused or suspect with permission of a judge may inspect documents or other evidence in court. Art. 180 (2).


85. See, however, the decisions cited in note 74 above.

86. See re Melvin, 546 F.2d 1 (1st Cir. 1976).

87. United States v. Doe, 541 F.2d 548 (6th Cir. 1976). Thus, the Federal Bureau of Investigation affects Internal Revenue Service ad­ ministrative investigations after a tax fraud case has been referred to the Department of Justice for criminal prosecution. United States v. Ege, 444 U.S. 707 (1980); United States v. LaSalle National Bank, 437 U.S. 298 (1978).


90. On procedures to establish unavailability and reliability, see Ohio v. Roberts, 408 U.S. 256 (1972).


92. Droe v. Missouri, 410 U.S. 162 (1973), establishes this as a due process concern.

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96. The proper scope of federal practice is delineated in United States v. Nixon, 418 U.S. 683 (1974); a subpoena is not to be used as a substitute for discovery under the federal rules. On privilege infringement through the process of response, see In re Grand Jury Proceedings (Sohanan), — F.2d —; 27 Crim. L. Rep. (BNA) 2507 (3d Cir. 1980).


100. See text accompanying notes 78-80 above.

101. See note 84 above.

102. A citizen has no duty to cooperate with police officers who precipitate an encounter without reasonable suspicion that he or she may be involved in or have useful information about past, present or future activity, and therefore cannot be punished for refusal to give identification or solicited information. Brown v. Texas, 443 U.S. 434 U.S. 47 (1979). Accordingly, although it is "an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement," Miranda v. Arizona, 384 U.S. 436, 477-78 (1966), it is not a legally enforceable duty until the legal prerequisites are met for a stop-and-frisk encounter. The leading decisions on the latter doctrine are Pennsylvania v. Mimms, 434 U.S. 106 (1977); Adams v. Williams, 407 U.S. 143 (1977); Terry v. Ohio, 392 U.S. 1 (1968).

103. Conversely, if there is noncompliance, a prosecutor can move to set aside a guilty plea to a lesser charge and can use as admissions statements made during the plea-taking procedure. People v. Cummings, 84 Mich. App. 509, 269 N.W.2d 638 (1978).

104. E.g., United States v. Huston, 609 F.2d 1326 (9th Cir. 1979) (but actual detrimental reliance is necessary if federal agent acted outside scope of official duties in making promise); United States v. Weiss, 399 F.2d 730 (5th Cir. 1979) (cites conflicting federal decisions on duty to dismiss indictment, but finds no agreement in fact made); United States v. Rodman, 519 F.2d 1028 (1st Cir. 1975) (promises of nonprosecution made by SEC agents required dismissal of indictment); People v. Reagan, 395 Mich. 306, 235 N.W.2d 581 (1975) (prosecutor agreed not to charge defendant if he "passed" a polygraph test); People v. Forshey, 88 Mich. App. 5, 276 N.W.2d 498 (1979) (police chief and 19-year-old youth agreed there would be no jail time; shock or "taste of jail" probation violated that agreement) A promise made under duress is nonbinding. United States v. West, 607 F.2d 300 (9th Cir. 1979) (promise of amnesty during prison riot, given to secure release of hostages).


106. Federal circuits are divided on the matter: United States v. Turkish, 623 F.2d 769 (2d Cir. 1980), and United
Some Aspects of Arrest and Pre-Trial Detention

by Xavier Connor*

Arrest and pre-trial detention were the themes of the 54th International Seminar conducted by UNAFEI in February/March 1980. These topics are dealt with differently in the countries which were represented by the participants at the seminar. A country tends to develop a legal system which accords with its needs. Geography, ecology, distribution of population, the degree of industrialisation, history, culture, custom and religion may each play a part. It is a mistake to assume that something which works well in one country will necessarily do so in another. The area of arrest and pre-trial detention is no exception. Even so, certain common problems tend to emerge and I shall deal with some of these in this paper.

A person who is under arrest is deprived of his liberty. In general he is not free to go where he wishes to go or to see the people he wishes to see or to do the things he wishes to do. To give one person the right to arrest another is to give him a very considerable power over the person arrested. The Australian Law Reform Commission recently had this to say on the subject of arrest:

"Arrest has disadvantages for the State as well as for the person arrested. These are obvious enough. Our society quite rightly puts a premium on freedom of movement. Arrest is the complete negation of freedom. As a result it casts a considerable onus on those who would justify it. Further, arrests cost the State a considerable amount of money, both in absolute terms and as compared to other ways of bringing people to court. Innumerable man hours are spent in transporting, guarding and processing the arrested. American experience suggests that an arrest costs the State on average five times the cost of a summons. . . . One further disadvantage of arrest which it is appropriate to mention is the fact that there is strong disapproval in many parts of society, of any one who has an arrest record. This may take the form of social ostracism, dismissal from employment or withdrawal of commercial credit."

Having said this it is nevertheless clear that members of the police force must have the power to arrest if good order is to be preserved in the community. The problems are considerable, so far as possible, in the first place that the power is effective and in the second place that it is not abused.

Lawyers instinctively think of the problem in terms of laws governing the right to arrest, the manner of arrest and the action required to be taken after the arrest. Before passing to these matters I venture one observation of a non-legal nature; and that is to say that in my view there is no substitute for a well trained competent police force. If the members of a police force are taught during their basic training and periodically reminded during their service of the drastic nature of the power to arrest, if they are taught to treat arrest as a last resort, and in fact they do so, the practice concerning arrest will tend to be satisfactory, whatever the state of the law. In the absence of a well trained police force the situation concerning arrest will tend to be unsatisfactory, no matter how enlightened the law may be. That is not to say, however, that the law is irrelevant. It is a considerable advantage to any community—indeed one may say a necessity—to have clear and satisfactory laws concerning such an important matter as arrest. The words of Stephen J. in Re Caution are particularly apposite to statutes dealing with arrest. Speaking of statutes in general Stephen J. said in that case:

"It is not enough to attain to a degree of precision which a person reading in good faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it."

Criteria for Arrest

The first concern is to determine the criteria for the power to arrest. The test is usually formulated in terms of belief or suspicion on reasonable grounds that a person has committed a crime. It is sometimes assumed that it is a matter of little consequence whether the test is belief or suspicion. I do not think that belief and suspicion should be treated as synonyms without doing violence to the ordinary meaning of each word. Belief involves a state of mind which goes beyond suspicion. In the present context it means that the person entertaining the belief thinks that the person to be arrested has actually committed the crime. On the other hand a police officer may entertain a strong suspicion on reasonable grounds that a person has committed a crime without having a belief that he has done so. I think that a genuine suspicion on reasonable grounds should satisfy the first criterion for arrest. Whether an arresting officer entertains an actual belief that a person has committed a crime may vary greatly with the individual officer, depending on his temperament and his experience. A police officer may have believed on previous occasions that a person had committed a crime only to discover later that the belief was mistaken. Such an officer may be wary of forming a belief even in the face of what appear to be incriminating circumstances which generate a genuine and reasonable suspicion which, if not acted upon, may result in an offender escaping justice. Moreover the test of belief tends to promote a certain cynicism on the part of arresting officers by tempting them to say that they entertain a belief, whether they do so or not.

I do not think that reasonable suspicion should be sufficient on its own to justify arrest. I think there should be a second criterion, namely that the arresting officer believes on reasonable grounds that proceedings by way of summons would be ineffective. This requires the police officer on the spot to consider whether proceed- ings by way of summons are feasible; and this raises for discussion the purposes of arrest. Historically the main purpose is to take the arrested person before a court at the first opportunity. It must be acknowledged also, I think, that another purpose in many cases is to place under police control the person found offending and thus bring to an immediate end his criminal enterprise. In many cases where a person is found committing a breach of the peace, arrest will be immediately indicated because proceedings by summons would be ineffective to deal with the situation overall. In other cases where there is no ongoing breach of the peace at the time the police officer encounters the offender, the offence in respect of which the offender is being sought may be so serious as to suggest reasonably to the police officer that proceedings by summons would not be effective for the sole reason that the motive for failing to appear at court in answer to a summons would be too strong.

There will of course be other cases, where the offender refuses to give his name or address or refuses to identify himself satisfactorily or where the police officer reasonably believes that the offender is giving him false information as to his identity. In such a case the police officer may well reasonably form a belief that cover from subsequent investigation that his belief was mistaken. Such an officer may be wary of forming a belief even in the face of what appear to be incriminating circumstances which generate a genuine and reasonable suspicion which, if not acted upon, may result in an offender escaping justice. Moreover the test of belief tends to promote a certain cynicism on the part of arresting officers by tempting them to say that they entertain a belief, whether they do so or not.

On the other hand, it is not difficult to envisage cases in which it would be unreasonable for the police officer to form the view that proceedings by summons would be ineffective. The offence may not be a serious one. There may be no ongoing breach of the peace at or about the time the offender is encountered. The offender may produce convincing identification from personal papers which he is carrying reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.
and which are plainly enough referable to him. The offender may not only be able to identify himself satisfactorily but may be in a position to demonstrate to the police officer that he has local family and property ties. It seems to me to be plainly undeniable in such a case that the police officer should arrest this class of offender even though there be strong suspicion that he has committed a crime. If an arrest is made in those circumstances it seems to me that the law ought to be that such an arrest is illegal.

A further criterion for arrest is the necessity to preserve evidence relating to the offence for which the person is arrested. To this end it may be on the person of the arrestee; and if he is not prepared to surrender it to the police an arrest may be the only feasible means of preventing him from destroying it. In the case of persons suspected of theft an arrest accompanied by the seizure of stolen property from being removed before the arrest may be the only feasible means of preventing a suspect from warning his accomplices of the turn of events thus enabling them to escape.

### Action after Arrest

Because the power to arrest is a drastic one the view is generally taken that it should be hedged about with provisions designed to prevent its abuse. A common provision is that the person arrested should be taken before a judicial officer as soon as practicable after arrest to be dealt with according to law. The advantage of such a provision, if carried out promptly, is that the person arrested comes under the control of a judicial officer, who is independent of the police and who has the power to grant him bail. Arrests are frequently made at a time when it is not always feasible to secure the prompt attendance of such a judicial officer. Presumably to meet this situation it is commonly provided in some countries that the person arrested be delivered forthwith into the custody of the member of the police force who is in charge of the nearest police station and who has power to grant bail. Provided that the arresting police officer has satisfied himself of his authority to arrest, and that the offence which he has committed is a criminal one, such a provision provides a prompt opportunity for the arrested person to regain his liberty. Two common pitfalls occur in practice. In the first place there is a strong temptation for the arresting officer to detain the person arrested in his custody for the purpose of questioning or generally facilitating investigations into the suspected crime. In the second place there is often a tendency for the officer in charge of the police station to order photographs and fingerprints as a matter of routine, whether necessary or not, and to postpone the consideration of bail until after these procedures have been completed.

#### Custodial Investigation

In 1975 the Australian Law Reform Commission made an interim report entitled "Criminal Investigation" in which it dealt with many aspects of custodial investigation. It strongly recommended that custodial investigative provisions requiring that persons in custody should be informed:

| a) that they are in custody, |
| b) why they are in custody, |
| c) their right to refuse to answer questions, |
| d) their right to access to relatives and friends, |
| e) their right to access to a lawyer, and |
| f) if relevant their rights as to identification parades and bail. |

On the question of access to friends and relatives the Commission favoured legislation providing for the right of the suspect in custody to communicate with at least one friend or relative except in cases where the police entertain a reasonable belief that the suspect in so doing will warn an accomplice who is not in custody or arrange for the disappearance or destruction of evidence. The Commission also recommended that there should be a formal legal obligation on the part of the police to answer bona fide inquiries from friends, relatives and legal representatives as to the location and status of the person in custody. Although in many parts of the world, including Australia, police practice out of a desire to ensure such inquiries are not used as an unauthorised and uncontrolled method of communicating with a suspect, it is often a temptation for the arresting officer to use such a right in an improper way. The Commission, rightly in my view, points out that where there is an aura of real criminality about having one’s fingerprints or photographs compulsorily taken in a police station, the Commission recommended that this should be limited to situations where the prints or photographs are reasonably believed to be necessary for the identification of the person with respect to the commission of an offence for which he is in custody. If the suspect does not consent to the taking of fingerprints it should be unnecessary, as an example, for the police to apply to a magistrate for an order that fingerprinting be permitted before conviction.

### Custodial Investigation

As to identification parades, the procedure for these is generally governed in Australia by orders or instructions emanating from police commissioners with statutory backing. There is a dual judicial control over the way in which they are conducted. In the first place the evidence from identification at a parade may be excluded if, by reason of the manner it was conducted, it would be unfair to the accused to admit it. In the second place, on the basis that evidence of the identification parade is admitted, there is still a warning given to juries about the care which is to be exercised in acting upon such evidence. The warning given is along the lines suggested by the English Court of Appeal in [R. v. Escobedo](https://supremecourt.gov/vl1966/1965a0075.html). If such a right is to mean anything in Australia it will need statutory backing, which it does not now have.

It is sometimes claimed that a right of access to a lawyer during the investigative process unduly hampers law enforcement. If, however, the right to silence is acknowledged, the case for access to a legal practitioner during the investigative stage is a strong one. Otherwise any knowledge developed during the investigation process should be disregarded and the cases resolved.

The ignorant and the timid will not. If the right to silence is acknowledged it is difficult to defend such an unsatisfactory Constitutional right. If the accused requires some of these things be done, I agree with the Commission that it is desirable that legislative provision should be made in respect of such matters. As to the question of access to counsel I cannot say better than quote from the Commission’s report: "The right to consult with a lawyer during the course of pre-trial police investigations is one of those traditionally claimed civil rights to which almost universal obeisance is paid in principle, but which is greeted with very great circumspection in practice by law enforcement authorities. The "right" has no constitutional or statutory backing in Australia. It cannot be said to have more than the marginal support from the common law. This is to be contrasted with the situation in the United States. There, building on the already recognized entitlement of many accused persons to have counsel in a crime to have a lawyer at trial, the Supreme Court of the United States has declared, first in [Escobedo v. Illinois](https://supremecourt.gov/vl1966/1965a0075.html) 378 U.S. 478 and later in [Miranda v. Arizona](https://supremecourt.gov/vl1966/1965a0075.html) 384 U.S. 436 that the Fifth and Sixth Amendment constitutional rights to the assistance of counsel and to be free from compulsion to be a witness against oneself require the accused (a) to be warned that he has a right to remain silent, (b) to be warned that he has the right to the presence of an attorney, and (c) to be told that if he does not know or cannot afford an attorney, one will be appointed for him."

It is sometimes claimed that a right of access to a lawyer during the investigative process unduly hampers law enforcement. If, however, the right to silence is acknowledged, the case for access to a legal practitioner during the investigative stage is a strong one. Otherwise any knowledge developed during the investigation process should be disregarded and the cases resolved.
The effect of this is that when a case of an accused person depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken the judge should warn the jury of the special need for caution before convicting in reliance on the correctness of the identification. He should instruct them that the reason for that warning is to avoid the conviction of an innocent person by reason of a mistaken identification. The judge is required to make some reference to the possibility that a mistaken witness could be compelling one and that a number of witnesses could all be mistaken. He should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. If the prosecution have reason to believe that there is a material discrepancy between the description of the accused given to the police by the witness when first seen and his actual appearance, there should be supplied to the accused or his legal advisor particulars of the description the police were first given. In all cases, if the accused asks to be given particulars of any description, the prosecution should supply them. The judge should also remind the jury of any photographs which have appeared in the identification evidence. Where the quality of an identification is good, the jury can ask and be left to assess the value of the identifying evidence even if there is no other evidence in support, provided always that a vouchsafe warning has been given about the special need for caution. Where the judge considers that the quality of the identifying evidence is poor he should withdraw the case from the jury and direct an acquittal unless there is other evidence which supports the correctness of the identification and he should identify for the jury any evidence which he regards as capable of supporting the evidence of identification.

Identification parades should be recorded by at least a coloured still photograph. If this is done and the photograph is produced at the trial the judge and jury can see for themselves and form their own view of the height, build and appearance of the other persons on the parade with the accused. The effect of doing this is usually to the advantage of the prosecution because it generally puts to rest any argument about the fairness of the parade in this respect. It is desirable also, in my view, that parades should be conducted by a senior police officer who is not in the investigating team and preferably a uniformed officer not in the Criminal Investigation Branch. If arrangements are made for the attendance of a legal adviser of the accused and there is identification at a fairly conducted parade generally tends to strengthen the prosecution evidence. There also seems much to be said for the practice which prevails in some countries of having identification parades conducted in the presence of a magistrate.

As to the matter of identification by photographs, these will generally be used when the police are seeking a lead to the identity of someone who is still at large. Witnesses should be asked to record a written description of the suspect before they are shown any photographs. The photographs which they are shown, including that of the accused, should generally be mounted on a single large backing sheet and any witnesses who are shown to the witness. This should be preserved and produced at the trial. In this way the jury or other tribunal can see exactly what was shown to the witness; and this removes much argument as to the order and manner in which the photographs were offered to the witness. A careful written record should be made of anything said by the witness about the photographs shown to him.

If there is an arrest the witness, without being shown the photographs again, should be asked to identify the suspect at a properly conducted identification parade. Care must be taken to ensure that the impression is not conveyed to the tribunal of fact that the photograph of the accused comes from police records in such a way as to suggest that he has previous convictions.

In the sense in which I propose to discuss the right to silence consists of the right of an accused not to incriminate himself. This right, where it exists, is protected in a number of ways. In the case of an accused person he cannot be required to give evidence either for the prosecution or on his own behalf at his trial. In the case of a witness he cannot be required to give evidence in a trial which will tend to incriminate him. Alternatively in some jurisdictions he may be required to give such evidence but there is a law enacting that it will not be admissible against him if he should thereafter be tried. In the case of a citizen who is neither an accused nor a witness he cannot be compelled to answer incriminating questions put to him either by the police or by anyone else; and this is so whether he is a suspect or not.

Lawyers tend to discuss the right to silence in terms of constitutional or legal rights; but initially the question whether there should be a right to silence is in the realm of moral and political philosophy. Should there be such a right and if so why? Before endeavouring to answer this question it is perhaps logical to ask two questions with which we are opposed to the existence of such a right. First, do they contemplate that a police officer could ask any citizen he pleased what had he at any time in the past committed any offence against the law? Secondly, what measures would they countenance to compel the truthful and may be self-incriminating answers to such questions?

Unless the opponents of the right to silence answer these questions with some precision it is not easy to evaluate the right because it is not possible to identify what is the alternative to it. If police officers had the right to ask any citizen whether he had at any time in the past committed any offence against the law I do not think it would be practicable for them to question the person effectively unless either they entered his home or business premises or took him from where he was to a police vehicle or a police station for that purpose.

I think it is plain furthermore that, if police were entitled to question people in this way, many people who had committed offences would not at first make admissions. Police officers would then in the course of their duty persist with the questioning; and the invasion of the home or the detention in police custody would be prolonged.

At this stage of the discussion most opponents of the right to silence tend to dissipate their opposition to its existence by restricting police activity in this field to cases in which the police have reasonable grounds to suspect the commission of a crime. It follows immediately from this that the right to silence is thereby accorded to the vast majority of citizens, as probably no more than a very small section of the community would be suspects at any given time.

Before considering the position of suspects it is useful to ask why there seems to be general agreement that the right to silence should be accorded to the vast majority of the community in respect of whom there are no reasonable grounds for suspicion. If the police had the right to detain them for questioning it may well be that many persons would be convicted of an innocent crime; that many more persons would be cleared up. I do not think it is possible to give any more satisfactory answer to this question than to say that most people regard the right of the general populace to silence as the lesser evil—the greater evil being the kind of society we would have if citizens in general, not reasonably suspected of any offence, were liable to be detained indefinitely for questioning without any charge being laid against them. Most people would fear that in such circumstances an oppressive police state would emerge.

I think that for practical purposes there are three debatable issues:

(1) Should suspects have the right to decline to answer questions put to them by the police in the course of investigating offences?

(2) Should the prosecution be able, as part of its case, to rely upon a refusal to

...
Some aspects of arrest and pre-trial detention

I turn finally to say something of the situation in Australia concerning confessions and some recent proposals for reform. The first question that will probably be asked is whether a person can be questioned by the police. The answer in Australia is the same as set out in Rule 1 of the Judges' Rules, namely that:

“When a member of the force is endeavouring to discover the author of a crime there is no objection to his putting questions in respect thereof to any person or persons, whether suspect or not, from whom he thinks useful information can be obtained.”

The next question is whether a person interrogated has to answer such questions. The position in Australia is that he is not required to answer and if he is subsequently charged no inference adverse to him can be drawn from his failure to answer.

If the person being questioned does answer, in what circumstances can his answer be given in evidence against him? The brief answer is that evidence by way of confession or admission is admissible if it was given voluntarily. Dixon J., as he then was in McDermott v. R.37 said:

“If [the accused] speaks because he is overcome his confessional statement cannot be received in evidence, and it does not matter by what means he has been overcome. If his statement is the result of duress, intimidation, persistent importunity, or sustained or undue insistence or pressure, it cannot be voluntary. But it is also a definite rule of the common law that a confessional statement cannot be voluntary if it is prompted by an inducement held out by a person in authority and the inducement...
Capital Territory there is a special
in the
accused, for example
missioners of
rules which set up general standards of
request is not admissible in evidence
(not being the exercise of violence,
voluntarily by that person.
mission was obtained were not
charged in a criminal proceeding shall
determined in evidence against the person
and
made by the person charged if, having
admission in
circumstances rendering
procurement to admit the confession
and
must not be carried out with the
idea of manufacturing evidence or ex-
torting some admission and thereby
securing a conviction. Upon the
particular circumstances of each case
depends the answer to the question as
to the admissibility of such evidence.
There are of course problems con-
cerning the Judges' Rules and it has been
strongly urged that in many cases the
protection which appears to be afforded
by them is illusory. For instance Rule 2
requires a police officer to caution a person
being interrogated when he has made up
his mind to charge that person. It is often
difficult even for the police officer to pin-
point the time; and in practice it seems to
happen that by that time the caution will
be too late. If at the commencement of
interrogation the police officer has not
made up his mind to charge the person, but
after some time he does so, it will nearly
always be as a result of something which
the person has said. He will have said it
without having been cautioned. The police
officer thinks it is enough to justify a
charge and it is not until then that the cau-
tion is given.
Rule 3 provides that persons in custody
are not to be questioned without a caution.
This often gives rise to conflicting evidence
as to whether a person was in custody.
There is a tendency for the police to say
that they invited the accused to come to
the police station and he voluntarily co-
operated with them. There is a tendency
for the accused to say that in the circum-
cstances he did not think he had any option
but to accompany the officers to the police
station.

The Australian Law Reform Commiss-
ion has also suggested that the fact that
the accused has no right to have a lawyer
present while he is being interrogated tends
to make the protection afforded by the
Judges' Rules somewhat illusory.10
The Australian Law Reform Commis-
ion made the following recommenda-
tions:

"There should be statutory recognition
of the suspect's right to silence, a
statutory requirement that he be notified
of that right and a statutory guarantee
that he be afforded the opportunity
to obtain such professional assistance as is
necessary to enable him to exercise that
right.
There should be procedures introduced
for ensuring the reliability of confes-
Sional evidence and minimizing contests
as to the circumstances in which it was
obtained. Interviews should preferably
be (a) recorded by mechanical means
(b) corroborated by a third person
and, if these measures are not prac-
ticable in the circumstances, (c) checked
by a third person after being reduced to
writing, or at least (d) reduced to
writing and signed by the accuses."
there is some police evidence to the effect that sound recordings of police interviews would inhibit the person being interrogated from saying anything. Perhaps only experience will show whether this is so or not. I am disposed to think that it is equally if not more inhibiting for a person being interviewed by the police to see and hear every answer being recorded on a typewriter; and yet it is notorious that many people do give and sign typed records of interview. I am also disposed to think that, if sound recording of police interviews were introduced there would no doubt be some growing pains but I believe that more and more people are becoming convinced that sound recording of police interviews must come.

REFERENCES
2. [1891] 1 Q.B. 149 at pp. 167-168
3. Report paras. 100 and 526
4. Report para. 105
5. Report paras. 112-116
6. [1977] 1 Q.B. 226
7. (1948) 76 C.L.R. 501 at p. 511
8. (1947) 47 S.R. (N.S.W.) 284 at pp. 312-313
9. (1950) 82 C.L.R. 133 at pp. 154-155
10. Report para. 140
11. Report paras. 344-348

SECTION 2: PARTICIPANTS’ PAPERS

Arrest and Pre-trial Detention
by Ayub Quadri*

The Constitution of Bangladesh is the supreme law of the country. This is supplemented by other laws of which we may, rather arbitrarily, make two broad categories to facilitate this discussion. These are:

a) ordinary laws inherited from British or Pakistan times and adopted with minor changes in Bangladesh;
b) special laws promulgated since the independence of Bangladesh in 1971. In category a) the major laws relevant to this discussion are the Penal Code 1860, the Code of Criminal Procedure 1898, the Evidence Act 1872, the Prisons Act 1894 and the Jail Code 1860, etc. In category b) the Special Powers Act 1974 and the Emergency Powers Rules 1975 would be relevant.

Ordinary Laws

1. Arrest and pre-trial detention may be of two broad types:
   a) of persons accused or suspected of criminal offenses for investigation of the crime and trial of the offender;
b) to prevent persons from committing crimes.

In part III, which deals with fundamental rights, the Constitution of Bangladesh provides safeguards against arrest and preventive detention. These are:
   i) No person shall be deprived of life or personal liberty except in accordance with law (Article 32).
   ii) No person can be detained in custody without being informed of the grounds for his arrest nor can he be denied the right to consult and be defended by a legal practitioner of his choice (Article 33(2)).

Si Deputy Secretary, Ministry of Home Affairs, Bangladesh

*
In view of the congestion in jails, in actual practice in Bangladesh, the courts grant bail quite liberally. This is a constitutional safeguard. The law provides safeguards against arbitrary arrest and detention. These safeguards may be adequate in an advanced society where people are aware of their rights and able to enforce them. However, in a country like Bangladesh where nearly 80% of the people are illiterate and the vast majority abysmally poor, mere existence of legal provisions may not necessarily provide adequate protection to the accused in this regard. According to the Evidence Act, a confession made to a police officer is not acceptable, as evidence, nor is a confession obtained through inducement, threat or promise.

In bailable cases grant of bail is discretionary on production before a court, provided the accused person is not and b) non-bailable. In bailable cases grant of bail is discretionary on production before a court, provided the accused person is not and b) non-bailable. An arrested person is not to be subjected to more restraint than is necessary to prevent his escape. The Code of Criminal Procedure also contains provisions identical to those of the constitution regarding production of an arrested person before a magistrate within 24 hours etc.

3. Offences are further categorised in the Code of Criminal Procedure as a) bailable, and b) non-bailable. In bailable cases grant of bail is automatic on production before a court, provided the accused person is not and b) non-bailable. An arrested person is not to be subjected to more restraint than is necessary to prevent his escape. The Code of Criminal Procedure also contains provisions identical to those of the constitution regarding production of an arrested person before a magistrate within 24 hours etc.

4. In refusing bail to arrested persons the courts generally have the following considerations in view:
   a) to prevent him from absconding and thereby evading the law;
   b) to prevent him from tampering with evidence during investigation or trial;
   c) to prevent him from committing further crime; and
   d) to enable him to be interrogated for as to bail, nonacceptance of confessions made to police officers or under duress and also the provisions for legal action for wrong arrest or detention provide safeguards against arbitrary arrest and detention. These safeguards may be adequate in an advanced society where people are aware of their rights and able to enforce them. However, in a country like Bangladesh where nearly 80% of the people are illiterate and the vast majority abysmally poor, mere existence of legal provisions may not necessarily provide adequate protection to the accused in this regard. According to the Evidence Act, a confession made to a police officer is not acceptable, as evidence, nor is a confession obtained through inducement, threat or promise.

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requirement for preventive detention. The advisory committee consists of three members: two judges of the supreme court and a senior government official. The government is required to submit each case of detention to the advisory committee within one hundred and twenty days of detention together with the grounds of detention and representation made by the affected person. The committee examines the papers, hears the person detained and gives its opinion on whether or not the detention is justified. The advisory committee is required to give its recommendations to the government within one hundred and seventy days of detention. If the committee considers the detention unjustified, it is obligatory for the government to release the person from detention. The committee is required to review each case of detention every six months even if it finds the detention justified.

3. In addition to the provisions of review of detention orders under the Special Powers Act, detention orders can also be challenged in courts of law. The superior courts in Bangladesh have entertained many such petitions and in some cases detention orders have been set aside. The committee considers the detention together with the grounds of detention and representation made by the affected person. The committee examines the papers, hears the person detained and gives its opinion on whether or not the detention is justified. This was contrary to the fundamental rights guaranteed by the constitution, but fundamental rights were suspended with the declaration of emergency.

2. In August 1977 the Emergency Powers Rules, 1975 were amended. Provisions similar to those of the Special Powers Act, 1974 in respect of communication of grounds of detention, constitution of advisory committee and review of detention by it, were made. The power to arrest without warrant was limited to police officers of and above the rank of sub-inspector instead of "any police officer." The Emergency Powers Rules have been rescinded with the lifting of the emergency in November 1979 and people detained under it have been freed.

**PARTICIPANTS' PAPERS**

**ARREST AND PRE-TRIAL DETENTION: BANGLADESH**

people have to spend long periods in custody before sentences in their cases are passed. Admitting these constraints of overcrowding due to lack of physical facilities and prolonged detention due to delay in investigation and trial of cases, it may be said that the administration of jails is conducted fairly strictly in accordance with the provisions of the Prisons Act, 1972 and the Jail Code, 1960.

2. It will also appear from Appendix C that during the last four years there has been a significant decrease in the number of prisoners. The ratio between convicts and under-trial prisoners has also improved. This has been possible because of persistent efforts to expedite investigation and trial and cases and release persons detailed for long periods. There appears to be an awareness of the problem of congestion in jails and the reasons for it and efforts are made to improve the situation. These consist of measures to improve investigation and trial, but more important and effective is the periodic release of prisoners from jails.

3. Apart from the temporary measures to remove the congestion in jails, basic reform is necessary and is being undertaken. Jails are administered according to the Prisons Act and the Jail Code. It is felt that the provisions of these need to be adjusted to suit the present times. With a view to bringing about basic reform in the system of jail administration, the government set up a Jail Reform Commission in November 1978.

The Commission has submitted an interim report containing seventeen recommendations. Most of these have been accepted by the government and some have already been implemented. The final report of the Commission is expected to be submitted soon. Some of the recommendations are:

a) Discontinuation of such punishments for violation of jail discipline as are in conflict with human dignity and may cause physical suffering and mental dishonour; the Commission identified such punishments as the use of fetters and confinement in tiny cells;

b) Improvement of accommodation, sanitation, food and dining facilities;

c) Provisions of facility for prayers;

d) Provision for outdoor games and sports;

e) Provision for regular visits by family and friends, improvement of facilities for visitors; giving liberal mailing rights to prisoners;

f) Provision for adequate supply of newspapers;

g) Provision for prisoners to work on payment for prescribed hours;

h) Provision for segregation of convicts and under-trial prisoners; youthful prisoners to be kept in correctional homes and not jails;

i) Activation of the system of Board of Visitors as provided in the Jail Code to ensure improvement in practices relating to treatment of prisoners by jail officials;

j) Provision for training in modern methods and practices of jail administration for jail officials; and

k) Liberal use of bail; with some exceptions, under-trial prisoners whose trial do not begin within six months of admission into prison should be released on bail.

**Appendix A**

Section 54(1) of The Code of Criminal Procedure

Any police officer may, without an order from a Magistrate and without a warrant arrest:

1. Any person who is reasonably suspected of having acted, or of being about to act in any manner prejudicial to the security of the territory, or interest of Bangladesh or the maintenance of supplies and services essential to the life of the community [rule 30(3)]. Under this rule any police officer or any other officer empowered by the government, could detain any person for a period of fifteen days. The government could detain any person for a period of two months. Thus any police officer could detain any person for a period of fifteen days without having to obtain any order for detention from any magistrate. No provision was made for communication of the grounds of detention to the person detained or for the review of detention by any committee. This was contrary to the fundamental rights guaranteed by the constitution, but fundamental rights were suspended with the declaration of emergency.

2. In November 1978 the Prisons Act, 1972 was amended. Among other things this:

b) reduced the number of offences triable exclusively by Special Tribunals; and

c) made provision for trial in absentia.

3. In August 1977 the Emergency Powers Rules, 1975 were issued in January 1975. These rules gave wide powers to the government to tackle prejudicial acts as defined in the rules. The rules also gave special powers to police officers, and other officers empowered by the government, in respect of arrest and detention. Such officers were authorised to arrest 'without warrant any person whom he reasonably suspects of having acted, of acting, or of being about to act in any manner prejudicial to the security, the public safety or interest of Bangladesh or the maintenance of supplies and services essential to the life of the community' [rule 30(3)]. Under this rule any police officer or any other officer empowered by the government, could detain any person for a period of fifteen days. The government could detain any person for a period of two months. Thus any police officer could detain any person for a period of fifteen days without having to obtain any order for detention from any magistrate. No provision was made for communication of the grounds of detention to the person detained or for the review of detention by any committee. This was contrary to the fundamental rights guaranteed by the constitution, but fundamental rights were suspended with the declaration of emergency.

4. In August 1977, the Special Powers (Amendment) Ordinance, 1977 was promulgated. Among other things this:

a) removed the prohibition on grant of bail;

b) reduced the number of offences triable exclusively by Special Tribunals; and

c) made provision for trial in absentia.

B. The Emergency Powers Rules, 1975

1. As mentioned earlier, Bangladesh is a poor country and as a result there is inadequacy in almost every field. This general situation prevails in her jails also. Appendix C gives the registered capacity of jails and the actual number of inmates over the last ten years. It is evident that there is overcrowding in the jails. The high number of under-trial prisoners in comparison with that of convicts is also patently evident. This is indicative of the delay in investigation and trial of cases and of the fact that
anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

Seventhly, any person who has been concerned in, against whom a reasonable complaint has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

<table>
<thead>
<tr>
<th>Statement of Convtable Cases</th>
<th>Cases completed</th>
<th>Percentage of completed cases in total cases</th>
<th>Percentage of cases ending in conviction</th>
<th>Total no. of cases including those completed in previous years</th>
<th>Total no. of persons convicted</th>
<th>Total no. of persons convicted by reference to such thing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>No. of cases</td>
<td>Percentage</td>
<td></td>
<td>No. of cases ending in conviction</td>
<td>No. of persons convicted</td>
<td>No. of persons convicted by reference to such thing</td>
</tr>
<tr>
<td>1973</td>
<td>237,709</td>
<td>69.0%</td>
<td></td>
<td>133,672</td>
<td>44,618</td>
<td>5.9</td>
</tr>
<tr>
<td>1974</td>
<td>272,705</td>
<td>60.9%</td>
<td></td>
<td>154,564</td>
<td>47,880</td>
<td>12.2</td>
</tr>
<tr>
<td>1975</td>
<td>280,943</td>
<td>57.7%</td>
<td></td>
<td>158,645</td>
<td>52,330</td>
<td>15.0</td>
</tr>
<tr>
<td>1976</td>
<td>286,230</td>
<td>52.4%</td>
<td></td>
<td>155,230</td>
<td>50,520</td>
<td>15.0</td>
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<tr>
<td>1977</td>
<td>260,750</td>
<td>48.6%</td>
<td></td>
<td>126,234</td>
<td>45,638</td>
<td>18.0</td>
</tr>
</tbody>
</table>

Appendix B
PARTICIPANTS' PAPERS

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ARREST AND PRE-TRIAL DETENTION: BANGLADESH

Appendix C

Jails

<table>
<thead>
<tr>
<th>Date</th>
<th>Registered capacity</th>
<th>No. of convicts</th>
<th>No. of under-trials</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jan. 1970</td>
<td>12,553</td>
<td>9,009</td>
<td>10,921</td>
<td>19,930</td>
</tr>
<tr>
<td>1 Jan. 1971</td>
<td>12,553</td>
<td>1,729</td>
<td>36,636</td>
<td>38,356</td>
</tr>
<tr>
<td>1 Jan. 1972</td>
<td>12,993</td>
<td>4,152</td>
<td>6,174</td>
<td>19,326</td>
</tr>
<tr>
<td>1 Jan. 1973</td>
<td>13,364</td>
<td>4,463</td>
<td>38,231</td>
<td>42,694</td>
</tr>
<tr>
<td>1 Jan. 1974</td>
<td>14,100</td>
<td>7,029</td>
<td>37,754</td>
<td>44,783</td>
</tr>
<tr>
<td>1 Jan. 1975</td>
<td>14,100</td>
<td>4,626</td>
<td>33,684</td>
<td>38,310</td>
</tr>
<tr>
<td>1 Jan. 1976</td>
<td>14,257</td>
<td>5,409</td>
<td>32,591</td>
<td>38,000</td>
</tr>
<tr>
<td>1 Jan. 1977</td>
<td>15,507</td>
<td>8,505</td>
<td>25,220</td>
<td>34,125</td>
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<tr>
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<td>15,707</td>
<td>8,176</td>
<td>20,602</td>
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</tr>
<tr>
<td>1 Jan. 1979</td>
<td>15,707</td>
<td>8,055</td>
<td>19,544</td>
<td>27,599</td>
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<tr>
<td>1 Jan. 1980</td>
<td>16,381</td>
<td>6,480</td>
<td>18,861</td>
<td>25,341</td>
</tr>
</tbody>
</table>
Anticipatory Bail - A New Experiment in India

by Hukam Chand Goel

Grants of bail to a person suspected or accused of an offence is a civilized society's recognition of the possibility that he may be innocent or that he may merit punishment less serious than imprisonment in jail. Grant of bail on arrest in bailable (minor) punishable with maximum imprisonment of less than 3 years (or more) that bail could be asked for only after arrest by police and the matter was within the discretion of the judiciary.

An independent judiciary is universally regarded as the greatest bulwark against arbitrary arrest or detention. The development of Indian bail law can be related to this field.

The earlier Code of Criminal Procedure, 1898 authorized the police to investigate into cognizable offences reported to have been committed and to arrest persons suspected or accused therefor without reference to any judicial authority. The police was required to produce him before a magistrate who could hold an enquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal Procedure Code, to give directions in the nature of habeas corpus.1

Arrest and thereafter interrogation in police custody for 24 hours without interposition of magistracy was expressly authorized by the Code. Effective investigation into serious crimes was considered necessary to require these powers for the police.

After independence the right to personal liberty was accepted as a Constitutional right in 1950. It was not found practicable to restrict the power of arrest by police without obtaining a magisterial warrant only to cases where the suspect was found in flagrante delicto (committing the crime), or in urgent cases when arrest could not be satisfactorily delayed until a written warrant could be secured from a magistrate. India is a large country and means of communication and transport are not fully developed in all parts of India. The power of police to arrest persons without warrant in cognizable cases is considered necessary and unavoidable.

However, arrest is considered too serious a matter to be left to the police alone, who have scope for misuse and abuse of the power to arrest. That independent judgment should be brought to bear on this point is the ground for requirement of a magisterial warrant for arrest. In India a new approach has been evolved. While police power to arrest without warrant in cognizable cases remained, the new Code of Criminal Procedure, 1973 simultaneously introduced a judicial control of superior judiciary in the matter. The instrumentality of that control is what is called "anticipatory bail" provided for in section 438.

The Law Commission of India in its 41st report recommended a provision for anticipatory bail in India. The basis for the recommendation is formulated thus:

"The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

The provision for anticipatory bail in section 438 of the new Code of Criminal Procedure is in the following terms:

438(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case as it may think fit, including:

(i) a condition that the person shall make available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a magistrate deems such a warrant as unlikely to be issued, a bail application may, in extenuation of the formality with the direction of the court under sub-section (1).

The usual factors to be considered in granting bail may be enumerated as under:

(i) The nature of the accusation.

(ii) The nature of the evidence in support of the accusation.

(iii) The severity of punishment which the conviction will entail.

(iv) Whether there is likelihood of course of justice being thwarted by the applicant either by escape or by tampering with witnesses against him.

(v) The antecedents of the applicant, particularly whether his previous record suggests likelihood of his committing a serious offence while on bail.

These factors have relevance to grant of application for anticipatory bail as well. But no exhaustive enumeration of the
factors that have to be considered and, save bearing on the matter of grant of anticipatory bail is possible. The Law Commission of India conceded its inability to do so. In the 41st report it was observed as usual bears on the matter of grant of patory bail is possible. The Law uncer: report it was observed as usual.

"We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those condi-
tions and, moreover, the laying down of such conditions may be construed as prej udging (partly at any rate) the whole case. Hence we would leave it to the discretion of the court and prefer not to fetter such discretion in the statutory provision itself. Superior courts will undoubtedly exercise their discretion particularly and not make any observations in the order granting anticipatory bail which will have the tendency to prejudice a fair trial of the accused." The courts do not insist on surrender of the accused applicant in court before grant of his application for anticipatory bail in view of the fact that the provision is intended to save the applicant from harassment/humiliation of an arrestee at the time of arrest. It is of course the procedure that the final presentation from being merely descriptive or assertive. The attempt made was to reconcile the provisions of Defence of India Rules with the safeguards of liberty expected to exercise the power of granting bail in their discretion after notice to the State. The attempt made was to reconcile the provisions of Defence of India Rules with the safeguards of liberty expected to exercise the power of granting bail in their discretion after notice to the State.

"We found that the prosecution opposes the application and the conviction is of any such provision of these Rules or orders made thereunder as the Central Government may by notified order specify in this be-
half, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention. The Supreme Court did not accept the police's view that the right to anticipatory bail was an extraordinary power under the Defence of India Rules. The court took the opportunity of stressing the fact that the provision for anticipatory bail was an extraordinary remedy made available to higher courts for relieving apprehensions in respect of arrest and detention and the superior courts were expected to exercise the power of granting bail in their discretion after notice to the State."

"We are of an opinion that the right to anticipatory bail was an extraordinary power under the Defence of India Rules with the safeguards of liberty expected to exercise the power of granting bail in their discretion after notice to the State."

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Mr. Bal Chand Jain was a business man of a Cantonment Area in the State of Madhya Pradesh and was carrying on retail business of selling miscellaneous goods including kerocene oil for a large number of years and was maintaining records. On 23rd July, 1975 a magistrate along with a food inspector and some police officers visited his shop and took some account books into possession to verify their correctness regarding sales of kerocene oil. On 25th July, earlier account books kept in a shop were taken away on a second visit in his absence. Bal Chand Jain apprehended that he might be arrested for contravention of the provisions of Defence of India Act and rules made thereunder in respect of sales of kerocene oil by him and sought anticipatory bail for the non-bailable offence under the Defence of India Rules. It was pleaded by the State that rule 184 of the Defence and Internal Security of India Rules, 1971 had repealed section 438 Cr.P.C. in relation to offences under these rules and rule 184 was relied upon for such repeal. The said rule enact ed as under:

184: Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), no person accused or convicted of a contravention of these Rules or orders made thereunder shall, if in custody, be released on bail or his own bond unless:

(a) the prosecution has been given an opportunity to oppose his application for such release, and

(b) where the prosecution opposes the application and the conviction is of any such provision of these Rules or orders made thereunder as the Central Government may by notified order specify in this behalf, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention.

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limitations on the power to grant bail under section 437 Cr.P.C. which lays down the powers of magistrates to grant bail to arrestees were implicitly imposed in relation to the power to grant anticipatory bail under section 438 Cr.P.C. and the power to grant bail was controlled by considerations similar to those which operated when bail after arrest was claimed under discretionary powers of the court.

The court took notice of the fact that serious economic offences involving corruption at the higher rungs of the executive and political power may require investigation and interrogation of an accused in custody. It was observed that reason the discretion to grant anticipatory bail under section 438 Cr.P.C. may not be exercised in their favour in such cases. The mere allegations of mala fides in a general manner were said to be not sufficient for holding that the accusations were false or groundless.

It would thus appear that the courts are anxious to safeguard individual liberty while at the same time there is no effort on their part to foreclose police investigative efforts into serious crimes alleged to have been committed even by influential and highly placed public servants, including Ministers. It is important to mention that the provision for anticipatory bail under section 438 Cr.P.C. contains safeguards against improper exercise of the powers.

The first thing to be noted is that the power is vested only in the superior judiciary, namely the High Courts and the Courts of Sessions, ensuring exercise of the power by mature persons with sufficient judicial experience. The second thing is that the power is exercised only after notice to the Public Prosecutor and after opportunity given to him to oppose the

same. This practice ensures dismissal of frivolous or baseless applications for grant of anticipatory bail. The conditions imposed while granting anticipatory bail further ensure that police investigation and availability of accused are not hampered and conduct of trial in court is not affected, and wherever necessary the power to cancel bail earlier granted is exercised.

However, the provision of anticipatory bail is a recently introduced provision. No definitive opinion can be given at this stage about its permanence on the Indian state. The Metropolitan Police in Delhi look upon this provision as impeaching their authority. They feel that their ability to deal with habitual/dangerous offenders is adversely affected by courts' liberal attitude towards grant of bail. Their point of view is that grant of anticipatory bail is not exceptional or extraordinary but has become a matter of course in most cases. The fact however, remains that a fairly large number of persons have successfully invoked this provision, but for which they might have suffered the agony and humiliation of arrest. It may be worth while for co-participants from sister countries of Asia to examine this Indian experiment of novel provision of anticipatory bail as an attempt at reconciling police power to arrest without warrant with judicial control in this sphere of personal liberty.

NOTES

1. AIR 1945 PC 18.

Arrest and Pre-trial Detention in Singapore

by Jeffrey Chan Wai Tack*

Introduction

In any discussion on the law and practice relating to arrest and pre-trial detention, it is inevitable that one is confronted with the conflict between the right of the individual not to be deprived of his liberty before a conviction by a court of law and the right of the State to preserve its security and the security of its citizens. It is the dilemma of the lawmaker to resolve this conflict in setting guidelines through legislation and it is the responsibility of the judiciary and the various agencies charged with the duty of law enforcement and crime prevention to ensure that a proper balance is struck in the individual cases.

Article 9 of the Universal Declaration of Human Rights proclaims the fundamental right that no one shall be subject to arbitrary arrest, detention or exile, a rule which later became a part of the American Bill of Rights. Article 9 of the Universal Declaration of Human Rights proclaims the fundamental right that no one shall be subject to arbitrary arrest, detention or exile, a rule which later became a part of the International Covenant on Civil and Political Rights, 1966. Though fairly recent in their promulgation, these provisions set forth basic human aspirations and, though often more noted in their breach rather than their observance, remain as an internationally recognized standard of conduct for States to emulate in their domestic policies.

The fundamental provisions in Singapore guaranteeing the rights of individuals with respect to arrest and pre-trial detention are to be found in Part II of the Constitution. Apart from the Constitution, the Criminal Procedure Code and the relevant provisions of the Criminal Procedure Code Code, the particular statute setting out the offences may also specify whether it is seizable, bailable or non-bailable. If no such provision is present, then the general provisions of the Criminal Procedure Code would apply.

The Scheme of the Criminal Procedure Code

The provisions governing the administration of criminal law in Singapore are found largely in the Criminal Procedure Code (CPC). Modelling on the Indian Criminal Procedure Code, it classifies all offences into either seizable or non-seizable and bailable or non-bailable and it is on these distinctions that all the rules governing arrest and pre-trial detentions are based.

A seizable offence is defined as an offence for which a police officer may arbitrarily arrest without a warrant and a non-seizable offence is one where a police officer may not ordinarily arrest without a warrant. This corresponds roughly with the distinctions between felonies and misdemeanours recognized in some other jurisdictions.

A bailable offence is an offence for which bail can be asked for as of right and a non-bailable offence is an offence which the court has a discretion to grant bail. In the case of non-bailable offences, a magistrate, district judge or police officer may grant bail in all cases except where there are reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life.

Instances When Arrest Can Be Made

The Criminal Procedure Code contemplates essentially two instances of arrest: arrest under the authority of a warrant of arrest issued by a magistrate, district

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PARTICIPANTS' PAPERS

judge or coroner and arrest without a warrant of arrest. In practice it is the lat­
test of the three common instances. A magistrate may issue a warrant of arrest in a number of instances. For of­
fences where the Schedule 'A' of the Criminal Procedure Code states that a warrant shall be ordinarily issued at the first instance, a magistrate may, where he has knowledge that the offence has been committed by any person, issue a warrant for the arrest of that person. The usual mode of the offence to be brought to the

attention of a magistrate by a complaint laid under the provisions of the Criminal Procedure Code is "the allegation made orally or in writing to a magistrate with a view to his taking action under this Code that some person whether known or unknown has committed or is guilty of an offence." Such complaints are normally laid by the officer investigating the case, but there is no bar against private citizens invoking such a procedure. Warrants of arrest are also issued in a number of other instances, e.g., when a person under compulsion to

attend court fails to do so or when it has been reported that a debtor is attempting to flee the jurisdiction in order to defraud his creditors.

In some instances, arrest is a mode of compelling appearance before a court, and would be inappropriate if there are other modes of compelling appearance. Seldom is the person arrested detained in custody, for on being arrested he is brought straight to a police station or to a court and immediately released on bail.

The position is quite different in a case where a person is arrested without a warrant, for here arrest is not merely a means of compelling the person's attendance before a court of law but also to prevent him from committing other of­
fences and to enable investigations to be made into the alleged offences. The main provision for such arrests is Section 31(1)(a) of the Criminal Procedure Code which permits a police officer to arrest any person concerned or against whom a

reasonable complaint has been made or credible information has been received or on a reasonable suspicion that he has committed a seizable offence. A magistrate or police officer may also arrest any person who has committed, any offence in his presence, whether the offence is seizable or not and a private person may arrest any person who, in his view, commits a seizable and a non-bailable offence. Section 31 also enumerates other instances where a police officer may arrest without a warrant and he can also arrest a person committing, or is accused of committing a non-seizable offence if that person refuses to give his name and residence, gives a name or resi­
dence which the police officer believes to be false or gives a residence not within Singapore. Besides this, the Criminal Procedure Code preserves the police of­

ficer's right of arrest without a warrant under any other law. Besides police of­
ficers, other law enforcement officers are empowered to effect arrest under the statutes they administer, e.g., customs officers for offences under the Customs Act; immigration officers for offences under the Immigration Act and Corrupt Practice Investigative Bureau special criminal investi­
gaters for offences under the Prevention of Corruption Act.

The point to be noted here is that all law enforcement officers are empowered to effect arrest on reasonable suspicion that the person arrested had committed a seizable offence. What is a reasonable suspicion must necessarily depend on the facts and circumstances of each case. In­

evitably the danger of abuse of such power would be present and such dangers can be minimized by having honest and efficient law-enforcement officers.

Nature and Effect of Arrest

An arrest has to be executed formally. In making an arrest, the arresting officer must actually touch or confine the body of the person to be arrested unless there is a submission to his custody by word or action. A mere oral declaration is insuffi­
cient. In affecting arrest, the arresting

officer is permitted to use necessary force and to break into and search premises where he reasonably suspects the accused person to be. Unless the arrest is properly executed, it is ineffective and a person who resists such arrest or aids another to resist such an arrest cannot be charged with the offences of resisting or aiding another to resist an arrest which are offences under the Penal Code.

Although the Criminal Procedure Code does not state that the person arrested should be told of the grounds of his arrest, it has long been held that any person who is arrested has the right to ask the officer arresting him what power he has to do so. False imprisonment.

Article 5 of the Malaysian Constitution, as applied to Singapore, guarantees the right of the arrested person to be told the grounds of his arrest but it would appear that unless he asks, the arresting officer is under no obligation to do so.

When an arrest has been effected, the arrested person is in the custody of the arresting officer and the arresting officer is empowered by the Criminal Procedure Code to search his person and seize any weapons he has in him. By Section 27(1) of the Criminal Procedure Code, the

arresting officer is not permitted to use more restraint that is necessary to prevent the arrested person from being at large. If the arrested person refuses to give his name and residence, the arresting officer is permitted to use force to obtain them.

As stated earlier, investigations may not have been completed at the time of his arrest or witness may not be available forthwith to testify against him. Further, to produce him forthwith for trial would mean that he would have no opportunity of preparing his defence or obtaining legal advice. It is inevitable that in all instances of arrest, some time would lapse before the person arrested can be tried.

When a person is arrested, if the arrest is by a private person, he must forthwith be handed over to a police officer and if the arrest is by any law enforcement

ARREST AND PRE-TRIAL DETENTION: SINGAPORE

officer it is to produce the accused person before a court for him to answer the offence alleged against him and while the ideal situation is for him to be produced forthwith before a court, in practice this is not always possible. Investigations may not have been completed at the time of his arrest or witness may not be available forthwith to testify against him. Further, to produce him forthwith for trial would mean that he would have no opportunity of preparing his defence or obtaining legal advice. It is inevitable that in all instances of arrest, some time would lapse before the person arrested can be tried.

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officer, the practice is for him to be brought to a police station and for an arrest report to be made out. Section 34 of the Criminal Procedure Code states a police officer arresting without a warrant must, in cases where the person is not retained in custody or otherwise, take or send the person arrested before a magistrate's court. By Section 35, he cannot detain such a person for a period longer than is necessary in the circumstances of the case and, in any event, the period of custody may not exceed 24 hours.

Appendix A shows the number of arrests made from 1974 to 1978 as compared to the number of accused persons reported and the number of persons charged in court. It is noteworthy that only 69.7% of the persons arrested were charged in court. It can be safely presumed that the remaining 10,247 persons were not charged in court because of the practice of the police not to withdraw any proceeding commenced against any persons without a direction from a deputy public prosecutor. Section 333 Criminal Procedure Code provides that the Attorney-General shall be the public prosecutor who shall have the control and direction of criminal prosecutions and proceedings under the Code. This means that the practice of the police is to empower a police officer to intervene in any criminal proceeding and this acts as a check against abuse of the powers conferred on law enforcement officers.

Even if a person is produced forthwith before a court, unless he chooses to plead guilty, he is never tried forthwith.

The procedure adopted by the courts is that all arrest cases for the day are first mentioned in a "mention" court (Court 26). Here, the accused persons are produced before the court and the charges are read to them. The accused may be represented by counsel but as a large proportion of such "mention" cases are of persons arrested within the past 24 hours, it is not often that counsel appears to represent the accused when he is first brought before Court 26. At Court 26, for cases triable in the Subordinate Courts, if the prosecution is ready with all its papers, the accused is asked to plead to the charge. If he pleads guilty, he is dealt with forthwith but if he claims trial, he will be asked whether he wishes to engage counsel and if he does, the case is adjourned to another date for trial. If he does not wish to proceed to trial, the magistrate would then proceed to fix a date for trial in one of the hearing courts. When an accused person is represented by counsel, a date for trial will be given only when both counsel are ready to proceed with the case; the accused intimates that he intends to plead guilty to the charge in the High Court, the magistrate in Court 26 can either forthwith record this and proceed to commit the accused for trial in the High Court or he can transfer the case to another magistrate to do so. If the accused does not indicate that he intends to plead guilty to the charge, then a date is fixed for a preliminary inquiry in a hearing court.

All these mean that some time would lapse before the person arrested is tried for the allegations made against him. The lapse of time between the date when the case is fixed for hearing in Court 26 and the actual date of hearing is normally under four months for cases triable in a district court and four months for cases triable in a magistrate's court. However, the lapse of time between the time a person is arrested and the time of his trial could be even longer if the case is adjourned for further mention in Court 26 before a hearing date is finally fixed. Then again the experience of hearing courts is that trials often do not begin on the first date fixed for some reason or other, e.g., witnesses may not be available, counsel may be engaged elsewhere or further investigations may be necessary. It is during this lapse of time that the possibility of pre-trial detention arises.

**Bail**

The distinction drawn by the Criminal Procedure Code between bailable and non-bailable offences is of crucial importance in determining when a person arrested and charged in court for an offence can be released or remanded pending his trial. A person is admitted to bail when he is released from the custody of law enforcement officers and entrusted to the custody of sureties who are bound to produce him when required to do so or he may be released on his own bond to appear in court as and when required. The purpose of such bail is merely to secure the appearance of the accused person at a certain day and place to answer a charge against him. When a person is arrested for a bailable offence, he is entitled to be released on bail as of right. No court or police officer has any discretion to keep him in custody beyond the period permitted by Section 34 and 35 of the Criminal Procedure Code. At common law, to delay or refuse bail to any person accused of a bailable offence is an offence against the liberty of the subject. Further, a court or police officer has no discretion, when releasing the accused in the case of a bailable offence, to impose any conditions on the bail or bond.

A non-bailable offence is one which the accused is not entitled to bail as of right. It does not, however, mean that he cannot be released on bail. All it means is that the granting or denial of bail is a matter to be exercised by the court or, where the accused has not been brought before a court, by a police officer. Here again, the general rule is that bail should be granted but a magistrate, district judge or police officer has no discretion to grant bail where there are reasonable grounds for believing that the accused has committed an offence punishable with death or imprisonment for life. The rationale here is that the severity of the possible sentence is sufficient to cause the accused person to abscond but even here there is a discretion to grant bail if the accused person is either under 16 years of age, a woman, sick or infirm.

These provisions are novel for, in the case of bailable offences, bail is entitled as of right and, in the case of non-bailable offences, the release of the accused person on bail is the rule rather than the exception. With such provisions, there would appear to be no reason why, except in cases where the possible sentence is so severe that it is worthwhile for the accused person to take flight, an accused person should be detained in custody till the end of trial if the purpose of arrest is to ensure that he appears in court for trial. In instances where the accused misbehaves himself whilst released on bail, e.g. if he attempts to intimidate the witnesses against him, bail can be cancelled and the accused committed to custody. Here, the accused is remanded not to compel his appearance but to ensure that he does no further harm. Such instances are rare.

### Pre-trial Detention

Although the general rule is that persons arrested should be released on bail pending trial, for the years 1969 to 1979, a total of 15,683 or 44.49% of the prison population were remanded for varying periods before their trial as shown in Appendix B. The thought of a person being detained before his trial is abhorrent, for it runs counter to the principle that the accused is presumed to be innocent until such time as he is proven guilty and thus should not be subjected to both the loss of his liberty or the restrictions placed on his activities by the rigours of the criminal process.

There are several reasons, which in the public interest, necessitate that an accused person be remanded before his trial and it is being increasingly accepted that in certain cases it is necessary to cause an accused person to remain in custody during the course of trial. The rule to be observed here is that such detention should be confined to as few persons and to as short a period as possible.

One obvious and fairly common reason why an accused person is remanded before his trial is observed when there is a doubt as to whether he is of sound mind such that he is incapable of making his defence. The Criminal Procedure Code lays a duty on the magistrate or district judge holding a trial or inquiry who has reason to suspect that an accused person is of unsound mind and consequently unable to make his
defence to first investigate the fact of such unsoundness. If he is not satisfied that the accused is capable of making his defence, he is under a duty to postpone the inquiry or trial and remand the accused person in remand because it is not possible to make such an investigation or observation for a period not exceeding one month. The medical superintendent must then certify his opinion as to the state of mind of that person and if he is unable to form any definite conclusions during the period, he can ask for a further period of remand.

The court can then extend the period of remand for another two months. A court may order the accused to undergo such a procedure on the application of the public prosecutor. If the accused is found to be of sound mind and capable of making his defence, the case may proceed but if he is found to be unable to do so by reason of unsoundness of mind, then the trial or inquiry must be adjourned. In such a case, where the offence is bailable, the accused can be released on bail until such time as he is able to stand trial and, where the offence is non-bailable or where sufficient security is not given, the court must report the case to the Minister who has the discretion to order the accused to be confined in a mental hospital or some other institution. Such a period of remand may extend to such time as and when he is capable of making his defence.

Remanding an accused person for the purpose of ascertaining whether he is capable of making his defence is an instance where it is necessary to remand the accused in his own interest. This is not the case in the other instances where the accused is remanded before his trial. Appen­dix C gives a breakdown on the figures of persons remanded pending trial from 1969 to 1979. Of these, an average of 5,050 were remanded because bail was refused, 5,431 were remanded because they were unable to raise bail and 9,227 were released within one week.

The statistics in Appendix C also suggest the following reasons why persons not suspected of being of unsound mind were remanded: (a) application for bail was refused; (b) the amount of bail offered was excessive; or (c) sureties were not available immediately.

Each of these reasons merits separate consideration.

a. Refusal of Bail

In non-bailable cases, the court or police officer has a discretion whether to release the accused person on bail except where there are reasonable grounds for believing that he has committed an offence punishable with death or life imprisonment. In the latter case, unless the accused person is under 16 years, a woman, sick or infirm, or has been held that the mere fact that a charge has been preferred against him is not sufficient to give rise to reasonable grounds for believing that he has committed such an offence, as a matter of prudence, magistrates and district judges are inclined to refuse bail or set bail at a very high amount in such cases. All such cases are triable in the High Court and after an accused person is committed for trial at the High Court, bail is refused as magistrate has no longer any discretion to grant bail, where the accused is remanded for trial to grant bail in any event and it is open to the accused person to apply by way of a petition to the court in which the court has a discretion to grant bail must be exceedingly rare, if any.

b. Excessive Bail

As bail is to ensure the attendance of an accused person at his trial, the amount of bail should be no more than necessary for that purpose. The difficulty faced by all magistrates and district judges in determining the amount of bail to be offered is that at the time when the accused is to be offered bail, there is no independent information before the court to indicate what amount of bail would be sufficient to ensure the appearance of that particular accused person. Often the prosecution is invited to suggest the amount of bail to be offered and the accused is asked whether he can furnish it and if not, why not. Over the years it is possible to discern a tariff emerging of the amount of bail to be offered depending on the offence charged and the station of the accused. The amount initially offered is at best a hazardous estimate by the court as to the amount required to ensure both that the accused is not detained pending his trial and his appearance on the day of trial. The difficulties faced by the court in reaching such an estimate because of the lack of information before it at the time when the offer of bail has to be made are often high­lighted when the accused has to be remanded because of his inability to raise bail or, more dramatically, when he fails to appear on the date of trial.

c. Inability to Find Sureties

An accused person, when released on bail, is released into the custody of his sureties. This presupposes that the accused person is able to find persons willing to stand surety for him. This is not always the case. It is not always that a person who is produced before a court has sufficient time to gather his friends or relatives to stand surety for him. In such cases, he will have to be remanded until he is able to get in touch with his potential sureties.

In this respect, Singapore has a unique problem. With full employment, a strong economy and a shortage of labour, there is a large proportion of foreigners in our labour force. These are mostly Malaysians but include Indians, Thais, Sri Lankans, Indians and Filipinos, further as a tourist destination and by virtue of its proximity and easy access to Peninsular Malaysia, large numbers of visitors are attracted to the Republic. With such a large number of foreigners within our boundaries, it is inevitable that some would run foul of our criminal laws and when such persons are arrested, charged in court and offered bail, the condition is often imposed, for obvious reasons, that their sureties be Singaporeans or permanent residents of Singapore. It is not often that this condition can be met by such persons and inevitably they end up being remanded before their trial.

Treatment of Persons Detained before Trial

Prisoners under remand are persons...
who the law still presumes to be innocent and to treat them in the same manner as convicted persons would make a mockery of the rule of law. In Singapore, persons are remanded either at the Queenstown Remand Prison, the Central Police Station lock-up, the Singapore Boys' Home, Remand Wing for juveniles and the Woodbridge Home for persons suspected of being unsound mind. Persons remanded at the Remand Prison enjoy privileges not accorded to convicted prisoners, e.g., he wears his own clothes, gets food from home and if he desires, is allowed to meet visitors more often and for longer periods, gets his mail and is allowed unlimited reading materials. Unlike convicted prisoners, he is not compelled to work and if he chooses to do so, he is paid for it.

Also, every opportunity is given to him to consult his counsel but such consultations can only be conducted at the place of detention. This means that the counsel must first be disposed to travel there and this necessarily restricts the amount of time the accused can spend with his counsel.

Keeping a person in custody is a costly affair. Because of the privileges he enjoys and because of the necessity to escort him to court each time, additional staff are required and more expenses incurred. It costs a great deal of money to keep a person in custody pending trial rather than to keep a convicted person. Whilst remanded, the accused person ceases to contribute to the national economy, further adding to the loss that the accused as well as his family suffers the deprivation of confinement. It is, therefore, logical to try and economize and to curtail pre-trial detention should be avoided.

Safeguard against Pre-Trial Detention

A person can be detained before trial only on the authority of a warrant of remand signed by a magistrate or a district judge and the Criminal Procedure Code only empowers a magistrate or district judge to order a person to be remanded for a period not exceeding eight days. This means that when a person is remanded for one or other of the reasons stated earlier, at the end of each week in custody he must be brought before a magistrate or district judge for a change of remand. The magistrates or district judges then review each week the reasons why the person is still under detention.

In the instances where a person is remanded to ascertain his mental state or because the court has reason to believe that he had committed an offence punishable with death or imprisonment for life, such proceedings are merely a formality and are not normally conducted to ascertaining from the accused whether he has any complaints about the place of his detention or any reasonable requests to make. Where the accused is remanded for some other reasons, these proceedings are highly useful in ensuring that the accused is not detained longer than is necessary. The court before which the accused is produced can reconsider all aspects of the proceedings against the accused so far and can take measures to ensure his release.

In cases where the accused was refused bail at the first instance because of objection to production from the prosecution, the prosecution must make a fresh application for remand and this application is made when he is found guilty of the charge and is sentenced to prison.

It is when the accused was remanded for inability to raise bail or for other suitable reasons that these proceedings are of greatest effect. Each time the accused is brought up for remand, the court can reconsider the terms of the bail offer and can vary both the amount of bail and the requirements as to sureties. The fact that the accused was unable to raise the amount specified is prima facie evidence that the amount is excessive. The court can reduce this amount or vary it, e.g., it can vary a bail offer of $2,000 with one surety to $1,000 with two sureties.

When the accused is unable to furnish sureties, the court can vary the bail offer to a mere personal bond on the part of the accused although for serious offences, particularly those punishable with mandatory imprisonment, this would be inappropriate. If an accused person is unable to get in touch with his potential bailors, the court cannot do so. By the time an accused person is brought up for a change of remand, he would have been detained for at least seven days and he would have been accorded facilities to get in touch with his potential bailors. The fact that he still could not find a bailor could only mean that his potential bailors do not want to be contacted by either post or telephone. In such instances, the court can direct the accused to proceed forthwith to the home of the potential bailor to inform him of the accused's plight. Because of Singapore's compact size, this can be done within a day.

Finally, if there are no means whatever to enable the accused to take up the offer of bail, the court can minimize the accused's period of detention by ordering the date of trial to be brought forward. This is not always possible, for witnesses may not have set aside any other days apart from the dates originally fixed for the trial to attend court but whenever possible, this is done.

Habeas Corpus

A person under detention for whatever reason and who desires to challenge the legality of his detention may apply for a writ of habeas corpus from the High Court. This application is made when he desires both release and a probe into the legality of his detention. In this respect, his position is different from that of a bail applicant who accepts the legality of his detention but seeks release from it. The writ of habeas corpus is a common law writ but it has been held that it exists in Singapore independently of statute and it is now a right entrenched in Singapore Law by Article 5(2) of the Malaysian Constitution.

Habeas corpus is also available as a remedy where a person alleges that he is being illegally detained whether in public or private custody or where he claims to be brought before the court to be dealt with according to law. It is also a convenient and practical way to redress for a person under pre-trial detention.

An accused on bail cannot obtain a writ of habeas corpus, but if he is taken into custody whilst on bail, this remedy can be obtained. On an application for habeas corpus, the court may dismiss the order, ask the accused to withdraw unconditionally or may order that he be released on bail.

Alternatives to Arrest and Pre-Trial Detention

An arrest is a cumbersome procedure for compelling the attendance of a person before a court and it is fraught with the dangers of abuse. The act of arrest is relatively simple but the administrative procedures and facilities needed to deal with an arrested person up to the time he is produced before a court necessitates both expenses and effort. Even after being produced in court, the persons arrested may suffer the indignity of being detained before he is found guilty of an offence and intending that he should be so detained. By any reasoning, where the attendance of a person in court is desired, and nothing more, arrest should be used as a last resort if there are other means of achieving the same purpose.

In Singapore there are two other means of achieving this end without effecting an arrest. The first is the use of the summons under the Criminal Procedure Code and the second is the use of the appearance ticket. A summons is simply an order issued by a magistrate requiring the person named therein to appear before a court at a certain date and time to answer a charge which is stated in full in the summons. A summons can be issued when a complaint under the Criminal Procedure Code is laid before a magistrate and, as a rule, is served personally on the person summoned.

If the person fails to attend court on the date and time stated, a warrant of arrest is then issued to compel him to attend
1. Malaysia Federal Constitution. Singapore was a self-governing British colony up to 14 September 1963, when it merged with Malaya, Sabah and Sarawak to form Malaysia. On 9 August 1965, Singapore separated from Malaysia and became an independent Republic. By virtue of the Republic of Singapore Independence Act, certain provisions of the Constitution of Malaysia were continued in force. The fundamental liberties provision of the Malay Constitution are among the provisions.


5. For a comprehensive discussion on every aspect of bail in Singapore, see Chandra Mohan S. "Bail in Singapore" (Singapore, Malayan Law Journal 1977).

6. The term is used to mean the law of England. The laws of Singapore are still largely based on English law and legal concept. Although the Criminal Procedure Code is a codifying statute, English law on criminal procedure may still be applicable by virtue of Section 5 which reads: "As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in Singapore the law relating to criminal procedure shall be applied as far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto."

7. See Tan Chor-Yong, J.: "Habeas..."
## PARTICIPANTS' PAPERS

### Appendix C

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons remanded in custody pending trial (excluding debtors)</th>
<th>No. of persons refused bail (%)</th>
<th>No. of persons unable to raise bail (%)</th>
<th>No. of persons released after being remanded for 1 week (%)</th>
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<tbody>
<tr>
<td>1969</td>
<td>833</td>
<td>230 (27.6)</td>
<td>414 (49.6)</td>
<td>189 (22.8)</td>
</tr>
<tr>
<td>1970</td>
<td>857</td>
<td>258 (30.1)</td>
<td>396 (45.0)</td>
<td>213 (24.9)</td>
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<tr>
<td>1971</td>
<td>1,058</td>
<td>399 (37.7)</td>
<td>186 (17.6)</td>
<td>473 (44.7)</td>
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<tr>
<td>1972</td>
<td>1,278</td>
<td>536 (41.9)</td>
<td>223 (17.4)</td>
<td>520 (40.7)</td>
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<tr>
<td>1973</td>
<td>1,608</td>
<td>478 (29.7)</td>
<td>335 (20.8)</td>
<td>795 (49.4)</td>
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<tr>
<td>1974</td>
<td>1,475</td>
<td>356 (24.1)</td>
<td>488 (33.0)</td>
<td>844 (57.2)</td>
</tr>
<tr>
<td>1975</td>
<td>1,375</td>
<td>385 (28.0)</td>
<td>449 (32.6)</td>
<td>834 (60.7)</td>
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<tr>
<td>1976</td>
<td>1,959</td>
<td>774 (39.5)</td>
<td>693 (35.4)</td>
<td>1,467 (74.9)</td>
</tr>
<tr>
<td>1977</td>
<td>1,970</td>
<td>686 (34.8)</td>
<td>807 (50.0)</td>
<td>1,493 (75.8)</td>
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<tr>
<td>1978</td>
<td>1,903</td>
<td>549 (28.8)</td>
<td>827 (43.6)</td>
<td>1,376 (72.3)</td>
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<tr>
<td>1979</td>
<td>1,367</td>
<td>399 (29.2)</td>
<td>624 (45.6)</td>
<td>1,023 (74.8)</td>
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<tr>
<td>Total</td>
<td>15,683</td>
<td>5,050 (32.2)</td>
<td>5,431 (34.6)</td>
<td>9,277 (58.8)</td>
</tr>
</tbody>
</table>

### SECTION 3: REPORT OF THE SEMINAR

#### Arrest and Pre-trial Detention

**Summary Report of the Rapporteur**

**Session I: Safeguards against Arbitrary Arrest and Detention**

**Chairman:** Mr. Mohammad Khan Raisani  
**Advisor:** Mr. Tóicht Fujiiwara  
**Rapporteur:** Mr. Julio Frances Ribeiro

**Introduction**

Following the presentation of individual papers on Arrests and Pre-trial Detention, general discussions were held on four main topics connected with the subject. The first topic taken up for consideration was "Safeguards against Arbitrary Arrest and Detention" as it was considered basic to the main theme of the Seminar.

**Grounds for Arrest and Detention**

The Government of every country, whether democratic or otherwise, is armed with powers of arresting and detaining a citizen with a view to bringing justice for a wrong alleged to have been done by him against society. No administration can survive unless it is able to protect its law-abiding majority against the wrongs done by fellow-citizens who disrespect the laws as exist in that country.

At the same time, every civilized society guarantees to each of its citizens certain basic human rights even if that individual has deviated from the correct path. The real problem then is to ensure the bifocal interests of justice to the individual and of justice to the society affected. To strike a correct balance between these two interests should be the constant concern of the criminal justice system in every country.

While constitutions define basic human rights of individual citizens in many countries, the substantive criminal laws elaborate on such rights in more practical terms, prescribe penalties for deviation and describe procedures to be followed in the pursuit of justice. In the common law countries, as in the countries that follow the European continental form of criminal administration, the necessity for arrest and detention is recognized and provided for under proper safeguards. Remedies for wrongs suffered by improper or arbitrary arrest are also prescribed.

Each participant explained the laws in his country in very clear terms. On close examination of their papers it was seen that the basic requirements to prompt an arrest was "reasonable grounds for suspicion" that the individual to be arrested was in fact responsible for the crime. The question that naturally followed was: "What is the minimum permissible objective standard of suspicion or belief for arrest and detention?"

There was general agreement among the participants that this question was not easy to answer but the courts of each country must have ruled on the norms to be adopted by the investigation agency, according to the cultural and historical traditions of that country and its economic or other imperatives. One of the participants from the police emphasised that illegal or arbitrary arrests would react unfavourably on the officers making such arrests and that knowledge alone would act as an internal sanction against misuse of powers. Another participant said that in his country a complete inquiry usually precedes an arrest, thus obviating chances of injustice.

Despite these opinion negating the possibility of any extensive injustice through arbitrary arrest and detention, the participants felt that the scope for such arrests should be reduced to the minimum by effective and closer supervision of senior officers of the investigation agency, who should be as jealous in guarding the interests of the innocent as they usually are in...
bring the guilty to book. The participa-
ted agreed with Mr. Endo of Japan that
standards should be laid down with the
following criteria as guides:
1. The reason for the arrest
2. The necessity for the arrest
3. The preponderance of evidence
4. The chances of the suspect abscond-
ing
5. The chances of the accused tamper-
ing with the evidence
6. The safety of the witness and some-
times of the accused himself.

During the course of discussion it was
revealed that some countries, like India,
Pakistan and Bangladesh, have provisions
in their criminal procedure laws for arrests
intended to prevent the commission of cog-
nizable (the more serious forms of crime
punishable generally with imprisonment
for three years or more) offences even
prior to the actual commission thereof.

Some participants said that such arrests
were unknown to their legal systems and
the police in Japan did not arrest suspicious
people. Mr. Ribeiro of India explained
that in his country, the police were bound to
arrest individuals accused of cognizable crime
if there was sufficient evidence to
prove the guilt of the accused. The
investigation agency would arrest
and detain only after sufficient evidence
was first collected against an offence
suspect. The general opinion was positively
against an arrest or detention effected only
against whom there was insufficient evidence
in a specific crime. The mental, psychological
and other psychological effects of such
arrests were also discussed.

Some participants said that the investigation
agency would arrest and detain only after sufficient evidence
was first collected against a suspect merely to interrogate him
about his probable part in the commission of a reported crime, and
also whether it was correct and proper to interrogate an
accused against whom sufficient evidence had already been collected to implicate
him in a specific crime. Mr. Ichikawa of Japan in his
paper submitted to the Seminar had referred to an empirical study conducted by
James W. Witt, Head of Criminal Justice, Armstrong State College,
U.S.A. on post-Miranda period police effectiveness.

The figures of course could be differ-
ent in other countries if similar Miranda
rules were applied.

Alternatives to Arrest and Detention

Considering the adverse psychological
effect of an arrest or detention on the
mind of the individual concerned and also
the economic costs of such arrests and
detention to the state, can such police or
prosecutorial action be minimized without impairing effective investigation? This was
the next question posed for consideration
and discussion. Much ground had already
been covered in the earlier part of the dis-
cussions. The position could be summed
up as under:

1. In India and some other countries

2. In minor or non-cognizable offences,

3. In cases, specially where acquisition of

property was the motive for the crimes. In-

cidentally, Mr. Ichikawa of Japan in his

paper submitted to the Seminar had re-
ferred to an empirical study conducted by
James W. Witt, Head of the Department
of Criminal Justice, Armstrong State College,
U.S.A. on "Non-Coercive Interrogation: The Impact of Miranda on Police Effec-
tiveness". The report was widely circulated
in 1977. The study showed that in the
first six months after the Miranda decision,
suspect was interrogated. He pointed out that in
Japan only 20 percent of suspects in clear-
criminals preparatory to committing a crime decide the issues themselves through
mutual agreement even after the matter is
agitated with the police. In other countries, within the ambit of the existing
law, if there is sufficient evidence against him, if the prosecutor feels that society will
benefit more from such a course of action. The mental, psychological and other con-
ditions of the accused at the time of the
commission of the offence and after are
taken into account by the prosecutor before
arriving at his decision. The power to
to let off the accused without legal action
has been delegated by prosecutors to the
local police agencies in respect of specified
crimes. For example, in Western Samoa as
Mr. Alai'asa projected in his paper, the
"fono" (council meeting of village chiefs) decides many disputes which might other-
wise have found their way into the law
courts and police stations. In India and
Pakistan, village panchayats or "jirgas" decide many minor issues in the same
manner. Such alternatives to arrest and detention as naturally are not available in
urban settings. It is here, that the relevance of
the Japanese experience becomes obvious. The applicability of the principles used in Japan,
mutatis mutandis in other participating
countries, within the ambit of the existing
law, if possible, or if necessary by amend-
REPORT OF THE SEMINAR

Arrestee or Detainee

The power to arrest and detain those who transgress criminal laws forms the very basis of organized societies. It has existed in every society from the dawn of history and will continue to exist for all time. But since the power exists for the ordered existence of the members of society, a correct appreciation of the point at which a balanced existence is threatened has to be constantly made by intelligent and responsible minds so that individual liberty and basic human rights are not sacrificed at the alter of political or other expediency. Besides, societal costs should be measured in precision terms by minds alive to human and psychological problems, so that reformative measures which if wisely used can avert arbitrary detention and is even more efficacious than intervention at a later stage after the initial damage is done.

The third and last question discussed by the conference with regard to safeguards against arbitrary arrest and detention was: "What measures or remedies must be immediately available to suspects and accused persons against arbitrary arrest or detention?" Naturally, though unfortunately, these measures can only serve as poor consolation for a wrong committed, but in certain cases where the investigation agencies (police and prosecutors) did not act properly, they could take the form of compensation as well as retribution to bring some measure of redress, however small. The remedy of habeas corpus has been and is always available in common law countries. In Japan, a collegiate body of these judges sits and decides an appeal against detention on the very day on which such an appeal is made.

But a little more positive action was called for. So, Mr. Ichikawa of Japan stated that in his country those guilty of arbitrary arrest and detention were punished while the State paid compensation (if demanded) to those acquitted. The chairman mentioned this action against arrest officials was even taken in his country and Mr. Ribeiro of India corroborated this position in respect of his country also.

Conclusion

The seminar brought to the attention of the participants the necessity of responsible supervision as the core concept of the concept of anticipatory bail. The power to arrest and detain those who transgress criminal laws forms the very basis of organized societies. It has existed in every society from the dawn of history and will continue to exist for all time. But since the power exists for the ordered existence of the members of society, a correct appreciation of the point at which a balanced existence is threatened has to be constantly made by intelligent and responsible minds so that individual liberty and basic human rights are not sacrificed at the alter of political or other expediency. Besides, societal costs should be measured in precision terms by minds alive to human and psychological problems, so that reformative measures which if wisely used can avert arbitrary detention and is even more efficacious than intervention at a later stage after the initial damage is done.

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Conclusion

The power to arrest and detain those who transgress criminal laws forms the very basis of organized societies. It has existed in every society from the dawn of history and will continue to exist for all time. But since the power exists for the ordered existence of the members of society, a correct appreciation of the point at which a balanced existence is threatened has to be constantly made by intelligent and responsible minds so that individual liberty and basic human rights are not sacrificed at the alter of political or other expediency. Besides, societal costs should be measured in precision terms by minds alive to human and psychological problems, so that reformative measures which if wisely used can avert arbitrary detention and is even more efficacious than intervention at a later stage after the initial damage is done.

The third and last question discussed by the conference with regard to safeguards against arbitrary arrest and detention was: "What measures or remedies must be immediately available to suspects and accused persons against arbitrary arrest or detention?" Naturally, though unfortunately, these measures can only serve as poor consolation for a wrong committed, but in certain cases where the investigation agencies (police and prosecutors) did not act properly, they could take the form of compensation as well as retribution to bring some measure of redress, however small. The remedy of habeas corpus has been and is always available in common law countries. In Japan, a collegiate body of these judges sits and decides an appeal against detention on the very day on which such an appeal is made.

But a little more positive action was called for. So, Mr. Ichikawa of Japan stated that in his country those gu
of law. It is imperative that if the presumption
of innocence is to be preserved as the cornerstone for the administration of crim-
inal justice, the person who is arrested and
detained before conviction must be granted
certain rights which would not only enable
him to meet fully the accusation against
him but would also set him apart from
convicted persons. It is recognized that
every legal system must establish certain
basic procedures to enable this end to be
achieved whilst at the same time not
impeding fair and thorough investigation into
the accusation by the enforcement agency
concerned.
Understandably there cannot be a
common procedural code setting out the
procedural rights of all detained persons
for all the nations of the world, for each
nation must devise its procedures accord-
ing to the characteristics of its people, their
values and priorities, the nature of its
government and other characteristics pecu-
iar to itself. But it is thought that having
regard to the common experience of man-
kind and the principles expounded by the
many internationally agreed declarations
on human rights, there are certain procedural rights which has traditionally been recognized as basic to all mankind. The discussion sought to identify some of such rights and to examine them in the light of the circum-
cumstances and experiences of the nations
represented in this Seminar. The emphasis
was on whether such rights existed and if so,
to what extent, and the guarantees and
remedies available to enforce such rights in
the participating countries. Abstract dis-
cussion of the philosophical basis of such
rights or whether such rights should be
granted at all were deliberately avoided.
The Right to Counsel
Whatever rights accorded to a person
after he has been arrested and detained
would be illusory unless the person knows
that he is entitled to them. The experience
of most criminal justice systems is that
such person tend to come more often than
not from the less affluent sectors of society
and in developing countries, such persons
tend to be both poor and illiterate. It is
therefore imperative that such persons be
given an opportunity to be advised by a
practicing lawyer. This is recognized by the
constitutions of all the participants of this
Seminar and the right to counsel is in all
cases, enshrined as a fundamental constitu-
tional guarantee.
Notice of the Right to Counsel
The guarantee of the right to counsel is
by itself meaningless if it is accom-
panied by certain other procedural rights.
One obvious procedure which is necessary
in order to give effect to this legal right is
that the arrestee or detainee must be given
notice of such a right. This may be super-
fluous in countries where the population is
generally educated and well informed but
in most of the countries represented in this
Seminar, most of whom are still in the
process of development, this procedure is
an absolute necessity.
The notice of the right to counsel must
be given as soon as reasonably practicable
and it must be communicated to the ar-
restee or detainee in a language which he
understands.
Access to Counsel
Granting an arrestee or a detainee the
right to counsel must mean that the
arrestee or detainee is to be allowed reason-
able access to his counsel. What constitutes
reasonable access would depend on the
circumstances of the case but at the very
least the person should be afforded an
opportunity to meet his counsel in order to
brief him and to receive advice. The ques-
tion which was in issue here was whether
the arrestee or detainee should be allowed
to meet his counsel without the supervision
of the custodial authorities. To permit
such an encounter could give rise to op-
portunities whereby the ends of justice
and the security of the detainee could be
jeopardized. The rule often adopted in
most countries is that the meeting could
take place but it should be within sight but
out of hearing of the custodial authorities.
Such a procedure would appear to strike a
balance between the right of the detainee
to meet and receive advice from his counsel
and the necessity to insure that the secur-
ity of his detention is preserved.

When Should Counsel Be Permitted to
Represent the Detainee?
The laws and practices of the partici-
pating countries differ as regards the point
of time when the detainee can be repre-
sented by counsel. The Seminar had been
informed through lectures that in the
United States, the arrestee is entitled to be
represented by counsel from the moment
he is arrested. The same is true of some of
the countries represented in this Seminar
in the Philippines where the position is
similar to that of the United States. If the
arrestee demands to be represented by
counsel, he cannot be questioned further.
It was impressed on the participants that
in many instances, such a procedure would
work in favour of the prosecution's case
rather than against it, for when a detainee
is represented by counsel, it would be
difficult if not impossible for him to
challenged evidence elicited against him, par-
cularly his own confessions, if such evidence
was obtained in the presence or with the
knowledge and concurrence of counsel.

However, in the case of other countries
represented in this Seminar, counsel is not
permitted to appear on behalf of the ar-
restee until such time as a final decision is
taken to proceed against him in court or
until he is finally produced in court itself. A number of reasons were
advanced for this. It was disclosed that in
some countries such as Singapore and Sri
Lanka, it is not usual for persons to engage
the counsel the moment they are arrested or
the moment they come to know that
investigations are being made against them
in respect of an accusation. Such persons
would prefer to wait for the outcome of
the investigations and only after a final
decision is taken by the law enforcement
agency concerned to charge them in court
would they proceed to engage counsel.

This is because until such a time, there is
always a possibility that the authorities
may decide not to proceed against them,
in which event if counsel had been engaged,
it would be a waste of money. For coun-
tries with such experiences, to advance the
proposition that counsel should be per-
mitted to represent the suspect at the
investigation stage would be contrary to
their general practice.

Some participants from countries which
do not permit the accused to be represent-
ed by counsel at the investigation stage
expressed concern that if this procedure
were permitted, the investigations would be gravely
impeded. Mention was made that the
nature of the police in many countries was such that counsel would not
be adverse to indulging in improper con-
duct in order to ensure that their clients
are cleared of the accusation. Even for
countries e.g. Japan and the Republic of
Korea where no aspirations were cast on
the integrity of defense counsel, it was
believed that the presence of defense
counsel with the suspect during investiga-
tion may pose serious obstacles to a fair
and thorough investigation.

The Proper Role of Defence Counsel
The role of a defence counsel at a trial
is well understood and clearly defined.
What is not so clear is the role of defence
counsel before the trial. He is to represent
the interest of his client but the extent to
which he should be permitted to intervene
in the investigation in the name of protect-
ing his client's interest and the means
whereby he should be permitted to do so
are matters for concern. Where counsel is
permitted to present the suspect at the
investigation stage, it is accepted that he
should be permitted to give advice to his
client. In this respect, it was noted that
the advice often given is that the suspect
should remain silent when questioned.
However defence counsel often demand
for more rights e.g. to be present when
witnesses are interviewed, to be granted
access to real evidence for independent examina-
tion, to be present during identification

These confessions, when witnesses are questioned, he should, if he wishes, be permitted to have the advice of counsel in answering the investigator’s queries. In this respect, a point to note is that for jurisdictions which do not permit confessions made to the police to be used as evidence against accused person, the role of defence counsel at the investigation stage is limited.

Duty of the State to Appoint Counsel for Indigent Persons

The discussion there concerned not only the duty of the state to provide a counsel for an indigent person at his trial but also whether counsel should be appointed for such persons at the investigation stage. It was agreed that at the stage of trial when a person is unable to engage counsel because of poverty, the state should appoint a counsel for him. Failure to do so would mean that an indigent person would be placed in a more disadvantageous position at a trial than a person with more means. Such a situation is socially unacceptable. However, it was recognized that for the state to appoint counsel to every person charged in court who cannot afford to engage counsel himself would mean a tremendous financial burden on the state and most developing countries are unable to sustain such a burden.

All countries have schemes whereby indigent persons are provided with counsel for cases where the offence tried is punishable with heavy penalties. The class of such persons varies with each country. But for relatively minor offenses, where the defendant is unable to engage counsel, he must present his case in person. The method used to inform persons of their right to counsel is not always satisfactory. It is best when a printed form containing a notice of this right to counsel is read and explained to the suspect and he is then given this document for his retention. But in some countries the notice of this right to silence is often accompanied with the caution that if he chooses to waive this right, then anything he may be taken down and used against him, is printed at the beginning of the sheet of paper used for recording the suspect’s statement. This is merely shown to the suspect without explanation and the investigator then proceeds to question him and record his statement. Such a practice, where it exists, should be revised. In this respect, the position in Singapore is somewhat different from the other countries represented at the Seminar. Singapore recently adopted the recommendations of the United Kingdom Law Commission, and amended its Criminal Procedure Code to provide that at the time an accused person is charged or officially informed that he will be prosecuted, he must be served with a notice giving him particulars of the proposed charge and a warning that if he has anything to say, he is advised to remain silent otherwise it may have a bad effect on his case at the time of his trial. Some participants viewed this measure as a reversal of the traditional right to silence. The participant from Singapore informed the Seminar that in practice, this provision has not affected any drastic change to the procedure in Singapore. Many persons still elect not to say anything in response to the notice and whether this has a bad effect on the person’s case at his trial is entirely a matter for the trial judge to decide. The trial judge is not bound by law to draw an adverse inference from the person’s failure to make a statement pursuant to this notice.

Anglo-American jurisprudence and is also recognized as such by most other legal systems. It is thought to be fundamental to the privilege against self-incrimination which is guaranteed by the national constitutions of all the participating countries. As in the case of the right to counsel, the right to silence carries with it the right to be notified of this right. The doctrine as to the kind of notice which should be given and the procedures to be followed has been highly developed by the United States Supreme Court and has been accepted by many other countries. Apart from these, all countries have same procedures laid out, whether statutory or in the forms of administrative directives, to ensure that accused persons are informed of this right. This right of silence takes effect from the moment a person is arrested. This means that he should be informed of such a right preferably at the time of his arrest.

In practice, however, it is transpired that except for a few countries, arrested persons are not informed of this right at the time of arrest. However, they are always informed of this right and if they have been informed earlier, they are reminded of this right, at the time when they are questioned by the investigator. Failure to do so may amount to a confession. This is especially true in Japan. In some countries e.g. India, Pakistan, Bangladesh and Sri Lanka, this fact is irrelevant because such confessions made to the police are inadmissible at trials. These confessions can only be aids to the investigator in uncovering other evidence supporting the prosecution’s case. Only confessions made to magistrates are admissible and even in the case of such confessions, the weight attached is very slight.

Where the confession of a suspect is admissible and especially if it alone is the basis for a conviction, then it becomes crucial to examine closely the maker’s waiver of his right to silence to ensure that the waiver was done not only voluntarily i.e. without any threat, promise or inducement, but also done with full knowledge of the right to silence and the consequences of making such a statement. Ultimately it
is the responsibility of the trial court to decide on this issue and in coming to its decision, the court must take into account all the circumstances under which such a statement was made. It was thought that a prolonged period of detention would be an important factor effecting the voluntariness of a confession. Confessions not voluntarily made should not be admitted in evidence.

Right to Be Told of Grounds of Arrest and Detention

Most constitutions provide that an arrested person is to be told the grounds of his arrest. Very few, however, proceed to state clearly when this right arises. It would appear obvious that at the time of arrest an arrested person is to be told the grounds for his detention. This means that such persons should be informed of, at the very least, the generic type of crime which he was suspected to have committed. In most instances, arrested is made at an early stage of the investigation where the precise offence which the suspect is to be suspected to have committed is not yet ascertained. However, whenever arrested has been done, the suspect should be told of it. This is imperative if he is to prepare an adequate defence.

Right to Notify Relatives or Friends of the Fact of Detention

It is not often that a person is arrested and brought to a police station in the presence of his friends or relatives. When a person is detained, in the mind of friends or relatives who are not aware of his arrest and detention, he has suddenly disappeared from their sight. The effect of such a mentality on the general morale of a nation's population and the problems that arise from such a situation both for the detainee's family as well as for society in general are tremendous. Arrested persons who are subsequently detained must be allowed an opportunity to inform their relatives or friends of the fact that they are detained.

Right to Understand and to Be Represented

Unlike Japan which is a homogenous society, most of the countries represented at this Seminar are either multiracial or are composed of many linguistic groups. The official languages may not be understood by many members of the citizenry. Further, in many developing countries, the rate of illiteracy is still very high. All these pose serious problems for the criminal justice system.

In order for a person to exercise his right, he first must know what his rights are and he must be able to express his response to those rights. All this means that where he is unable to speak the language of the investigator, interpretation facilities must be made available. The ideal situation would be for all interpreters to be attached to an agency independent of the investigating agency and to be available at any time something needs to be said to the suspect or when the suspect wishes to say something. The advantages are the obvious ones of which is the fact that there would be an independent witness to the voluntariness or otherwise of whatever statements the suspect might make.

Right to Know and to Be Represented

Most countries provide that when a person is wrongfully arrested or detained, he is entitled to compensation. In some countries, e.g., Japan, when an arrested person is acquitted after a trial, he is automatically entitled to compensation by the state for the period spent in detention and

Right to Be Told of the Grounds of His Detention

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compensation is paid according to a rate fixed by statute. In other countries e.g. Singapore, the aggrieved person has to bring a suit against the government and has to prove his claim in a civil court. For such purposes, the legislature had provided that the government, normally immune from suits under the doctrine of sovereign immunity, can be sued in court. But there are other countries where it is not permitted to sue the government at all. In such cases, the only remedy for the aggrieved party is to sue the person responsible for the violation. This poses problems, for if the violator is impotent, even if the suit is brought against the government and has to prove his claim in a civil court. For such cases, the legislature had provided that the person responsible for the violation is impecunious, even if the suit is unsuccessful, the aggrieved person would have remesh without a remedy. The voluntariness of a confession is a matter to be decided on by a trial court at the time of trial. In India, Bangladesh, Pakistan and Sri Lanka, this question does not arise as all confessions made to the police, voluntary or not, are inadmissible. However, evidence obtained as a result of these confessions can be admitted. A question was raised here as to why this should be so and it was noted that the United States Supreme Court, in developing its exclusionary rule doctrine whereby all evidence obtained as a result of a violation of the suspect's right are excluded, based its reasoning on the concept of "the impecuniosity of judicial integrity." The reply to this was that the evidence obtained could stand on its own and in such instances, to say that relevant and highly probative evidence should be excluded would result in obviously guilty men being set free at great cost to society.

The fact that evidence obtained as a result of violations of the procedural rights of the detainee will be excluded is obviously a deterrent against any temptation to violate the detainee's procedural rights but the scope of this rule may differ from one country to another. It was noted that many countries feel that except for confessions, an extension of this rule may result in perversion of justice.

c) Consequences for the Person

There is little to say about the consequences of the procedural rights of the detainee having been violated. The violation of the procedural rights to the detriment of the detainee is equivalent to the commission of a crime by the police officer. The police officer is responsible for the violation. But it was clear from the discussion that all participating countries have provisions in their domestic laws and some administrative directives for ensuring that persons arrested and detained before trial are accorded basic procedural rights. Procedures are also laid out for the enforcement of such rights and remedies for their violation are also prescribed. But it was also clear that in many countries, in practice, not all such rights are enjoyed by arrested and detained persons and where such rights are fully accorded, there are some exceptions, for example, in Japan, some countries feel that except for confessions, a violation of the detainee's procedural rights would have him punished for his misconduct is present but the gathering of evidence may be a problem as the investigation agency concerned may refuse to render assistance.

The position is even more difficult in the case of departmental disciplinary actions. All agencies retain their internal affairs as their sole prerogative and are reluctant to allow persons outside their organization to dictate the course of action to be taken against their errant members. As agencies are often reluctant to take action against members who violate rights of suspects, if the violation is not actionable, the violator is free to continue with his misdeeds. This has been recognized in the United States where moves have been made to create independent agencies which can investigate allegations of misconduct within the agency concerned and commence action against the offenders. The aggrieved party is permitted to be represented at such actions.

In this context, it was noted that some countries, e.g. the United Kingdom, use the office of the Ombudsman or Parliamentary Commissioner to the same effect. This system merits further consideration.

Conclusion

It was clear from the discussion that all participating countries have provisions in their domestic laws and some administrative directives for ensuring that persons arrested and detained before trial are accorded basic procedural rights. Procedures are also laid out for the enforcement of such rights and remedies for their violation are also prescribed. But it was also clear that in many countries, in practice, not all such rights are enjoyed by arrested and detained persons and where such rights are fully accorded, there are some exceptions, for example, in Japan, some countries feel that except for confessions, a violation of the detainee's procedural rights would have him punished for his misconduct is present but the gathering of evidence may be a problem as the investigation agency concerned may refuse to render assistance.

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Nations prepared a series of papers on the situations and requirements in each country, they are being considered as the main guidelines in this regard.

Detention and Bail

The Draft Body of Principles for the Protection and Detention of Persons Under Any Form of Detention or Imprisonment defines detention as: "the period of deprivation of personal liberty from the moment of arrest up to the time when the person concerned is either imprisoned as a result of final conviction for a criminal offence or released".

Taking a broader look at this definition, it includes (1) deprivation of personal liberty, (2) the necessity for quick action within the criminal justice system, (3) speedy release if the criminal justice system cannot contain the detainee within its fold.

When a person is arrested, he becomes a cog in a wheel of a vast machine and the supervisory level of the criminal justice system has to turn at full speed if his case is to be handled speedily and for his quick release on bail. Unfortunately, in most countries, as came up in the Seminar, this is not so and the criminal justice system moves slowly thus extending the period of detention.

Detention could result from non-completion of investigation or due to slow handling of trials. To overcome the problems of this nature, various countries have adopted various systems to have persons in detention released subject to certain restraints pending either completion of investigation or trial.

Bail and provisional release are methods most widely used among countries that participated in the Seminar. Whilst in certain countries bail is available after completion of investigation, or as a provision of law giving mandatory period for completion of investigation or release as court, in certain other countries such as the Republic of Korea and Japan, bail is granted only after institution of formal prosecution. In Peru, however, the provisions on bail do not exist at all. This is also true of Indonesia.

In common law countries bail is granted at the police station itself in bailable offences and in non-bailable offences, the suspects when produced before magistrates are granted bail in most instances except in cases where other measures have been adopted. A case in point is Sri Lanka where according to the Criminal Procedure (Special Provision) Law the magistrate has no power to grant bail in certain offences. It was however pointed out that this law was being used very sparingly due to its strong features.

As mentioned earlier, in Indonesia although there is no legal provision for bail, provisional release suited to the customs and traditions of its people is being practised. Identical practice also exists in Peru. In the Philippines and Iraq, bail is denied in offences that could be punishable by death when the evidence of guilt is strong. In some countries, persons without fixed abode are denied bail.

The procedure regarding the availability of bail is unbridled in the laws of the land, and where such provision does not exist, it tends to impair the security of the suspects or hinder the investigation and trial.

The office of the public prosecutor is working well in Japan and in some other countries. In some countries investigation is prolonged at times due to the fact that coordination between police and the public prosecutor is not very effective.

Much emphasis was laid on the geographical factors affecting investigations. The difficulties of access particularly did hamper speedy investigation, and this was more so in Nepal, Peru, Pakistan and some parts of Indonesia and India. Due to this difficulty, particularly in Nepal a time limit is also given before which a complaint has to be made, as against making prompt complaints in other countries. It is also legally prohibited in Nepal to effect any searches between sunset and sunrise. The difficulties of access was also brought into focus particularly in Baluchistan area of Pakistan.

Most participants commonly agreed that limited resources, exigency makes it almost a Herculean task for them to conduct investigations speedily. As against the speedy response time of Japan, it was mentioned that in some countries it could take the better part of a day or more to start the process of investigation. It was stated that, in developing countries, the emphasis was more on development rather than expenditure on agencies which did not produce a return. As against this, it was explicitly mentioned that even the United Nations had now revamped their programmes where stability of society was considered a primary factor for development. The inadequate facilities of most participating countries: "made it difficult to effect speedy investigation, whilst in some countries, the available facilities were
located only in important places, thereby causing a delay in obtaining the services of such services or expertise. Shortage of forensic science, laboratories and experts and inadequate staff at their offices often account for long delay in completion of investigation.

The consentus of opinion of the participants was that in most instances public cooperation was lacking for the investigator to really go ahead. It was stressed that public cooperation was the most vital consideration in an investigation. The reason for the lack of such cooperation was reported to be that police were way out of the public and that they had not gained the full confidence of those whom they served in the final analysis. In this instance it was pointed out that in Japan the cooperation between the public and the police was excellent. Visits by police to houses, the establishment of crime prevention associations and mass media have helped in establishing that cooperation was lacking for the investigation.

As remedies to this situation, the following were suggested:

a) Investigations should be conducted diligently and honestly;

b) effective investigation with the cooperation of the public;

c) balance between justice and morality;

d) effective use of mass media and public relations on a productivity oriented basis.

It was also emphasized that a sound police-community relations programme anchored on police efficiency should also be the concern of any police agency.

Speedy Trial

Criminal trials in most countries took a considerable long period of time. The delay in trial causes concern among the members of the community that a wrong-doer remains unpunished, whilst the accused person remains in a state of mental agony not knowing what would happen to him. Most participants stated that in respect of normal trials the period of time taken to complete was comparatively short, and was between two to six months. However, in certain instances, lengthy trials lasted for very long periods of time. The main reasons ascribed for delay in trial were:

a) Nonavailability of sufficient number of judicial officers as well as court houses;

b) nonappearance of witnesses and experts;

c) uncooperative attitude such as dilatory tactics on the part of defense counsel;

d) the poor system of fixing case for trial by court staff;

e) the attitude of police;

f) frequent transfers of investigating officers from the police station concerned during the trial of the case;

shortage of public prosecutors in some countries.

It was considered a universal problem by all participants that there was a dearth of judicial officers. It was mentioned that in many countries the magistrates were overburdened with work. Another participant mentioned that due to lack of space in courts, magistrates took turns in hearing cases at the same premises. It was pointed out that other than judicial officers, auxiliary staff required to run a court also were lacking and that this had aggravated the situation. The net result of this form of organization would be a vast accumulation of cases resulting in delayed trials. This situation normally existed at the level of the lower courts. Another area where trials were delayed was found in the system of committal procedure. The magistrate has to commit the case to a higher tribunal. Hence it becomes a trial at two different points. The nonappearance of accused persons and witnesses is directly related to the procedures adopted by court and generally the public view this money and time consuming process with abhorrence. Every time a case is postponed, the public would be inconvenienced. The same parameters would apply to the accused who also marks his presence in court on every such occasion. Then again, attention was focused on the accused absconding himself from courts. It was indicated that the absence of witnesses or accused worked vice versa. In certain instances the law has laid down that trial against an accused could proceed in his absence, whilst in some other countries such legal provisions were nonexistent.

The nonappearance of counsel representing accused is a matter which causes grave inconvenience all round. Some counsel deliberately refrains from appearing in court and in some instances it is as uncommon to cancel the proxy thus leaving the accused undefended. Such action does not appear to be uncommon in the public in most countries and it is indicated that some remedial action is required in this regard.

The biggest problem confronting courts in most countries is that there is no proper guideline in procedure in respect of the disposal of cases. There is also no priority rating. It was observed that some cases are called up at the expense of others, whilst the latter category go down for further dates, without being heard for long periods of time. The supervisory control over the working of court appears to need revitalization in this respect.

Pre-trial Diversion

It was mentioned that pre-trial diversion was available in Sri Lanka, Western Samoa, the Philippines, the Republic of Korea and Japan.

In Sri Lanka under the Code of Criminal Procedure, police are empowered to compound certain offences. This is extended not only to the offence itself but also to abstention and also attempt to commit such offence. The requirement here is that a prosecution should not be pending in magistrate’s courts. If such a prosecution is pending the person eligible to compound the offence may do so with the consent of the magistrate. Another form of diversion practiced in respect of traffic offences, where police are empowered to stay prosecution on the issue of a warning ticket. In courts diversion as mentioned earlier could take place but over and above these court could compound certain other offences without proceeding to trial.

In Western Samoa the Magisterial System, where the traditional chiefs settle cases at their level without proceeding to trial is being practised.

In the Philippines the Barangay System which is in force makes it imperative that minor offences are placed before the Barangay Chairman, in the first instance. No prosecution would be entered in respect of such cases in the absence of a showing that amicable settlement was first tried but failed.

In respect of Japan, diversion is available in instances where the prosecutor is of view that a prosecution should not be entered upon in respect of any offence. This is a system which is unique in Japan and the Republic of Korea due to their criminal justice systems prevailing in these countries. It should also be mentioned that the traffic infraction system prevailing in Japan could be taken as a model which may be modified to suit the requirements of other countries.

Remedies Suggested

The following remedies were suggested by participants to prevent prolonged pre-trial detention and delays in the trial procedure:

1) Judicial officers should exercise judicial functions and not executive functions as done in some countries at present.

2) Police should only be investigators and prosecutors must handle the entire court procedure.

3) The necessity for trained personnel and expertise by way of scientific aids was felt by the participants.

4) In certain countries the criminal procedure code is antiquated and therefore militates against speedy trial. This is a situation which requires remedial action.

5) Committal procedure as done in some countries is a duplication of work.

6) Trials preferably should be completed within three months.

7) Cooperation between law enforcement agencies and public should be agitated.
Session IV: Human Rights of Arrestees and Pre-trial Detainees

Chairman: Mr. Ayub Quadri
Advisor: Mr. Akio Yamaguchi
Reporters: Mr. Jamaludin Haji and Abul Hamid

Introduction

The group was estranged to examine problems and find remedies towards the effectiveness in implementing the principles embodied in the United Nations Declaration of Human Rights concerning persons under detention. Those under detention are predominantly the accused or suspects who are denied bail due to the seriousness of their offence for which they are charged or who, because of poverty, cannot afford bail. There are also those who are forced under detention. Those under detention were charged were to be immediately released. In the Supreme Court after reviewing cases and hearing the habeas corpus petitions, released all these people who had been in detention for periods beyond the maximum term of imprisonment that could have been given to them. Following this, the Supreme Court issued directives requiring periodic returns and those under detention for period beyond their maximum term of imprisonment were to be immediately released.

The problem of overcrowding in prisons exists in many countries and Thailand is no exception. Mr. Somboon of Thailand pointed out that the situation in his country expressed that the United Nations Standard Minimum Rules were not being effectively implemented due to the overcrowding. However, he added that his country was trying hard to apply and to conform to the Standards as far as the situations in the prisons allowed. In Japan, according to Mr. Kihara, this problem of overcrowding does not arise and the Prison Law and Regulations are in conformity with that of the Standard Minimum Rules.

It is generally believed that whether the United Nations Standards are formally ratified by a government or not is to a large extent the desire of the government. However, it is a difficult problem to know whether they are implemented or not particularly in developing countries where there exists a problem of resource constraints. This was the view of that of Mr. Quadri of Bangladesh. In a situation of resource constraint, priority for allocation of resources has to be worked out and the limited resources implemented or standards with regard to prisons does not merit priority in developing countries. When situation of overcrowding in the prisons exist, the basic standards of living conditions could not be effectively implemented even though there may be principles embodied in the prison rules. As to the situation in Sri Lanka, Mr. Seneviratne said that, although there have been covariant overcrowding in the remand prisons, relatively adequate living conditions in prisons have been guaranteed under normal circumstances except during emergency in 1971 when about 5,000 suspects were arrested and detained. Mr. Torres of the Philippines stated that “Barangay Justice” practiced in the village level in the Philippines. Under this scheme, no prosecution for minor offences will be obtained in the absence of a showing that attempts at amicable settlement was made by the Barangay and the Arbitration Committee. This system largely helps to reduce remand prisoners in the Philippines. Out of composition, the President even releases yearly thousands of suspects charged for violating laws against national security.

Mr. Shikita, Director of UNAFEI, who have had experienced working in the United Nations Secretariat observed that there exists anything that concerned crime and criminals did not merit priority in the technical assistance proposed by each and individual government. Economic assistance has always come up priority whereas crime prevention and treatment is the opposite. By 1970, after realizing this trend, the United Nations set more emphasis on the social development programmes in which crime prevention and treatment of offenders is an important part. He advised that it is the responsibility of those in the criminal justice system to make the laws of the countries, the planners realize that emphasis on social development programmes will lead to more sound economic development of the country. Though it is quite unrealistic to expect the drastic increase in the amount of budgetary allocation for the criminal justice field, there still is considerable room go to maximize the limited resources allocated to the field. With more coordination of the effort between the police, the courts, the correctional organization, criminal justice administration will have a bit further to go even though resources are limited. The participants of the seminar have had experienced working in the various international documents have been promulgated in the domestic laws of all the countries of the world. These treaties are regarded as basic practice and procedures to any fair system to any administration of criminal justice. It has already been agreed upon, thus it is then for the individual countries to develop this concept further.

Setting-up New International Standards and Guidelines

In giving his opinion Mr. Chan of Singapore viewed that, it might be important to consider before going on to consider the necessity to set up standards or guidelines for whether those presently agreed upon standards are being observed and practiced. So far not all the standards which had been agreed upon in the various international documents have been promulgated in the domestic laws of all the countries of the world. These guidelines are regarded as basic practice and procedures to any fair system to any administration of criminal justice. It has already been agreed upon, thus it is then for the individual countries to develop this concept further.

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In all the participating countries, the unconvicted prisoners are segregated from the convicted. These unconvicted prisoners whom our law presumes to be innocent until they are proved guilty, are mainly confined pending trial under conditions which are more oppressive and restricted than those applied to convicted prisoners. These people should not be kept in custody pending trial as a punishment but primarily to leave their appearance at trials and to protect such persons who may be called to appear as witnesses from being tampered by the accused.

The practice and procedure as provided in the criminal procedure code in each country is usually that persons under arrest are firstly kept in police lockup, which is administrated usually by the police administrative authority for the purpose of investigation. They are then sent to detention centers, jails or prisons, which are administered usually by the prison administration. The due process and equal protection privileges by virtue of his detention, he does not need to lose all his civil rights.

Mr. Ribeiro opined that many of their human rights shall be subjected to lack of supervision and independent check. The practice and procedure as provided in the criminal procedure code in each country is usually that persons under arrest are firstly kept in police lockup, which was managed by the police authority, have been improved as they each to an individual cell is possible.

Referring to Mr. Martin's paper about the situation in Peru, it was reported that the living conditions for prisoners were quite insufficient due to the lack of full attention by the government. Most of the prisons had no medical care. Even in the principal jail, La Junquillo, there was only one hour of running water daily for 6,000 prisoners. Most of the prisoners were not given beds and mattresses.

In providing the solution to this problem and naturally accommodating the needs of offenders as laid down in the Code 1860, skilful and intelligent supervision of prisoners is essential. Skilled and intelligent supervision of prisoners is needed to lose all his civil rights.

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In providing the solution to this problem and naturally accommodating the needs of offenders as laid down in the Code 1860, skilled and intelligent supervision of prisoners is essential. Skilled and intelligent supervision of prisoners is needed to ensure the human rights of the arrestees and detainees more sufficiently.

The living conditions in some detention houses. This was mainly because the police stations were newly built and modernized thus providing better facilities for the arrestees. The control and supervision of the police lockup is under separate and independent division of the police and not by the investigation officers to ensure the human rights of the arrestees and detainees more sufficiently.

Mr. Chao observed that the conditions and facilities in the police lockup are generally poor as compared to the conditions in the prisons. He attributed this to the lack of supervision and independent check. He felt that the United Nations Standard Minimum Rules should also be applied to the police lockup.

Legal Consequences for Unlawful Arrest and Detention

In India, according to Mr. Goei, Sections 341 to 346 in the Indian Code of Criminal Procedure deal with the wrongful arrest and detention. There were few cases in which prosecution was lodged against police officers. As the police power of arrest is very wide and unless it is shown by the complainant that it was wanton or a mala fide act on the part of the police, public prosecution would not succeed. In some serious cases where some police officers have wrongfully confined detainees for a long period and when death have taken place through torture, the case will be taken up at the government level. He added that under tort, the officer concerned might be liable for compensation if a case were to come out. However, to hold the government liable under tort might be extremely difficult although technically that is also possible.

In the Philippines, for an act of unlawful arrest and detention the officer concerned is liable to criminal sanction or administrative proceedings. Also the immediate supervising officer is equally liable to be charged. In providing the solution to this practice of unlawful arrest and detention, the officer concerned is liable to criminal sanction or administrative proceedings. Also the immediate supervising officer is equally liable to be charged.

In Japan, according to Mr. Jinde, it is stipulated in the Criminal Compensation Law that if it is ascertained after his detention in custody for the investigation and trial, he should be compensated the amount of money by the government for his detention calculated with the rate ranging from 1,000 yen to 4,800 yen per day of detention.

Training of Personnel Involved in Arrest and Pre-trial Detention

Mr. Jalaluddin explained that as far as the prisons are concerned it is essential that the prison officers be trained in order to carry out their duties efficiently. Skilful and intelligent supervision of prisoners is basic to competent prison administration. Mr. Martin felt that judges in many countries were not fully aware of the practice of arrest and detention as being done by the police and also whether the police has much concern for the human rights of the arrested.

Dr. George, the UNAFEEI visiting expert for this Seminar, mentioned that there was a need for closer liaison and cooperation between the prosecutors and police officers so that they could discuss departmental policies and practices. The jurisdiction between police and prosecutors was sensitive because police usually did not want too close supervision from prosecution on their activities. While on the other hand the prosecutors regret receiving cases that have not been adequately investigated. He further added that some legal advisers should be provided to the police department so that the police could get specific guidance in matters of law.

Conclusion

The criminal justice system was formulated to effectively control crime while protecting human rights of the accused under arrest and detention. In order to realize both of these principles the coordination of various agencies under its administration is vitally important.
For many years the United Nations has expressed concern regarding the protection of human rights for those people under detention. Various standards, principles and recommendations have been set up and intensified for this purpose. The question here is whether these standards, principles and recommendations are actually adhered to.

The problem in most of the developing countries is that the average daily population of prisons has increased to a large extent over a short period of time. The existence of overcrowding in many of their prisons or detention houses would suggest that our practice in criminal justice falls short of the ideal. It is without doubt that this burden is crippling the efforts of the correction agency to render the decent conditions and secure rights of the incarcerated as required by the United Nations Standards.

Something has got to be done. It can be seen that inadequacies in the bail system and delay of trials are directly responsible for the overcrowding in remand prisons. Thus there is a need for a close examination into this matter. Only with more understanding and coordination of the various segments of the criminal justice system this problem and many others could be solved successfully.

PART II

Material Produced During
The 55th International Training Course
On the Institutional Treatment
Of Adult Offenders
SECTION 1: EXPERTS’ PAPERS

Some Practical Problems in Asian Corrections

by J. P. Delgoda*

Introduction

The current correctional policies in Asian countries are a mixture of Eastern and Western philosophies of the past few centuries. Many of these countries boast of a cultural heritage that goes back several centuries and of ancient civilizations predating those of western nations by hundreds of years. Many of them have been under foreign domination of the Portuguese, the Dutch, the French and the English at various times during the past few centuries and regained their independence during the last three or four decades. During the period of foreign domination the western powers introduced their own criminal justice systems into these countries in order to facilitate their administrative control over them. As a result the criminal justice systems of countries in the region include both the Anglo-Saxon as well as the continental types mixed with the traditional forms of legal administration plus the less formal traditional forms of social control based on Hindu, Buddhist and Muslim conceptions of social structure.

With the attainment of independence in many of these countries there was a revival of cultural and national activities. Many countries have adopted their own language as their official language. Others have adopted new constitutions and made changes in the forms of government. Yet there has been little or no drastic change in the correctional or criminal justice systems in the region. There has been no return to the harsh and severe methods of punishing criminal offenders which perhaps existed in these countries before the foreign domination. On the contrary the trend towards the more humane and less punitive methods of dealing with the offender introduced by the western powers have been continued by and large. The picture is one where slowly but steadily more and more countries in the region have been adopting the treatment techniques that have been tried out in America and Europe. This is evidenced by the new methods that have been introduced into the correctional systems of many countries in the region during the twentieth century such as probation, parole, home leave, work release and suspended sentences. This is no doubt due to the influence of the United Nations and allied agencies that have encouraged global perspectives in the treatment of offenders and prevention of crime. Many correctional administrators from the Asian region have benefited from the training programmes made available under the United Nations and Colombo Plan programme and on their return to their own countries attempted to introduce the new concepts in operation in other countries. In this context the work of UNAFEI has been particularly valuable in that during the past eighteen years of its existence it has offered training facilities to a very large number of officials employed in the criminal justice systems of Asian countries. There are alumni of UNAFEI in almost every country in the region and the training given to these officers must have some impact on the correctional and criminal justice systems of these countries.

The introduction of change in the correctional system is a slow and difficult process even among affluent societies. It is far more difficult in the Asian setting. In this paper it is proposed to examine some of the practical difficulties experienced by correctional administrators in the Asian region both in their day to day administrative functions as well as in their attempts to introduce changes into the existing systems.

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administrators. For example, many countries in the region are managing with prisons which were built during the last century. These antiquated buildings do not often have the facilities necessary for a modern correctional institution. They lack adequate security facilities such as gun turrets or watch towers and modern electrical and electronic equipment. Some of them do not have even basic facilities such as water service and drainage. Many of them are barely held together with much difficulty and the expenditure of considerable sums of money on repairs and maintenance. When no new prisons are built, the tendency to cope with increased population is to build temporary structures in the limited space available within the boundary wall of an existing prison. This in turn leads to congestion inside the prisons and reduces the space available for recreational facilities for prisoners. The difficulties of managing an antiquated, congested, overcrowded prison without basic amenities can be better imagined than described.

Again, there are some countries where the funds provided are inadequate to give the convicted offenders their basic requirements. There is one country where adequate funds have not been provided for prisoners' clothing and as a result prisoners have been allowed to wear their own private clothing. In another country adequate funds have not been provided for vehicles for the transport of prisoners. As a result prisoners are taken about by public transport in buses or trains or in hired vehicles. This has resulted in increased escapes while on transit and disciplinary action against prison officials. The use of restraints on prisoners who are taken about in public transport has also raised unfavourable comment from members of the public. The inadequacy of funds has also resulted in the shortage of staff in many prisons in the region. There may be many similar instances where facilities and services available to the prisoners or the prison officials are reduced or even totally omitted in order to accommodate a reduction in the budgetary provision. This in turn could lead to serious repercussions because in any prison in the world dissatisfaction among staff and inmates could easily terminate in a riot. The fear of a riot and the consequent danger to life and property is any prison officer's biggest bugbear.

Overcrowding of Prisons

The second major problem for correctional administrators in the region arises from the acute overcrowding of prisons in almost all the countries in the region. The overcrowding is often due to the presence of an excessively large number of remand prisoners and short term offenders. In many countries well over half the daily average population of convicted prisoners are those serving sentences under six months. A large percentage of this number again are those serving short sentences in default of payment of fines. In the case of both these categories the period of imprisonment is not long enough for any kind of vocational training in a planned programme for rehabilitation. These prisoners are exposed to all the evil effects of imprisonment without receiving any benefits from their imprisonment. For them prison administrators can only guarantee all the negative results such as break up of the family, loss of employment, association with hardened criminals and so on. Since their period of imprisonment is too short for any rehabilitative programmes they can only be employed on jail service labour such as washing, sweeping, cleaning, and cooking services in the prison. Recently however some countries in the region have introduced the work camp concept for short term offenders. Under this scheme short term offenders are taken out of the prison and sent to work in open work camps where they are employed on agriculture and animal husbandry and detained under minimum security conditions. This training is considered valuable as in many of these countries the large majority of offenders come from an agricultural background. Many Asian prisons are overcrowded owing to the presence of a large number of
remand prisoners. In some countries the average daily number of remand prisoners is more than fifty percent of the daily prison population. When prisons are called upon to detain such a large number of remand prisoners what invariably happens is that they are compelled to use up the accommodation meant for convicted prisoners for remand prisoners. When there is no accommodation in the remand prisons, they are provided accommodation in sections of the convicted prisons. This leads to several other problems. The segregation of the remand from the convicted prisoners makes the conviction process ineffective. Security is weakened. Additional staff has to be diverted for the remand from the accommodation and less facilities. The remand prisoners are kept in the same conditions as the convicted prisoners for long periods. Sometimes even youthful offenders are kept in the same conditions as the convicted prisoners for long periods.

There may be several reasons for the detention of such a large number of remand prisoners for long periods. One of them could be the attitude of the Police. In countries where the Police officers do not have the confidence in courts quite often they object to the offender being released on bail. The reasons adduced by them are that the accused might intimidate the witnesses or harm them or even commit further offences when he is out on bail. There could be long delays in completing the police investigations or again technical reports or medical reports could be delayed as a result. Countries are experiencing a shortage of officers with this type of skills. The court procedure itself may cause a certain amount of delay. Courts are often overburdened with a large number of cases on their roll and therefore it is not possible for magistrates to dispose of cases early. Cases are often postponed for non-availability of witnesses or lawyers or even police officers. There are also some magistrates who order bail with high security which the accused is unable to furnish. At present in many countries in the region there is no system whereby the court is apprised of the accused’s ability or inability to furnish the bail fixed by court or for that matter any information at all which might help the magistrate to determine whether the accused can be released on personal bail. He has to rely on what the police tell him. There is no doubt that many persons who are now detained on remand could be released on personal bail if investigations were made regarding their background. The court could make a better decision on this matter if such information as to whether the accused has a permanent job, or is married and has a home and family in a particular area is made available to court. The presence of such a large number of remand prisoners creates problems regarding their production in court or at identification parades which are further aggravated by the inadequacy of vehicles for their transport or shortage of officers to escort them. In view of this overcrowding among remand prisoners quite often first offenders and hard core recidivists are located together as remandees. Sometimes even youthful offenders are not segregated. There is therefore much contamination and a great deal of damage caused during the period offenders are detained as remand prisoners in overcrowded prisons.

Staff Problems

There are many problems regarding staff matters in the Asian prisons and in the western countries most countries in the region do not provide specialised staff for social workers who are working in the field of building and maintenance of buildings and plant. Custodial officers attend to all the clerical and accounting work in prisons. The maintenance of buildings and plant is also attended to by custodial officers using prison labour. The superintendent or jailor in charge of an institution is expected to be able to supervise building and maintenance, electrical equipment and plant and even cooking and accounting work. A similar situation is the absence of adequate doctors, psychiatrists and psychologists. In almost all the countries in the Asian region there is an acute shortage of qualified doctors, psychiatrists and psychologists and when the whole country is short of this type of personnel it is impossible to expect them to be available to the prison service.

Some Practical Problems in Asian Corrections

They remain in it only until they can find something better. Only those who fail to find anything better continue to make a career in the prison service.

A further staff problem is that in some of the countries in the region there is little or hardly any training given to prison officers particularly in the lower ranks. Only some of them have recently started training centres for prison officers. The result is that a large percentage of the older staff have left no training and are oriented towards the prison environment. They have no knowledge and no faith in the new rehabilitative techniques.

Yet another staff problem which is perhaps not frequently seen in western countries is that created by bribery and corruption among prison officials in the region. Incidents of bribery, trafficking with prisoners, the introduction of contraband and other corrupt practices by prison officers are a constant threat to good administration and proper management of prisons in the region. Although this is not a problem confined only to the prison service in these countries it is more dangerous than in other branches of the public service when prison administrators have to rely on officers whom they cannot trust.

In addition to all these problems regarding staff corruption administrators have to contend with low morale among prison officers. This is due to the general feeling among prison officers particularly of the lower ranks that while much attention has been given in recent years to improve facilities for the prisoner little or nothing has been done to improve the lot of the officer. They have many grievances against the administration in many of these countries. In addition to the poor pay and working conditions already mentioned above they do not receive some of the fringe benefits given to other uniformed services such as the police or the army in these countries. Their housing facilities are woefully inadequate. Many countries do not have any organisation for staff welfare. Risk insurance or compensation schemes are not available. Further in many of these countries prison officers are not allowed...
to form trade unions and they have no means of ventilating their grievances. All these factors put together tend to create a situation where the most important people in the business of rehabilitating criminal offenders, namely the rank and file of the prison service have more problems than the prisoners themselves and are at cross purposes with the administration.

Problems Regarding Prisoners

The presence of political prisoners who are often held for long periods without trial, is another problem for correctional administrators. This is a problem that has arisen in many countries after the attainment of independence. Very often these prisoners are politicians from the opposition who command some influence in the community. They are not interested in following the prison rehabilitational programmes and only try to behave in such a manner as to attract public attention. They attempt to carry on their struggle with the administration. The punitive ideology is what is important to them while they are in prison enhances their political prestige. There may also be certain officials who sympathise with them and contribute to their political views and such a situation would create further problems for the administrator.

The presence of special types of offenders is another peculiarity in this region. These are members of secret societies or gangster groups or such groups as the dacoits of India. These prisoners would continue to have their own groups and follow their own rules in prison and thereby create special problems for the administration. When such groups are known to be violent, the attitude of the masses towards the administration is fast changing. The mass today are more vociferous, more demanding and less subservient than their counterparts of a generation ago. This situation is reflected in the prisons also. Today's prisoners too are more violent, more assertive and more conscious of their rights and privileges of a generation ago. In many Asian countries there has been an increase of gang violence with the use of firearms. There are more armed robberies and bank hold-ups. In many of these countries there is an increase of the number of offenders in the age group under thirty years. The handling and treatment of these younger, more educated, more violent and more demanding men is more different from that than they were in the past. Prison officers are called upon to manage these changed conditions without any of the facilities available to prison officials in western developed countries.

Lack of Coordination between Agencies in the Criminal Justice System

Many countries in the region suffer from a lack of coordination between the different branches of the criminal justice system and thereby create problems for the prison administration. The court, the judiciary, the prison and probation departments in many of these countries work in separate water tight compartments. Quite often each of them comes under different ministries. Many of the personnel in each of the branches do not have a proper understanding of the functions of the other branches. Quite often they are suspicious and openly hostile towards each other. For example the police officers do not believe in corrections. Many judges do not know what goes on inside the prisons. Very often the prison administration is at the receiving end of the connected problems because in

Non-Availability of Funds

The foremost problem in almost all these countries is that of obtaining adequate funds for crime prevention and treatment of offenders. In the allocation of funds, crime prevention and treatment of offenders rank as a very low priority item in the national budgets throughout the region. There is one very good reason for this state of affairs. Almost all the countries in the region except Japan, would come under the category described as "developing nations." In a developing country the prime national effort is on economic development. In planning for development emphasis is on attempts and strategies to improve the gross national product rather than on social problems. Planners in the region are primarily concerned about development of agriculture and industries where the results are more tangible and immediate. Even when there is concern about planning for social welfare, the emphasis would be on improving services such as health, education and employment. It is no doubt true that in many of these countries there is large scale unemployment, poverty, illiteracy, malnutrition and disease on near epidemic levels which require prior attention. These problems are far more apparent than the crime problem and their solution is far more urgent and important. In comparison planners in the region do not see crime as a serious social problem. They are therefore reluctant to make an investment in programmes for crime prevention and corrections.

Another reason for this attitude on the part of planners would be the operating new concept of weeding out criminal philosophies in each country. Although correctional workers have their own views in keeping with the latest trends in the field there is no wide acceptance of some of these new concepts of rehabilitation. The punitive ideology is what is widely accepted and there is a reluctance on the part of planners and treasury officials to provide for expenditure on new concepts in the treatment of offenders. They are content with imprisonment and the provision of the barest minimum facilities for the offender despite the increasing per capita cost of maintaining offenders in prison.

Not only the planners but even the general public in many of these countries have maintained a rather negative attitude towards corrections. Until recently there was little or no community involvement in corrections. The general attitude was one of apathy and indifference to the problems of offenders after his conviction and sentence by court.

Whatever the reasons may be planners in the region do not see the gravity of the crime problem as against the perspective of more pressing economic and social problems although during this century every country has shown a tremendous increase in crime. The costs of crime and its social consequences both in terms of hard cash as well as human suffering do not seem to be taken into account adequately in the preparation of the national budgets in the Asian region. The result of this kind of policy is that correctional administrators find it extremely difficult to obtain funds for correctional programmes and the introduction of reforms. Treasury officials are prone to omit new proposals that are likely to involve additional expenditure and allocate only minimum funds to carry on. This attitude and the failure to provide funds often acts as a damper on enthusiastic correctional administrators and precludes the introduction of innovations in corrections and criminal justice.

Quite often in many countries in the region not only is it extremely difficult to obtain funds for new programmes and recurrent financial provision is barely adequate for the services that have been going on in a situation where there is an increase in the prison population accompanied by an increase in the per capita cost of feeding and maintaining each offender in prison. It may not be incorrect to state that in many countries there has been a deterioration of the facilities available owing to non-provision of adequate funds. This in turn creates a host of problems for correctional...
SECTION 1: EXPERTS' PAPERS

Some Practical Problems in Asian Corrections

by J. P. Delgoda*

Introduction

The current correctional policies in Asian countries are a mixture of Eastern and Western philosophies of the past few centuries. Many of these countries boast of a cultural heritage that goes back several centuries and of ancient civilizations that have been excavated and preserved for us. This is in contrast to the situation in the Western world, where the cultural heritage of ancient civilizations has been lost due to many factors, including the spread of Christianity and the rise of the Roman Empire. In the Asian world, however, the cultural heritage of ancient civilizations has been preserved and passed down from generation to generation.

In the last half of the 19th century, due to foreign domination of the Asian and Far Eastern countries, we have seen many changes in the structure of these countries, including changes in their legal systems. Many of the legal systems of these countries during the last three or four decades are influenced by the Western legal systems. As a result, the region includes both the Anglo-Saxon and the continental types mixed with Islamic conceptions of social structure.

In many of these countries there was a revival of cultural and national activities. Many of these countries have adopted new constitutions and made their legal education and administration as their official language. It is in this context that the work of UNAFEI has been particularly valuable in that for the past eighteen years of its existence it has offered training facilities to a very large number of officials employed in the criminal justice systems of Asian countries. These are alumni of UNAFEI in almost every country in the region and the training given to these officers must have some impact on the criminal and correctional systems of these countries.

The introduction of change in the correctional system is slow and difficult. The transition from one system to another is not an easy process even among affluent societies. It is far more difficult in the Asian setting. In this paper it is proposed to examine some of the practical difficulties experienced by correctional administrators in the Asian region both in their day to day administrative functions as well as in their attempts to introduce changes into the existing systems.

Inadequacy of Community Involvement in Corrections

Corrective administrators are also handicapped by the woeful inadequacy of research or studies on correctional work in the region. There are hardly any publications on crime and corrections in the region. There is no research or information on the impact of the introduction of innovations into the correctional systems of countries in the region except of course of the material published by UNAFEI. Even the universities in the region have little or no research on crime and corrections. Unlike in America or Europe there is very little coordination between the universities and the departments in charge of corrections. None of the correctional administrators have any ongoing research projects in their own countries on any aspect of their work. In fact correctional administrators in the region do not seem to be oriented towards the need for research and study in their field.

There is also no uniformity in the collection of prison statistics or for that matter any crime statistics in the region. Even at a national level each government department merely collects the statistics required for the publication of its administration reports annually. Therefore in the assessment of the crime situation in any country correctional administrators have to go by mere hunches rather than on any systematic statistical basis. In such a situation the introduction of change is like a game of blind man's bluff.

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the existing hierarchy of the administration he dares not challenge an order made by a judge. It would certainly be much easier for everybody concerned if all these arms of the criminal justice system had a proper understanding of each other's functions and problems. What is required is the organisation of proper training for police, prison and judicial officers in the correctional process. At present in many of these countries judicial officers have only their legal education as lawyers and this is considered to be adequate. They do not receive any training as judges in sentencing techniques. As a result it is difficult to see any sentencing policy as such in many of these countries. There is plenty of scope for joint seminars and training programmes for judges, police officers and prison and probation personnel in order to solve the existing problems.

Lack of Research in Corrections

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Inadequacy of Community Involvement in Corrections

The last but not the least important problem for correctional administrators in the region is the inadequate community involvement and poor support from the community in their efforts to rehabilitate criminal offenders. This is evidenced by the poor services available to discharged offenders. This is largely due to the general attitude that the business of dealing with the offender after conviction should best be left in the hands of public officials alone without interference from the community. In the past correctional officers themselves have tended to create this situation when they locked the door on the community and took the prisoner in. The community did not know what was happening within the four walls of a prison and therefore its attitude towards the ex-offender was one of mistrust and fear. In many of these countries there is a great deal that can be done by the community to help the discharged offender and thereby facilitate the work of correctional administrators. Many ex-prisoners are from the poorer classes and have no resources at all when they come out of prison. Governments also do not provide funds for programmes for ex-offenders. Therefore there is a great need in the region for organised community assistance for the discharged offender. Fortunately the situation is now changing gradually in a few countries where there have been efforts made to educate the community through the mass media and increase their involvement in corrections. There is however a need for the community to be organised and led in this effort and this is a role that should be filled by correctional administrators themselves if they need the
The problems confronting the Asian correctional administrators and the difficult conditions under which they run their prisons have been examined above. They are managing without adequate staff, in antiquated buildings without any of the modern facilities under very difficult conditions. Yet there have been few escapes from custody and fewer instances of violent riots in the prisons in this region. It is indeed a tribute to their devotion and personal involvement in the daily business of managing their prisons that they have been able to maintain this state of affairs under such trying conditions. They have been able to do so also because of the humane treatment given to the offender in the Asian prisons. The relationship between staff and inmate in the Asian prisons is much better than the staff-inmate relationship in many European or American prisons. Also the prisoner in this part of the world accepts the authority of the government official more readily than his counterpart in the European and American prisons. This is perhaps due to the Asian cultural heritage of accepting the authority of those placed in authority, for better or worse.

The fact that there have been no serious incidents and that correctional administrators have managed to run their institutions without any violent outbursts however should not lead to complacency on the part of Asian governments. There are twin dangers to be seen in the continuance of the present system whereby crime prevention and corrections are starred of funds and we continue to deprive the prisoner and the subordinate officer of power and create dissatisfaction among them. On the one hand there is the danger that the Asian prisoner will not continue to be humble and submissive and tolerate all the deprivations imposed on him for very much longer. The indications are that the new prisoners are younger, more violent, more aggressive and more ready to fight for their rights and privileges. The second danger is that the rank and file of the prison staff will not tolerate any longer their neglect and unsatisfactory working conditions which have been imposed on them by the administration. They too are becoming more educated, more vociferous and demanding. It is not possible for any administrator to carry on if both the staff and inmates are antagonistic towards the administration. Therefore it is necessary that planners and treasury officials should be apprised of these dangers ahead of Asian corrections so that the necessary funds are made available before there is a violent outburst. In the long run the investment of funds now is much cheaper than rebuilding a prison after it has been destroyed by a riot and several lives have been lost.

Recent Changes in Correctional Policies and Practices in Sweden

by Knut Svernt

1. Background—1940 to 1965

Since the 1940s a great many changes in crime policy have taken place in Sweden, all of them directly or indirectly influencing the correctional system, its structure and daily work. In 1945 a new Prision Law abandoned the principle of the solitary system (in actual correctional work abandoned earlier) and introduced a system of joint activities for the inmates in the correctional institution. In 1944 special attention was given to young offenders in order to avoid the stigmatization of a court proceeding. The public prosecutor was given the opportunity not to prosecute 15 to 18-year-old delinquents and could from this year choose between court proceeding and referral to the local Child Welfare Board. In 1948 a new Criminal Procedure Law was introduced, changing the court proceedings to a less formal system than it had been easier. Especially important was the changed role of the prosecution, which following the principle from the 1944 year law on young delinquents was given greater freedom to choose between prosecution and other measures, such as summary penalty (given ordered by the public prosecutor himself) or decision not to prosecute.

The greatest change, however, came with the introduction of a new Criminal Code in 1962 (in force from 1 Jan. 1965). The work on this Code had been started in the late 1930s by two committees, one in charge of the definition of the criminal behavior itself, the other in charge of the sanctioning system—the penalties.

The latter committee presented its proposal in 1956, which internationally aroused great interest. The reason for this was that the committee suggested that all sanctions should have a rehabilitative aim. The word "punishment" did not appear in the proposed law at all, but was replaced with "social and individual reactions" showing clearly that the committee wanted to make away with any trace of punishment for general preventive reasons. After a long and sometimes bitter debate among all concerned, the Minister of Justice presented his bill for a new Criminal Code to the Parliament in 1962, reinstating the word "punishment," but at the same time suggesting as a guideline for the courts that they, when deciding between different sanctions, should "with due consideration for what is necessary in order to maintain the law-obedience of the public, give special attention to the rehabilitation of the offender" (C.C. Chapter I, Section 7). In order to balance these two contradictory principles, the Code gave the courts a great variety of reactions to choose between: Two reactions, imprisonment and fines were called "general punishments" while conditional sentence, probation, youth prison, internment and commitment for special care (by psychiatric institutions, child welfare institutions, etc.) were called "sanctions". While imprisonment and fines mainly should be used for general preventive reasons, the other measures should be used in order to forward the offender's adjustment to society or (in the case of internment) to protect the public from habitual and dangerous criminals.

With some amendments, the Criminal Code is still in force. Important to notice is, however, that not only the committee making the proposal for the new system of reactions, but even the Ministry of Justice did not predict the new law to be fully endorsed by the Parliament. In practice, this statement had an important effect. It has greatly influenced the courts, which generally try to avoid using imprisonment. Comparing sentencing practice before the introduction of the Criminal Code (1960-64) with the practice of today (1974-78) it can be shown that
the number of sentences involving imprison-
ment has not increased, in spite of an in-
creased crime rate and an increase of 50 per-
cent in the number of persons sentenced.2 Fur-
thermore, the length of the sentences has been shortened considerably.

As late as 1945, 38 percent had sentences for 6 months or
more, while those of 11,034 who were
sentenced in 1978 were only 25 percent received
such comparatively long sentences. This
changed practice, together with extensive use
of certain sanctions, has also led to a sharp de-
increase in the daily average of offenders in
open prisons, from 3,500 in 1965 to 2,900 in 1980. The daily average in
open prisons has been the same—1,500 since 1965.

2. Reforms—1965 to 1980

Although the principles and the implemen-
tation of the Criminal Code of 1962 and
the Prison Law of 1945 may be de-
scribed as very liberal, they were from the end
of the 1960s attacked from many quarters of the Swedish society. The critic
was to a large extent directed towards the
use of incarceration and the situation of the arrestee. Both those remanded in
custody awaiting trial and those sentenced—and led to the formation of a private organization (KRUM—the
association for more humane treatment of prisoners) to which many intellectuals and prisoners
became affiliated. Although looked upon
with some reluctance from the prison
administration, the general program of the
association was by no means foreign to the
thinking of the Parole Board, the Depart-
ment of Justice and its Minister. The
Association wanted less use of imprison-
ment (ideally it should be abandoned completely), more openness between daily prison
life and the surrounding society and more specific rules regulating the rights of the
prisoners. Although these principles
could be considered as extensions of the
principles laid down in the Criminal Code,
it is no doubt that the work of the Associa-
tion speeded up the process of the reform
work.

While this critique mainly was based upon
an ideological evaluation of the prison system—albeit with examples from practi-
cal life of its injustices—at the same time
empirical evidence of the detrimental effects of prison life appeared from crimi-
nological studies carried out in many
western countries.4 This increased the
knowledge and led to more systematic
studies of the effectiveness of imprison-
ment and other penal measures in general, showing that the expectations of the policy
makers seldom were met in actual life. The
acquiescence and its consequences were
summed up in a report from the National
Swedish Council for Crime Prevention
called A New Penal System.

This different ideological and empirical base
views had a great impact upon the reform work in the period with which we
are concerned. In order to decrease the
use of punishment the Parliament decrimin-
alized drunkenness in public places and
changed the definitions of burglary and
robbery in 1976 (thereby restricting the
number of cases to be punished with long-
term imprisonment and making some
changes even concerning some other quan-
titatively less important crimes. On the
other hand the tendency to use detention and parole was increased. At the same time,
the Parole Board revised the old act and
reintroduced parole in 1973, a general rule concerning credit for time
spent in remand prison prior to the sen-
tence—from that year the time counted
runs from the moment of arrest.

Lastly, a proposal for the abolishment of
interim is pending before the Parlia-
ment. In 1979 the Parliament further accepted
some principally important changes in the
sanctioning system. Most prominent was
the new law concerning the abolition of
youth prison.6 This type of sanction was introduced in 1937 and kept in the Criminal Code
without any changes. Youth prison was meant to be a rehabilitative instrument for young of-
fenders between 18 and 21 years of age, it included both institutional and non-institu-
tional care, it was indeterminate in length,
but could not be extended over 5 years of which
no more than 3 years in institution.

In order be ready for the changes
which would come with the new Criminal
Code in 1965, the prison administration
presented in 1962 a plan for a reform of the
prison system, including the erection of
a series of new prisons. The country should
be divided into sections, each of which
should have all types of prisons sufficient
to cover the expected intake in each
section. This huge program would have
costed billions of dollars and would have
different degrees of security, a youth prison, an
interment prison, an institution for insti-
tutional care of probationers and a series of
small open prisons in each section of the
country. The construction of some of
these prisons was immediately started, but
the building plan was supposed to take at least ten years to carry out. This
delay was fortunate. As earlier described,
the costs were reduced partly due to the
post-war economic upturn and since the daily population of pris-
oners declined, there were no need for all
the expected places. The New Minister of Justice, who was himself negative to the
use of incarceration, abandoned the earlier plans and set down a committee with com-
pletely new directives. The result of its
work was presented to the Parliament in
1973. A new Prison Law (PL) was en-
acted in 1974.

This reform, which is now being carried out,
is built upon the idea that the prison-
ners should serve their term in institutions
close to their homes, in order to keep fre-
quent contacts with their relatives and to have access to the social services of
their local communities while they are in prison.

3-2 Organization

The National Prison and Probation Ad-
mnistration is the central administrative head of the correctional system including prison,
parole and probation. It consists of a board with the director general as the
chairman and 9 other members approved by the government. In addition
representatives from the prison officers, representatives from the probation officers and
members of labor unions are always present. In 1978 the 9 members of the board were:
the vice-director of the administration, a representative from the National Welfare Board, a representative from the Central Labor Unions, 3
members of the Parliament (all women), one
director from a private industry, and a
representative from the National Labor Administration.

The daily work is carried out by an administrative staff of 390 members. The organization is mainly an administrative authority, but has in certain matters even the duty to make decisions directly connected with the single inmate (e.g. to order certain punishments for misbehavior). Most decisions of the latter type are the duty of the different boards, namely the Central Correctional Board, the Internment Board and the local supervision boards. The director general is a member of the Central Correctional Board, but the actual geographic area is governed by a supreme court judge.

This board decides in matters concerning parole, etc., for persons sentenced to more than one year imprisonment. It is also an instance of appeal for decisions made by the local supervision boards. The Internment Board has similar duties concerning persons sentenced to internment.

The local supervision boards, of which there are 50, are responsible for parole and probation within their respective regions. Each board has five members and the chairman must be a lawyer, usually a judge, whereas the other four are laymen. The duty of the board is to decide in matters concerning parole for prisoners and arrangements for probation including special provisions and restrictions for such decisions. If conditions set up for the parolees and probationers are broken, the board may order the police to apprehend the offender and he may be placed in prison for up to a week while the board decides in the matter.

In 1978, 557 such incarcerations took place.

The board may even decide that the parole should be revoked and send him back to prison for the rest of his term (or part of it), or institute proceedings against him in a criminal court. Neither is very common. In 1978 these measures were taken only in 32 and 16 cases respectively.

The work of the supervision board is considered very stimulating by most members. Especially many judges have found that the work gives them insight into the difficulties many ex-prisoners and probationers have, which the judges find most useful when they sit on the bench doing their daily work in the criminal courts.

3-3 The prison system and allocation of inmates

Since 1974 there are no more any special institution for internment, imprisonment or other types of sentences. The allocation of the inmates is arranged according to the following principles. The institutions are divided into national and local prisons of which there are both closed and open institutions. In 1978 there were 15 national closed institutions with a capacity of 1,312 places—the largest being Kummel with 213 places (administratively divided into 2 institutions with 70 and 143 places). Furthermore, there were 10 national open institutions with 603 places. In addition, the women's prison (the only one in the country) had 48 closed and 34 open places. In the same year the number of local institutions was 51, of which 21 were closed (with a total capacity of 729 places), and 30 open (with 1,210 places). As can be understood, each of these institutions is very small, most of them accepting 20-60 inmates.

In the Act on Correctional Treatment in Institutions (The Prison Law) is described how the allocation shall be to the different types of institutions. If an inmate has a sentence of one year or more, he shall be placed in a national institution, but may be transferred to a local institution if his need is necessary in order to prepare him for release. Prisoners with a sentence of less than 12 months shall, in principle, be placed in a local institution.

Concerning the use of open or closed institutions, the main rule is that a prisoner should be placed in an open institution unless there is risk that he will abscond or that he represents a "security risk." But a prisoner who is in need of services which can only be given in a closed institution, may be placed there if such an institution can better manage his needs. For those who are serving more than two years the general principle is opposite: They should not be placed in a closed institution unless there is reason to believe that they will not abscond and continue their criminal activity. However, even these inmates may be transferred to open institutions in order to arrange for their release or for other reasons.

As can be understood, these prescriptions aim at greatest possible flexibility within the system. It should also be noticed, that the inmate himself shall be given opportunity to express his own views concerning his placement—as in all other matters which particularly affect him (P.L. Section 5).

In 1978 there was no overcrowding in the institutions. The average daily population was 85 percent of the capacity in the closed national institutions and 82 percent in the open institutions. The equivalent figure for the local institutions were 77 percent.

3-4 Treatment in institutions

When entering the institution the prisoner shall together with the institutions' treatment board make up a treatment plan for his housing during his stay. This plan shall take into consideration his special skills, his need for education and vocational training, his physical and mental health and his need for medical and dental treatment.

It is the duty of an inmate to do the work prescribed for him or to study, if he so wishes. For his work as well as his study, he receives a remuneration, which approximately is about 15.1 per hour. Some prisoners working on special types of jobs may, however, earn much more and on the other side, those who are unable to work for medical reasons are given a certain remuneration in order to meet their daily need for tobacco, newspapers, etc.

Since 1972 an "experiment" has been undertaken to introduce competitive wages for the inmates in an open institution (Tillberga). This institution, which has a capacity of 118 places, has a modern factory for producing prefabricated houses. The wages paid is "competitive" of those which are paid for similar work in the open society—in 1978 approximately $3.25 per hour after taxes. The aim of the experiment is to straighten out some of the economic difficulties the inmates are known to have, and especially to secure that they have a fair amount of money to start with when they leave the prison. Together with the inmate, the advisor of the institution makes a budget for his income and expenses (including unpaid debts etc.) and 75 percent of his income is used for taking care of these problems. Whatever is left is kept for his release. In 1972 a similar experiment was started at a closed institution, Skogram, which has a capacity of 88 places and a large laundry doing washing for the hospitals in the area.

The effects of these experiments have been evaluated by the research division of the Prison and Probation Administration. The reports showed that the inmates were positive to the treatment they had received and that their economic situation had been improved. However, due to the difficulties on the labor market, they had 12 months after leaving the institution great economic conditions than before entering the institution. Obviously, work training and competitive wages are no solution to the problems of readjustment, these problems are of a different kind, depending upon conditions in the society itself with which the parolee cannot cope. Education on the second level (but sometimes even at university level) is arranged in many institutions in many institutions by the ordinary schools for adults in the local community—or in some institutions by their own teachers employed by the prison (at the moment there are 16 such employees).

Most closed institutions have facilities for sport (indoor and outdoor) and there is a library service attached to all institutions. Unless there are special security problems involved, the inmates are free to purchase any types of books, magazines and newspapers they want (there are no restrictions on pornography or any type of political literature). The institutions are ordered to keep necessary number of copies of the most common newspapers available for the inmates. For the benefit of foreigners...
staying in prison, the library service has 70 foreign papers and journals in different languages. Furthermore, a copy of the Criminal Code and about 25 other laws and ordinances shall be kept available for those inmates who want to study them.

According to Section 17 of the Prison Law, inmates shall work and spend their leisure time together unless special circumstances make it necessary to stipulate otherwise. An inmate who wants to spend his leisure time alone, shall use the permission given by a prison officer although this usually is considered necessary. As stated in Section 20, such prisoners may be kept separate from other inmates. This was earlier done by means of solitary confinement, but due to the negative psychological effects of such treatment special arrangements are now made for such prisoners. In three closed institutions a special part of a wing and rate rooms for about 5 prisoners. The security of staff and other inmates. This was earlier done

A special feature of the Swedish prison system is the extensive use of furloughs. These are of different kinds, but they all serve the aim of making the distance between life in prison and life in the society less striking. The most important types are the following:

a) Short-term furlough (P.L. Section 32 as amended in 1978) may be given to prisoners except when there is a substantial danger of continued criminal activity or a considerably more serious type of abuse or for a particular group of long-termers (Section 7, 2). The furlough from some hours to some days, depends on the circumstances and the distance from the prison to the place he wants to visit. If necessary, it may be followed by a prison officer although this usually only is the case when the prisoner is an earlier escapee. In 1978 there were granted in 40,385 cases, of which 9 percent were abused mostly by the inmates not returning to the prison within the stipulated time.

b) Release-furlough (P.L. Section 35). As a preparation for release or parole a prisoner may be given the opportunity to live outside the prison although be technically is a prisoner under the prison's supervision. This type of furlough can be given from the date he is eligible for parole (which usually means after having served 2/3 of the sentence) and is often used as a transmission between prison and parole. In 1978 release-furloughs were granted in 1,589 cases.

c) Sojourn (P.L. Section 34) for seeking special assistance, e.g. in treatment clinics, etc. may be granted and are often successful. In 1978 the number was 627.

d) Medical treatment (P.L. Section 37-39). If better care can be given in a hospital than in the prison, the prisoner shall be transferred to a hospital.

f) Paroling in leisure time activities outside the prison (P.L. Section 14). The prisoner may be allowed—alone or in groups—to leave the institution in order to take part in club activities, studies, sports or to go to the theater, cinemas or similar entertainments. If necessary, it can be ordered that they are under surveillance.

d) Daytime work leave (P.L. Section 11). In local institutions the prisoners are encouraged to find work or studies outside the institutions and may be granted permission to spend their daytime in such activities. In 1979, 15 percent of the clients had this type of arrangements and efforts are made to increase this figure to 25 percent. Even some national institutions may be granted such permissions under certain conditions.

According to Section 39 of the Prison Law (as amended in 1978) may be given to prisoners who want to stop using drugs may apply for placement in this jail, signing a contract that they will undergo a certain treatment and leave until they are declared drug-free.

In 1979 heroin was, for the first time, as a third of the daily population is addicted to stimulant drugs or opiates. In 1979 two prisons outside of Stockholm was set aside for such prisoners; starting in fact with one case. In three institutions and may be granted. In 1978 the number was 627.

In the case of a violent inmate who may be considered necessary. As stated in Section 20, such prisoners may be kept separate from other inmates. This was earlier done by means of solitary confinement, but due to the negative psychological effects of such treatment special arrangements are now made for such prisoners. In three closed institutions a special part of a wing and rate rooms for about 5 prisoners. The security

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<tr>
<th>CHANGES IN CORRECTIONAL POLICIES AND PRACTICES IN SWEDEN</th>
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<td>---------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Escape or attempt to escape: 818</td>
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<tr>
<td>Abuse of furlough: 401</td>
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<tr>
<td>Refusal to work: 406</td>
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<tr>
<td>Intoxication: 206</td>
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<tr>
<td>Violence or threat against another inmate: 73</td>
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<tr>
<td>Violence or threat against a prison officer: 31</td>
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<tr>
<td>Possession of contraband: 105</td>
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<tr>
<td>Other reasons: 173</td>
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<td>Total: 1,876</td>
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Contrary to what is the case in most prison systems, solitary confinement does not occur as punishment. A study in 1979 shows that solitary confinement was used mostly in cases of drunkenness (returning from furloughs) or in order to safeguard the security of staff and other inmates. The length in such cases were usually less than two days (until the necessary investigation had been carried out, and eventual arrangements for transportation to another prison made). Sections 20 to 23 regulate those cases in which maximum security is considered necessary. As stated in Section 20, such prisoners may be kept separate from other inmates. This was earlier done by means of solitary confinement, but due to the negative psychological effects of such treatment special arrangements are now made for such prisoners. In three closed institutions a special part of a wing has been rebuilt and furnished with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilt and furnished with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilt and furnished with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilt and furnished with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilt and furnished with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 prisoners. The rooms consist of a separate wing has been rebuilding with separate rooms for about 3 princes
measures are very strict. In this manner the handful of dangerous offenders are kept under strict control, but under such circumstances that the negative effect of the loneliness of solitary confinement is avoided.

4. The Probation and Parole System

Since parole is an integrated part of the treatment of the prisoners, it is necessary to give some information about its organization and work. The main idea of the reform in 1974 was to integrate treatment in institutions with treatment outside of institutions. This is the main reason for the use of furloughs and it also is the basis for the parole system.

The organizational structure is so made that the parole system is a part of the same organization as the prison system. The country is divided into 13 regions, each headed by a director who is both responsible for the work of the local prisons within his region and for the probation and parole services. Parole and probation are combined and each region has a number of districts headed in its turn by a chief probation officer. The actual work are carried out partly by probation officers themselves or by supervisors appointed by the courts or the supervision boards under the guidance of a probation officer.

A prisoner shall have an appointed contact at the time when he is eligible for parole. The supervisor will visit him in prison, make contact with his family, arrange for living-quarters, work, etc. However, such efforts are often met with great difficulties, and studies have shown that the ex-prisoners often express the view that the supervisors and probation officers have been of little help to them.

Last year a report was presented concerning a long-term experiment of the work of a parole and probation district, the Sundsvall experiment.13 The idea was to study the effects upon the clients of an increase in resources in the district of Sundsvall (in the north of Sweden). The experiment was started in 1972 and was finished for evaluation in 1978. It included the following extra resources for the aftercare of ex-proniners (in comparison with other districts): A tabling of the full time staff, a half-way house with 20 places, a hostel with 20 places, a socio-medical clinic and the availability of a full time public servant attached to the labor exchange with the sole task to secure jobs for the clients. The result of the evaluation is negative. Measured in terms of recidivism, use of alcohol and work adjustment, the Sundsvall clientele did not significantly improve in comparison to the paroled prisoners in other districts. The reason for this was that the resources were not channelled into such activities which directly had any impact upon the clients, e.g. the level of contacts between the supervisor and his client was the same as before the experiment started (approximately 14 hours per year). This is quite obviously not a type of contact which in any way can influence the client's behavior.

5. Evaluation of the Reform of 1974

Recently the National Prison and Probation Administration published a report concerning the application of the Prison Law of 1974.14 A representative sample of 15 percent of those 2,586 prisoners who were paroled in 1977 were studied. The report gives a picture which appears from the study to be quite disorderly and difficult to grasp. It shows that as many as 23 percent of those sentenced to less than 1 year imprisonment—those who in accordance with the intentions of the law should have been placed in a local institution close to their homes—were in fact placed in national institutions. Furthermore, no less than 22 percent of those placed in local institutions asked to be transferred to another institution. This, in combination with other facts concerning placements and dissatisfaction expressed in the wish to be transferred, indicates that there are good reasons to be concerned. Another disturbing fact was that misbehavior, considered to be so serious that transports to other prisons were made, was very common. No less than 76 percent of the ex-prisoners had been transferred to another prison at least once during their term. The report points out that according to the instructions given in 1974, transport was such a serious measure that it should be used restrictively. This is, as the figure shows, not the case. Lastly, the report points out that one of the main ideas of the reform was that those prisoners who were placed in national (closed) institutions should be transferred to local institutions for adjustment in good time before their release. But no less than 34 percent had in fact not been given this opportunity, something which necessarily must have led to difficulties for their adjustment in the local community, since their possibilities to visit employers, family, etc. and to be in contact with their parole officer were hindered.

The reform of 1974 was not built upon any deeper analysis of the clientele in the Swedish prisons and the difficulties of prison life, and probably it did underesti­mate both the number of psychologically unstable prisoners and the problems of adjust­ments in prisons with few rules and little restraint. However, the basic idea of the reform seems to be good, although good intentions are not a guarantee for good results.

If the plans for future crime policy will be passed, this will make another prison reform necessary, because the prisoners will then probably appear to be those who today are in closed institutions.

6. Reform Plans

Those decisions concerning policy ques­tions, which really have any impact upon occupational work, are seldom made within the correctional system itself but by other governmental bodies, especially the Ministry of Justice and the Parliament. In order to be meaningful a discussion of reforms must therefore include crime policy in general. As presented earlier in this paper, the Swedish Parliament accepted in 1979 the proposals from the government that youth prisons and the sanctions called "probation with institutional treatment" should be abolished. The reason for this was mainly that both sanctions convinced relatively indeterminate length of incarceration, which is a type of sanction built upon a rehabilitation model. The Parliament's accep­tance signifies a change in attitude which has been under way since the last 15 years, and is a result of the critical views described earlier in this paper. This criticism concerning the criminal justice system summed up in a report from a working party within the Swedish National Council for Crime Prevention in 1977, called "A New Penal System."15 This report played an important role as guidelines for the discussion of new reforms. However, it is by no means the only document pointing out new directions. When the 1974-year Committee Concerning Young Offenders submitted its proposal in 1978, it contained similar ideas as those of the working party of the Council for Crime Prevention.16 And a pre­vision from the Ministry of Justice concerning the future of imprisonment ac­cepted a similar position.17 Discussing these matters in a general way, the Parlia­ment gave its general approval in 1979.

Even other proposals have been in the focus for the discussions. A committee concerning the treatment of mentally dis­turbed criminals suggested restrictions in the use of incarcerations in mental hos­pital, and a committee instructed to review the whole social welfare system proposed in 1977 that the incarcerated alcoholics and drug addicts should be restricted, which would eventual­ly lead to abolishment of the provisions in the Criminal Code (Chapter 31, Section 2) that criminal courts can refer cases to the Alcohol Temperance Boards for treatment in clinics for alcoholics whenever this is a more suitable measure than a prison sentence.18 The common basic philosophy of all these proposals is to make away with reha­bilitation by force, by means of state author­ity. Historically, Sweden like most European states has in the last hundred years built up systems of social welfare which do not only contain "rights" for the citizens, but also has lost many ideas from the time when "the supremacy of the state" was the main ideological concept regulating the relationship between the state and its citizens. In many laws from
The first half of the century, it can be found that the state believes that it can rehabilitate offenders, mentally disturbed, alcoholics, vagrants and other deviant groups by means of force and without consideration for the individuals’ own wishes. Ideologically, the proposed changes in the laws described above is a change away from this policy towards a greater emphasis upon the individual and his own responsibility.

The report “A New Penal System” from the working group of the Swedish National Council Crime Prevention has tried to sum up the critic in the following manner: The existing system has been based on the idea that the measures taken against the deviants are beneficial for them, which the result of systematic research has shown usually to be untrue. Furthermore, the rehabilitative principle leads to results which are contrary to the idea of equality before the law. A person of high social standing will never be incarcerated in a dreary institution for alcoholics, that is to be reserved for those on the bottom of the society. Within the criminal justice system, the treatment ideology may lead to long term treatment of an offender, while another, committing the same crime, and with the same social background, may get away with a short term treatment—all depending upon whether the offender against a question may be in “need of treatment” or not.

However, this does not mean that assistance, help, service and treatment shall have no place in the future system. The report says, “The critic is characterized by the seventh, the type and severity of the measures taken against an offender is not to be decided upon the needs for treatment a certain offender is supposed to have. These proclaimed needs shall not be considered an independent and autonomous reason for the kind of measures to be used. However, the critic does not imply any denial against giving individual offenders service and treatment. Although it is not justified to use an offender’s supposed need for treatment as the reason why we choose a certain type of measure, it is on the other hand allowed or even necessary to offer him the service and treatment which may be needed. Certain rehabilitative effects may perhaps be had by this; especially if the treatment work is done in consultation with the client. It may even happen that new research results may lead to a reversal of the standpoint we are today forced to take. However, this argument is not necessary in order to indicate that the offering of services to the clients. Both humanitarian and equity reasons request that such services shall be given to all citizens who need them, regardless whether they have committed crimes or not.”

The report points out that treatment philosophy leads to injustice, to cancellation of the conflicts between the lawbreaker and the society, to a false understanding of the causes of crime and to ineffective treatment results. It expresses the view that the level of criminality probably is less influenced by the criminal justice system and its measures what it is believed to be the case. However, it is necessary to draw up a code of conduct for the citizens, and to use incarceration in order to strengthen the moral messages in the rules. These measures should, then, be graded according to the moral stress given to the particular rule and the interest it protects. In principle, there should be equal punishments meted out for the same type of forbidden behavior. Having said this, the report adds that as far as this principle leads to unfairness, a control function and a service function shall make an inventory of alternatives to imprisonment and other measures involving incarceration with the aim to strengthen the moral message in the rules. The last part, however, should be the duty of the social welfare agencies, and the control function should be placed in the foreground. The Committee is instructed to present proposals for such changes in the probation system which can follow from this changed philosophy.

Furthermore, it shall make an inventory of alternatives to imprisonment and other measures involving incarceration with the aim to suggest such changes which can lead to less use of imprisonment and to less use of other measures involving incarceration.

Lastly, I would like to point out that the discussion concerning these basic problems of penal philosophy by no means is restricted to Sweden. All the Scandinavian countries have this debate and there are generally agreement in most quarters of the basic critique of the existing philosophy. However, in criminological circles—among those who through research and arguments have won the first stage of the battle—they are differences of opinions whether the policy-makers are going in the right direction. The debate is not finished, and it never will be.
2. In 1960-64 the number of crimes against the Criminal Code reported to the police were approximately 300,000 per year, and in 1974-78 approximately 660,000. The number of persons sentenced for "serious" crimes (to be registered in the criminal register) increased from 20,000 per year to 30,000 in the same period.


5. The proposal was prepared by a committee which presented its suggestions in a report in 1978 (tillsynsdom, SOU 1977: 83).

6. The Cabinet's proposal in these matters were presented to the Parliament in the spring 1979 (Regeringens proposition 1978/79: 212 om ändring i brottsbalken, m.m.; beslutad den 5 April 1979).

7. Ibid., p. 48.


9. The information concerning the organization is from the publication mentioned in note 3.

10. KVS/U report 14/1975 and 29/1978. (Reports from the Research Unit of the National Prison and Probation Administration.)


12. Ibid., note 3, p. 41.


16. Ibid., note 5.

17. Ibid., note 8.


20. Ibid., p. 181 (Swedish version).

21. Ibid., p. 185.

22. Ibid., p. 405.

23. The committee consisted of the secretary to the minister of justice (chairman) the director of public prosecution, the director-general of the prison and probation administration, three judges, a legal adviser to the labor unions, a criminal law professor and a professor of criminology.

24. Föreläsning och kriminalvård i anstalt. Direktiv 1979: 34; Kriminalvård i frihet m.m.; Direktiv 1979: 35. The decision was taken in a cabinet-meeting March 15, 1979.


26. Ibid., p. 6.

27. Ibid., p. 8.


29. Ibid., pp. 13-15. As can be understood, this will be the most difficult task for the committee, since it involves the political-ideological questions of what kind of behavior which ought to be punished in a modern, industrialized society, and furthermore to decide the priorities within these types of behavior.


33. Ibid., p. 13-18.

34. The official documents are the following. From Finland: Straffomställningskommittens betänkande (1976: 72), Helsinki 1976. From Denmark: Alternativer till frihedsstraf – et debatrapport (Betænk­nings nr. 806/1977), Copenhagen 1977. From Norway: Stortingsmelding nr 104 (1977-78) Om kriminalpolitikk, Oslo 1978. (Contrary to what has happened in the other Scandinavian countries, the Norwegian proposal was met by a negative attitude from the members of the parliament when it was discussed there in April 1980.)

35. Straff- och rättsförmågor—ny nordisk debatt (ed. Sten Hecksher, Annika Snare, Ebba Talaia and Jere Varte­gaard), Stockholm 1980. Since the official standpoint upgrades the idea of general prevention in place of rehabilitation, some intellectuals point out that the abolition of the rehabilitation idea doesn't logically lead to an acceptance of the general preventive idea. Other possibilities (e.g. A more complete abolishment of punishments in general) must also be discussed as alternatives.
SECTION 2: PARTICIPANTS’ PAPERS

Institutional Treatment of Adult Offenders in India

by Barindra Nath Chatterji*

Prison as the oldest and universal form of penal institution was primarily used for detention of socially maladjusted persons. Later it was meant for the punishment of the lawbreakers and in modern times, it provides a secure place for confinement and correction of such law-violaters whose dissociation from the society has been considered to be inevitable. This institution has undergone momentous changes from time to time in keeping with the growth of human civilization, social values and knowledge of criminal behaviour.

Objectives

The modern prison administration in India like other progressive countries aims at ensuring the return of an offender to society as a well-adjusted and self-supporting individual. Reformulation and rehabilitation of offenders have been accepted as the ultimate objective of imprisonment. It is now widely appreciated that protection of society can not be achieved merely by depleting and reforming inmates. Prisoners once released would have to face the same challenges which he would have faced during his incarceration. The modern prison system aims at assimilating himself with the society instead of being an alien to the society. The correctional programme and treatment so that he may not have any chance of re-offending or being visited by the law enforcement agencies. The execution of the offender for the purpose of smooth resettlement in society, proper classification on the basis of individual correctional requirement and induction of appropriate training and treatment programmes have been felt to be necessary. With the acceptance of these principles, prison administration in India is faced with tremendous responsibilities and problems.

Historical Perspective

The prison administration in India is governed by the old central legislation like the Prison Act, 1894, the Prisoners Act, 1900, the Indian Lunacy Act, 1912 and the Transfer of Prisoners Act, 1950. The maintenance and development of prisons is a state subject under the Constitution of India and the state governments have their own Prison Manuals. The Indian Jails Committee 1919-20 was a landmark in the field of correctional services in India, as for the first time it declared that the ultimate object of imprisonment is the reformation and rehabilitation of offenders. One of the main recommendations of this Committee was that juvenile offenders should be separated from the adult offenders. Several important recommendations of this Committee could not be implemented even after independence.

Some major and significant events took place in the field of prison development after independence. In 1922 Dr. W.G. Reckless visited India under the United Nations Technical Assistance Programme and submitted a review of the prison administration in India suggesting to the Government of India, a number of modifications in the techniques of handling the offenders. In 1957, the Government of India appointed the All India Jail Manual Committee to prepare the Model Prison Manual and to examine prison legislations and correctional programmes. Meanwhile, the Standard Minimum Rules for the Treatment of Prisoners were passed by the U.N. in 1955. This Committee got the benefit of the guidelines provided therein in preparing a draft model prison manual. The All India Jail Manual Committee submitted its report in 1959 making a number of far-reaching recommendations and a blue print for the reorganization and development of prisons in this country. As a result, the Model Prison Manual came out in 1960 to provide broad guidelines for the state governments to revive their respective Jail Manuals. In 1961, the Central Bureau of Correctional Services came into existence under the Ministry of Home Affairs to serve as the Central Technical Advisory Body with the broad objective of evolving modern policies and programmes in social defence field. Later on, the objective of this organization was further broadened to cover the entire gamut of social defence and was reconstituted and renamed as the National Institute of Social Defence in 1971. The National Institute of Social Defence was reconstituted and renamed as the National Institute of Social Welfare on 1 January 1975 with the following functions:

1. Undertakes research on social defence.
2. Compiles, processes, and analyses statistics on social defence.
3. Develops, promotes, sponsors and implements training programmes.
4. Drafts model legislation and rules in the field of social defence.
5. Advises the Central and State Governments/Union Territory Administrations on social defence problems and provides technical services facilities for preparation of schemes, formulation of projects, drafting of legislation etc.
6. Provides a forum for the exchange of information on social defence among States/Union Territories and voluntary organizations and thus serves as a clearing house for information in the field of social defence.
7. Creates public awareness on social defence problems especially with regard to preventive and rehabilitative role of the community.
8. Assists the Government of India for the exchange of information on social defence with other countries and with the United Nations or other specialized agencies.
9. Establishes liaison with universities’ research institutes and voluntary organizations for appropriate attention to social defence.
10. Organizes conferences/seminars/workshops on social defence.
11. Brings out publications in the field of social defence, both popular and scientific.

In 1972, the Ministry of Home Affairs, Government of India appointed a Working Group on Prisons to examine measures for streamlining and improving the jail administration and living conditions of prison inmates. The Working Group in its report submitted in 1973 made a number of valuable recommendations regarding overcrowding in prisons, prison buildings, vocational training for prisoners, staff structure, training of prison personnel to mention a few and made an appeal to treat prison development as a part of national development plan and to extend financial assistance to state governments to improve facilities in jails. The most remarkable event in the field of prison development took place on 9 April, 1979 when the Conference of Chief Secretaries of all the States of Indian Territories was convened to have a detailed discussion on various problems relating to prison development and to find out concrete remedial measures. Overcrowding and living conditions in jails, revision of prison manuals, improving jail administration and state and national boards of visitors were the main items for discussion. This conference recommended a number of solutions for each item and the Ministry of Home Affairs is at present engaged in taking necessary steps for implementing those recommendations.

Prison Population

Continuous increase in prison population has posed a serious challenge before...
the correctional administrators and jail authorities. During the period 1972-76, jail population has increased by over nine million, which is a rise of 55 percent. All of the major states have shown an increasing trend. The annexure depicts the exact position. According to the latest figure, there are 71 central jails, 225 district jails, 693 sub-jails and 24 open jails, and 14 juvenile jails in the country. The total capacity in all the institutions is 179,567 prisoners as against which there were 211,963 prisoners in Indian jails on 1 January, 1978.

Classification

Classification of prisoners based on a scientific understanding of their personality traits and behaviour patterns is an essential feature of a progressive correctional system. Classification is a continuous process, which does not end with the initial study and diagnosis of the offender or planning of the correctional programme. Classification system is still functioning at a rudimentary stage in India due to various reasons. Classification in Indian jails is generally based on age, sex, tenure of sentence and number of offenses committed. Long termers are incarcerated in central jails, short termers are generally lodged in district jails. Inmates showing signs of increased violence and difficulty in handling are transferred to central jails. Differences in behaviour patterns and correctional requirements of different homogeneous groups, yet in India diversification of institutional resources is imperative for meeting the specific requirements of different homogeneous groups.

Education

Education of prisoners is an important ingredient of the institutional treatment in prisons. It provides an important avenue for reformation of their character and behaviour and preparing them for better adjustment in society after release. The Indian Jails Committee 1919-20 recommended for educational facilities for the inmates especially for those who are below 25 years of age. The All India Jail Manual Committee 1957-59 also looked into the educational programmes run by the jails in the country and urged for a diversified programme of education for inmates. Similar views have also been expressed by the Working Group on Prisons. Giving due consideration to these recommendations, jails in the country pay special attention for providing general education to the inmates. Almost all district jails and the central jails offer this facility. Certain institutions also provide facilities for attending schools and colleges outside. Likewise, many institutions conduct formal examinations leading to award of certificates. Inmates are also permitted to sit for examinations outside. Juvenile jails at Bareilly, Udaipur, Pratikot and Jamnagar run regular classes up to a high school level. Inmates are given special remission if they are able to put up worthy performance such as being successful in a formal examination.

Work Programmes and Vocational Training

All inmates in prison for rigorous imprisonment are required to work subject to their physical and mental fitness as determined by the medical authority. Work in Indian prisons are not considered as an additional punishment but a means of forming better work habit and of preventing idleness and thereby furthering the rehabilitation of the prisoners after release. Under proper supervision, inmates work in these lands and grow vegetables, cereals and food grains for themselves. Bottlenecks in achieving desired results in work and vocational training programmes may be grouped under two broad categories viz. (i) structural problems such as inadequacies in institutional resources, (ii) functional problems like insufficiency of man power, insufficiency of man power, insufficiency of man power, insufficient staff and prevalent public apathy towards work in these lands.

Institutional Treatment of Adult Offenders: India
generally of three types, a) ordinary remis­

sion, b) special remission and c) state

government remission. Ordinary remission

is granted to well-behaved prisoners on a

monthly basis, special remission is ac­

corded for a special achievement of the

prisoners and state government remission

generally granted to eligible prisoners in

block on occasions of national importance.

Rules regarding eligibility, sanctioning

authority and scale vary from state to

state. But total remission of a prisoner

does not exceed the half of his total

sentence.

Parole, being synonymous with for­

liveness, ticket of leave, home leave, emer­

gency leave, is generally used in India for

the award of temporary release for a short

duration for providing an opportunity for

some selected prisoners to be with their

relatives. Prisoners who have already served

5 years or more and have completed one

third or one half of their sentences satis­

factorily, become eligible for parole. A

board consisting of district magistrate, ses­sions judge, Jail superintendent and two

nonofficial members is constituted in each

central and district jail for the purpose.

This board holds meeting twice a year

when all the eligible cases are considered.

A number of remission earned, conduct,

offence, family relationship, local charac­

ter, are some of the considerations for parole.

The board looks into each case and send

recommendations to the State Government

where the cases are further scrutinised and

aftercare is liable to be misused. Aftercare

where the cases are further scrutinised and

are sent to the concerned prisoner and provide him with minimum

facilities to which he has a right as a human

being. Once a convict is admitted to jail, his well-being becomes the responsibility of

the state and hence of the institution. Jail

manuals are very specific in prescribing

scale of diets for different categories of

prisoner which ranges from 1,500 to

3,000 calories. Minimum facilities like

bedding, necessary clothes, oil and barber­

ing, and soap are provided to prisoners.

Every jail has a whole-time or part-time

medical officer and all the central and
district jails have hospitals. Medical officers

are assisted by the qualified compounders.

Alling prisoners are attended to by the

medical unit and get the facility of being

hospitalised if necessary.

Besides these facilities, the prisoner is

allowed to observe his own religious

practices in the jail. Relatives and friends

of the prisoner may also occasionally pay

visit to the institution and correspond with

him at regular intervals. In fact, the pris­

oner has the opportunity to keep in touch

with the family and the community. This

aspect helps him in smooth rehabilitation

back into society after release.

with prison programmes so as to effect

a smooth transition from institutional
custody to free life.

PARTICIPANTS' PAPERS

Prison Buildings

Prison buildings in some states are
generally in a dilapidated condition. Two
thirds of prison buildings in this country
are 75 to 100 years old and they are ill
furnished and without proper ventilation.

The traditional architecture of prison
buildings cater mainly to custodial and
security requirements. It is difficult to
conceive in such institutions the requisite
standard of proper living, sanitary con­
ditions, proper classification, education,
training and other aspects of progressive

participation. All types of prisoners are

generally lodged within same institution
leaving little scope for a specialised han­

dling for custody and correction. There­

fore, prison buildings need to be recon­

structed in keeping with the changing
security and correctional requirement for
different categories of prisoners.

Security Measures

Most of the central and district jails are
provided with adequate security measures
in terms of having secure walls, well
protected gates, grilles, cells, lighting
system inside and around the institution,
a central part for the control of movement
of prisoners and a thorough system of
counting prisoners twice in a day. A sys­
tem of custody and control and inspection
of locks and keys, handcuffs and other
security measures are also prevalent.

Prison Offences and Punishment

Sections 45 and 46 of the Prisons Act,
1894 provide for 16 types of acts as prison
offences, committed by a prisoner. The
superintendent takes decision after proper
examination of case to determine punish­
ment to be given to the concerned prisoner.
Prison offences range from warning to
criminal prosecution. Previously untried
prisoners were also subjected to whipping,
which has now been abolished.

INSTITUTIONAL TREATMENT OF ADULT OFFENDERS: INDIA

Prison Panchayat

With a view to encouraging inmate
participation in jail administration, to
imulate self-discipline among them and to
enable them to sort out their problems in a
democratic way, panchayat system has been
introduced in many jails. The prison
panchayat is constituted by the elected
prison inmates who are elected by their
fellow prisoners. The panchayat supervises
cooking and distribution of food and looks
after sanitation and other recreational
facilities. Periodical meetings with the
superintendent are held in which problems
concerning jail administration and inmate
welfare are discussed and resolved to the
best possible advantage of the inmates and
administration.

Living Condition

The jail manuals of various states con­
tain the detailed procedure for dealing with
a prisoner and provide him with minimum
facilities to which he has a right as a human
being. Once a convict is admitted to jail, his well-being becomes the responsibility of

the state and hence of the institution. Jail
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scale of diets for different categories of
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him at regular intervals. In fact, the pris­

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with the family and the community. This

aspect helps him in smooth rehabilitation

back into society after release.

Standard Minimum Rules for the

Treatment of Prisoners

As stated earlier, the All India Jail
Manual Committee 1957-1959 prepared a
Model Prison Manual and submitted the
same to the Government of India along
with its recommendations. The Standard
Minimum Rules for the Treatment of
Prisoners as an important document was
passed by the U.M., in 1955. All the India
Jail Manual Committee, therefore, incorpo­
rated the main principles enshrined therein
for treatment of prisoners in progressive
lines. The state governments have already
taken necessary action to revise their
existing jail manuals in accordance with the
guidelines provided in the Model Prison
Manual. Some states have completed the
work of revision of their respective manuals
while in others the work is in progress.

Recruitment and Training of

Correctional Officials

The efficiency and success of correctional
operations depend largely upon the quality
of competence and calibre of the prison staff.
Prison personnel are not only engaged in
arduous, hazardous and exacting work
also they are often required to work for
10 to 14 hours a day. Therefore, special

care and attention need to be bestowed on
the selection and training of the prison
staff. At present prison staff are recruited
both by open selection and by promotion.

Prison Warders, i.e., guarding staff are
directly recruited. From Assistant Jailors
to District Jail Superintendents are re­
cruited both by promotion and by direct
recruitment. Central Jail Superintendents
and Deputy Inspector Generals are ap­
pointed on the basis of seniority-cum-merit
from the lower posts. In some prisons
Inspector General of Prisons are depart­
mental and in some states they are from
Indian Administrative Service Cadre. Each
state has got its own arrangements for
giving in-service training to warders, Assist­
ant Jailors, Deputy Jailors, Jailors and
Superintendents of District Jails are sent to
Jail Officers' Training Schools at Lucknow,
Pune,Hisar and Vellore. For the senior level officers above the rank of District Jail Superintendents, the National Institute of Social Defence, New Delhi organises short term orientation courses and seminars from time to time.

Conclusion

Inspite of continuous efforts made by the Government of India, the guidelines contained in the Model Prison Manual has not been adopted by most of the states. The paucity of funds has been identified as the main hurdle in this respect. Although the role of the central states with technical assistance and advice, Government of India has made a symbolic investment on prisons may have to be reconsidered to a reconsideration of the status of prisons as a state subject and the possibility of bringing within the concurrent list. The lack of uniform legislation on prisons has perhaps been one of the main reasons for delay in the adoption of guidelines contained in the Model Prison Manual. The Ministry of Home Affairs is already considering a draft on Model Prison Legislation in consultation with the National Institute of Social Defence and state governments. The issues in this regard naturally involve a national consensus on the possible modalities and priorities of action. The investment on prisons may have to be considered as a human resource development as it aims to raise the quality of human life besides protecting society from criminogenic forces. At the present stage of development, it may also be necessary to consider the inclusion of prison development in the national plan.

PARTICIPANTS’ PAPERS

Institutional Treatment of Adult Offenders: India

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<td>5,903</td>
<td>7,688</td>
<td>+ 37.237</td>
</tr>
<tr>
<td>Sikkim</td>
<td>55</td>
<td>69</td>
<td>80</td>
<td>110</td>
<td>97</td>
<td>+ 76.364</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>-</td>
<td>-</td>
<td>24,709</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tripura</td>
<td>1,539</td>
<td>460</td>
<td>542</td>
<td>592</td>
<td>651</td>
<td>- 57.700</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>40,131</td>
<td>35,346</td>
<td>34,861</td>
<td>33,432</td>
<td>40,438</td>
<td>+ 24.479</td>
</tr>
<tr>
<td>West Bengal</td>
<td>25,893</td>
<td>21,855</td>
<td>23,084</td>
<td>24,792</td>
<td>24,397</td>
<td>- 0.004</td>
</tr>
<tr>
<td>Andaman &amp; Nicobar Island</td>
<td>81</td>
<td>90</td>
<td>69</td>
<td>128</td>
<td>174</td>
<td>+ 114.815</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>-</td>
<td>57</td>
<td>76</td>
<td>194</td>
<td>118</td>
<td>+ 104.175</td>
</tr>
<tr>
<td>(over 73)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dadra &amp; Nagar Haveli</td>
<td>15</td>
<td>23</td>
<td>6</td>
<td>10</td>
<td>10</td>
<td>- 56.522</td>
</tr>
<tr>
<td>Delhi</td>
<td>1,962</td>
<td>1,539</td>
<td>1,892</td>
<td>2,358</td>
<td>3,335</td>
<td>+ 70.999</td>
</tr>
<tr>
<td>Goa, Damro &amp; Dju</td>
<td>206</td>
<td>165</td>
<td>193</td>
<td>180</td>
<td>286</td>
<td>+ 38.835</td>
</tr>
<tr>
<td>Mizoram</td>
<td>-</td>
<td>-</td>
<td>314</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>98</td>
<td>123</td>
<td>95</td>
<td>151</td>
<td>174</td>
<td>+ 77.551</td>
</tr>
<tr>
<td>Total</td>
<td>191</td>
<td>189,122</td>
<td>188,771</td>
<td>220,146</td>
<td>208,562</td>
<td>+ 9.017</td>
</tr>
</tbody>
</table>

Treatments of Adult Offenders: India
Corrections in Iraq
by Nasih Shawkat Al-Khalessi*

Introduction
Iraq has, since the 17th July 1968 Revolution by the Arab Baath Socialist Party (A.B.S.P.), been planning and striving for the transformation of the main bricks of society in all aspects, bearing in mind that and educational spheres, prison and enhancement with a view to in such a way as to secure its discharge of harmony with the enormous cultural its humanitarian obligation as to be in progress achieved by government. Therefore the leadership, understood to issue certain regulations. Most important among them were:

1) The Law of Prisons Department No. 151 (1968). This was an advanced law bearing upon correction of criminals.
2) Modifications to this law through the change of the general organization of the Ministry of Labour and Social Affairs according to Law No.195 (1978) which converted the Prisons Department into the State Organization for Social Reform, Ministry of Labour and Social Affairs which is subdivided into (a) General Office for Adult Correction and (b) General Office for Juvenile Correction.
3) Regulations bearing upon rehabilitation and pardon.

Organization
Since the subject bears upon the treatment of adult offenders, I shall review the structure of organization responsible for

* Director-General, General Office for Adult Correction, State Organization for Social Reform, Ministry of Labour and Social Affairs, Iraq

the treatment of prisoners.

In General Office for Adult Correction there is an Expert Committee consisting of specialists in psychology and sociology, psychiatrists, specialists in vocational training, and social researchers. The Committee is in charge of the planning of correction procedures and dealing with obstacles which emerge during the operation.

General Office for Adult Correction is divided into eight offices. They are (a) Department of Legal Affairs which is concerned with the rights of prisoners and the fair application of correction laws to them. (b) Department of Prisoner's Affairs which is concerned with the records and files of prisoners relating to home-leave, parole and pardon. (c) Department of Vocational Training and its ramifications which is charged with supervising the planning and administration of training programmes. (d) Department of Social Research and Post-parole Care which is concerned with the classification work and nomination for parole and home-leave. It observes the daily life of prisoners and presents reports and recommendations to the Committee and also to related prison (e) Department of Factories which is concerned with services commonly coming from industrial bodies. (f) Department of Planning and Follow-up. (g) Agricultural Activity Office. (h) Administrative and Service Office. (i) Accounting and Follow-up Department.

Under the supervision of General Office for Adult Correction, there are four prisons. Two of them are in Baghdad, namely, Abu-Ghraib Central Prison for men and the other for women. The third prison is in north of Iraq (Nineveh). The fourth is in south of Iraq (Basrah).

In each prison, there is a sub-committee of experts headed by the chief of the prison. Sub-committees are similar in composition and function to the main Expert Committee and technically connected to it. Prisoners also have branches such as social research section and vocational training section.

Procedure of Work
Sentences passed on adult offenders are divided into two types. One is unimplemented sentences and the other is sentences served in the prison. In the latter case the prisoner is accommodated in a social reform department (prison) situated near his family. Then the prisoner is provided to the records section where a file is opened for him. Later on he is led to the reception section where social researchers study different aspects of the file. The prisoner, e.g. personality, family background, mental and physical capabilities. And a doctor examines his physical condition. After that the social research section will classify him and assign the suitable work. All these pieces of information will be passed to the Expert Committee for the purpose of review and recommendation for suitable treatment.

As for buildings, prisons located in Baghdad and Abu-Ghraib are considered advanced and modern. They comply with all requirements for correctional facilities such as good accommodation, individual beds with sponge mattress, blankets, and sheets. Rooms are also appropriate from the hygienic point of view. There are electric lighting, heating, ventilation and running water. Bathrooms are attached to the rooms. There are gardens and open grounds.

Services
They are adequately provided. They include housing facilities and self-service launderies. A number of prisoners are assigned to bakery and cooking in return of work.

All prisoners work in the prison cooperative for proper performance of their responsibilities under the supervision of the chief of the prison. He is empowered to give necessary disciplinary sanction to the prisoners according to his institution.

Among these authorized penalties are:

(a) deprivation of athletic or recreation activities for period of not more than three months,
(b) deprivation of correspondence for a period not exceeding three months,
(c) deprivation of visits for not more than three months, and
(d) solitary detention for a period not exceeding three months.

Prisoners may be deprived of private food and their food shall be provided by the prison, which remains adequately nourishing. The law strictly prohibits the use of compulsion and such punishments as iron fetters and beating.

Aftermentioned are about prisons located in Baghdad and Abu-Ghraib. As for the rest of two prisons in Nineveh, they are not fit for the implementation of correction programmes due to the improper structure of the buildings. They do not have ample halls, workshops and grounds and there are many other things which are insufficient. Therefore the central planning for the improvement of correction department have started in 1978. The construction of an ideal prison with highly developed requirements is planned. It is expected that the new building in Nineveh is completed in 1981. In this very year, the construction of a similar prison can be started also in Basrah.

General Trend in Prison Population

The prisoners now accommodated in prisons is totalizing 3,500 persons in number since a lot of factors contributed to the reduction of the number of prisoners. These factors involve: (a) economic growth with no unemployed labour and still numerous vocations among every kind of job which necessitated the employment of many non-Iraqis from Arab and other foreign countries; (b) development of culture and education which led to a decrease in certain types of crime; (c) introduction of general pardon and alleviation of sentences; (d) abolishing detention of dangerous offenders and of those who have returned to crime; and (e) release of those convicted by the Revolution Court or the Civil Courts. This resolution was passed in celebration of the 10th Anniversary of the Revolution.
However, there is an increase in the number of certain offenders. The increase of such offences are supposedly the result of the rapid cultural evolution in urban areas. They are mostly larceny, embezzle-
ment and associated offences.

Correctional Programmes

A. Classification

The task of classification formerly took into consideration the kind of crime and the length of sentence. But since the establishment of the Expert Committee and its branches, a radical change has been enforced in the classification process. The experience and information of Japanese prisoners classification system have con-
tributed to the emergence of new classifi-
cation process. The present categories are as follows:

1) Classification according to national-
ity.

2) Classification according to potential-
ity to commit crimes. This category is subdivided into (a) a group with much propensities towards crime and (b) a group with less propensity towards crime.

3) Classification according to health condi-
tions. The sick are subdivided into (a) the mentally retarded and (b) those in need of health care for long periods and those with physical disabilities, or aged prisoners.

4) Classification according to sentence. Sentences are (a) light sentence of less than one year, (b) medium sentence ranging around 3 years, (c) sentence ranging from 3 to 5 years, (d) long sentence from 5 to 7 years, (e) long sentence from 7 to 10 years, (f) long sentence from 10 to 15 years, (g) long sentence from 15 to 20 years, and (h) long sentence over 20 years.

5) Classification according to age. Of-
fenders are classified into (a) those between 18 to 26 years old and (b) those over 26 years old.

In addition there are programmes for individuals who need special treatment. They can get a daily interview if required to do so by the social researcher.

B. Education, Work and Vocational Training

1) Education

Primary, intermediate and secondary schools are facilities for education. Education is not compulsory. However, in view of the fact that Iraq is suffering from a cultural backwardness, the central office of A.B.S.P. and the government issued the effective law of the comprehensive cam-
paign for illiteracy eradication and adult education. The law binds every illiterate citizen. All potential resources, both in official and private levels, have been ap-
piled in its service. For the past two years the campaign has been quite successful. All correctional institutions have now adult education centres. These have drawn 100 percent of the illiterate prisoners.

To complete this illiteracy eradication, education has been regarded as one of the conditions for parole. At the end of 1979 new regulations for the public school have been issued. These schools are adult stage to the illiteracy eradication schools. At the opening of 1980, several of these schools have been inaugurated in the cor-
rectional institutions. Learners are provided with all the educational requirements gratuitously. The prison offers incentive prizes to the prisoners to work in their fields on their release.

2) Work

In the prison there are production factories of such trades as carpentry, black-
smithing, sewing, shoe making, texture, carpet making, book binding in addition to the manual work done by the prisoners individually. The prisoners work for six hours a day in return of small amount of wages. Supervision of these factories is headed by the head of the prison. The prisoners are nominated for leave by the Expert Committee in coordination with the social researchers. The wishes of the prisoners have to be taken into consideration in this procedure.

The Institute is operating vocational training programmes at prisons both in Basrah and Nineveh in such fields as (a) typing (Arabic and English), (b) carpentry, (c) electricity, (d) sewing (e) hairdressing, (f) agriculture, (g) financial sciences, (h) engraving, (i) welding, (j) pennismanship, and (k) mechanics. Those who successfully complete the study are given a certificate qualifying them to work in their fields on their release.

C. External Treatment (Open Institutions, Work Release, Home-Leave and Parole)

1) Open institutions

This kind of prison is not available in Iraq and numerous factors including social conditions do not allow us at present to adopt this system.

2) Work release

Outside work is not hitherto legislated in the correctional institutions. But the State Organization for Social Reform, which is supervisory body of both adult and juvenile correction, allowed the prison in Ninewah to attempt a small-scale experi-
ment so as to observe its effectiveness. In practice the prisoners participated in the paving work and in the preparation for festivals according to their wishes. There are regulations similar to those for granting home-leaves. The prisoners worked with-
out any supervision except for visits by the social researchers during work hours with a view to facilitate the prisoner. The experiment proved successful and the arrangement may be adopted after being endorsed by the Ministry of Labour and Social Affairs.

3) Home-leave

All the prisoners are entitled to home-
leave with the exception of those convicted of sodomy or jeopardizing the state security. The home-leave is granted once every three months and lasts for five days. The prisoners are nominated for leave by the Expert Committee in coordination with the physician. The nomination pro-
cess is headed by the head of the prison. The prisoners' attitude in the prison is to be considered in granting home-leave. To be granted home-leave, the prisoner must serve one-third of his sentence which should not be less than one year.

4) Parole

The Parole Law No. 34 (1974) is an amendment of the Penal Trial Law No 23 (1971) which allows parole when the prisoner served 75 percent of his term of imprisonment. The Penal Trial Law excludes the dangerous offenders and re-
cidivists sentenced for such offences as sodomy, rape, criminal assault on persons below 18, forced assault, penal servitude, embezzlement of public funds, "provided that they have been convicted of a similar offences." Those are also not eligible for parole who are convicted for two or more successive embezzlement offences, those convicted for an embezzlement offence constituted of two or more successive deeds or those convicted for a number of thefts provided that they have already been convicted for one or more thefts even if they have passed the term of imprisonment for any reason.

The court issues a resolution to release the prisoner and place him under control while he is out in society until term of sentence expires. If he commits another
Prisons in Iraq adopt traditional measures for security and maintenance of the prison facilities. This is effected through double fences and watch towers. Security inside the prison and discipline of prisoners are effected through social controllers who are not armed but trained to deal with prisoners. No electronic security system is introduced at present. But new prisons under construction will have such equipments.

1) Prison structure and security facilities

In the Law the use of physical compulsion is strictly prohibited, except in the case of self-defence or in preventing prisoners from committing offences directly against the security of the prison. Firewalls are used only for guarding the surrounding walls of the prison. Nobody can be allowed to enter the prison with a firearm no matter what his rank is. As for the restraining devices, they are banned in the prison with exception of those fetters binding the prisoner during his transfer to or out of the prison. He is released from such devices immediately after his arrival.

2) Human relations in prison

Since enactment of the Law of Prisons Department (1968) and the formation of the Expert Committee, relations among prisoners as well as relations between prisoners and officials have been carefully defined. In the Law the use of physical compulsion is strictly prohibited, except in the case of self-defence or in preventing prisoners from committing offences directly against the security of the prison. It can be noticed that the relations have acquired a human and correctional character.

3) Inspection and search

There is a routine inspection of prisoners with a view to preventing them from the use of banned material. There is an inspection of inmates who received visitors for there is no fence between visitors and the prisoners.

4) Disciplinary measures

As is described before, directors of prisons are authorized to impose penalties on prisoners who break prison rules but this can only take place after submitting the cases to the social research section and when punishment is indispensable for the security of the prison. The punishments are recorded and referred to when granting of home-leave and parole.

5) Use of firearms and restraining devices

Firearms are used only for guarding the surrounding walls of the prison. Nobody can be allowed to enter the prison with a firearm no matter what his rank is. As for the restraining devices, they are banned in the prison with exception of those fetters binding the prisoner during his transfer to or out of the prison. He is released from such devices immediately after his arrival.

6) Emergency planning

Plans especially related to breaking-out of fire are laid down in coordination with civil defense organization. A prison is required to have its own plan in case of any threat to the peace of the institution.

Prisoner’s Rights and Living Conditions

1) Visits and correspondence

Prisoners are allowed to communicate by letter with their families and friends. Letters are received in their rooms or in halls. Visits are allowed four times a month as well as on religious occasions and national festivals.

2) Religious activities

Religious activities are one of the effective factors in the correction work. Hence prisons encourage such activities and provide places for religious practice. Suspenders are paid to religious preachers of all sects who give religious service and lectures. Foods are provided in a specific way during the period of religious fast.

3) Access to information

Prisons are equipped with radios which enable prisoners to listen to amusement and news programmes. Daily newspapers are available free to prisoners. Prison libraries provide prisoners with magazines and periodicals in addition to cultural and religious books. In 1979 the President presented a number of colour T.V. sets to prisons. In the near future an educational T.V. station will be established and special educational programmes will be televised for prisoners.

4) Personal freedom and privacy

Prisoners are free to move inside the specific area of the prison and are allowed to smoke and purchase things at canteen in the prison. They are allowed to see the social researcher or the director of the prison if necessary. They are allowed to visit each other at any time without restriction. The only restriction is to cause no disturbance to others.

5) Procedure of redress for grievances

Prisoners have several ways for redress for their complaints. They are allowed to complain through the social research section. Complaints are then examined by the administration. They are allowed to send complaint-statements to the administration or to any outside body. Our law bans the obstruction of any complaint addressed to anybody. They are allowed to summon their lawyers while the sentence is still subject to appeal.

Furthermore, the senior inspectors and the officials of the head office occasionally visit prisoners and this will allow the prisoners to express their complaints directly to them. A locked box is installed in the prison so that prisoners put letters of complaints in it.

6) Medical care and living conditions

Prisons daily provide fresh foods to ensure health. A prisoners committee supervises quality of foods and services.
Institutional Treatment of Adult Offenders

by Peter Rogers*

Roles and Functions of the Correctional Institution

The Malaysian Prisons Service comprises Prisons Department of Peninsular Malaysia, Prisons Department of Sarawak and Prisons Department of Sabah. The administration of the Prisons Department is vested in the Director-General of Prisons, subject to the directives, approval and policy of the Ministry of Home Affairs. At the Prisons Headquarters, the Director-General is assisted by two Deputy Directors-General of Prisons, the Director of Industries, Senior Superintendent of Welfare and Aftercare, Administrative Officer, Research and Planning Officer and the Organizer of Schools, each of whom heading their own division. At the regional level, each penal institution is under the responsibility of a Director or a Senior Superintendent, or a Superintendent or an Officer-In-Charge. They are responsible to the Director-General of Prisons with regard to the administration, security of institution as well as the rehabilitation programmes of the inmates.

In contrast to the practice in the past, the work of the Prisons Department today is mainly of a rehabilitative rather than administrative nature. The essentials of penal administration are provided for in the followings: (a) Prisons Ordinance of 1952. (b) Prisons Rules, 1953. (c) Juvenile Courts Ordinance, 1952. (d) Penalties and Awaiting Trials. (e) Emergency Ordinance, 1969. The general principles of penal administration can be summarized as follows:

a) Discipline and order shall be maintained with fairness but firmness and with no more restriction than is required for safe custody and to ensure a well-ordered community life.

b) In the control of inmates, prison officers should seek to influence them through their own example and leadership, so as to enlister their willing cooperation.

c) At all times, the treatment of inmates shall be such as to encourage their self-respect and a sense of personal responsibility, so as to rebuild their morale, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

General Trends in Prison Population

The Prisons Department of Malaysia is under the Ministry of Home Affairs and administers 26 Institutions.

<table>
<thead>
<tr>
<th>Inmates</th>
<th>Prisons</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Borstal Schools</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Rehabilitation Centres</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Prison Officers Training School</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

The current total population in the following correctional institutions over the country as of 31 December 1979 is as follows:

<table>
<thead>
<tr>
<th>Institutions</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>8,156</td>
<td>158</td>
<td>8,314</td>
</tr>
<tr>
<td>Borstal Schools</td>
<td>844</td>
<td>21</td>
<td>865</td>
</tr>
<tr>
<td>Rehabilitation Centres</td>
<td>678</td>
<td>9</td>
<td>687</td>
</tr>
<tr>
<td>Total</td>
<td>9,678</td>
<td>188</td>
<td>9,866</td>
</tr>
</tbody>
</table>

With a population of about 13.5 million, the Malaysian imprisonment rate is 70 prisoners per 100,000 of the population. In respect of remandees and those awaiting trial, the following may be observed:

<table>
<thead>
<tr>
<th>Total Inmates</th>
<th>3,109</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisoners</td>
<td>2,139</td>
</tr>
<tr>
<td>Prisoners under Remand and Awaiting Trials</td>
<td>25.7</td>
</tr>
<tr>
<td>Percentage of Remandees and Awaiting Trials</td>
<td>15.8 per 100,000 of General Population</td>
</tr>
</tbody>
</table>

The years following 1975 saw a dramatic rise in the prison population:

<table>
<thead>
<tr>
<th>Year</th>
<th>Prisons</th>
<th>Borstals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>3,097</td>
<td>606</td>
<td>866</td>
</tr>
<tr>
<td>1971</td>
<td>2,978</td>
<td>558</td>
<td>837</td>
</tr>
<tr>
<td>1972</td>
<td>3,030</td>
<td>466</td>
<td>537</td>
</tr>
<tr>
<td>1973</td>
<td>3,177</td>
<td>448</td>
<td>537</td>
</tr>
<tr>
<td>1974</td>
<td>3,334</td>
<td>496</td>
<td>601</td>
</tr>
<tr>
<td>1975</td>
<td>3,520</td>
<td>566</td>
<td>601</td>
</tr>
<tr>
<td>1976</td>
<td>3,510</td>
<td>734</td>
<td>946</td>
</tr>
<tr>
<td>1977</td>
<td>5,799</td>
<td>847</td>
<td>7,646</td>
</tr>
<tr>
<td>1978</td>
<td>7,220</td>
<td>913</td>
<td>8,134</td>
</tr>
<tr>
<td>1979</td>
<td>8,314</td>
<td>865</td>
<td>9,186</td>
</tr>
</tbody>
</table>

The rise in prison population may be attributed to:

i) Intensified efforts on the part of the police directed towards criminals and Secret Societies.

ii) Greater number of arrests of drug abusers and traffickers.

iii) Introduction of stiffer penalties by the Courts.

With the problem of overcrowding in prisons is compounded by the fact that most of the penal institutions are old, built in the mid 19th century or at the turn of the century. To aggravate matters, over the passage of time, these prisons have become located in the heart of the city or main town amidst heavy flow traffic and high rise development. In view of this, apart from minor renovations, the prospects of future expansion and extension of the said existing institutions are extremely poor.

As a result of the increases in prison population, the Department has been beset with the problem of overcrowdments. The problem can be summarized as follows:

i) Prisons which used to accommodate 600 inmates in the early 1970s now have to accommodate as many as 1,400 to 2,000 inmates.

* Deputy Superintendent of Prisons, Malaysia
is in accord with the premise that since Malaysia is basically an agricultural country, therefore, training in agriculture is more likely to encourage youths to work instead of seeking employment in towns.

In the future, it is intended to extend this agricultural scheme to adult prisoners.

Work release and furlough has not been introduced in Malaysian penal institutions, except that work release is currently implemented for young offenders who are committed to the borstals or approved schools. In any event, work release is considered a useful technique for helping the offender to strengthen his ties with the community and to ensure his eventual rehabilitation.

With a view to encouraging good conduct and industry and to facilitating reformatory treatment, a convicted prisoner (male or female) sentenced to a term of imprisonment exceeding one month is granted one-third remission of sentence. According to the Prisons Ordinance, 1952, where a prisoner is sentenced to several terms of imprisonment on several warrants at the same time, or is sentenced to a further term or terms of imprisonment before the expiration of his original sentence, his several sentences on all the warrants shall be consecutive, unless otherwise ordered by the court and the aggregate term shall run from the date of the first warrant. An offender transferred to a mental institution is allowed full remission. A prisoner undergoing confinement in a punishment cell is not entitled to earn remission in respect of the period during which he is undergoing such punishment.

In Malaysia, there is no general system of parole for convicted adult prisoners. Parole is given for young offenders who are committed to the approved schools.

Security and Control

1. Prison Structure and Security Facilities

Under the Five-Year Development Plans, efforts are being taken to replace or renovate old prison buildings which have become ill-adapted to the aims and purpose of modern correctional practice. In the planning of future institutions, an effort is made to avoid an unsightly, grim drab and forbidding appearance. The layout of the buildings is designed not only to take account of the security aspects but also to give them an attractive appearance.

Beside the traditional walls, some maximum security prisons have additional inner fences to strengthen the perimeter security. Selected armed prison guards are on 24 hours shift duty at all post towers. Each post tower and workshop is equipped with an alarm system which is used in case of emergency.

Everyday, surprise checks are made in cells, to check the bars, walls and doors. High powered lights are given at strategic points in the night. All ladders, ropes and planks that would facilitate escapes are kept locked in a secured area. Male prisoners, who during a previous detention in lawful custody have escaped or attempted to escape, will be considered and treated as potential prison breakers. A special watch will be kept over them.

2. Human Relations in Prison

There are many opportunities for offenders to develop personal relationships with members of various kinds of work teams, both within and without the prison society. Human relations is maintained with officers in the daily inspection of the prison, by interviews and recreation, with instructors in workshops, teachers in classes and the prison welfare officer. All these situations provide staff with opportunities that can be used to demonstrate that good relationships have been maintained with Malay, Chinese and Indian prisoners.

3. Inspection and Search

Daily inspection of prison officers is carried out by a senior officer. All lower rank officers are made to assemble for inspection. A senior officer is detailed to check the appearance and smartness of prison officers. Attention is drawn to cleanliness of uniform, shoes, buttons and reasonable short hair. Similarly, the inspection officer ensures that every prison is given an attractive appearance.

Everyday, surprise checks are made in cells, to check the bars, walls and doors. High powered lights are given at strategic points in the night. All ladders, ropes and planks that would facilitate escapes are kept locked in a secured area. Male prisoners, who during a previous detention in lawful custody have escaped or attempted to escape, will be considered and treated as potential prison breakers. A special watch will be kept over them.
duty in the morning, afternoon and night are picked at random and taken to a search room and strictly searched. While he is in unattended, a prison officer is supposed to keep in possession any objectionable items, except his Baton, a whistle and his author-
ity card.

4. Disciplinary Measures
There is a fairly high standard of discipline among prison officers. In all penal institutions, prison officers are strictly
confined to all written laws, rules, standing orders and regulations. All written or verbal orders are explained to uniform staff during monthly meetings. However, discipli-nary action is taken against any prison officer who contravenes the above condi-
tions. He is liable to dismissal, reduction in rank, extra weakened duties or extra drill.

5. Use of Firearms and Restraining Devices
Firearms are only used by prison officers at post towers, or officers proceeding on escort duties to courts and hospitals. Gen-
erally, a prison officer is taught to use of any such weapon against any prisoner escaping or attempting to escape, provided
such attempt shall not be had to the use of any weapon unless such officer has rea-
sonsable ground to believe that he cannot otherwise prevent the escape. Firearms can also be used on any prisoner engaged in
any combined outbreak, in any attempt to force or break open the outside door or gate, or in using violence to any prison officer. Before using firearms against a prisoner, the officer shall give a warning to the prisoner that he is about to fire on him. The use of firearms shall be as far as possible to disable and not to kill.

6. Emergency Planning
The director of each prison has drawn up emergency plans to improve prison security and defences. In the event of any
prison disturbance, several prison guards have been trained in unarmed combat to control any physical violence without
using arms. If the situation gets out of control and if prisoners are overpowered, an alarm system and a "hot line" is im-
mediately relayed to the Police Riot Squad Division. So far in the history of Malaysian Prisons, there has been no such incidents.

In borstals and rehabilitation centres, wherever the compound is wide, wireless sets are used by staff to communicate with each other. At every prison, there is also a fire service to prevent any fire outbreak. Similarly, each prison is equipped with a generator to supply electricity if the mains are temporarily disrupted.

**Prisoners’ Rights and Living Conditions**

1. Visits and Correspondence
In all prisons, priority has been given to visits to those who are convicted and on demand according to the stage in which a prisoner is serving. The time allowed for each visit in all stages is 30 minutes. Those serving less than 6 months are allowed every 26 days and prisoners serving above 6 months are permitted between every 3 weeks to weekly visit. Visits are also ac-
corded to the legal adviser of a prisoner who is conducting any legal proceedings, civil or criminal. The privilege of writing and receiving letters is allowed every week.

Prisoners can write to their families, relatives and friends but all correspondence has to be censored. In addition, a prisoner is allowed to write a special letter or to receive a special visit in any of the follow-

### 1. Access to Information (Books, Radio, Television and Newspaper)
All penal institutions are provided with library facilities and prisoners are en-
couraged to make the best use of them. In addition, newspapers and periodicals are made available. Regular cinema shows, radio, cassette and television facilities are made available throughout the year. Be-

### 1. Organizational Arrangements
In the form of indoor and outdoor games, annual sports for prisoners are organised by prisoners themselves under the supervi-

### 1. Personal Freedom
In all prisons, priority has been given to visits to those who are convicted and on demand according to the stage in which a prisoner is serving. The time allowed for each visit in all stages is 30 minutes. Those serving less than 6 months are allowed every 26 days and prisoners serving above 6 months are permitted between every 3 weeks to weekly visit. Visits are also ac-
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### 1. Religious Activities
Malaysia is a multiracial society and prisoners of different races and religions are committed to custody. Freedom of
religious worship is allowed for all prisoners. Religious instructors and ministers from various faiths provide religious guid-
ance in all penal institutions. On festive occasions, religious organisations provide food parcels to all prisoners.

### 1. Medical Care and Living Conditions
In all penal institutions, every prisoner after his admission is separately examined by the medical officer. If a prisoner is
found to be suffering from any infectious disease, he is at once taken to be treated and to prevent it from spreading to other

### 1. Discipline and Punishment
In all prisons, priority has been given to visits to those who are convicted and on demand according to the stage in which a prisoner is serving. The time allowed for each visit in all stages is 30 minutes. Those serving less than 6 months are allowed every 26 days and prisoners serving above 6 months are permitted between every 3 weeks to weekly visit. Visits are also ac-
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In all penal institutions, every prisoner

PARTICIPANTS' PAPERS

PENAL SYSTEM

 Penal system. Selected senior officers are often sent overseas for specialized courses at the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders at Fuchu, Japan, the Staff College, Wakefield, England and Australian Institute of Criminology. In this era of development, the Malaysian Prisons Department realises the fact that it cannot remain complacent with its present achievements, but continuously seeks to be on the move, probing new innovations that will bring about greater efficiency in penal administration as well as keeps it abreast with modern trends in criminology, penology and social defence as a whole.

THE PRINCIPLES AND METHODS OF THE PROBATION SYSTEM AS PRACTICED IN WESTERN SAMOA

by Nofoatolu Poumanu Papali'i

Introduction

The Samoan Islands lie in the Central Pacific about 1,000 miles south of the equator, within an area bounded by latitude 13° and 15° south and longitude 168° and 173° west. The group consists of nine main islands which were inhabited by Samoans at the time of their discovery by Europeans in 1722 and which have remained under continuous habitation ever since. Samoans belong to the ethnic race of peoples known as “Polynesians.” The Polynesians settled the islands within a vast triangle in the Pacific Ocean stretching from Hawaii in the north to New Zealand in the southwest and across to Easter Island in the east. Physically, the Polynesians are a brown skinned people, with straight or wavy hair, generally tall and solidly built; and similarities of material culture, of language, of tradition, and of social structure help to assess their common origin. The theory most widely accepted by anthropologists believes that the Polynesians came from Southeast Asia under progressive migrations. It has been firmly established that Samoa was one of the earliest regions of settlement and has been continuously inhabited for at least two thousand years.

The Independent State of Western Samoa, which was the first fully independent state in the South Pacific to emerge in the 20th century, achieved this status on 1 January 1962.

The people of Western Samoa are almost wholly (98%) literate, however, over 50% being literate in the Samoan language only. Almost without exception every Samoan professes to belong to one established church or another of the Christian Faith. Of the economically active popula-

* Chief Probation Officer, Justice Department, Western Samoa

The Judicial System of Western Samoa

The judicial system of Western Samoa operates at three distinct levels: The Supreme Court which is presided over by the Chief Justice, the Magistrates Court presided over by two magistrates and the Lower Magistrates Court which is managed by specially appointed lay judges who are Samoans. The Lower Magistrates Court has only minor jurisdiction and only deals with

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The judicial system of Western Samoa operates at three distinct levels: The Supreme Court which is presided over by the Chief Justice, the Magistrates Court presided over by two magistrates and the Lower Magistrates Court which is managed by specially appointed lay judges who are Samoans. The Lower Magistrates Court has only minor jurisdiction and only deals with
the smaller offenses carrying penalties of six months imprisonment or less. It may also handle a limited number of civil cases involving minor traffic offenses, domestic proceedings, and civil claims.

Courts of all jurisdictions are mainly conducted at Apia, the capital of Western Samoa, situated on Upolu, the smaller but the more developed of the two main islands. Regular courts are convened at the smaller township of Tutuila on the larger but less developed island called Savaii.

The Samoan criminal justice system which functions on the above judicial pattern was adopted from the New Zealand system which in turn was modelled after the British judicial organization. The Samoan system, however, has been extensively modified to suit the particular needs of the community. For example the jury system is not used in Western Samoa and in the Supreme Court trials the Chief Justice is assisted by a panel of five assessors, all of whom must be holders of Matai titles (chiefs) and thoroughly conversant with Samoan customs, Samoan attitudes and practices. Like a jury, the assessors determine the facts of the case and reach a verdict. If they convict the defendant the Chief Justice has the power of veto, but if they acquit, the decision must stand.

The basis of statute laws in Western Samoa stems from English common law and civil law. A system is common with those practiced in other former British colonies such as New Zealand, Australia and the rest of the Commonwealth nations.

2. Definition of Probation
Probation may be defined in Western Samoa as a method of dealing with an offender convicted of an offense punishable by imprisonment wherein the imposition of a final sentence is suspended, instead of being sentenced to imprisonment the offender is released on probation under the supervision of a probation officer. Subject to certain restrictions laid down and with the help, guidance and advice of the probation officer, the offender is given the opportunity to prove himself within society. He is given the chance to regain a place he may have lost through his offenses and to become re-established as a law-abiding citizen within his own community. Should he fail by his own choosing the law can still deal with him for his original offenses.

The aim to release young and first offenders on probation is to rehabilitate and encourage them to resume a useful place in the community. Probation enables the court effectively to protect young and first offenders from meeting and associating with habitual criminals, as such would be the case if they were sentenced to imprisonment.

3. Power of Court to Impose Probation
Where any person is convicted of any offense punishable by imprisonment the court may in its discretion, instead of sentencing him to imprisonment, release him on probation for a specified period of not less than one year nor more than three years. In addition to this, provision is made by the court to sentence an offender to imprisonment for up to 12 months followed by a period of probation of not more than one year.

4. Court Reports (Investigation)
Probation officers are required to make enquiries and prepare written reports on offenders at the request of magistrates. They submit similar reports on the majority of criminal cases for sentence in the Supreme Court. Reports are required to be complete, accurate accounts covering the criminality, employment and social history of offenders. They may recommend probation or some other forms of treatment of which has been prepared on him. He must also be prepared to assist the court as required by acting as interpreter and answer questions relating to any information contained in the pre-sentence report.

The preparation of the pre-sentence report represent the first of two main functions and duties required of the probation service. The second and probably the most difficult of the two from the point of view of the probation officer is the client's point of view, as well as being the most important from the corrective standpoint is supervision.

5. Supervision on Probationer

a) He shall not reside at any address without the written consent of the probation officer who prepared the offender's court report, to undertake his supervision and the chief probation officer to delegate most casework to his officers on this basis.

b) He shall report to the probation officer under whose supervision he is as and when required to do so by the probation officer.

c) He shall give the probation officer reasonable notice of his intention to change his address, and if he moves from one address to another and establish the tone of their relationship for future casework. It must be remembered that the period of supervision will last from 1 year to 3 years and in order to ensure a smooth relationship the probation officer must be honest but firm with his client during the initial stages of supervision.

At this first interview the supervising probation officer will issue the client with his probation order, sometimes called a probationary licence in other countries, and explain to him in clear and simple terms the conditions under which he is being released. The standard probation order issued to the client will contain the following conditions which he must abide by:

a) Within 24 hours after his release on probation he shall report in person to the probation officer.

b) He shall report to the probation officer under whose supervision he is as and when required to do so by the probation officer.

c) When the probation order has been obtained he is as and when required to do so by the probation officer.

d) He shall not associate with any specified class, with whom the probation officer who prepared the offender's court report, to undertake his supervision and the chief probation officer to delegate most casework to his officers on this basis.

The first duty of the supervising officer is to arrange an interview with his new client (offender) as soon as possible and the importance of this interview cannot be overstressed as it allows the probation officer and his client to get to know one another and establish the tone of their relationship for future casework. It must be remembered that the period of supervision will last from 1 year to 3 years and in order to ensure a smooth relationship the probation officer must be honest but firm with his client during the initial stages of supervision.

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PARTICIPANTS' PAPERS

- He shall be of good behaviour and commit no further offences against the law.

- If a probationer fails to comply with one or more of the conditions of his probation order he is liable to be brought before the sentencing court and dealt with by way of imprisonment for a period not exceeding 3 months or a fine not exceeding $100. It may also impose additional conditions and extend the term of probation up to the maximum of 3 years for those serving less.

- To institute such proceedings the probation officer has, in writing, the powers, protection and privileges of a police constable and may arrest without warrant. I would hasten to add that such powers should not be used by any probation officer unless the situation is unavoidable and that he must always seek a warrant from the court.

- From time to time it may become necessary for the probation officer to apply to the court to vary certain conditions of the probation order or add special conditions in order to effect better supervision methods to benefit both the probationer and his own status as supervisor.

- In the matter of a discharge from probation the supervising officer may apply at any time to the court to have the probationer discharged however, the probationer himself may make application to the court but only after he has served half of his term. For the court to approve such a discharge usually it requires a major change in the probationer's attitude and general circumstances and even then the court is very reluctant to grant such a discharge.

- The probationer is deemed terminated when the prescribed term ordered by the court has expired. With this the person is no longer under legal obligation to the probation service or the court and his supervision is formally ended.

- The professional practice of probation in Western Samoa is directed towards the achievement of more permanent goals than just prevention of criminal or otherwise antisocial behaviour during the offender's period on supervision. The technique of intensive casework counselling and use of general community resources are exploited to their fullest extent in an endeavour to develop within the probationer those qualities of character and personality necessary for him to lead a stable and more responsible life within his community. Such an undertaking requires the cooperation of full cooperation on the part of the probationer and the contribution of a probation officer, who is fully equipped both by requisite factors within his own personality and specialized training together with his status in the community, will be able to develop the situation to its fullest potential.

The value of probation in Western Samoan criminal justice system is firmly established. As is shown in the Table below the judiciary's willingness to use the service has marked increase over the past three years to an extent where it has now become difficult to keep up with the demands of the courts without further increase in staff. The quality of the service is dependent on those who administer it and at present, I am proud to admit the high standard of professionalism with the service. As more and more young Samoan men and women are being sent overseas to study in the field of human sciences, this high standard will be maintained in the future.

**PRINCIPLES AND METHODS OF PROBATION SYSTEM: WESTERN SAMOA**

<table>
<thead>
<tr>
<th>Offences Committed by Persons on Probation for 1979</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>37</td>
<td>2</td>
</tr>
<tr>
<td>Bodily Harm</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Theft</td>
<td>103</td>
<td>17</td>
</tr>
<tr>
<td>Insulting with Threat Words</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Found by Night</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Break/Enter</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>Driving without Licence</td>
<td>9</td>
<td>-</td>
</tr>
<tr>
<td>Negligent Driving Causing Bodily Injury</td>
<td>6</td>
<td>-</td>
</tr>
<tr>
<td>Negligent Driving Causing Death</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Driving under Influence of Alcohol</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Dangerous Drugs</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>Armed with Dangerous Weapons</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Forgery/False Presence</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>Wilful Damage</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>Throwing Stones</td>
<td>19</td>
<td>1</td>
</tr>
<tr>
<td>Unlawful Conversion</td>
<td>11</td>
<td>-</td>
</tr>
<tr>
<td>Indecent Assault</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>Unlawful Sexual Intercourse</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Attempted Sexual Intercourse</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Rape</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Arson</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Car Conversion</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Wilful Trespass</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>Others</td>
<td>25</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>294</td>
<td>25</td>
</tr>
</tbody>
</table>

Male Female
SECTION 3: GROUP WORKSHOPS

WORKSHOP I: Some Important Aspects in Criminal Justice Administration

Summary Report of the Rapporteur

Chairman: Mr. Leo Teng Jit
Advisors: Mr. Minoru Shikita, Mr. Makatu Ikeda and Mr. Susumu Umemura
Rapporteur: Mr. Tin Ching-Lung

Tittles of the Papers Presented

1. Prisons Social Service in Singapore by Mr. Leo Teng Jit (Singapore)
2. Kwun Tong Hostel—the First Probation Hostel and the Only of Hu Kind in Hong Kong by Mr. Tin Ching-Lung (Hong Kong)
3. Criminal Justice System in Iran by Mr. Mostafa Zarin-Ghalam (Iran)
4. Stimulant Drug Offenders by Mr. Nobuyuki Ikizia (Japan)
5. Suspension of Execution of Sentence in Traffic Crimes by Mr. Kiyomasa Yamagaki (Japan)
6. Juveniles Sniffing Thinner or Glue by Mr. Makazu Ikeda (Japan)

Introduction

The group consisted of two judges, one public prosecutor, one family court probation officer, one probation officer and one rehabilitation officer. All of the group members directly or indirectly involved in one way or another in the criminal justice administration towards the common goal of prevention of crime and treatment of offenders. The group discussed various aspects related to the criminal justice administration such as criminal justice system, suspension of execution of sentence, stimulant drug offenders, examination and treatment of glue sniffing juveniles, probation hostel and prisons social service.

Prisons Social Service in Singapore

In Singapore, the release on licence is equivalent to the parole system of many other countries. Mr. Leo explained that this system could be administered from two angles, one is operated as a segment of criminal justice system and the other, as part of an integrated system of treatment for the prisoners. In the former case, it involves the introduction of a separate agency, which is disengaged from prison administration. In the latter case, parole administration is vested in the penal authorities.

Mr. Leo introduced the prisons social service in Singapore. Formerly, a branch of the Probation and Aftercare Service provided casework services to the offenders detained in the prisons. As this branch was detached from the Prisons Department and unable to provide adequate assistance to the prisoners, the Prisons Social Service Division was thus established as an integral part of the Prisons Department on 1st November, 1972. Mr. Leo himself was then one of the five probation officers transferred to the Prisons Social Service Division. This Division has two roles: 1) Essential roles—to provide various social services to prisoners and their families and to act as a channel of communication between prisoners, the penal authorities and community; 2) Supportive roles—to enhance the effectiveness of treatment programmes, to reinforce the security and control. These roles were achieved by conducting social investigation in relation to inmates’ training and domestic problem, preparing social enquiry reports for the Prisons Clarification Board, providing individual and group counselling to inmates and their families and carrying out surveys and research regarding inmates’ training and problems.

SOME IMPORTANT ASPECTS IN CRIMINAL JUSTICE ADMINISTRATION

The functions of Prisons Social Service officers can be broken down to three distinct but interrelated stages: 1) Upon admission—the Social Service Officers help the newly admitted prisoners, in the process of classification interviews understand their situation in order to let them have better adjustment to the institutional life, and provide assistance to them and their families if necessary; 2) During rehabilitation process—many complicated problems, including financial, marital and adjustment problems, require long term intervention from the Social Service Officers who are all the time available to assist the prisoners; 3) Prior to release—the Social Service Officers on the one hand assess the prisoners’ suitability for home leave and, if favourable on the other hand prepare both prisoners and their families for the prisoners’ release from prison. Cases requiring follow-up intervention after release are to be referred to the Singapore Aftercare Association which is a voluntary social agency, assisting the released prisoners on voluntary basis, or to the Probation and Aftercare Service if the prisoners are to be released on licence, as the service, a government establishment, is carrying out statutory supervision of licencees.

The present practice of the release on licence in Singapore was considered by Mr. Leo to be a segment of the criminal justice system. After emphasizing the importance of release on licence and pointing out the disadvantages of the existing practice, Mr. Leo opined that the prisoner would be helped more adequately and effectively if the release on licence was administered as an integrated part of the prisoner’s treatment in and outside the prison, with the same Prisons Social Service Officer handling his case throughout the process.

Regarding the importance of the release on licence, Mr. Leo stressed the fact that many ex-prisoners who had gone through a period of stay in prison would lose all sense of direction to live a normal life on their release unless they were given guidance during the initial period of integration. It was unnecessary to emphasize, Mr. Leo added, how all the efforts of the rehabilitative staff would be wasted if an ex-prisoner relapsed into committing crime again mainly due to his failure in adjusting to the living of the open society upon his release. The group members unanimously agreed that effective rehabilitation depends on effective release on licence system.

The present practice, i.e. the Probation and Aftercare Service being responsible for the statutory supervision on the release on licence cases, was not considered by Mr. Leo to be an ideal approach because a long-standing rapport between the Prisons Social Service Officer and the supervisee ended abruptly due to the change of supervising officer. Mr. Leo added that the Prisons Social Service was enquired. In his opinion, if release on licence case was to be supervised continuously by the Prisons Social Service Officer, the advantages would go both to the worker and the client, and the practice would become a part of an integrated system of treatment for the prisoners. In Japan, parolees have to be transferred to the probation officers because of the comparatively large community area, whereas Singapore is a small country, geographical factor is not a problem. The communication with the open community made by the Probation and Aftercare Officers and Prisons Social Service Officer was discussed, and it was found that two kinds of officers were the same while comparing with their abilities and experiences. Again the subject of professional and personal relationship was mentioned; the possibility of supervisee’s wish to have a change of supervising officer was raised; the smooth transfer system in Japan was elaborated; and the physical setting of Prisons Social Service was enquired.

In Singapore, the discharged prisoners maintain very close relationship with the Prisons Social Service Officers; all the work performed by those officers are under the close attention and supervision from senior officer and a change of supervising officer will be taken if necessary; and the Prisons Social Service Office is situated at the...
GROUP WORKSHOP I

Kwun Tong Hostel—The First Probation Hostel and the Only of Its Kind in Hong Kong

The general picture of probation service in Hong Kong was given by Mr. Tin. Probation is used by the courts to place an offender under the supervision of a probation officer for a period of 1 to 3 years. Probation order is usually issued after the court has considered carefully the circumstances leading to an offense, the nature of the offense and the character of the offender. There are altogether 13 probation officers serving magistrates, district courts and the Supreme Court. To facilitate the successful rehabilitation of offenders towards the community, the probation officer guides the behaviour of probationers during the probation period, makes regular contact with them through home visits and interviews and exercises his professional skills and knowledge of local resources to meet the needs of probationers, and, where necessary, that of their family members for financial assistance, employment, schooling, etc. The Kwun Tong Hostel, with a capacity of 60, is the first probation hostel and the only of its kind in Hong Kong for the male probationers who are serving the maximum period of residence. According to the Probation of Offenders Ordinance, the maximum period of residence in the Kwun Tong Hostel is one year, but some probationers, especially those having poor relationship with their parents and those having immature personality and antisocial behaviour, may need longer period of training in the hostel. Under the present practice, they have to be discharged after the completion of 12 months residential training.

3) Lack of cooperation from employers: Some employers have prejudices against probationers, the former do not employ the latter if they know those applicants are probationers. Bearing in mind that full cooperation from the employer is vital factor in the rehabilitation process, we have to seek for the possible solution to this problem.

4) Employers' attitude towards probationers: Some employers have prejudices against probationers, the former do not employ the latter if they know those applicants are probationers. Bearing in mind that full cooperation from the employer is vital factor in the rehabilitation process, we have to seek for the possible solution to this problem.

After the presentation, the group members discussed the period of residence. In Japan, the rehabilitation aid hostel, private organizations, perform rehabilitation services under the authorization and supervision of the Minister of Justice, and the state reimburses the expenses for such services. There is no limitation for a probationer or parolee to stay at the rehabilitation aid hostel and the residential period for a discharged offender is 6 months but he can be allowed to stay there continuously at his own expenses. In Singapore, the discharged Criminal Law detainees can stay at the Ahmad Ibrahim Camp for a period of 6 to 12 months but the Camp Commandant, with the consent of the Minister for Home Affairs, may extend this period to not exceed a longer period whenever necessary. The

SOME IMPORTANT ASPECTS IN CRIMINAL JUSTICE ADMINISTRATION

The group was of the opinion that in order to facilitate the rehabilitation of offenders, the residential period at an institution should be as flexible as possible, and it was more desirable if the residential period could be extended.

Secondly, the group members exchanged ideas about the public opinions towards offenders and the cooperation from the employers. In many countries, the probation officers have certain connection with factories and companies, but some employers may still have prejudices against offenders. The group felt that the government should enlighten the society about the importance of gainful employment to the offenders' future rehabilitation. The Singapore government invites the unemployed businessmen to be members of the Aftercare Subcommittee; as a result the committee members try their best to offer job opportunities and work cooperatively with the government officials towards the rehabilitation of offenders, and the success of the subcommittee is highly recognized by the government. It was concluded that the general public should be educated while the cooperation from the employers should be sought in order to achieve the goal of successful treatment for the offenders.

Finally, the group took up the subject of the availability of a social worker in probation hostel for discussion. The expansion of services justify the establishment of a social worker, the provision of training to the staff, the negotiation with trade union, and the role of a social worker was thoroughly discussed. It was agreed that at least one social worker attached to the hostel was necessary because this being the functional post in the institution.

Criminal Justice System in Iran

Mr. Zarin-Ghalam introduced the criminal justice system in Iran. When a report is made to the police, the police investigates both the complainant and the accused, and gathers evidence including statements from witnesses, medical certificates, etc. After completion of the investigation, the police sends a file to the examining judge or interlocutor who again makes enquiry into the complaint, and, after he has formed his views, he may authorize a resident to stay there at a

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and the latter will not be satisfied if no concrete explanation about the delay is given. In Japan, if a copy of the formal medical certificate is not paid by the insurance companies, although the compensation is decided by the courts.

Regarding the protests against sentences given by courts on the cases of traffic negligence causing death, the group members exchanged information about sentences given by the courts from different countries. In Iran, the offender is likely sentenced to 6 months imprisonment, fine or even suspended sentence, due to mitigating circumstances, although the statutory penalty ranges from 2 to 3 years imprisonment, and the amount of compensation is very small. The Japanese laws do not consider this as a serious offence, the usual practice is 6 to 10 months imprisonment without forced labour, among the total number of those who received imprisonment sentences, majority of them are granted suspension of execution; the compensation is mandatory and are to be paid by the insurance companies, although the amount of compensations may not always satisfy some victims. The Singapore situation is more or less the same as Japan, and the compensation is decided by the courts and paid by the insurance company. The majority opinion was that the court should be empowered to give sentence on the cases of traffic negligence causing death and the compensation should better be paid by the insurance company.

The criminal justice system in Iran is undergoing an overall change due to the Islamic Revolution. During the transitional period, there are some differences in the judicial practice between revolutionary and ordinary courts. The group recognized the existence of the difficulties and understood the strenuous efforts made by the revolutionary government of Iran to solve this problem.

Some Important Aspects in Criminal Justice Administration

At the outset, Mr. Hikita invited the group's attention to the serious problem of stimulant drug offenders. The number of stimulant drugs cases including the smuggling of stimulant drugs, has been continuously increasing, and the original causations for the use of stimulant drugs are out of curiosity, sexual stimulation and compulsion to use. The use of stimulant drugs not only harmful to the individuals but also to the society as a whole; even worse some drug abusers make into commercial crimes because of stimulant drugs. With regard to the possible measures to cope with an increase of stimulant drug offences, the group members exchanged their experience and opinions. Singapore exercises the severe punishment towards drug offenders; the mandatory death penalty applies to anyone who is convicted for trafficking morphine in the quantity of more than 30 grammes or heroin of any amount exceeding 15 grammes; as to the drug traffickers, the first known offenders are sent to drug rehabilitation centres, and the released offenders are sent to prison. Even in Japan, if any drug offender is found at the border, the drug offenders are sent to drug rehabilitation centres, and the released offenders are sent to prison. Even in Japan, if any drug offender is found at the border, the drug traffickers whereas the drug abusers should be given special treatment for the cure of drug abuse, and the public should be informed of its serious consequences. As to the institutional treatment for drug offenders, both Hong Kong and Singapore have compulsory treatment. In Hong Kong, an inmate, immediately following admission, will receive treatment for withdrawal symptoms if necessary. He is also enrolled in an induction course to assist him in adjusting to the demands of the treatment programme. An inmate is assigned to an aftercare officer who will establish rapport, give him individual counselling, seek on the inmate’s behalf reconciliation with his family, plan arrangements for postrelease employment and accommodation, and give such other help as is necessary. At the completion of the induction course, an inmate is directed and encouraged to undertake a particular work task based on his previous experience, skill if any, and aptitude for the job. Work in a third treatment centre serves a twofold purpose: firstly, it provides the inmate with a source of self-esteem based on gainful employment, and secondly, it instills into the inmate a good work habit. An inmate’s physical progress and attitudinal changes are observed closely by the staff, and his case is brought up at monthly intervals before a board of review chaired by a senior member of the staff who is in charge of all treatment centres. Suitability for release from a treatment centre is decided by members of this board. Before release from a drug addiction treatment centre, an inmate is served with a supervision order which is effective for one year. The requirements of the supervision order can be varied at the discretion of the courts. It may review for the benefit of individual inmates. On leaving the treatment centre, every person who will be under supervision is to sign a document that he will abide by the terms for supervision. In Singapore, the one year statutory supervision, noncompliance with the conditions of supervision may result in recall to a treatment centre for further treatment. However, during the second and third years, such statutory restrictions are not enforced, and the aftercare officer fills the role of counselor, helper, and social worker.

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work in the open community. Of course, all dischargees have to undergo the compulsory supervision under the supervision officers, and the supervision period is 2 years. It was suggested by the group that institutional treatment for drug offenders operated by Hong Kong and Singapore might be referred to if consideration for the establishment of this kind of service was necessary.

The group discussed the international cooperation for the prevention of smuggling stimulant drugs. The group members strongly believed that a single country alone could not win the battle against dangerous drugs. All Asian countries have to play an active part in international anti-drug action; i.e. to keep close links with the United Nations, with the inter-governmental agencies such as the Colombo Plan Bureau and Interpol, and with the individual government, with Europe, North and South America, etc. Furthermore, it is very useful and important to conduct comparative studies and to exchange information on the prevention of drug abuse and thus the repression of illicit trafficking in dangerous drugs. The group also agreed that comparative studies were necessary to conduct in order to commit the alleged particular offence.

Suspension of Execution of Sentence in Japan (Especially Concerning Traffic Crimes)

Mr. Yamagaki explained the system of suspension of the execution of sentence in Japan, Punishment is sometimes unsuitable for some persons, especially those who are convicted and sentenced to short-term imprisonment. Thus Japan has this kind of system. The requirements for suspension of the execution of sentence were explained clearly. As for a person who falls into the requirements may be suspended for a period of not less than one year or more than five years. When the period of suspension elapses without revocation of the pronouncement of the suspension of execution, the original sentence loses its legal effect. The suspended sentence is to be given or not is the most concerned matter to the accused, and consequently it is likely to become the most controversial and important problem for the judges.

Concerning the violation of the Road Traffic Law, most cases brought to the court as violation of the Road Traffic Law are those of driving without license and drunken driving. The offender committed the aforementioned offence for the first and second time is usually dealt with according to the summary procedures; cases of traffic crimes disposed of through the formal procedures are those of rather malignant ones. The main factor to decide whether suspended sentence is to be granted lies in the offender's crime record in traffic violations. According to the Osaka District Court's research, the total number of past malignant traffic offences is the borderline to distinguish suspension and non-suspension sentence for non-licence driving cases; as to the non-licensed and drunken driving cases, the marginal number of past malignant traffic offences is 5.

Members were invited to comment on the Japanese court's assessment standard on the violation of the Road Traffic Law. All group members involved themselves in the discussion. It was felt that the attention had to be paid to the type of offence, i.e. whether the offender committed the same offence repeatedly, and the interval between the past and the fresh offence. As to the juvenile offenders, the court should give different consideration, while comparing with the adult offenders, though there might not have an agreed standard of sentencing. Since the present practice would let the court and the offender have the same expectation towards sentencing, it might then be considered as an appropriate assessment.

With regard to the serious traffic accident cases, the suspension rate of the death cases without malignant violation against the Road Traffic Law is higher than that of the bodily injury cases with malignant violation against the Road Traffic Law. This means that much more emphasis is given on the malignancy of criminal conduct, or the gravity of negligence overrules the gravity of result. While the court is going to decide the term of imprisonment, the degree of the accident's result becomes a more influential factor than the degree of negligence; other factors taken into consideration are (1) the nature of previous traffic offences, (2) the degree of negligence on the part of the injured person and (3) the compromise between offender and victim; besides, factors including age of the injured person and degree of offender's injury are also considered by the courts.

The group realized the need to consider both the gravity of the accident's result and the degree of negligence. In Japan, the public prosecutors do make recommendation to the court after having considered these two factors carefully. However, the group's opinion was that more emphasis should be given to the degree of negligence, and yet all other relevant factors should also be duly taken into consideration.

Some Important Aspects in Criminal Justice Administration

Juniors Sniffing Thinner or Glue

Mr. Kaneko explained the procedures of Family Court and drug offenses. He revealed, there are many thinner or glue sniffing cases required assistance from the family court probation officers. The teenagers resort to the abuse of thinner and glue as a 'play' to satisfy their wants. The trouble with these juveniles is that they do not have the sense of guilt as other offenders because they think that they do not do harm to others. But the abuse of thinner and glue is found by scientists to have ill effects both on physical and psychological, on the abusers.

In order to have a clear picture about thinner or glue sniffing juveniles, Mr. Kaneko classified them into three types:

1) Simple type: Those sniffing thinner or glue just for a 'play', or just out of curiosity, and having the tendency to get rid of it or change another kind of play later.

2) Delinquent type: Those having the tendency of sniffing thinner or glue habitually, losing interest in school work, and sniffing thinner or glue with other abusers.

3) Habitual type: Those having psychological and physical dependence on thinner or glue and with the difficulty to build up relationship with others.

Majority of the thinner or glue sniffing juveniles are the simple and delinquent type, whereas the habitual type juveniles are the minorities. According to Mr. Kaneko, counseling guidance and group discussion can be used to help the simple type abusers; in addition to the aforementioned methods, finding out the basic causes of the problems and helping them solve their problems by probation supervision are necessary to the delinquent type of abusers; as for the habitual type of abusers, treatment in the juvenile training school may be the only way, and it should be followed continuously by aftercare service.

To close his presentation, Mr. Kaneko introduced the programme of group guid-
sense for the thinner and glue sniffing juveniles at the Fukui Family Court. This programme aims at helping those juveniles, except the habitual abusers, who are brought to court for the violation of the Poisonous and Hazardous Substances Control Law or are proved to be thinner or glue abusers. The juvenile abusers should participate with parents or employers; group discussions are held separately for juveniles and the adults, i.e. their parents and employers. During the selection of group members, care has to be taken so that the proper juveniles will participate in the proper group. Sometimes, individual interviews have to be given to those members who do not verbalize their feelings in group discussions. Although there is no follow-up study on the effectiveness of this programme yet it seems to be a successful one.

In the discussion period, the group firstly discussed how to prevent the juveniles from sniffing thinner or glue. In Japan, most juveniles sniffing thinner or glue are those graduated from junior high schools or dropped out from senior high schools, therefore, it is badly necessary to enlighten the younger generation and the parents about the sniffing problem; perhaps, the schools can be chosen as the target groups, meetings and discussions should be arranged for the teachers, students and parents so that all of them are aware of the seriousness of the problem. In Singapore, intellectual, recreational, social, cultural and training activities are provided by the community centres to meet the interests and needs of different people and to occupy the citizens' leisure time; through these community centres, the prevention of thinner and glue activities can be carried out.

The group was of the opinion, that in order to avoid duplication of service and to coordinate different kinds of service, it was necessary to have a centralized body to make policy, to give advice and to coordinate activities against the use of thinner and glue; the work of the different organizations, either governmental or voluntary, might be focused on fostering public awareness of the dangers of thinner and glue abuse, promoting community involvement to deal with the problem and persuading young people not to experiment with thinner or glue. Finally, the group discussed the workability of the present treatment given by court for those thinner and glue abusers juveniles. All group members were eager to find the best treatment for this type of juvenile offenders. However, the members divided into groups of opinion; 1) juvenile training school being a must to stop juveniles from sniffing thinner and glue, 2) educational and counselling being the alternative because juvenile training school being too harsh to them. After thorough discussion, the group unanimously agreed that chance should be given to the first or second known juvenile offenders; in order to avoid the social stigma of institutionalization, institutional treatment should be used as the last resort to treat those habitual offenders; the group also recognized that institutional treatment might be an effective way to stop certain type of juveniles from sniffing thinner and glue.

WORKSHOP II: Administration of Penal Institution

Summary Report of the Rapporteur

Chairman: Mr. Nabil Hanna Shammo Kirma
Advisors: Mr. J.P. Delgoda, Mr. Akio Yamaguchi and Mr. Tetsuji Fujinara
Rapporteur: Mr. Barindra Nath Chattaraj

Titles of the Papers Presented

1. Institutional Treatment of Offenders in Thailand
   by Mr. Nutschat Ratinudethi (Thailand)
2. The Need for Correctional Programmes
   by Mr. Francis Xavier Thunakreatanv Philips (Sri Lanka)
3. Administration and Technical Committee in the State Organization of Social Reform
   by Mr. Nabil Hanna Shammo Kirma (Iraq)
4. Recruitment and Training of Correctional Officers
   by Mr. Sddiquar Rahman (Bangladesh)
5. Training Needs of Prison Personnel in India
   by Mr. Barindra Nath Chattaraj (India)
6. Substituted Prison System in Japan
   by Mr. Takashi Mori (Japan)
7. Problem in the Treatment of Unconvict-ed Prisoners
   by Mr. Suekichi Ushifima (Japan)

Introduction

The group was mainly composed of prison officers except one who belonged to the National Police Agency, Japan. Each member of the group presented his own paper according to order, as mentioned above. The titles of the papers although, were different, the main emphasis of most of the papers was laid on correctional functions of the penal institutions. However, there were some papers which were devoted to the administrative function of some penal institutions.

All the papers were discussed in the group and deliberations were based on the personal and professional experiences of the participants in the light of existing conditions of their respective countries.

Institutional Treatment of Offenders in Thailand

The first paper was presented by Mr. Ratinudethi on the Institutional Treatment of Offenders in Thailand. The paper was mainly devoted to describing as to how the Thai Correctional Administration is engaged in developing treatment programmes for the prisoners. At present, Thai correctional systems, as mentioned by him, is busily engaged in making necessary preconditions in which prisoners are properly studied, classified and treated to make them fit for living in the community as law-abiding citizens. With a view to accomplishing the desired result, the individual case history of the prisoners are carefully studied and examined. Medical and psychological services are also provided to the prisoners. Parole and remission as parts of treatment programmes are liberally granted.

As an important component of correctional programme, vocational training on some suitable trades are given to the prisoners which serves mainly two useful purposes. Firstly, it has a treatment value for the prisoners and secondly, prisoners learn some skills by which they may earn money when they are released. He reported that there are more than 20 kinds of trades on which vocational training is given to the inmates of Thailand prisons out of which, craftsmanship, industrial work and agriculture are very important.

He also pointed out that the prison administration of Thailand is trying best to achieve community involvement in prisoners' treatment programmes. Prison authority has opened some shops in the local
The Need for Correctional Programmes

The next paper was presented by Mr. Philips. Mr. Philips's paper explained elaborately the purpose of punishment and different objectives of imprisonment. Punishment, according to him, is expected to serve the purpose of correcting and reforming the offenders. He discussed about two main limitations of punishment. The first of these two is that it exerts certain adverse effect on the offender's personality which in turn works against the goal of reforming him as a law-abiding citizen. The second disadvantage comes from the brand it imprints on the offender's personality. This branding makes the offender feel rejected in the society and tends to be driven to the company of other criminals.

Regarding goals of imprisonment he commented that goals assigned to a prison are sometimes contradictory with each other. Society expects the prisoners to be punished and at the same time wants that the prisoners to be reformed also in the prisons. In order to satisfy the society's expectations, it is necessary for the prison authorities to lay emphasis on coercion and regimentation which again operates against the society's expectation to reform the prisoners. He held that in Sri Lanka prisoners are given different types of punishments on any prisoner violating the rules of the prison. In order to implement individualized treatment programmes, adequate number of staff is necessary to take individual care of the prisoners. Hence, Mr. Philips commented that the group discussed the points raised by Mr. Philips while discussing the problems in conducting prison programmes on the progressive line. His first problem was related to shortage of staff. He stated that in order to implement individualized treatment programmes, adequate number of staff is necessary to take individual care of the prisoners. His second problem was concerned with inadequate training of staff. Although a training institute is set up in Sri Lanka in 1975, yet it has not been possible to impart training to all the prison staff.

The group after examining the pros and cons of the problems expressed the necessity for reforming the government to understand the real nature of the problems and consequences. Regarding the staff training the group felt that by opening one more training institute, this problem may be solved to a great extent.

The group discussed the points raised by Mr. Philips from various perspectives and wanted to know from him regarding the position of Sri Lanka in respect of implementation of treatment programmes in prison.

Mr. Philips stated that in Sri Lanka, prisoners are given different types of vocational training on trades which are popular in the community with a view to enabling them to earn their livelihood after being released from the jails. He told that prisoners of Sri Lanka are also given formal education for which full-time educational teachers are appointed. He maintained that education sharpens the mind of the inmates and widens their outlook.

Besides vocational training and educational programmes, inmates of Sri Lanka prisons are offered with liberal opportunity to pursue their respective religion. Mr. Philips asserted by saying that religion has a strong impact on the prisoners' mind. He cited that his personal experiences concerning the usefulness and effectivity of religion in creating favourable attitudes in prisoners toward society.

Mr. Philips mentioned about two main problems in conducting prison programmes on the progressive line. His first problem was related to shortage of staff. He stated that in order to implement individualized treatment programmes, adequate number of staff is necessary to take individual care of the prisoners. His second problem was concerned with inadequate training of staff. Although a training institute is set up in Sri Lanka in 1975, yet it has not been possible to impart training to all the prison staff.

The group after examining the pros and cons of the problems expressed the necessity for reforming the government to understand the real nature of the problems and consequences. Regarding the staff training the group felt that by opening one more training institute, this problem may be solved to a great extent.
vocational and cultural rehabilitation, secondly to organize and supervise the work inside the prison, and thirdly to carry out the functions of the Committee described in 
the Constitution of the Vocational and Cultural Rehabilitation Committee. He stated that the government order directing the members of the Committee to organize and supervise the work of the Committee. The main reason of their refusal to cooperate with the Committee is due to the low remuneration given to them by the government. The group after deliberating upon the problem, suggested that it is better if the prison department can make fulltime appointment of these experts in the prison service. Mr. Karna mentioned that at present, this problem has been partially solved by issuance of a government order directing the members to attend the meetings regularly. He also stated that some social researchers of prison department have been sent abroad for specialized training. On their return back, this problem may not exist in Indian jails.

Recruitment and Training of Correctional Officers

Mr. Rahman discussed a recruitment problem and need for training of prison staff of Bangladesh. He stated in the beginning that the Prisons Act, by which prison administration is guided and controlled today was formulated by the then government whose primary aim was to rehabilitate the offenders to rehabilitate them in the community. He said that prison administration can not undertake any progressive programme for prisoners' treatment due to the absolute prison rules. He felt an urgent need of replacement of the old rules by new rules which would be framed in keeping with the modern objectives of punishment. The group unanimously agreed with him and felt that some immediate measures should be taken in respect of revising the outmoded prison ordinances. Mr. Rahman mentioned that Bangladesh Government has already set up a commission for the same purpose.

Mr. Rahman pointed out that the prison staff of his country is appointed and confirmed without any possibility of getting good and efficient workers in the department. Another fact which restricts the change of getting efficient workers, he mentioned, is low status and inferior pay scale of the prison staff. Following an elaborate discussion, the group came into conclusion that in order to get good and capable staff, pay and status of the prison staff have got to be enhanced. In this respect again government's interest is to be aroused. In respect of the recruitment of the guarding staff, the group felt that there should be open competition on the basis of written and oral test to select candidates. Candidates are required to pass good health test and should be educated up to high school standard.

Mr. Rahman stated emphatically that proper training of the prison personnel is imperative in smooth functioning of the prison administration. Today's guards are not supposed to perform the custodial duty only but also they are expected to help the prisoners to improve their behaviour pattern. Untrained prison personnel instead of performing these tasks often create hindrances in the way of achieving modern objectives of prisons. At present, Mr. Rahman, pointed out that there is no formal arrangement for imparting training to prison staff in Bangladesh. He expressed an urgent need for establishing at least one Training Institute for this purpose. The group suggested that to begin with, arrangement for imparting training to guarding staff should be made in the existing four central jails. Initially one barrack of each central prison may be spared for this purpose, where newly recruited guarding staff may be given practical training by experienced prison officers. This arrangement may not need financial implication. The group also agreed to Mr. Rahman's proposal with regard to the establishment of a Central Training Institute for conducting regular training courses for the newly recruited prison officers and also to conduct refresher courses for those who have put considerable services in the prison department.

Training Needs of Prison Personnel in India

The main theme of paper presented by Mr. Chattaraj was related to training needs of prison personnel. Mr. Chattaraj's paper contained a historical review of the development of thought in evolving infrastructures for imparting training to different categories of prison staff.

At present in India, training is conducted at three levels for three categories of prison staff like lower ranking staff (prison guards), middle ranking officers (assistant jailors to district jail superintendent) and high ranking officers (central jail superintendent and above). The first level training is organized by the respective states. Many of the states have got their own Training Institutes for prison guards. The second level of training which is meant for the middle ranking officers are generally organized at regional level. At present, there are four Training Institutes at Lucknow (Uttar Pradesh), Poona (Maharashtra), Hissar (Haryana) and Vellore (Tamil Nadu) which are engaged in imparting training for the middle ranking officers of the country. The training of high ranking officers is generally arranged by the National Institute of Social Defence, Ministry of Social Welfare in collaboration with the different state government in terms of organizing short term courses, seminar and workshops.

In spite of these arrangements Mr. Chattaraj mentioned that a vast majority of the staff of Indian prisons still remains without adequate training and proper orientation concerning the modern philosophy and methods of correction. The training which is given to the guarding staff is mostly in-service training. But before giving in-service training, Mr. Chattaraj felt that they should be given initial and basic training at the time of their recruitment. The facility is lacking at present.

The group assessed the training need on the basis of available statistics relating to the strength of prison staff working in Indian prisons and discussed on the various facets of the problem. The group felt that in view of changing pattern of criminality and change in the objectives of punishment from deterrence to rehabilitation, the training for prison staff has become essential. Therefore, each state government in addition to giving initial training to guarding staff has to make arrangements for conducting refresher training courses for them at a regular interval. The four existing Regional Training Institutes have to organize the same for the middle ranking officers. The National Institute of Social Defence, the group felt, has to play a very significant role in this sphere by organizing more seminars and workshops for the high ranking officers, who are working at policy making level. The group also suggested that the National Institute of Social Defence may also hold some special courses of short duration on some selected topics for a cross section of top level officers experienced in different branches of correctional administration from various states and union territories.

Substituted Prison System in Japan

Mr. Mori who is a police officer of the National Police Agency, presented his paper on substituted prison system in Japan. He mentioned that the substituted prison system being synonymously known as police jail is the place where persons who are arrested by the police according to the Code of Criminal Procedure of the country are detained not more than twenty three days. At present, there are about 1,200 police jails in Japan where 5,000 persons are detained by the police.

Mr. Mori after giving a systematic historical outline of the substituted prison system, tried to bring about the major criticisms against the system. Mr. Mori, by
GROUP WORKSHOP II

the virtue of being a senior and responsible police officer had also reproduced the summary of the official comments given by the police in December, 1977 against those criticisms.

The main criticisms, he listed are three fold. Firstly, the substituted prison system has always a possibility of the infringement of the human rights in course of investigating an accused while his detention. Secondly, the system has a contradiction to the Code of Criminal Procedure in respect of its principle or philosophy of "adversary system" and thirdly, the system suffers from insufficient facilities and lack of arrangement for treatment.

The official comment in respect of first and second criticisms is that the police pays respect to human rights and it is one of their major interests throughout the process of investigation. He added that the severe training and education are given to all police officers to carry out their duties and to observe the due process of law and every police officer recognizes the importance of the protection of human rights. The Constitution, the Code of Criminal Procedure and other laws guarantee the human rights of suspects and the police appreciates that the rights of the suspects should be respected as much as possible at every stage. In respect of the third criticism regarding insufficient facilities and treatment, he maintained that the criticism is not well founded because 30 to 40 police station buildings are rebuilt newly or renovated every year and the police jails of these stations are provided with modern and up-to-date facilities. The other out-of-date police jails are given adjustment by providing new interview rooms, physical exercise ground, improved ventilation and lighting system.

Mr. Mori justified the importance of and necessity for the existence of the police jails in a very elaborate manner. The main point on which he emphasized is that the police jails provide an opportunity for the police officers to conduct proper and rapid investigation which ultimately lead to shortening of the period of detention of accused persons. Mr. Mori concluded his paper by mentioning that, although substituted prison system is not suffering from any major drawback, yet police authorities are trying their best to modify the police jail system in order to bring further improvement in it. On first April, 1980, the management of the police jail has been transferred to the jurisdiction of general affairs secretariat section from the criminal investigation section. This arrangement will be helpful in reducing the misunderstanding that police infringes on the human rights of the subject.

Problems in the Treatment of Unconvicted Prisoners

The last paper was presented by Mr. Ushijima. His paper was related to problems in the treatment of unconvicted prisoners. In the beginning of his paper, he made it clear that the treatment of unconvicted prisoners does not intend for making efforts for their rehabilitation. He gave a detail account relating to legal provisions made by the Prison Law Enforcement Regulations in respect of accommodation, personal hygiene, clothing, bedding, exercise, entertainment and sports, interview, correspondence, books and newspaper, writing materials and work.

He mentioned that he is to face some difficulties very often in carrying out the rules strictly as enunciated by the Prison Law particularly in the areas relating to under trials. The difficulties are due to the outside contact, work programmes and interview facilities. Mr. Ushijima stated that there is a proposal for amendment in Prison Law regarding remand prisoners' right of work and added that in case, the amendment comes in force and large number of under trials apt for work, there is a possibility of creating the problem of inadequacy of staff. He also mentioned about the problem arising out of the use of micro-tape recorders by the lawyers in interview with remand prisoners.

WORKSHOP III: Correctional Programmes in Prisons

Summary Report of the Rapporteur

Chairman: Mr. Nabil Shawkat Al-Khalessi
Advisors: Mr. Knut Sveri, Mr. Keziê Haghiana and Mr. Masaru Matsumoto
Rapporteur: Mr. Ghulam Sarwar Lalwani

Titles of the Papers Presented

1. Female Penal Institution in Hong Kong by Miss Chan Sim-Ying (Hong Kong)
2. Religious Activities in Tongan Prisons by Mr. Sokoloma Hupa eua Tuiti (Tonga)
3. Report on Classification in Ninevah by Mr. Nabib Shawkat Al-Khalessi (Iraq)
4. Over-population and Problem of Classification in the Prisons of Pakistan by Mr. Ghulam Sarwar Lalwani (Pakistan)
5. Treatment of Prisoners Associated with Organized Violent Groups by Mr. Tsumoru Tornonaga (Japan)
6. Criminal Case on the Maintenance of Security and Discipline in Institutions by Mr. Taisami Nekan (Japan)

Introduction

The group comprised five correction officers, one public prosecutor. These participants with different professions and coming from different countries contributed towards programming for the treatment of offenders, and their rehabilitation and streamlining their living condition. The papers focused mainly on the issues relating to the staff members' requirements, human relations in relationship to the correctional institutions, better treatment and requirements of classification, and the activities of members of the gangster groups within the walls.

Female Penal Institution in Hong Kong

The first paper which came for discussion was the one presented by Miss Chan on the functioning of the female institution in Hong Kong and the various problems faced in the treatment process. Tai Lam Centre was established to cater for the young and adult prisoners, training centre inmates and remands who were awaiting trials and each of these groups was accommodated in separate sections of the centre.

Miss Chan explained briefly the treatment adopted in the different sections of prison. During work, recreation and accommodation, they were kept separately from each other and the different programmes were drawn. Miss Chan added that for the drug addiction centre inmates a comprehensive treatment programme including medical and psychological treatment was conducted. They were mainly employed on tailoring, embroidery and domestic chores. While for the training centre inmates a comprehensive programme of group discussions, individual counselling and education classes were conducted. They were engaged in half day education training and the other half in vocational training. The release of training centre inmates was based on their progress and they were required to undergo compulsory supervision for a period of 3 years after release. Miss Chan explained the importance of welfare and aftercare to look into the need of prisoners, to undertake and group counselling for inmates of the drug addiction centre and the training centre, and to coordinate with the Discharged Prisoners Aid Society in order to make pre-release arrangements for employment and accommodation.

Miss Chan put up the problem that with the enactment of new Law in 1975 the female employees could not get married during their service which resulted in the shortage of the skilled and experienced staff, since the employees had to leave the
job after marriage no one could adopt this job as a career and these jobs had become a pastime. The participants regarded it highly discriminating when in police and other departments the married women were on the job. There was a risk of physical violence from prisoners against the staff but the chances were very few. The group suggested that the department should convince the government to change the recruitment system and women be allowed to remain in their service after their marriage.

Miss Chan put up another problem which was the offshoot of the previous one, that the immature and inexperienced staff had to deal with mature and shrewd prisoners as the experienced staff had to leave the jobs. The participants opined that it was very necessary to allow the staff to carry on their jobs after marriage and it was also suggested that the staff should be given advanced training with which they would be able to fill up the gap with the still and specialized knowledge. Few participants put up their opinions that both sexes be allowed to work in the institution and the training was quite different than that of the prison and that they had to face the outflow of the trained custodial staff to other departments. The participants opined that the training of the mature prisoners as the experienced staff had to leave the jobs.

Mr. Tatila told that in Tonga the prison staff was trained in the Police Training School where the nature and purpose of training was quite different than that of the prison and that they had to face the outflow of the trained custodial staff towards Police Department. Dr. Sveri suggested that it would be beneficial as well as economical if it was managed to get prison staff to work as teachers in the police training centre as they had in Sweden. However, there was an advantage that the recruits from the inner most police and police would be able to fill the gap with the assistance of the trained staff.

Dr. Sveri looked into another facet of the problem and remarked that in Sweden they were also facing the difference of attitudes between young and old staff. He said that new staff was educated in prison schools and they had got particular ideas of humane treatment, but when they came to actual work and tried to implement their ideology they faced resentment by the members of the old staff who were used to work with the old staff. Mr. Tatila maintained that the prison staff did not want to perform the duty of execution. The staff contended that it was easy to pass the order but to carry out was very difficult. But it was always the prison staff who had to pull the rope. In Iraq, the Japanese, Hong Kong, Tonga and Pakistan, according to the participants, the death sentence still existed as it was an agreeable act in the society. Dr. Sveri suggested that the best solution was to make away with the death sentence as it was strange to continue such things after so much advancement in the civilization. It was a matter of great concern that there was no regard for human life and that the feelings of revenge were being upheld by the society. Mr. Al-Khalesi of Iraq reacted that it was very difficult to finish the death penalty in the society where for the sake of honour and for small things murders were easily committed. Had the death penalty been stopped, there would have been a tremendous amount of crimes. Death penalty was a necessary step to minimize the rate of murder.

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Mr. Tatila presented his paper on the impact of religion and its role in the rehabilitation process. He explained that religion had great influence upon the people of Tonga. With the advent of Christianity in Tonga, a new way of life came with the emphasis upon the reforms and the equality of mankind and it had done a lot to minimize the rate of crime in the society. As the religion touched the inner heart and changed the mode of thinking and behaving. In Tonga, every staff member of the institution had belief in God and had the spirit to teach and treat the prisoners with kindness. He said most of the crimes occurred due to the lack of knowledge of the religious spirit. Hence, it was the foremost duty of the society to set the religious rules and try to have their prevalence so that the crime occurrence should be minimized. This was the work to be done simultaneously in the community and within the prison.

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Another problem which came under discussion was that there was a resentment among the senior staff against the junior staff and the nature of the job and, nevertheless, the senior staff was trained in the police training centre as they had in Sweden. The expert committee was also of the opinion that the prison buildings were not adequate to meet the requirements of the classification policy to be implemented. The new pattern of classification was based upon nationality, potentiality to commit crimes, health conditions, period of sentence and age factor.

It was only in 1978 when the Pardon Law was enacted, there came a chance to reclassify the prisoners. The new classification as the population of the Nineveh Prison decreased remarkably after the release of Kursi who was convicted of fourteen charges of armed rebellion in the past. According to Mr. Al-Khalesi when the new principle was translated into practice various kinds of problems were faced by the prison administration. In the first instance, it was found that the prisoners with different sectarian attitudes were not ready to tolerate each other in the same block of confinement. Secondly, the tribemen who regarded themselves honorable refused to live with the prisoners of the moral offences. Thirdly, regarding murders and retaliatory murders there came up the difficulty of placing the prisoners of the same offence were placed in the same ward regardless of their age and health condition. Owing to the diversity of offenses several wards were needed when the buildings did not have the required accommodation. Due to over-population of the inmates and scarcity of the accommodation, the inmates were placed haphazardly with the result that contamination prevailed and the different social evils such as gambling, sodomy and the use of drugs erupted in the younger prisoners. Sometimes the sectarian conflicts arose resulting into group fights amongst the prisoners.

With the Revolution of 1968, prison reforms were introduced. Mr. Al-Khalesi explained the process of new reforms and stated that the main expert committee established for the welfare of prisoners, managed to draw a uniform principle in order to be adopted by all the social researchers during the classification process. The expert committee was also of the opinion that the prison buildings were not adequate to meet the requirements of the classification policy to be implemented. The new pattern of classification was based upon nationality, potentiality to commit crimes, health conditions, period of sentence and age factor.

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segregated on the basis of age and period of sentence. Mr. Al-Khazali suggested that while finalizing the policy of classification various sectarian factors and offenders' background within villagers or tribal areas should be carefully observed.

The classification of prisoners in most of the participating countries was based upon the basis of advanced criminality and less advanced criminality categorized as A and B and they were confined in the prisons accordingly. The condition of the prisoners of Iraq was typical due to its territory and society where just for the sake of separation of prisoners. However, Mr. Lalwani opined that in Pakistan the problem of overcrowding and inadequacy of the prison buildings to accommodate the prisoners for better treatment. In the prisons of Pakistan mainly two categories of prisoners, i.e., undertrial and convicted prisoners were confined. The existing arrangements for the confinement of convicted and unconvicted criminals were most unsatisfactory features of prison administration. Even amongst the undertrials, there was need for careful classification of segregation of prisoners. However, even at the moment most of the undertrials were locked up together at night in large association barracks, where the danger of association between previous convicts and casual prisoners seriously existed.

Mr. Lalwani opined that convicts who were tried and convicted by courts of law, were to be released on stipulated dates whether this term was short or long. However, violators could not be kept out of circulation permanently. They might be kept behind walls for long duration but eventually they have to come back to society as a reformed individual or as a confirmed criminal. A person reformed as one who had developed a change in his environment. He had to be understood as a confirmed criminal who it should be found out what had gone wrong with him, his family or his environment. Mr. Lalwani said the process of the reformation of a prisoner was not a matter which could be affected overnight. It took time. Therefore, the reformation of short term prisoners was rather difficult. In cases of first offenders or petty offenders, Mr. Lalwani opined that it was in the public interest to avoid imposition of short sentences and to either impose fines or to place the offenders on probation.

Realizing the necessity and importance of segregation, attempts were being made in most of the prisons in Pakistan to keep the different classes of prisoners in separate blocks and to segregate them so as to prevent the evils of contamination and molestation, but congestion in the prisons was so acute that all efforts at segregation had become futile. The necessity of protecting juveniles and young prisoners and the segregation of undertrials and convicted prisoners from confirmed convicts of the classification was most essential. The participants were of the opinion that the main problem the prisoners, the overcrowding of the undertrials and lack of proper segregation. Most of the prison buildings were very old and inadequate to absorb the inflow. The prison population was increasing partly due to the lengthy procedure of the courts and undue delay in the disposal of the cases. With the result that on one hand the prisoners were not provided required hygienic facilities, on the other hand, the overcrowding of the undertrials was indirectly disturbing the rehabilitation work for the convicts.

It was suggested by the group that the Ministry concerned should be approached to give priority to the correctional institutions regarding the provision of new buildings, custodial staff and the specialist staff for better treatment. Moreover, the alternative methods for outflow such as parole and probation, remission and work camps should be encouraged.

Treatment of Prisoners Associated with Organized Violent Groups

Mr. Tomonaga of Japan presented that the number of prisoners associated with organized violent groups had shown increasing tendency, that tendency to increase would continue as they were already 50% of all prisoners in penal institutions for category B prisoners i.e., those who have an advanced criminal tendency, and that such prisoners were involved in most of the serious incidents in penal institutions.

Prisoners associated with organized violent groups were organized informal groups within penal institutions, and were so acute that all efforts at segregation had become futile. The necessity of protecting juveniles and young prisoners and the segregation of undertrials and convicted prisoners from confirmed convicts of the classification was most essential. The participants were of the opinion that the main problem the prisoners, the overcrowding of the undertrials and lack of proper segregation. Most of the prison buildings were very old and inadequate to absorb the inflow. The prison population was increasing partly due to the lengthy procedure of the courts and undue delay in the disposal of the cases. With the result that on one hand the prisoners were not provided required hygienic facilities, on the other hand, the overcrowding of the undertrials was indirectly disturbing the rehabilitation work for the convicts.

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prosecutor wanted to prosecute in court he must have sufficient evidence.

Mr. Nakao put up a case for study. This was a case of 50 years old prisoner M in Shiga Prison who had 16 days as an un-expired portion of sentence out of one year and two months. When after the movie festival for inmates was over and he was coming back with his cellmates, Guard A checked him that he was out of step with the others and took him by his hand to security section. Guard B, who happened to pass by, rushed up for his help and to security section. Guard B, who happened to pass by, rushed up for his help and to security section. There were two alternatives of dispositions before public prosecutor, i.e., M's violent behaviour against Guard A needed severe punishment in order to maintain discipline among others. It might be that Guard A's actions to take him by force had deviated from the normal use of security force. However, as M caused Guard A bodily injury by hitting him in the face, he should be prosecuted for assault against an official or on the charge of obstruction of official duty. Another alternative disposition was that because the public prosecutor had wide discretionary power to discharge the offender from prosecution, the case should be dropped.

In determining the disposition of this case, the factors regarding injuries sustain­ ed, medical treatment involved, motive and modus operandi, psychological reason, and difficulties in sustaining the prosecution at the court, must be taken into consideration. It was an incidental case of an assault that was provoked by Guard A's excessive force, and the injury Guard A received was not serious. In addition, M didn't use any cutlery. Therefore, the prosecutor who took charge of this case suspended the prosecution.

Mr. Nakao concluded that the prison officials better understood the importance of human relations, however, prison of­ ficials should always be aware that good and harmonious human relations should be maintained in the daily contact with inmates in the prison. In most of the countries disciplinary punishment was awarded by a prison committee. The investigation was made by the staff of the prison, sometimes working directly under the control of the inspectorate, and the punishment was given by the superintend­ ent or the committee. The Group discussed the issue whether or not the disciplinary punishment might be awarded by the disciplinary committee. Dr. Sveri argued that it was not fair that the disciplinary committee could award punishment relying upon the statements of the guard. Even if the decision was judicious the prisoners would think justice had not been done to them because the committee belonged to the same hierarchy. It was necessary that police should step in and investigate the matter. Mr. Hagihara opined that cases of minor nature relating to discipline were investigat­ ed and decided by the discip­ line committee and there were few com­ plaints by the prisoners against those decisions, which was a clear proof of the confidence the prisoners had in these committees. The group members emphasized the need of training given to the staff and that the staff should be oriented with the importance of human relations and the limitations of the use of force.

WORKSHOP IV: Assistance in Smooth Resocialization

Summary Report of the Rapporteur

Chairman: Mr. Peter Rogers
Advisors: Mrs. Shinichi Tsuchiya, Mr. Teitichi Harada and Mr. Masakazu Nihikawa
Rapporteur: Mr. Poumai Nofaotolu Papali

Titles of the Papers Presented

1. Community Involvement in the Institutional Treatment of Adult Offenders in the Philippines by Mrs. Susana U. Sembrano (Philippines)
2. Discharged Prisoners Aid Society by Mr. Peter Rogers (Malaysia)
3. Corrections and Community Agencies by Mr. Jeong Dong Jin (Korea)
4. The Use of Community Volunteers in Probation Work by Mr. Poumai Nofaotolu Papali (Western Samoa)
5. Some Aspects of Treatment of Residents in Halfway Houses by Mr. Norio Gota (Japan)
6. Relations between the Correctional Institution and the Aftercare Agency—Especially on Environmental Adjust­ ment by Mr. Hensyuki Namiki (Japan)

Introduction

The group consisted of three correction­ al officers and three probation officers. Each of the group members presented papers dealing with their own sphere of correctional or rehabilitation ex­ periences as presented by the organiza­ tions in their respective countries. In their presentations, group members put forward some of the major problems which they considered gave rise to difficulties in the proper treatment of many groups of of­ fenders such as discharged prisoners, parolees and probationers. Most of the group's discussions centred around the problems presented, in an effort to find solutions for improving the existing meth­ ods of correctional rehabilitation both within the institutional setting and also through the use of community based organizations and programmes.

Community Involvement in the Institutional Treatment of Adult Offenders

In her paper Mrs. Sembrano of the Philippines dealt extensively with the various rehabilitation programmes con­ ducted in their correctional institutions. Also presented in her paper were some of the problems and difficulties experienced as a result of the three independently ad­ ministered prison systems; national prisons, provincial prisons, provincial jails and city or municipal jails. Because of the separate administrations there is no uniformity of prison standards especially relating to treatment programmes and adequate training of staff in provincial and city or municipal jails. The group in discussion agreed that a more uniform sys­ tem of penal administration would ensure standardized training for basic grade and lower ranking custodial staff and promote better treatment programmes for prisoners. Another important aspect of correctional programmes utilized in the Philippines was the extensive use of prison labour. As ex­ plained by Mrs. Sembrano the overcrowd­ ing in the closed prisons led to a policy of separating the first-termers and recidivists from the hard core and taking care of them. This led to the establishment of open prisons re­ penal farms under minimum security and engage in scientific horticulture and animal husbandry projects. They are given a certain amount of cash re­ numeration ,and encouraged to open sav­ ings accounts so that they may have money on their discharge. A special feature of the penal colony system is the allowance of the
it is gained through such organizations as the community, concerned agencies is needed to effect cooperation and active coordination with those inmates sentenced to prison for 3 years training. For this reason an integrated most part they did not receive specialized lack of rehabilitation programmes geared made to ensure that the inmate is given the opportunity to practice his skills once he is back in the society. A particular problem touched upon by Mrs. Sembrano was the lack of rehabilitation programmes geared towards the short-term inmates and for the most part they did not receive specialized training. For this reason an integrated rehabilitation centre will be opened in 1981 situated in Manila. This centre will provide extensive rehabilitation treatment to those inmates sentenced to prison for 3 years or less.

Mrs. Sembrano spoke about the importance of community involvement to the extent that corrections cannot be accomplished properly without the active participation of the community. Cooperation and active coordination with concerned agencies is needed to effect better treatment of offenders. Community participation should be a continuing process and in the Philippines public support is gained through such organizations as; Rotary Clubs, Lions Clubs, Kiwanis, etc. and many groups like the Catholic Women's League. The Integrated Bar Association, Women Lawyers Association and the Episcopal Commission of Prisoners Welfare offer free legal assistance to inmates while the Ministry of Social Services and Development provides welfare assistance.

The group all agreed that programmes for rehabilitation and vocational training in the Philippines are somewhat superficially advanced in the use of volunteer aftercare services than many other countries and the interest shown by community organizations was to be commended. There did however exist some problems within the general administration of corrections as expressed by Mrs. Sembrano and these were outlined as follows:

a) Lack of uniformity in policy governing the administration and treatment of offenders in national prisons, provincial jails and municipal jail systems.

b) Lack of suitably trained personnel especially custodial staff in the provincial, city or municipal jail institutions resulting in congestion and poor conditions.

c) Considered several alternatives in dealing with the problem and suggestions were put forward as follows:

a) To promote the welfare of discharged prisoners especially first offenders and to enable them to become useful and self respecting members of the community.

b) To assist prisoners to find employment.

c) To give assistance in cash or kind to needy discharged prisoners.

Although it is primarily geared toward helping discharged prisoners financially the Society may also extend its assistance to those who may be in need of counseling guidance. Mr. Rogers explained further the membership qualifications and status within the Society especially the ex-officio members consisting of Directors of Social Welfare Departments, senior police officers and the Director of Prisons in Kuala Lumpur. The Society has four subcommittees, the main functions of this committee is centered on public assistance and job placement for ex-prisoners. The committee will interview about 20 prisoners each month prior to their release and recommend assistance to them on a basis of between $20 to $100 depending on their individual requirements. Usually they require assistance for travel expenses to return home, to make new identity cards if their old ones have been lost and to make renewal of driver's licence. Prisoners having been promised of their job placements are usually given a sum of $50 to live on until they receive their first wages. Sometimes money will be issued to enable the prisoners to purchase necessary clothing and tools for a particular trade he will be employed in after discharge. In all, cash assistance and purchase of items amounting to over $6,500 was given to more than 200 prisoners in 1979. In order to continue to provide assistance to post-discharged offenders the Society relies heavily on subscriptions by members and public support from well-wishers in the community. However raising finance to cover its budget has always been a problem and this was offered to the group as a topic for discussion. One suggestion put forward was for the Society to conduct lotteries in order to raise funds. Mr. Rogers explained that a lottery was already being run by the social welfare agency but the Society was not given a high priority on the list of charitable organizations who received assistance from such a scheme. The group in consensus considered that the work of the society should be publicized more through the mass media, interviews, meetings with the business community and even to the extent of holding a "Campaign for Bright Futures" is held in July allow the country in Japan. Consideration could also be given to involving service organizations such as Rotary Clubs, Lions Clubs and such other community agencies.

Next Mr. Rogers spoke about the committee's work in the employment assistance field and quoted that the Society secured employment for 87 prisoners in 1979. Several of these prisoners with minor offences registered with the employment exchange. The distribution of job seekers by educational attainment indicated that the majority had a low educational standard and many could not meet the required qualification stipulated by the private sector. Most of the jobs found for discharged prisoners were; rubber tappers,
labourers, shop assistants, lorry drivers, fishermen, carpentry, tailoring and farm­
work. The major problem faced by the Society is employment for ex-prisoners. Some employers are willing to accept and give them another chance, while the maj­ority feel that ex-prisoners will prove to be a bad risk to his business and he may be a bad influence on the other workers. The group was of the opinion that the problem of unemployment amongst discharged pris­­oners was common throughout the Asian region and was associated to the overall un­employment figures for the whole society and it was difficult for the ordinary non-offender to find work much more difficult would it be for the ex-prisoner with low education and a criminal record. Here again the group could only suggest that increased liaison with voluntary organi­zations and private sector businesses should be utilized together with closer coordina­tion of the government agencies such as the labour exchange, social welfare and correc­tional institutions. In order to make the ex-prisoner and amel rather than a liability to the community, there is much need to get influenced men and women of goodwill involved in the activities of the Discharged Prisoners’ Aid Society.

Correction and Community Agency

Mr. Jeong of Korea presented the third paper for discussion by the group which dealt with some of the major difficulties faced by correctional institutions in their efforts to promote closer liaison and com­munication with outside organizations in the community. Mr. Jeong pointed out that correctional agencies cannot be effec­tive in their mission if other social agencies do not cooperate in an integrated rehabilita­tion programmes extending beyond the prison walls and that the traditional insti­tutional structure of the correctional system is, virtually by its nature, a closed system, reactive to changes in the community. Corrections must mobilize public support for rehabilitation programmes and stimulate the interest of wellknown citizens who can lend their personal prestige and community status for the benefit of correction. This requires recruitment of advisory committee and public sponsorship. A technique used towards this end is to establish citizen advisory committees which may act as a liaison body between correctional institu­tions and the community. Citizen groups have an opportunity to make alliances through which they benefit from corrections. For example, among those whom such a mutual relationship can benefit are the labour unions, which draw their strength from working groups. In Korea there are 27 prison which conduct ex­­tensive vocational training programmes. Up to December 1978 over 100,000 pris­­oners had been given training and 25,737 of them in skilled work have passed nation­al trade certificate examinations. From 1971 to 1978, 184 inmates won awards in national competitions. Under such a sys­­tem the skilled inmates can usually expect to qualify for parole and this acts as an incentive for the scheme. Because the business community are actively involved in these training programmes and supply equipment and materials to the institution these supportive enterprises will also guarantee the inmate an employment opportunity on his release. Mr. Jeong ex­­plained however that there is still a greater need for public education in correctional programmes especially to deal with problems the prisoner is likely to face once he leaves the prison and reenters the commu­nity. Mr. Jeong explained that Korean correctional institutions also suffers from the problem of overpopulated correctional programmes especially to deal with problems the prisoner is likely to face once he leaves the prison and reenters the commu­nity. Mr. Jeong explained that Korean correctional institutions also suffers from the problem of overpopulation and that to date it was working very success­fully with only two cases of where prob­lems arose but the offenders were later placed in other foster homes and without further problems. Mr. Papalii commented that the system had only been in operation for the past 2 years and at this stage it was too early to make a sound judgement of advantages or disadvantages of the scheme but he added that to date it was working very success­fully with only two cases of where prob­lems arose but the offenders were later placed in other foster homes and without further problems.

The second method for the use of com­­munity volunteers involved vocational training with the YMCA Trade Training School. Here the probation service found members of the community who were prepared to sponsor a young offender to take up a course of trade training at the school and provide him with employment after graduation. This system was working successfully due mainly to the fact that the offender was grateful to his sponsor for being given the opportunity to learn a skilled trade, and the employer was happy to receive a worker who needed only the minimum of training on the job. Also on completion of the course the students were issued with tool kits for their respective trades e.g. carpentry, plumbing and motor mechanics. It has been found that once a young offender has learned a particular job well he is reluctant to do anything which may jeopardize future livelihood and so the system although used only on a small scale so far, is proving successful.

Lastly, there are also used within the

pleting initial training. In order to attract better qualified people into the service the group suggested that it would be possible to ex­­amine the present salary scale and the rank­­ing and promotional system and make re­­visions where necessary. An added benefit could also be gained by encouraging univer­sity students studying related courses such as, sociology, psychology, education, etc. to take part in prison programmes.

The second topic given by Mr. Jeong was public relations. As prison treatment pro­grammes and prion work in general, and how this could be better effected in the future. This was discussed at length by the group and various sugges­tions were put forward such as wider use of service organizations like Rotary and Lions and inviting the mass media into the prisons to produce programmes for in­­mates. Also outside entertainment bodies might stage performances in the prisons.

Thirdly, Mr. Jeong spoke on the prob­­lems of extensions to the present cor­rectional and penal system in Korea by explaining that at this moment there was no separate correctional institutions for women prisoners in his country. The female prison is situated in the same com­­pound as the male prison. He also felt that it was time that Korea considered im­­plementing a probation system as it ap­­peared from his observation that such a system would serve to alleviate many of the problems within the prisons relating to prisoners aftercare. The group agreed in principle on the merits of a probation system but suggested that it will require detailed study of the present criminal justice system and such a system should begin on a small scale aimed most at deal­ing with juveniles and then expanded later to include adult offenders.

The Use of Community Volunteers in Probation Work

The presentation by Mr. Papalii of Western Samoa outlined three programmes utilized by the probation service in Western Samoa to involve community cooperation and participation in the work of rehabilita­tion for the offenders and their resocializa­tion into the community. The first programme involved the use of volunteer foster homes which presently numbered 20. These foster homes provide suitable residences for young probationers for whom it is considered that his own home background and social environment may not be conducive to proper resocializa­tion. The foster parents receive the of­­fender into their home and treat him as a regular member of their family. Through this method the emotional and physical se­­curity of his new environment and the obliga­tions placed upon him by being treated as an equal by his foster family will give him a sense of responsibility and selfworth.

Mr. Papalii commented that the system had only been in operation for the past 2 years and at this stage it was too early to make a sound evaluation of advantages or disadvantages of the scheme but he added that to date it was working very success­fully with only two cases of where prob­lems arose but the offenders were later placed in other foster homes and without further problems.
there are some hostels that have special treatment programmes are expected to regard to the rehabilitation aid hostel scheme in Japanese correctional community. And willingness to assist those less fortunate in our society, fencers acquire a better start to a new life. They report once a month to the probation officers and counsellors for

(iii) "Risshaen" hostel located in Osaka city, Aichi prefecture, which has factory for automobile equipment and residents becomes students apprentices of the Kansai Automobile Equipment Factory attached to the hostel.

(iv) "Anyiren" hostel located in Fuchu city, Tokyo, which accommodates aged ex-offenders who cannot support themselves and has no family on which to rely for assistance.

in discussion the group was unanimous in the opinion that rehabilitation hostels should find ways and methods such as guidance and counselling to ex-offenders and that some hostels needed to specialize in accommodating those offenders with various needs such as medical treatment, job training, giving guidance and education- al programmes for academic purposes.

The first problem summarized for the group was the question of finance and it was pointed out by Mr. Gōda that many hostels had great difficulty in meeting budget requirement on administration cost and could only rely on the government for nominal assistance. The budget estimates for an average hostel are: 53%: government assistance; 11%: donations from community organizations and the public; 8%: reimbursement from offenders; 18%: workshop income. The question of financial assistance for the hostels was discussed at length by the group members and a suggestion was put forward as to whether the hostels could be administrated completely by the government as explained by Mr. Gōda that it was unlikely that hostel management would agree to such a plan. However, fund raising could be made with the assistance of local businesses such as Women’s Associations for Rehabilitation Aid. Another suggestion was for the hostel to form committees which include prominent members of the community and these hostel committees or boards could raise funds by promoting hostel programmes in the community. The final suggestion put forward for the hostels to accept lodgers from the community as well as offenders, and that these lodgers who needed accommodation could pay rent on a fixed basis and this could provide extra income for the hostels as it seemed that many hostels did not have full capacity for residents, but had to continue to pay staff and administration costs which created much of the financial burdens for them. Mr. Gōda expressed his ideas on certain measures which he felt the government could adopt such as (i) increasing the office expenses subsidies for entrusting affairs, (ii) extending the period of aftercare from 6 to 12 months, (iii) adoption of the system of allocation of funds by the government for hostels.

The final issue for discussion was the adoption of the Kansai Psychiatric Treatment Centre which was founded to provide psychiatric treatment. The Centre was agreed to form committees or boards could raise funds by promoting hostel programmes in the community.

in Japan, in which he stated that it was indispensable to keep good relations between the correctional institution and the after-care agency for the transfer of offenders from the institution to the community. In Japan, in 1978, out of 14,782 inmates in the classification home, 5,207 inmates (35.2%) were disposed on parole. Also out of 5,372 inmates released from training school, 3,066 inmates (90.9%) were released on parole. The final presentation for the group was the paper by Mr. Namiki of Japan, in which he stated that it was indispensable to keep good relations between the correctional institution and the after-care agency for the transfer of offenders from the institution to the community. He stressed that the environment has important significance for helping the rehabilitation of the inmate. The environment gives the inmate many influences which may lead him to become involved in crime or delinquency. The aim is therefore to arrange as much as possible a suitable environment to which the offender can return in order to minimize the risk of further offending. When investigation is conducted for the purpose of the environmental adjustment, the probation officer and VPO will pay particular attention to the following circumstances: 1) Offender’s guardian and family; 2) Environment of the neighbourhood in which the family live; 3) Community attitude toward the inmate’s
crime or delinquent behaviour; 4) The extent of any compensation made to the victim and his feelings toward the offender; 5) Life history and friends or associates before incarceration; 6) Offender’s plans with regards to schooling, employment, etc.; and 7) Motives and causes for his offending or delinquent behaviour.

When a complete and comprehensive report of the environmental adjustment has been prepared it may then be possible to effect a suitable programme for super­vision once the inmate is released from the institution. The value of such a report is seen once the inmate is released from the institution.

Social guidance and education should begin in the prison at pre-release stage in order to acquaint the prisoner better with life outside the institution; 2) There should be a liaison between probation officers and correctional institutions even to the point of having probation officers working within the correctional institutions as they do in the Philippines. If this proved difficult as it has in the past in Japan then perhaps it would be easier if correctional institutions used retired prison officers to act as social workers within the institutions to facilitate better communication between the institutions and the community agencies.

The group through discussion agreed with the aims and principles of environmental adjustment and suggested that: 1) Social guidance and education should begin in the prison at pre-release stage in order to acquaint the prisoner better with life outside the institution; 2) There should be a liaison between probation officers and correctional institutions even to the point of having probation officers working within the correctional institutions as they do in the Philippines. If this proved difficult as it has in the past in Japan then perhaps it would be easier if correctional institutions used retired prison officers to act as social workers within the institutions to facilitate better communication between the institutions and the community agencies.

The other topic considered by the group were ways in which mutual understanding and cooperation could be best promoted between correctional institutions and other agencies within the community. Mr. Namiki explained that meetings did occur between the individual agencies but such meeting were not frequent and usually involved only the senior executive members of the agencies and matters discussed were not revealed to the staff of the institutions or agencies. The group agreed that any cooperation should first begin with the heads of the different agencies in bureau and then communication may be engendered throughout the rest of the staff members. It was also suggested that as each agency published their own journals, articles representing the viewpoint of one agency might be printed in the other’s journal thus promoting better understanding of their problems. In the matter of staff training it was also suggested that representatives of the correctional institutions could give lectures to staff of the rehabilitation bureau and vice versa.

The group considered that as the offenders were often clients of both agencies at some stage of his rehabilitation it was therefore most important that the separate organisations do all in their power to enhance and maintain mutual cooperation for the benefit of both the offender and the community at large.

SECTION 4: REPORT OF THE COURSE

Institutional Treatment of Adult Offenders

Summary Report of the Rapporteur

Session I: Correctional Programmes

Chairman: Mr. Suekiichi Ushijima
Advisor: Mr. Keizo Hagihara
Rapporteur: Mr. Peter Rogers

Admission Programmes

It was agreed by the participants that admission and reception was a crucial moment when a prisoner was required to adapt to prison life. In view of this fact, participants suggested that a proper reception board/committee be established to look into the following factors:

i) To ease anxiety and mental stress of the newly admitted prisoners;

ii) To explain clearly the prison rules and regulations and information relating to his personal hygiene, work, exercise, sports and details of the prison diet;

iii) To help the prisoner to overcome the future of his family and what available assistance could be given.

Some participants suggested a shorter period of orientation be given while other participants suggested a larger period possible after his admission, should possess a personal education file which shall include a report by a medical officer on the physical and mental condition of the prisoner. The report and other relevant documents should be placed in the prisoner’s file. Some participants felt difficulties in providing short-termers with admission orientation, however, agreed that even in case of these prisoners utmost efforts should be made to give such opportunity as much as possible.

Classification and Progressive Treatment

It was unanimously agreed by the participants that the purpose of classification shall be:

i) To separate from others those prisoners who by reason of their criminal records or bad characters are likely to exercise an undesirable influence; and

ii) To divide the prisoners into classes in order to facilitate their treatment with a view to promoting their social rehabilitation.

As soon as possible after admission, a study of the personality of each prisoner should be conducted to ascertain the existence of any physical or mental sickness and to treat the offender if necessary.

This process of study should be carried out by psychologists or psychiatrists or by a trained social worker. This test is essential to determine the type of training, education and treatment which the prisoner will undergo during his period of training. Suggestions were made pertaining that the prisoners should be classified and transferred to separate institutions or separate sections of an institution for the treatment in respect of their individual needs, capacities and dispositions.

In the course of discussion, some participants also suggested the importance of classification for discipline and security especially for hard-core criminals. Some participants indicated that they could not achieve satisfactory classification due to inadequate buildings, overcrowding, influx of short-term prisoners, lack of segregation facilities, insufficient staff and prevalent public apathy towards the improvement of prisons. In some countries due to the scarcity of prisons and facilities classification was limited and only done according to the degree of criminality and the number of previous convictions.
Prison Work

There were several reasons given regarding the importance of prison work for prisoners. Participants unanimously agreed that the ultimate aim of prison work was to ensure the rehabilitation of offenders. Work programmes for offenders must be organized to facilitate their employment in productive and gainful occupation and to lead a satisfactory occupational life so as to promote their reintegration into society.

Work programmes as indicated by most participants should be planned, organized and performed not only to increase productivity but also to assist offenders by stimulating and cultivating intrinsically working habits and discipline, by providing, maintaining and upgrading vocational skills and enabling inmates to have wages or remunerations for their future independence. Thus, it was justifiable to require prisoners to engage in constructive labour or vocational training because of the wholesome effects on prisoners themselves and society at large.

All participants unanimously agreed that prisoners who had engaged in prison labour should be given a reasonable amount of remuneration for their work, and it was pointed out that the rate of such payment is relatively low in many countries. In most countries a certain portion of prisoner's remunerations are reserved as compulsory savings to be paid upon their release or to be remitted to family members and dependents. It was also noted that remunerations rates given to prisoners varied from country to country depending upon the social and economic conditions. However, the majority opinion was that prisoners had no rights to demand payment for their work. Instead, they must be trained by the existing instructor in the workshop or sent to a trade school for further training. In this way, even if the instructor has retired or resign for better job prospects, the prison officer could take over the duties of an instructor.

Other Institutional Correctional Programmes

In the field of other institutional correctional programmes, the participants emphasized on imparting to the offenders vocational training, academic education, religious education and daily living guidance and therapeutic treatment. It was stated by the participants that vocational training was now more emphatically implemented in the integration into society. Rehabilitation consideration was also favoured for the treatment of delinquent juveniles and youngsters offenders for vocational training. For the improvement of the programme, the participants stressed that the types of vocational training should be based on the needs of both inmates and society.

The participants talked on the importance of academic education which was provided in most institutions and there were some prisoners who sat for public examinations or followed university courses in some countries. Religious education was acknowledged by the participants as an effort to reform and rehabilitate offenders. In many of the participating countries religious instructors of different faiths were encouraged to come inside the prison to conduct services to the prisoners. Recreational and leisure time activities was also mentioned as healthy activities as part of the programme for rehabilitation. Contacts with friends and families through letters and regular visits was stressed to be an indispensable part of correctional programmes.

Extramural Treatment

Majority of the participants indicated that their countries had some form of community-based programmes for offenders such as open institutions, work release and furloughs. Some of these open institutions had minimum security and prisoners were involved in the work, such as farming, agriculture, animal husbandry and handicrafts. In some open penal institutions, prisoners with good conduct and who had to support their families were allowed to live with them in the penal reservations. A small portion of land for cultivation purpose was offered to the prisoners as a form of incentive. It was agreed by the participants that open institutions were more economical to construct and operate than the closed institution and also contributed much to the reduction of over-population of prisons.

Although not many countries had implemented fully the work release programmes, there were several countries in which work release programmes were currently introduced. The basic idea behind work release programmes is to require prisoners to go out into the free community for employment and return to the prison on leave, and thus it can make the prisoners get along with workers in the factory or workshop. They are given wages as normal workers and the money could either be given to the families or kept and given to them until their date of discharge.

The purpose of furlough system was to promote the inmate to adapt to the free social life by giving home leave for a certain period of time. There are several countries in Asia which have adopted furlough system but it is mostly used for young offenders.

SESSION I

REPORT OF THE COURSE

Conclusion

1) The initial period of admission orientation programme to a prisoner should provide him with proper information and instructions as this was a crucial period for the prisoner to adapt to prison life. Details regarding the procedure, routine and facilities must be made available so as to encourage the prisoner to follow a programme of rehabilitation.

2) As soon as possible after a prisoner's admission and after a study of the personality of the prisoner, a programme of treatment shall be prepared for him in the light of the knowledge obtained of his individual needs, his capacities and dispositions. Therefore, the purpose of classification is to separate from others those prisoners by their reason of their criminal record or bad character who are likely to exercise an undesirable influence and to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

3) Prison work programmes for offenders must be organized to facilitate their rehabilitation and gainful occupation and to lead a satisfactory vocational life so as to promote their reintegration into society.

4) It was easy to identify the problems and difficulties in the work programmes but effective ways to cope up with the situation was difficult to find and implement under the current social and economic conditions in many countries. It was also observed in many countries that correction departments had been given least priority in the context of the social development planning. Hence, policy makers and administrators had a role to convince the government the importance of rising social problems, financial assistance was required to implement effective and productive programmes for correctional institutions.

5) Many obstacles existed in expanding and improving vocational training programmes for offenders in almost all participating countries. Among them is the lack of systematic planning for the programmes owing to insufficient facilities and equip-
SESSION II

Security Incidents

All the participants admitted in the discussion that escapes happen in prisons. One participant stated that in the prison of his country, there were 17 attempted cases of escape in 1979 out of which seven cases were actual escapes. He stated that most of the escaped prisoners were long-termers who perhaps could not adjust themselves with the environment of prison. Another participant expressed that most of the escaped prisoners of his country were members of gangsters. These inmates were perhaps released by other inmates due to disturbances reached even to killing of a prisoner by another inmate due to homosexuality. Mr. Rahman of Bangladesh mentioned that escapes mainly happened in the prisons of his country from outside garden in course of employment in garden work. He also stated that the inmates usually remained calm and quiet inside the prison but the security incidents of the prisons were hampered when the political atmosphere of the country became cloudy. For instance, on such an occasion in 1971, about 2,100 inmates of a jail attempted to escape by breaking the main gate. They broke the doors of the office and about 400 to 500 inmates entered in the office as well as the main gate. The keeper of the gate was subdued and at one point a prisoner attempted to jump through the ventilator. The situation was brought under control by using firearms. One participant from Japan spoke of security incidents in the prisons of Japan. According to him, the average number of escapes from the prisons during the period from 1975 to 1979 was only 5.8, and there occurred no prison riot for nearly 30 years. However, gangsters or members of organized groups sometimes created problems in the smooth running of the administration of prison. Mr. Phillips of Sri Lanka stated that food is one of the most important items that create dissatisfaction among the inmates which ultimately turns to riot inside the prison.

All the participants agreed that one of the most important factors to be considered in the prevention of such security incidents is the maintenance of discipline amongst the inmates. He suggested that the respectfulness of inmates or the classified inmates should be maintained. Another participant stated that sometimes a metal detector is applied to search the body of the inmate if there is doubt that any instrument or firearm is concealed in the body. The search party even checks the body of the inmates with a view to maintaining discipline, thorough and regular search and surprise search in almost every area of prison including cells, dormitories, workshops and hospital area. This search party is a small group of the staff who conduct such surprise search in almost every area of the prison administration is the smooth running of the administration of prison and whenever an inmate is taken out for any purpose, he is searched by the senior executive officer in a private place to maintain privacy. The respectable inmates or the classified prisoners on whom suspicion arises are also searched by the senior executive officer in a private place to maintain privacy. Another participant stated that sometimes the admission to prison and whenever an inmate is taken out for any purpose, he is searched by the senior executive officer in a private place to maintain privacy.
Emergency Planning

As the inmates are put to prison against their will, it is quite natural that they may inevitably have complaints and problems which, if not duly solved, would cause disturbances. So, to cope with any event every prison should be equipped with modern firearms and staff trained accordingly. However, all the participants agreed that the use of firearms should be restricted and be applied only when all other methods fail, after due warning, in such serious cases as an outbreak of attempt to escape or loss of life, whereas in some countries, the use of firearm could be taken into consideration even when government properties are endangered or seriously damaged. In most of the countries all staff members are trained through in-service sessions in the technique of handling emergency incidents and their drills are put into practical exercise periodically. Written instructions of emergency plans are sealed in an envelope so that the officer on duty could have an easy access to them in time of emergency without being interfered with by civilians working inside the prison. Emergency plans to cope with any untoward event should be drawn for every prison should be equipped with modern firearms and staff trained accordingly.

Introduction

It was very clear during the discussion that there were many different practices/systems adopted by respective participating countries. However, it was generally agreed that in order to secure the competent correctional officials and to successfully implement the UN Standard Minimum Rules for the Treatment of Prisoners, the correctional policy should be geared towards improvement of the standard of correctional services and the interest of correctional personnel.

Recruitment and Training of Correctional Officials

There was almost a full agreement by the participants that most of the Asian countries faced a very serious problem on the matter of recruitment of correctional officials due to the circumstances explain as follows:

1) Low salary was the prime reason that the recruitment of qualified and specialized correctional officials could not be achieved. Most of the participants indicated this problem stating that it was mostly due to the increasing unemployment rate in the society that they could not get applicants for vacancies in a correctional institute.

2) The low social status of correctional officials in most Asian countries also discouraged educated and qualified personnel to work in the correctional field and it was due to the rapid development of industries and other economical activities in the society which offered these personnel sound salary, better condition in jobs and good positions, which resulted in their reluctance of accepting correctional employment.

3) Failure of job satisfaction was pointed out by some participants. Especially those newly recruited personnel who were only assigned to perform purely custodial work such as locking and unlocking prison gates, were very disappointed at the work. This might be due to the lack of society education concerning correctional activities.

4) The limited scope of promotion was also expressed by some participants to be one of the reasons that the turnover rate of correctional officials was very high.

5) The difficulty in training of correctional officials was encountered by some countries for either the lack of training institute in case of Iraq and Bangladesh, or the low educational standard of personnel or both which made it difficult to conduct good training courses. Therefore the limited training programmes usually emphasize only the custodial and security knowledge in these countries.

As a result of the discussion about the above-mentioned problems, the following suggestions were agreed upon by almost all the participants:

1) Improvement of correctional officials’ standard of living by increasing salaries, allowances of providing sufficient accommodation which would not only automatically lead them to a better social status, but also attract the qualified persons to join the correctional services.

2) Establishment of training institute and the improvement of training programmes as mentioned by Mr. Chatton of India who gave an example of programmes for various classes of correctional officials in his country.

a) Low ranking officers (guards)—security control, physical self-defence, emergency drills, social treatment (simple knowledge).

b) Middle ranking officers—management, corrections, psychology (general) as well as the programmes designed for the low ranking officers as mentioned above.

c) High ranking officers (e.g. superintendents and above) were stated that they should have different types of courses like: i) Orientation training for direct entry superintendents. ii) Pre-promotion course. iii) Refresher courses. iv) High standard combined courses conducted by national level institutes for concerned agencies personnel. v) Overseas courses and observation trip courses which would enable them to acquire a wide knowledge concerning correctional policies and future planning, research and the exchange of knowledge of other agencies, policies and procedures.

3) Enlargement of public participation in correctional activities in order to enable the public to have a better understanding of correctional works. By doing so, the status of correctional officials in the society will also be improved.

Prisoners’ Rights and Living Conditions

As to prisoners’ rights such as visits and correspondence, religious activities, access to information and procedures for redress of grievances, it can be said that they were provided for in one way or another in the statutes, ordinances, regulations, etc. in almost all the participating countries. But, generally speaking, prisoners were enjoying these rights to a satisfactory degree in individual countries. Ushijima of Japan explained that prisoners’ rights had been recognized in Japan to a very high extent which had led to some complaints from the staff sometimes when they compared jokingly to the staff’s rights which were not as highly considered as the prisoners’. He also mentioned that the procedure for the prisoners to redress their grievances had been well managed to an extent that it was sometimes inviting malicious complaints. Also Mr. Hikita of Japan stated (that although they had received and investigated many of these complaints, they had very small occasions to
allow prosecution on the staff members. Mr. Raisuddhi of Thailand expressed his view by saying that prisoner’s rights should be highly considered only when it would not hamper the security of the prison, upon which most other participants agreed. Religious activities were emphasized by Mr. Phillips of Sri Lanka as a supporting method for rehabilitation, although some participants showed doubts as for the effectiveness of religious activities in terms of rehabilitation of prisoners. However, there was a general agreement that the prisoners would be allowed to practice the religious activities freely.

2. Living Conditions

In terms of living conditions it was confirmed that in some countries, despite living conditions in prisons were maintained fairly well, but that, in many participating countries, overcrowding of prisons resulting from the presence of many unconvicted prisoners or short term offenders were causing problems relating to accommodation, health and hygiene. To alleviate overcrowding conditions in prisons, participants felt keenly the necessity of correcting investigation and trial expeditiously in every possible way and renovating or enlarging physical facilities for prisoners.

When the discussion was approaching the treatment of offenders and types of punishment imposed by correctional authority of different countries, corporal punishment such as whipping as disciplinary one came up for discussion. Some Asian countries are at present imposing corporal punishment such as whipping and canings. Mr. Sembrano of the Philippines and Mr. Moti of Japan agreed on the use of corporal punishment in favour of the idea of imposing such punishment for a certain type of prisoner who had violated prison regulations because of its efficacy to deter further disciplinary offences, although it was not imposed in their respective countries. Mr. Al-Khalessi of Iraq opined that such types of prisoners might have certain personal problems or be mentally disturbed but committed such violations and that some appropriate methods should then be used in solving their problems outside the prison, instead of imposing corporal punishment. As for the effectiveness of these punishment, some of the participants were of the opinion that corporal punishment had its effects on certain type of offenders so far as deterrence was concerned. Some other participants remarked that such punishment might only be effective on youthful offenders. However, some participants expressed strong disagreement on the use of corporal punishment irrespective of its effectiveness, insisting that it was a cruel, inhuman and degrading punishment.

Implementation of the UN Minimum Standard Rules for the Treatment of Prisoners

1. Difficulties

It seemed that there were lots of difficulties faced by some Asian countries which disabled them to implement some articles of the Minimum Standard Rules. The main difficulties raised through the discussion were as follows:

a) Financial problem due to the domestic financial constraint.

b) Prison manuals lagging behind the Minimum Standard Rules.

c) Political interference in prison management.

d) Unawareness of the Rules among the low ranking officials.

e) Difficulty in the translation of the Minimum Standard Rules into various local languages.

f) Lack of inspective unit on national and international level.

2. Suggestions

a) Due to the above-mentioned difficulties, it appeared that the Minimum Standard Rules had not been implemented satisfactorily. On this point, the following matters were confirmed as necessary.

b) Awareness of these rules should not only be essential for the prison personnel but also for the prisoners, and could be done through education, training and distribution.

c) Incorporation of the Minimum Standard Rules in the national laws and regulations in respective countries is required.

d) To improve facilities suitable to meet the Minimum Standard Rules, some means of supervision or inspection might be necessary both on domestic and international levels.

e) Translation of Minimum Standard Rules should be standardized under the authority of the United Nations.

f) Some other prisoner’s rights and living conditions such as prison clothes, diet, etc. were also discussed under this topic. In regard to the treatment of foreign prisoners there was a full agreement on the following points:

i) The right of communication with the prisoners’ respective embassy should be established.

ii) Special considerations in terms of diet and treatment should be given to such prisoners.

Conclusion

As a result of the discussion on the three topics mentioned above, we came to understand that there were enormous rooms for improvement in the correctional administration in the countries of the region. Also the necessity is felt for the standardization of the implementation of the Minimum Standard Rules through the meetings of policy making level officials to make its better implementation possible. It seemed one way of solution to the problems faced by many countries of the region, that a powerful authorized inspection committee supervised by the United Nations would give great assistance to ensure a better achievement and improvement of prison facilities and treatment of offenders as well, as the interest of the correctional officials.

Session IV: Correctional Policy

Chairman: Mrs. Susana U. Sembrano
Advisors: Mr. Masaru Matsumoto and Mr. Toiichi Fujiwara
Rapporteur: Mr. Barinda N. Chatara

Introduction

Objectives of punishment change from time to time in keeping with the growth of human civilization, social values and knowledge of criminal behaviour. Rehabilitation as an objective of punishment has toned down in most of the civilized societies. Deterrence and incapacitation have also been proceeded to have limited applications for some special types of offenders. Reformations and rehabilitation of offenders have been accepted, of late, by most of the welfare states as useful means for the protection of society from the antisocial behaviours. Accordingly, increasing stress is being laid on the need for adopting correctional attitudes towards those who come in conflict with laws. Today’s prison is therefore, not only a place for detention of inmates but also a plan for providing individualized treatment to the prisoners for facilitating their smooth return to the community as law abiding citizens. It is expected to be the centre of correctional treatment whose primary aim would be to produce constructive changes in the offenders’ personality which may further have a profound and lasting effect on their habits, attitudes, approaches and total value schemes of life.

In pursuance of this objective, correctional programmes in the prisons need to be reorganized in accordance with the treatment need of each offender. Proper classification of prisoners on the basis of age, sex, religion, education, degree of criminality, recidivism, resistance, physical and mental condition and a sound system of diversification of institutions constitute the most important ingredients of individualized treatment programmes. Another important function of the prisons today is to utilize the community re-
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sources to the fullest extent possible as the real success of the treatment programmes lies in the community's acceptance of the ex-prisoners to rehabilitate in the society. Problems are loaded with the twin functions of treatment and rehabilitation of offenders and over the function of custody and security. But the increasing trend of prison population in most of the countries in Asian region has posed a serious problem for the correctional administrators to conduct individual treatment programmes. Moreover, high pressure of administrative duties due to overcrowding in jail, inadequate training facilities and lack of progressive attitudes of the prison personnel, mixing together, have constituted different handicaps in the way of utilization of community resources for the rehabilitation of offenders.

In the above context, the group was engaged i) to examine the current position in respect of prison population of different countries, ii) to find out some probable causes and to suggest some feasible countermeasures against overcrowding, iii) to explore some effective ways of seeking cooperation and cooperation with the concerned agencies, iv) to identify ways and means for encouraging public participation and to ascertain the role of prison officers in rehabilitation of offenders.

Prison Population

The problem of overcrowding in prisons is prevalent in a number of countries in Asian region. Mr. Rahman of Bangladesh mentioned that prisons are facing the congestion problem. He also made the comment that detention of under-trial prisoners from one province to another. According to Mr. Philips, Sri Lanka's prisons are facing the congestion problem. He also mentioned that prisons in Singapore are accommodating excessive population of about six times greater than the registered capacity. According to him, the main reason for the over population is the incarceration of fine defaulters who constitute about 30 percent of the total prison population. Mrs. Sembrano stated that the over population of the Philippines prisons is also due to the same reason as indicated by Mr. Leo. She further added that the Government of the Philippines has enacted a progressive legislation in 1970 by which the court is empowered to release an offender who has been imprisoned for less than six months with the fine of 200 pesos. She further stated that in Singapore, there is a separate division in the Prisons Department known as Social Service Division which is involved in looking after the released prisoners' welfare, was forcefully brought out. Mr. Leo reported that the Government Social Welfare Department should also share this responsibility in terms of opening halfway houses for the released prisoners particularly for those who do not have any permanent abode. Giving emphasis on the community participation in prison programmes, Mr. Lalwani remarked that by inviting religious preachers in the prisons and by requesting industrialists to open small scale industries, community participation may be encouraged to a great extent. Mr. Udainaga of Japan explained the importance of roles played by the Volunteer Probation Officers in Japan to bridge the gap between prison and community. He also appreciated the contribu-

The group asserted that with a view to facilitating a timely rehabilitation of prisoners discharged from the penal institutions, voluntary social welfare agencies have to be increasingly involved in prison treatment programmes in the jails. The success of innovative projects like open camps, it was opined, depends considerably on an active participation of the community. The need for strengthening inter-departmental coordination in matters of prisoners' welfare, was forcefully brought out.

Mr. Leo commented that the responsibility of prison officers in respect of rehabilitation of prisoners has to be shared by the social welfare agencies both governmental and nongovernmental. He mentioned that in Singapore, there is a separate division in the Prisons Department known as Social Service Division which is involved in keeping a regular linkage with the social welfare agencies and other voluntary agencies engaged in social welfare services. Mr. Leo further added that the Government Social Welfare Department should also share this responsibility in terms of opening halfway houses for the released prisoners, paricularly for those who do not have any permanent abode. Giving emphasis on the community participation in prison programmes, Mr. Lalwani remarked that by inviting religious preachers in the prisons and by requesting industrialists to open small scale industries, community participation may be encouraged to a great extent. Mr. Udainaga of Japan explained the importance of roles played by the Volunteer Probation Officers in Japan to bridge the gap between prison and community. He also appreciated the contribu-

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tion made by the Women's Association for Rehabilitation Aid to the success of rehabilitation programmes of ex-prisoners. He opined that the exhibition of prison products in the local festivals may prove to be very effective to bring prisoners nearer to community. Mrs. Sembrano talked about the charity organization existing in the Philippines which are devoted in looking after families of prisoners. Mr. Rogers pointed in favour of developing a regular public relation system within the department as in Singapore, by which general public may be acquainted with exactly what prisoners are doing inside the prisons. According to him, exposure of prisoners' activities in the newspapers, radio and television for public consumption will definitely go a long way in soliciting public cooperation in the social defence programmes.

Mr. Jeong maintained that the introduction of a system of appointing jail visitors from all walks of life in community will pave the way for accomplishing better understanding between prisons and community. In some countries this system is working very satisfactorily. Mr. Al-Khalil felt the necessity of convincing labour unions and other related associations to take care of prison labour also. He also advocated for liberal treatment of prisoners in working outside the prison walls.

Mr. Phillips stated that the involvement of Lions Clubs and Rotary Clubs will be of immense help in the sphere of community involvement. Mr. Tsuchiya, Deputy Director, by virtue of his long standing experiences in the field of criminal justice system felt the urgent need for inter-departmental coordination among police, public prosecutors, judges, prisons and social welfare services. He stressed on the need of enlightening police, public prosecutors and judges regarding correctional programmes inside the jails.

Mr. Delgoda, Commissioner of Prisons in Sri Lanka and visiting expert of UNAFEI shared his valuable experiences in this regard. He mentioned about the success of his venture of allowing prisoners in taking part in the religious processions in the open community. Mr. Tin of Hong Kong asked the prison officers to adopt an open door policy rather than closed door policy.

Correctional Policy

Modern correctional philosophy envisages that reformation being the ultimate objective of imprisonment, the responsibility of the correctional officers does not cease with the release of an offender from jail but continues until he is resettled as a self-supporting and law-abiding citizen of the country. Institutional care and treatment of offenders are not enough. Prison officers are required to take an active part in their rehabilitation programmes.

The group felt that theoretically, this proposition is very sound. However, in actual practice, there are some impediments to put this in operation. In many countries in Asia like India, Pakistan, Bangladesh, Sri Lanka to mention a few, the group reiterated that prison officers are normally to remain preoccupied with routine duties of security and custody to such an extent that they find hardly any time to think for rehabilitation of offenders. Moreover, their training and orientation are not sound enough to make them capable of doing this type of work. In that situation, the group felt that the matter of participation of prison officers in the different rehabilitation programmes, need to be reconsidered at the policy-making level.

The group discussed elaborately as to how far prison officers are to remain responsible for the rehabilitation of released prisoners. The group members unanimously agreed upon that prison officers cannot deny this responsibility altogether. They expressed that prison officers can perform this duty more efficiently if their service conditions are improved and they are given appropriate and efficient training.

Mr. Leo caught attention of the group by commenting that correctional and rehabilitation programmes are not meant for all categories of prisoners. Due to urbanization and industrialization different types of crimes are increasingly on a consuming basis. As a result of that prisons sometimes receive one type of prisoners who are well-educated, intelligent and may not be successfully rehabilitated through the commonly accepted correctional programmes. This group consists of organized gangsters, smugglers and tax evaders. Mr. Leo said that, at present, our treatment programmes like vocational training, education, religious preaching, etc. do not serve any purpose for them. So it is better to exclude this group from the regular correctional programmes. Otherwise, he commented, the energy and time will be wasted which may be purposefully utilized for those, who may really need it. Mr. Rahman fully endorsed the view of Mr. Leo and suggested to segregate this type of offenders from other categories and to treat them with physical labour. Mr. Chattaraj of India felt that this category of prisoners is a serious challenge to the correctional philosophy and it is high time to explore some special techniques for handling them.

Regarding impediments in conducting correctional and rehabilitation programmes in the prisons, Mr. Al-Khalil said that the old prison buildings which were primarily constructed for the purpose of security do not cope with the requirement of correctional philosophy. Lack of professional training is a major problem. Mr. Rahman fully agreed upon that prison officers are not enough. Prison officers are required to take an active part in their rehabilitation programmes. Lack of scientific training and nonavailability of skilled personnel, according to him, pose a serious problem for proper implementation of treatment programmes. Mr. Rahman insisted on minimizing prison population in terms of sending under-trials and short termers in separate institutions. Mr. Rogers felt that proper planning and research are essential ingredients for smooth functioning of correctional and rehabilitation programmes.

Conclusion

Prisons in most of the developing countries in Asia are generally in a depressing state mainly due to paucity of funds and over-population. The problem of congestion has been identified as a serious hurdle in the way of accomplishment of modern objectives of reformation and rehabilitation. This problem in jails cannot be resolved through ad hoc improvisation because existing prison structures are not only old and dilapidated in condition but also unsuitable for diversifying the approach for various categories of offenders. Moreover, in transforming prisons from 'holding up operation' to correctional centres, the quality and calibre of prison personnel need to be developed. All these problems are further related to paucity of funds.

In most of the countries, prisons department does not get priority in budget allocation. The main reason may be public apathy and governmental negligence. So it is the high time for the correctional personnel to explore ways and means to create public awareness regarding the work which they are at present, engaged in and to convince the government that the investment on prisons is actually investment on human resource development as prisons' ultimate aim is to raise the quality of human life besides protecting society from the criminalogenic forces.
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