

## **NEED FOR REFORM OF CRIMINAL JUSTICE SYSTEM**

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*“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope”.* (Jennison v. Baker (1972) 1 All ER 997).

### COMMITTEE AND ITS WORK

1.1. The Committee on Reforms of the Criminal Justice System was constituted by the Government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System. (Annexure-1). The terms of reference for the Committee are:

- i. To examine the fundamental principles of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications or amendments are required thereto;
- ii. To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to re-write the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India;
- iii. To make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive;
- iv. To suggest ways and means of developing such synergy among the judiciary, the Prosecution and the Police as restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal;
- v. To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the Police, the Prosecution and the Judiciary accountable for delays in their respective domains;

- vi. To examine the feasibility of introducing the concept of “Federal Crime” which can be put on List I in the Seventh Schedule to the Constitution.

1.2. The Committee was constituted under the Chairmanship of Justice V.S.Malimath, former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the Human Rights Commission. The other members of the Committee are Sri S. Varadachary, IAS (Retd), former Advisor, Planning Commission of India and Sri Amitabh Gupta, former Director General of Police, Rajasthan. Sri Durgadas Gupta, Joint Secretary (Judicial), Ministry of Home Affairs was made the Secretary. On the recommendation of the Committee Justice Sri T.S. Arunachalam, former Judge of Madras High Court and Prof. N.R.Madhava Menon, Vice-Chancellor, West Bengal National University of Juridical Sciences were co-opted. Later, Justice Sri. T.S.Arunachalam tendered his resignation on personal grounds where-upon Sri D.V.Subba Rao, Advocate who also happens to be Chairman of the Bar Council of India was co-opted in his place. Sri Durgadas Gupta, Secretary of the Committee was made the Member Secretary of the Committee. Sri C.M.Basavarya, former District Judge and Registrar of the Karnataka High Court was appointed as Executive Director so that the Committee has the benefit of trial court experience in criminal matters. The term of the Committee, which was six months from the date of its first sitting, has been extended till 31 March 2003. Thus it may be noted that there is a wholesome combination of expertise of all the relevant fields --- the Judiciary, the Bar, the Police, the legal academic and administrator.

1.3. The notification constituting the Committee does not expressly state the reasons for constituting the Committee, obviously for the reason that they are too well-known. The statement in the notification that the Committee has been constituted “to consider measures for revamping the Criminal Justice System” implies that the Criminal Justice System is in such a very bad state as to call for revamping. A former Chief Justice of India warned about a decade ago that the Criminal Justice System in India was about to collapse. It is common knowledge that the two major problems besieging the Criminal Justice System are huge pendency of criminal cases and the inordinate delay in disposal of criminal cases on the one hand and the very low rate of conviction in cases involving serious crimes on the other. This has encouraged crime. Violent and organised crimes have become the order of the day. As chances of convictions are remote, crime has

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become a profitable business. Life has become unsafe and people live in constant fear. Law and order situation has deteriorated and the citizens have lost confidence in the Criminal Justice System.

1.4. The ultimate aim of criminal law is protection of right to personal liberty against invasion by others – protection of the weak against the strong law abiding against lawless, peaceful against the violent. To protect the rights of the citizens, the State prescribes the rules of conduct, sanctions for their violation, machinery to enforce sanctions and procedure to protect that machinery. It is utter selfishness, greed and intolerance that lead to deprivation of life, liberty and property of other citizens requiring the State to step in for protection of the citizens' rights. James Madison writes in his book *The Federalist* that "if men were angels no government would be necessary". It is the primary function of the government to protect the basic rights to life and property. The State has to give protection to persons against lawlessness, disorderly behaviour, violent acts and fraudulent deeds of others. Liberty cannot exist without protection of the basic rights of the citizens by the Government.

1.5. This is the first time that the State has constituted such a Committee for a thorough and comprehensive review of the entire Criminal Justice System so that necessary and effective systematic reforms can be made to improve the health of the system. Prison administration is one of the functionalities of the Criminal Justice System. However, it does not fall within the mandate of the Committee. All the earlier initiatives were of a limited character to bring about reforms in the relevant laws, substantive and procedural laws, judicial reforms or police reforms. The Committee is required to take into account the recommendations made by the Law Commission of India, the Conference of Chief Ministers on Internal Security, the Report of Task Force on Internal security and Padmanabhaiah Committee Report on Police Reforms.

1.6. The terms of reference are very wide and comprehensive. They require the Committee to examine the fundamental principles of criminal jurisprudence and relevant constitutional provisions and to suggest if any modifications or amendments are needed. If, on such review the Committee finds that any amendments to the Code of Criminal Procedure, the Indian Penal Code or the Indian Evidence Act are necessary to bring them in tune with the demands of time and the aspirations of the people, it can make necessary recommendations. The Committee is not called upon to take up a general review of all these three statutes. The mandate of the Committee is limited to recommending only such amendments to these statutes as may be necessary in the light of its findings on review of the fundamental principles of criminal jurisprudence. Therefore, the Committee has not undertaken any general review of these Statutes.

1.7. The well recognised fundamental principles of criminal jurisprudence are ‘presumption of innocence and right to silence of the accused’, ‘burden of proof on the Prosecution’ and the ‘right to fair trial’. Examination of ‘Adversarial System’ followed in India being an aspect of the concept of ‘fair trial’ falls within the purview of the Committee. Simplifying judicial procedures and practices, bringing about synergy among the judiciary, the Prosecution and Police, making the system simpler, faster, cheaper and people-friendly, and restoring the confidence of the common man are the other responsibilities of the Committee. This includes improving the investigation and trial procedures on professional lines for expeditious dispensation of justice and making the functionaries accountable. The Committee is also required to examine if the concept of ‘Federal Crimes’, can be put in List 1 of the Seventh Schedule of the Constitution so that it becomes the exclusive responsibility of the Central Government.

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#### STRATEGIES ADOPTED BY THE COMMITTEE

1.8. Realizing the importance and magnitude of the task, the Committee decided to reach out to every section of the society, which has a stake in the system, directly or indirectly. Accordingly the Committee decided to: -

- (1) Prepare a questionnaire and obtain responses from all walks of society.
- (2) Organize seminars on important issues in different parts of the country.
- (3) Participate in seminars or meetings organised by others.
- (4) Meet citizens from different States hailing from different walks of life.
- (5) Obtain the views of the State Governments.
- (6) Obtain the views of the High Courts and the Judges.
- (7) Obtain the views of Central and State Bar Councils and members of the Bar.
- (8) Seek the views of Attorney General and Advocate Generals of the States.
- (9) Obtain the views of the Heads of Police Departments.
- (10) Obtain the views of the Heads of Prosecution Departments.
- (11) Obtain the views of the Forensic Scientists.
- (12) Obtain the views of the academics in law.
- (13) Obtain the views of the media persons.
- (14) Get research done by scholars on important topics.

- (15) Study the relevant reports of the Law Commission of India, Report of Dharmavira Committee, Report of Padmanabhaiah Committee, Report of Vohra Committee, Report of Task Force on internal security, Report of Chief Ministers conference on Internal Security and other Commissions on topics relevant to the Criminal Justice System.
- (16) Study the Criminal Justice Systems in U.K, Australia, France, USA and other countries and the reforms undertaken by them.
- (17) Make a comparative study of Criminal Justice Systems in 20 selected countries from different continents.
- (18) Interact with experts from different countries in the world.
- (19) Examine Reports of the National Crime Bureau upto 2000.

1.9. After an in-depth study of the problem facing the Criminal Justice System the questionnaire was prepared and sent to 3,164 persons enclosing a pre-paid envelope to enable them to respond without incurring any expenditure. The list includes the Prime Minister, Home Minister, Law Minister, Attorney General, Home Secretary, Law Secretary, Govt. of India, Law Commission of India and functionaries of the State Governments such as the Chief Ministers, Home Ministers, Law Ministers, Chief Secretaries, Law Secretaries, Home Secretaries, Advocate Generals, D.GsP, Director of Prosecution, the Chief Justices of the High Courts, Senior District Judges, different Bar Associations and State and Central Bar Councils, Bar Association Lawyers. However the number of responses received is only 284.

1.10. Views of all the High Courts and information relating to institutions, pendency, disposal and other relevant information were sought from all the High Courts. As the response was not encouraging, the Chief Justice of India, on being requested by the Chairman, called upon all the High Courts to send their responses. As a result of the initiative of the Chief Justice, all the High Courts have sent their reports. (Refer Appendix 5, Volume II). However some of them have not furnished all the information sought, in the pro forma in regard to filing, disposal, pendency of criminal cases etc.

1.11. Similarly all the State Governments were requested to send their views. But only the States of Arunachal Pradesh, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh and Jammu & Kashmir have submitted their replies. Other States have not responded inspite of repeated requests. (Refer Appendix 6, Volume II).

1.12. Reports on the functioning of the prosecution system in all the States were sought from the respective heads of Police Departments. Reports have been received from the States of Arunachal Pradesh, Bihar, Goa, Himachal Pradesh, Karnataka, Madhya Pradesh,

Orissa, Tamil Nadu, and Uttaranchal. Others have not responded. (Refer Appendix 7, Volume III).

1.13. The Committee organised seminars as follows: -

<u>Date</u>	<u>Place</u>	<u>Topic</u>
9 February 2002	Chennai	Media and Criminal Justice System
23/24 February 2002	Jaipur	Reforms of Criminal Justice System (Investigation, Sentencing and Prosecution)
22/23 March 2002	Mumbai	Economic Crimes and Financial Frauds
26/27/28 April 2002	Delhi	Fundamental Principles of Criminal Justice – A Fresh Look.

1.14. Several other seminars organised on the recommendations of the Committee by different organizations and many more seminars organised by different organisations on the topics concerning the Criminal Justice System in which the Chairman or members of the Committee actively participated are the following: -

<u>Date</u>	<u>Place</u>	<u>Topic</u>
16 February 2002	Haveri, Karnataka	Reforms of Criminal Justice System
10 July 2002	Delhi	Use of Handcuffing – a rational approach.
27/28 July 2002	Hyderabad	Forensic Science, its use and application in investigation and prosecution.
12 September 2002	Lucknow	Symposium on Criminal Justice Administration and Dalits
13 September 2002	Allahabad	Application of Information Technology in Legal System and Reforms Of Criminal Justice System.
4 October 2002	Delhi	Insulating Police from External Pressures.
10/11 October 2002	Delhi	Law of Arrest – Police Powers and Accountability.
11 January 2003	Pune	Reforms of Criminal Justice System --- Speedier and Efficient Procedure for Trial Of Criminal Cases.

1.15. It is heartening to know that many eminent personalities participated in these seminars. Notable among them are Dr. R.Venkataraman, former President of India, Sri Bhairon Singh Shekhawat (now Vice-President of India), Sri Arun Jaitley, Honourable Minister for Law, former Chief Justices Sri Ranganath Misra, Sri A.M. Ahmadi, Sri M.H. Kania, Dr. A.S. Anand, former Supreme Court Judges Sri. K.Jayachandra Reddy, Sri. Jaganadha Rao, Sri. K.T. Thomas and many Senior Advocates Sri. Fali Nariman, Sri Soli Sorabjee, Attorney General, Sri K.K.Venugopal, Sri Shantibhushan, Sri. P.P. Rao, Sri V.R. Reddy, Sri. Dipankar P.Gupta, Sri. K.N. Bhat.

1.16. The Chairman held discussions with Mr. Badri Bahadur Karki, Attorney General of Nepal who is engaged in reforming the criminal prosecution system in his country. The Chairman discussed with Lord Goldsmith, Attorney General of U.K and held discussion with particular reference to several reforms undertaken in that country. The Chairman and members Professor Madhava Menon and Mr. Subba Rao participated in a video conference on reforms with prominent criminal lawyers from U.K. The Chairman and member Mr. Subba Rao visited Paris on the invitation of the French Government to study the Inquisitorial System followed in that country. Similar invitation from USA Agency USAID could not be accepted for want of time. Therefore USAID was good enough to send four experts to New Delhi who enlightened the Committee about the salient features of the Criminal Justice System in USA.

1.17. The Committee made an in-depth study of the materials gathered in respect of all the 19 items mentioned in the earlier paragraph.

#### CRIMINAL JUSTICE SYSTEM – AN OVERVIEW:-

Whatever views one holds about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual.

Herbert Wechsler

1.18. There was no criminal law in uncivilized society. Every man was liable to be attacked on his person or property at any time by any one. The person attacked either succumbed or over-powered his opponent. "A tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. As time advanced, the injured person agreed to accept compensation, instead of killing his adversary. Subsequently, a sliding scale of satisfying ordinary offences came into existence. Such a system gave birth to the archaic criminal law. For a long time, the application of these principles remained with the parties themselves, but gradually this function came to be performed by the State.

1.19. Since Independence and the promulgation of our Constitution rapid strides have been made in almost all fields. The communication revolution has opened the eyes, ears and minds of millions of people, resulting in increasing expectations of an ever growing population. The desire for quick, fair and affordable justice is universal. Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen. Any deprivation or breach of this valuable right is not permissible unless the procedure prescribed by law for that purpose is just, fair and reasonable. Has the State been able to keep up to this promise in a substantial measure? The ground reality, however, is that this precious fundamental right is turning out to be a mere pipe dream to many millions to whom justice is delayed, distorted or denied more than its delivery in accordance with the ideals enshrined in the Constitution. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System.

1.20. Latest report of the National Crime Record Bureau, 2000 (NCRB) published by the Ministry of Home Affairs, shows that in the year 1951 there were 6,49,728 cognizable crimes under the IPC. This has risen to 17,71,084 in the year 2000. In the year 1953 (figures for 1951 are not available) there were 49,578 violent crimes whereas in the year 2000 the number of violent crimes has increased to 2,38,381 (for the sake of illustration only figures of cognizable IPC crimes have been taken). These figures indicate an abnormal increase in the number of serious crimes. At the same time the population of the country which was 361.1 million in 1951 has increased to 1002.1 million in 2000.



**Consolidated Statement of Police Strength and of Cases Investigated by the Police in India  
1996 to 2000**

S. No			1996	1997	1998	1999	2000
1.	Total strength of State Police Forces		9,56,620	9,87,378	10,20,171	10,32,956	10,26,917
2.	Total number of cases in which investigation was completed by the police –	IPC Cases	16,78,453	16,63,666	17,53,121	17,94,390	17,92,896
		SLL Cases	41,95,778	46,00,513	44,09,133	35,47,072	33,66,127
		Total	58,74,231	62,64,179	61,62,254	53,42,462	51,59,023
3.	Workload of Civil Police : Total cases investigated by police divided by total number of investigating officer (ASIs to Inspectors)	IPC Cases	18.7	17.8	17.8	17.2	16.5
		SLL Cases	41.7	42.9	39.3	28.3	26.1
		Total	60.4	60.7	57.1	45.5	42.6

**Consolidated Statement of Cases Dealt with by the Courts in India from  
1996 to 2000**

Sl No		1996	1997	1998	1999	2000
1	No. of IPC cases which came up for trial during the year including cases pending at the beginning of the year	52,97,662	54,81,004	56,60,484	58,90,744	60,23,134

Sl No		1996	1997	1998	1999	2000
2	No. of SLL cases which came up for trial during the year including cases pending at the beginning of the year	7120383	7751906	7910411	7219222	6717380
3	No. of cases in which trial was completed during the year IPC cases SLL cases	843588 3487815	879928 3732474	895414 3679707	930729 3221158	933181 2518475
4	No. of cases pending trial at the end of the year IPC cases SLL cases	4252918 3259637	4395644 3625072	4585559 3784163	4775216 3506947	4921710 3649230
	Total	7512555	8020716	8369722	8282163	8570940
5	Conviction rate of those cases in which trial was completed IPC Cases SLL cases	37.8% 87.3%	38.2% 87.9%	37.4% 86.7%	39.6% 87.9%	41.8% 81.4%

Table 2

1.21. Out of every 100 cases (both IPC and SLL crimes) reported to and taken up by the Police for investigation, between 25 and 30 cases are IPC crimes and the balance is accounted for by SLL crimes. Of the IPC crimes taken up by police for investigation every year, investigation is completed by the police in 76% to 80% of these cases. The corresponding percentage in respect of SLL cases is between 85 and 95.

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1.23. These figures show that the courts have not been able to cope up with the number of cases that come before them for trial every year. According to Table 1 the total number of complaints received by the police and cases registered during the year 2000 in India is 56,62,773. It is a matter of common knowledge that several persons who are victims of crimes do not complain to the police. During the year 2000 the total number of cases charge-sheeted after investigation is 50,98,304. The total number of cases disposed of by the courts in the year 2000 is 9,32,774. So far as the cases under IPC are concerned, the analysis in the report on page 1 of the NCRB report shows that 79% of IPC cases were investigated in the year 2000, 78.4% of them were charge-sheeted, 18.3% of them were tried and 41.8% of them resulted in conviction. In many Countries like U.K., U.S.A, France, Japan and Singapore the rate of conviction is more than 90%.

1.24. Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding the criminal cases. It is a trite saying that justice delayed is justice denied. Table 25(b) of the NCRB report, 2000 furnishes the duration of trial of cases during 2000. It is seen that 10,382 cases of the duration of 3 to 5 years, 6,503 cases of the duration of 5-10 years and 2,187 cases of the duration of over 10 years were disposed of by

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all the courts in India during 2000. Taking more than 3 years (sometimes even 10 years) amounts to denying fair trial. Speedy trial is a right of the accused that flows from Article 21 as held by the Supreme Court. If the accused is acquitted after such long delay one can imagine the unnecessary suffering he was subjected to. Many times such inordinate delay contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time, or the witnesses do not remember all the details or the witnesses do not come forward to give true evidence due to threats, inducement or sympathy. Whatever may be the reason it is justice that becomes a casualty.

1.25. Vulnerable sections of the society like women, children and other members of weaker sections of society like the Schedule Caste and Schedule Tribes suffer more when the Criminal Justice System fails to live up to expectations.

### Crime Against Women

Sl No	Crime Head	Year			Percentage variation in 2000 over 1999
		1998	1999	2000	
1.	Rape	15151	15468	16496	6.6
2.	Kidnapping and Abduction	16351	15962	15023	-5.9
3.	Dowry Death	6975	6699	6995	4.4
4.	Torture	41376	43823	45778	4.5
5.	Molestation	30959	32311	32940	1.9
6.	Sexual Harassment	8054	8858	11024	24.5
7.	Importation of Girls	146	1	64	63.0
8.	Sati Prevention Act	0	0	0	-
9.	Immoral Traffic (P) Act	8695	9363	9515	1.6
10.	Indecent Rep. of Women (P) Act	190	222	662	198.2
11.	Dowry Prohibition Act	3578	3064	2876	-6.1
	<b>Total</b>	<b>131475</b>	<b>135771</b>	<b>141373</b>	<b>4.1</b>

Table 3

Several disturbing features are seen from the figures given in this table. There is a 6.6% increase in the offence of rape from 1999 to 2000. So far as the percentage of sexual harassment during the same period is concerned, there is an increase of 24.5%. What is worst is the figures relating to importation of girls obviously for sex which has increased to 63% during 2000. This is quite shocking.

1.26. So far as offences against children are concerned, Table 4 furnishes information about the incidents of different types of offences against them between 1996 and 2000.

**Offences Against Children**

Sl No	Crime Head	Years					Percentage variation	
		1996	1997	1998	1999	2000	2000 over 1996	2000 over 1999
1.	Child Rape	4083	4414	4153	3153	3132	-23.3	-0.7
2.	Kidnapping and abduction	571	620	699	791	711	24.5	-10.1
3.	Procuration of minor girls	94	87	171	172	147	56.4	-14.5
4.	Selling of girls for prostitution	6	9	11	13	15	150.0	15.3
5.	Buying of girls for prostitution	22	13	13	5	53	140.9	960
6.	Abetment of Suicide	11	13	28	24	18	63.6	-25
7.	Exposure and abandonment	554	582	575	593	660	19.1	11.2
8.	Infanticide	113	107	114	87	104	-8.8	19.5
9.	Foeticide	39	57	62	61	91	133.3	49.2
10	Child marriage restraint act	89	78	56	58	92	3.4	58.6
	<b>Total</b>	<b>5582</b>	<b>5980</b>	<b>5882</b>	<b>4957</b>	<b>5023</b>	<b>-10.0</b>	<b>1.3</b>

Table 4

The figures show a mixed trend during the last five years. There is an increase of 1.3% from 1999 to 2000.

1.27. So far as incidence of child rape is concerned, there were 744 victims below 10 years and 2,880 victims between of 10 and 16 years. This shows the extent of child abuse that is prevalent in India and the failure of the system to contain it. This is very disturbing.

1.28. So far as crime against other weaker sections of the society namely the SC and ST are concerned, the figures for the years 1998, 1999 and 2000 are furnished in the Tables 5 and 6.

Sl No	Crime Head	Years			Percentage variation in	
		1998	1999	2000	1999 over 1998	2000 over 1999
1.	Murder	516	506	526	-1.9	4.0
2.	Rape	923	1000	1083	8.3	8.3
3.	Kidnapping & Abduction	253	228	268	-9.8	17.5
4.	Dacoity	49	36	38	-26.5	5.6
5.	Robbery	150	109	108	-27.3	-0.9
6.	Arson	346	337	290	-2.6	-13.9
7.	Hurt	3809	3241	3497	-14.9	7.9
8.	PCR Act	724	678	672	-6.3	-0.9
9.	SC/ST (Prev. of Atrocities) Act	7443	7301	7386	-1.9	1.2
10.	Others	11425	11657	11587	2.0	-0.6
	<b>Total</b>	<b>25638</b>	<b>25093</b>	<b>25455</b>	<b>-2.1</b>	<b>1.4</b>

Table 5

Sl No	Crime Head	Years			Percentage variation in	
		1998	1999	2000	1999 over 1998	2000 over 1999
1.	Murder	66	80	59	21.2	26.3
2.	Rape	331	384	403	16.0	4.9
3.	Kidnapping & Abduction	56	59	48	5.3	18.6
4.	Dacoity	5	3	5	-40.0	66.7
5.	Robbery	15	8	2	-46.6	-75.0
6.	Arson	38	43	32	13.2	-25.6
7.	Hurt	638	646	447	1.2	-30.8
8.	PCR Act	50	45	31	-10.0	-31.1
9.	SC/ST (Prev. of Atrocities) Act	709	574	502	-19.0	-12.5
10.	Others	2368	2608	2661	10.1	-2.0
	<b>Total</b>	<b>4276</b>	<b>4450</b>	<b>4190</b>	<b>4.1</b>	<b>-5.8</b>

Table 6

In the year 2000 there was an increase of 1.4% of crimes against the members of SC. So far as the members of the ST are concerned the figures indicate that there was an increase in the number of crimes like murder, rape, kidnapping, dacoity during 2000 compared to the figures of the previous year.

1.29. Economic crimes like smuggling, money laundering, tax evasion, drug trafficking, corruption and serious economic frauds are eating the vitals of the nation in a very big way. Table 7 furnishes information about major frauds reported during 2000.

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### Major Frauds Reported During 2000.

SL No	Value of Property lost / defrauded	Number of cases Registered under		
		CBT	Cheating	Total
1.	1-10 crores worth of loss	430	1192	1622
2.	20-25 crores	2	6	8
3.	25-50 crores	0	0	0
4.	50-100 crores	0	1	1
5.	Above 100 crores	1	0	1
	<b>Total</b>	<b>433</b>	<b>1199</b>	<b>1632</b>

Table 7

1.30. These figures show that there were 1,632 incidents of serious frauds during the year 2000 involving property worth several crores of rupees. The growing sophistication in the commission of serious economic crimes along with its complexities is a great challenge which the law enforcement agencies have not been able to effectively counter. The criminals adopt very special and sophisticated *modus operandi*. Normally individual persons are not the victims. It is the State that often suffers from such crimes. These offences are committed without being noticed by the high and the mighty, often taking advantage of deficiencies in the existing legal provisions. The system appears to be incompetent and impotent to deal with serious economic frauds like that of Harshad Mehta. Very little has been done to tackle economic frauds that have shaken the economy of the country.

1.31. Terrorism and organised crimes are growing menacingly in all parts of the world and India is no exception. To combat this problem the Government of India enacted the Terrorist and Disruptive Activities Act (TADA). After this statute lapsed, Prevention of Terrorist Activities Act (POTA) has been enacted by the Parliament. Similar laws have been enacted by Maharashtra and other States. These are very serious and complex crimes that transcend State boundaries. As many of these crimes are inter-State in character, it may be necessary to examine if some of these matters should be included in the Union list to enable the Govt. of India to meet this growing challenge in an effective manner.

1.32. The number of judges in India per million population is about 12-13 judges. Corresponding figures available for USA is 107, for U.K is 51, for Canada is 75 and for Australia



was about 41 about 12 years ago. This shows how grossly inadequate is the judge strength per million of population in India. That is the reason why the Supreme Court has in its recent decision in (2002) 4, S.C.C.247, All India Judges Association & Others Vs. Union of India and Others directed that the existing judge population ratio of 10:5 or 13 judges per million people should be raised to 50 judges per million people in a phased manner within five years.

1.33. The foundation for the Criminal Justice System is the investigation by the police. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the offence, ascertain the facts and circumstances relevant to the crime and to collect the evidence, oral or circumstantial, that is necessary to prove the case in the court. The success or failure of the case depends entirely on the work of the investigating officer. But unfortunately, the Criminal Justice System does not trust the Police. The courts view the police with suspicion and are not willing to repose confidence in them. Section 161 of the Code empowers the investigation officer to examine any person supposed to be acquainted with the facts and circumstances of the case and record the statement in writing. However section 162 of the Code provides that it is only the accused that can make use of such a statement. So far as the prosecution is concerned, the statement can be used only to contradict the maker of the statement in accordance with Section 145 of the Evidence Act. Any confession made by the accused before the Police officer is not admissible and cannot be made use of during the trial of the case. The statement of the accused recorded by the police can be used as provided under Section 27 of the Evidence Act to the limited extent that led to the discovery of any fact. The valuable material collected by the investigating officer during investigation can not be used by the prosecution. This makes it possible for the witnesses to make a contradictory statement during trial with impunity as it does not constitute perjury. The accused now-a-days are more educated and well informed and use sophisticated weapons and advance techniques to commit the offences without leaving any trace of evidence. Unfortunately, the investigating officers are not given training in interrogation techniques and sophisticated investigation skills. All these factors seriously affect the prosecution. This is a major cause for the failure of the system.

1.34. So far as the system of prosecution is concerned, it is often seen that best legal talent is not availed of for placing its case before the court. The accused is normally represented by a very competent lawyer of his choice. There is a mismatch in that, an equally competent lawyer is not there to represent the prosecution. The burden of proof being very heavy on the prosecution, it is all the more necessary for the prosecution to be represented by a very able and competent lawyer. Lack of co-ordination between the investigation and the prosecution is another problem. This makes things worse.

1.35. Apart from the main functionaries of the Criminal Justice System, others who have a stake in the system are the victims, the society and the accused. Other players are the witnesses and the members of the general public.

1.36. The victim whose rights are invaded by the accused is not accorded any right to participate except as a witness. The system does not afford him any opportunity to assist the court such as adducing evidence or putting questions to the witnesses. The system is thus utterly insensitive to the rights of the victim. The focus is all on the accused and none on the victim. The system has denied itself the benefit of this important source.

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1.37. Criminal cases largely depend upon the testimony of witnesses. Witnesses come to the court, take oath and quite often give false evidence with impunity. Procedure for taking action for perjury is not simple and the judges seldom make use of them. Witnesses turning hostile is a common feature. Delay in disposal of cases affords greater opportunity for the accused to win over the witnesses to his side by threats, or inducements. There is no law to protect the witnesses. The treatment given to the witnesses is very shabby. Even the basic amenities like shelter, seating, drinking water, toilets etc. are not provided. He is not promptly paid TA/DA. He is often paid much less than what he spends and nobody bothers about it. The cases are adjourned again and again making the witnesses to come to court several times leaving aside all his work. Witnesses who are treated in this manner become an easy prey to the machinations of the accused and his family.

1.38. These are some of the major problems that have contributed to the failure of the Criminal Justice System.

1.39. Justice V.R. Krishna Iyer has expressed his anguish about the failure of the system in his article in the Hindu of May 25, 1999.

“The glory and greatness of Bharat notwithstanding, do we not, even after the braggartly semicentennial noises, behave as a lawless brood, tribal and casteist, meek and submissive when political goons and mafia gangs commit crimes in cold blood, and canny corruption and economic offences ubiquitous? The criminal culture among the higher rungs and creamy layers of society, even when nakedly exposed, does not produce the public

outrage one should expect, with no burst of rage from those who must speak... ..

Sans the punitive rule of law, democracy becomes a rope of sand... ..

India is not a soft State, a sick society, a pathologically submissive polity.

In this darkling national milieu, the penal law and its merciless enforcement need strong emphasis. Alas the criminals are on the triumph, the police suffer from “dependencia syndrome” and integrity is on the decadence and the judges themselves are activists in acquittals of anti-social felons. Less than ten percent of crimes finally end in conviction and societal demoralization is inevitable”.

1.40. Nowhere have the broad objectives of the Criminal Justice System been codified, though these can be inferred from different statutes, including the Constitution and judicial pronouncements. As in every democratic civilized society, our Criminal Justice System is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly and legally. More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and to prevent recidivism.

1.41. The above survey of the status of the Criminal Justice system throws many challenges to the Criminal Justice System. The fundamental principles of criminal jurisprudence and the relevant laws have to be critically examined to bring out reforms in the following among other areas.

- i. To set an inspiring ideal and a common purpose for all the functionaries.
- ii. To instill a sense of urgency, commitment and accountability.
- iii. To improve professionalism, efficiency, expedition and transparency in all the functionaries.
- iv. Quickening the quality of justice by streamlining the procedures.
- v. To enhance the level of professional competence and to take measures to enhance credibility, reliability and impartiality in the investigation agency.
- vi. To improve the level of professional competence of the prosecutors and to ensure their function in co-ordination with the investigation agency.
- vii. To focus on the role of the accused in contributing to better administration of criminal justice.

- viii. To focus on justice to victims.
- ix. To tackle the problems of perjury and to ensure protection and better treatment to witnesses.
- x. To find effective response to the menacing challenges of terrorism, organised crime and economic crime.
- xi. Restoring the confidence of the people in the Criminal Justice System.

1.42. The task of the Committee is to find ways and means to reform the system to ensure that every innocent person is protected and every guilty person is punished with utmost expedition. As Sri. Fali Nariman put it 'this is the last bus to catch'.

The task of the Committee is to find ways and means to reform the system to ensure that every innocent person is protected and every guilty person is punished with utmost expedition. As Sri. Fali Nariman put it 'this is the last bus to catch'.