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Paper : << Fundamentals of Crime, Criminal Law and Criminal Justice >>

Module : << Structure of Criminal Justice System in India >>



ज्ञान-विज्ञान विमुक्तये

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DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Criminology
Paper Name	Fundamentals of Crime, Criminal Law and Criminal Justice
Module Name/Title	Structure of Criminal Justice System in India
Module Id	19
Objectives	<p>Learning Outcome:</p> <ul style="list-style-type: none"> • To make the learners understand the structure of the police in India • To acquaint the learners with the structure of the courts • To make the learners understand the structure of the Prison
Prerequisites	General understanding of the Code of Criminal Procedure 1973
Key words	Police, prosecution, defence, court, judge

1. Introduction

The criminal justice system of any state is the set of agencies and processes established by governments for administration of criminal justice aimed at controlling crime and imposing punishment on persons who violate the law. The Union of India is a Federal State currently consisting of the Central government and the State governments in the twenty nine states. The states have their own powers and functioning under the Constitution of India. The Police and Prison are the state subjects. However, the Federal laws are followed by the Police, Judiciary, and Correctional Institutes, which form the basic organs of the Criminal Justice System. The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. In the Indian Criminal Justice Administration, the Police investigate, while the Judge's role is like a neutral umpire and a fact finder and he also imposes the sentence. The execution of the sentence is bestowed on the Correctional institutes.

2. Structure of Criminal Justice System

The structure of Criminal Justice system consists of the four main pillars namely, investigation by Police, Prosecution of case by the Prosecutors, determination of guilt by the Courts and finally the correction through prisons system. Article 246 of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List.

2.1 Investigation by Police

The very crux of the Criminal trial is laid down by the investigation done by the police. The information of the offence is registered in the local police station under Section 161 of the Code of Criminal Procedure 1973(CrPC). Thereafter the police starts the investigation under section 156 CrPC. Section 161CrPC 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. (Malimath Committee Report, 2003). The police can arrest a person for commission of cognizable offence under section 41CrPc in accordance to the procedure given under section 46 CrPC. In the course of investigation the Police officer may search any premise under sections 165 and 166 where there is an expectation to anything (documents, materials) in connection with a cognizable offence. Any such items may be seized by the police under section 102 CrPC. Police has the discretion to discharge a person arrested on executing a bond under section 169 CrPc , in case the officer feels that there is not enough incriminating materials against such persons. Finally, all such statements of the witnesses, and the evidence collected through the investigation alongwith the copy of the First Information Report is made into a Police report and submitted under section 173 to the Magistrate for taking cognizance there upon. Apart from this the Police also conducts the inquest where an information of death is received under section 174 CrPC.

The police is a state subject and its organization and working are governed by rules and regulations framed by the state governments. These rules and regulations are outlined in the Police Manuals of the state police forces. Each State/Union Territory has its separate police force. Despite the diversity of police forces, there is a good deal that is common amongst them. This is due to four main reasons: § The structure and working of the State Police Forces are governed by the Police Act of 1861, which is applicable in most parts of the country, or by the State Police Acts modeled mostly on the 1861 legislation. The Indian Police Service (IPS) is an All India Service, which is recruited, trained and managed by the Central Government and which provides the bulk of senior officers to the State Police Forces. § The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counseling role for the Centre in police matters and even authorizes it to set up certain central police organizations (Commonwealth Human Rights Initiatives, 2001).

Superintendence over the police force in the state is exercised by the State Government (Section 3, The Police Act, 1861). The head of the police force in the state is the Director General of Police (DGP), who is responsible to the state government for the administration of the police force in the state and for advising the government on police matters.

Field Establishment States are divided territorially into administrative units known as districts. An officer of the rank of Superintendent of Police heads the district police force. A group of districts form a range, which is looked after by an officer of the rank of Deputy Inspector General of Police. Some states have zones comprising two or more ranges, under the charge of an officer of the rank of an Inspector General of Police.

Every district is divided into sub-divisions. A sub-division is under the charge of an officer of the rank of ASP/ Dy.S.P. Every sub-division is further divided into a number of police stations, depending on its area, population and volume of crime. Between the police station and the subdivision, there are police circles in some states - each circle headed generally by an Inspector of Police. The police station is the basic unit of police administration in a district. Under the Criminal Procedure Code, all crime has to be recorded at the police station and all preventive, investigative and law and order work is done from there.

A police station is divided into a number of beats, which are assigned to constables for patrolling, surveillance, collection of intelligence etc. The officer in charge of a police station is an Inspector of Police, particularly in cities and metropolitan areas. Even in other places, the bigger police stations, in terms of area, population, crime or law and order problems, are placed under the charge of an Inspector of Police. In rural areas or smaller police stations, the officer in charge is usually a Sub-Inspector of Police.

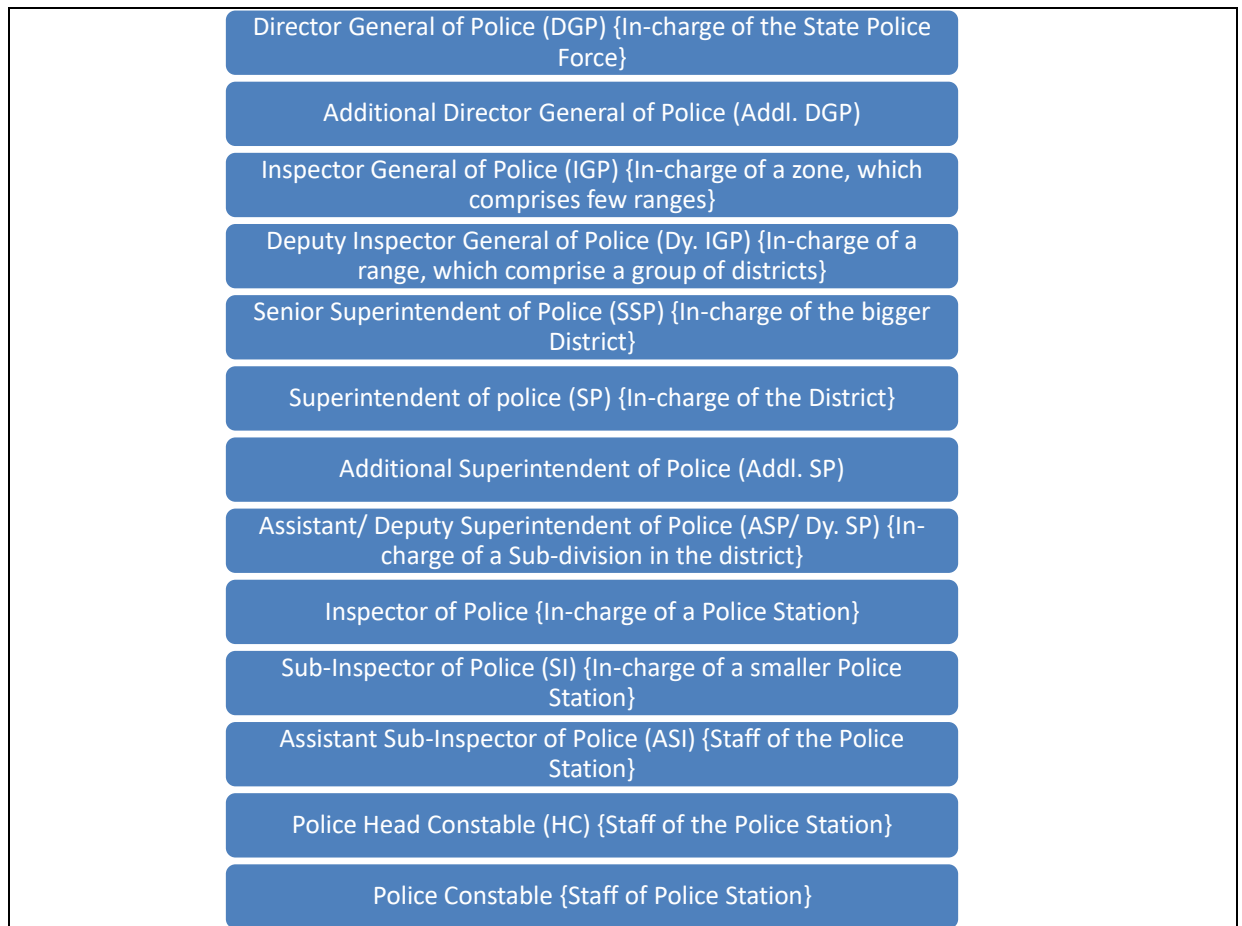


Fig. 1 Hierarchy of Police Force in India

2.1.1. Commissionerate System of Policing

The commissionerate system of policing was introduced by in certain metropolitan areas like Calcutta, Bombay, Madras and Hyderabad. Under this system, the responsibility for policing the city/area is vested in the Commissioner of Police. While the commissionerate system initially existed in four cities in the last century, it has been extended to many areas since Independence (Commonwealth Human Rights Initiatives, 2001).

2.1.2. Criminal Investigation Department (CID)

Criminal Investigation Departments or CIDs, as they are popularly known, are specialized branches of the police force. They have two main components - the Crime Branch and the Special Branch. The officer in charge of the CID generally supervises the work of both branches, though some states appoint a separate officer in charge of the Special Branch. The Crime Branch is the most important investigation agency of the state police. It investigates certain specialised crimes like counterfeiting of

currency, professional cheating, activities of criminal gangs, crimes with interdistrict or inter-state ramifications etc. In fact, when certain major crimes remain unsolved or when the public demands investigation by an agency other than the local police, the government or the head of the police force transfers cases for investigation from the district police to the CID. The Special Branch, on the other hand, collects, collates and disseminates intelligence from the security point of view. Its main role is to keep a watch over the subversive activities of persons, parties and organisations and keep all concerned informed (Commonwealth Human Rights Initiatives, 2001).

2.1.3. Central Bureau of Investigation (CBI)

What is known today as the CBI was originally set up as the Special Police Establishment (SPE) in 1941 to investigate cases of bribery and corruption involving the employees of the War and Supply Department of the Government of India during the Second World War. Even after the war was over, the need to continue the agency to investigate corruption charges involving government servants was felt. The Delhi Special Police Establishment Act was passed in 1946 to give the organisation a statutory base. Its jurisdiction was extended to cover cases of corruption involving employees of all departments of the Government of India. The role of the SPE was gradually extended and by 1963, it was authorised to investigate offences under 97 Sections of the Indian Penal Code, offences under the Prevention of Corruption Act and 16 other Central Acts. In 1963, the Government of India set up the Central Bureau of Investigation (constituted by the Government of India's Resolution No. 4/31/61-T dated April 1, 1963). This new organisation's charter included not only the work done by the Delhi Special Police Establishment but also additional investigation work relating to breach of central fiscal laws, major frauds in central government departments, public joint stock companies, passport frauds, crimes on the high seas and in the air and organised crimes committed by professional gangs. It was also given the work of maintaining crime statistics, collecting intelligence relating to certain types of crimes, working as the National Crime Bureau (NCB) of the country for the International Police Organisation (INTERPOL) (Commonwealth Human Rights Initiatives, 2001).

Presently, the CBI consists of the following divisions:

- i. Anti Corruption Division

- ii. Economic Offences Division
- iii. Special Crimes Division
- iv. Legal Division v. Coordination Division
- v. Administration Division
- vi. Policy and Organisation Division
- vii. Technical Division
- viii. Central Forensic Science Laboratory

The legal powers of investigation of the CBI are derived from the Delhi Special Police Establishment Act, 1946 (DPSE Act). The organisation can investigate only such offences as are notified by the central government under Section 3 of the DPSE Act. The powers, duties, privileges and liabilities of the members of the organisation are the same as those of the police officers of the union territories in relation to the notified offences. While exercising such powers, members of the CBI of and above the rank of Sub-Inspectors are deemed to be officers in charge of the police station. The Central Government is authorised to extend the powers and jurisdiction of the members of CBI to any area, including railway areas, for the investigation of offences notified under Section 3 of the District Special Police Establishment Act, subject to the consent of the government of the concerned state (Commonwealth Human Rights Initiatives, 2001).

3. Role of the Prosecutor

Prior to the enactment of the Criminal Procedure Code of 1973, public prosecutors were attached to the police department and they were responsible to the District Superintendent of Police. However, after the new Code of Criminal Procedure came into force in 1973, the prosecution wing has been totally detached from the police department. The prosecution wing in a state is now headed by an officer designated as the Director of Prosecutions under section 25A of CrPC. In Sessions Courts, the cases are prosecuted by Public Prosecutors. The District Magistrate prepares a panel of suitable lawyers in consultation with the Sessions Judge to be appointed as public prosecutors. The state government appoints public prosecutors out of the panel prepared by the District Magistrate and the Sessions Judge. It is important to mention that public prosecutors who prosecute cases in the Sessions Courts do not fall under the jurisdiction and control of the Director of Prosecutions (Sharma, Madan Lal).

The state government also appoints public prosecutors in the High Court. The appointments are made in consultation with the High Court as per section 24 of the Code. The most senior law officer in a state is the Advocate General who is a constitutional authority. He is appointed by the governor of a state under Article 165. He has the authority to address any court in the state. The Assistant Public Prosecutors, Grade-I and Grade-II, are appointed by a state government under section 25 CrPC on the basis of a competitive examination conducted by the State Public Service Commission (Sharma, Madan Lal).

Public prosecution is an important component of the Criminal Justice System. Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor. The Supreme Court of India has defined the role and functions of a public prosecutor in *Shiv Nandan Paswan vs. State of Bihar & Others* (AIR 1983 SC 1994) as under:

- a) The Prosecution of an offender is the duty of the executive which is carried out through the institution of the Public Prosecutor.
- b) Withdrawal from prosecution is an executive function of the Public Prosecutor (section 321 CrPC).
- c) Discretion to withdraw from prosecution is that of the Public Prosecutor and that of none else and he cannot surrender this discretion to anyone.
- d) The Government may suggest to the Public Prosecutor to withdraw a case, but it cannot compel him and ultimately the discretion and judgement of the Public Prosecutor would prevail.
- e) The Public Prosecutor may withdraw from prosecution not only on the ground of paucity of evidence but also on other relevant grounds in order to further the broad ends of public justice, public order and peace.
- f) The Public Prosecutor is an officer of the Court and is responsible to it.

The prosecutor has a very significant role. To start with there is a presumption of innocence in favour of the accused. On the basis of the facts proved by the oral, documentary and forensic evidence, the public prosecutor tries to substantiate the charges against the accused and tries to drive home the guilt against him. If there is a statutory law regarding presumptions against the accused, the public prosecutor draws

the court's attention towards that and meshes it with other evidence on record. Throughout the trial he has the burden of proof and the standard of such proof is quite high in India, as it has to be beyond a reasonable ground. He has to prove the circumstances, and then he has to draw the inferences and convince the court that the arraigned accused alone is guilty of the offences that he has been charged with.

4. Judiciary

The role of the judge or the Court in India starts from the stage of taking cognizance of the criminal case under section 190 CrPc, followed by making over of the case (section 192) to the appropriate court having jurisdiction to try the case or commitment to the Court of sessions under section 209 CrPC. This is followed by the issue of process under section 204 either by summons or warrant as the case may be. Once all the actors of the Criminal Justice Administration, that is the accused represented by the defence counsel, the prosecutor representing the State as well as the victim and the Judge come face to face, the trial unfolds. At this stage the Court frames the charge if the evidence submitted to it and from the opening statements and the two sides, it comes to the conclusion that the evidence is sufficient enough to start the trial. Conversely, discharges the accused person if the evidence is not sufficient.

During the whole process of trial the court's duty is finding of the facts that are relevant from the evidence presented by the prosecutor and the defence and come to the conclusion of the guilt by making a balance sheet of the aggravating and mitigating factors. Once the judgment is reached and in case it is a guilty verdict, the Court proceeds to pronounce the sentence applying its discretion based again on the aggravating and mitigating factors, the antecedents and probability of reform of the offender.

4.1 Structure of the Judiciary

The Judiciary has the Supreme Court (S.C) at the apex having three-fold jurisdiction namely, original, appellate and advisory. Supreme Courts and High Courts have only appellate criminal jurisdiction. Below the S.C are the High Courts at state level, followed by subordinate courts in the districts. The courts of session exercise both

original and appellate jurisdiction. Major offences like murder, dacoity, robbery, rape etc cannot be tried in a court below the sessions.

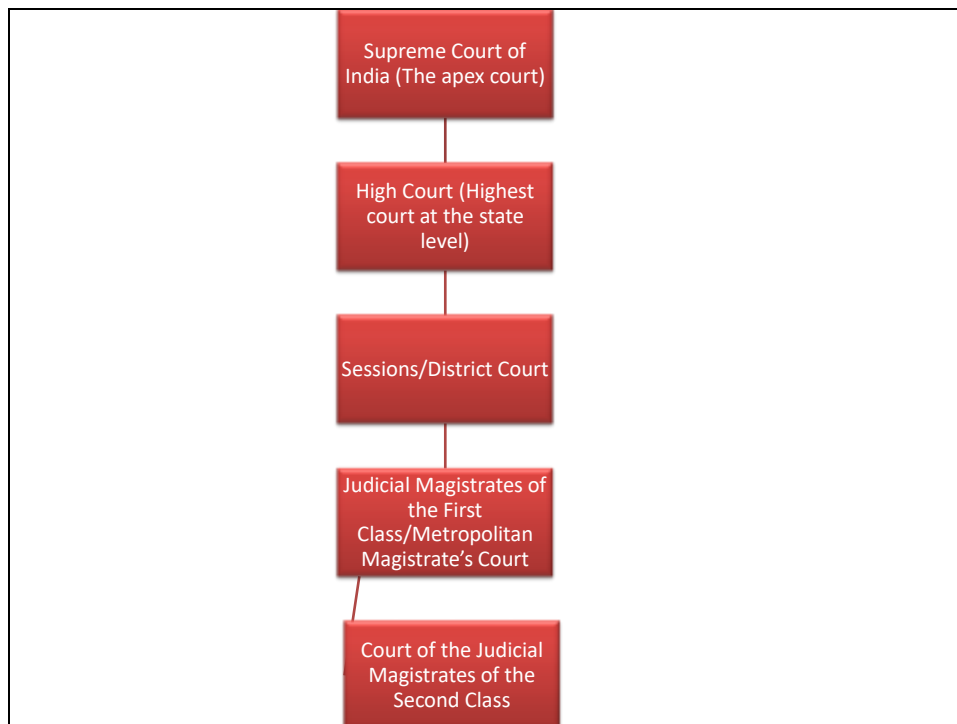


Fig. 3 Hierarchy of Courts in India

The appellate jurisdiction of the S.C. covers constitutional, civil and criminal cases. In criminal matters, an appeal lies to the Supreme Court from any judgement or order of the High Court if the latter (a) has on appeal reversed an order of acquittal and sentenced the accused to death or imprisonment for life or for a period of not less than 10 years; or (b) has withdrawn for trial before itself any case and has in such trial sentenced the accused person to death; (c) certified that the case is fit for appeal. In any case, the Supreme Court, under Article 136 of the Constitution, can grant special leave to appeal from any judgment, decree, determination, sentence or order in any matter passed or made by any court or tribunal in the territory of India. The consultative jurisdiction of the S.C. is in respect of matters, which are referred for its opinion and advice by the President of India under Article 143 of the Constitution (Commonwealth Human Rights Initiatives, 2001).

The High Court exercises appellate jurisdiction in criminal cases under section 374 (appeal from an order of conviction) and section 378 (appeal from an order of acquittal). Apart from that the High Court also have inherent powers under section 482

to give effect to an order under the Code, to prevent abuse of the process of Court and to otherwise secure the ends of justice. The jurisdiction of the trial courts are determined on the basis of the sentencing jurisdiction of the courts in accordance to sections 28 and 29CrPC. (Fig.3)

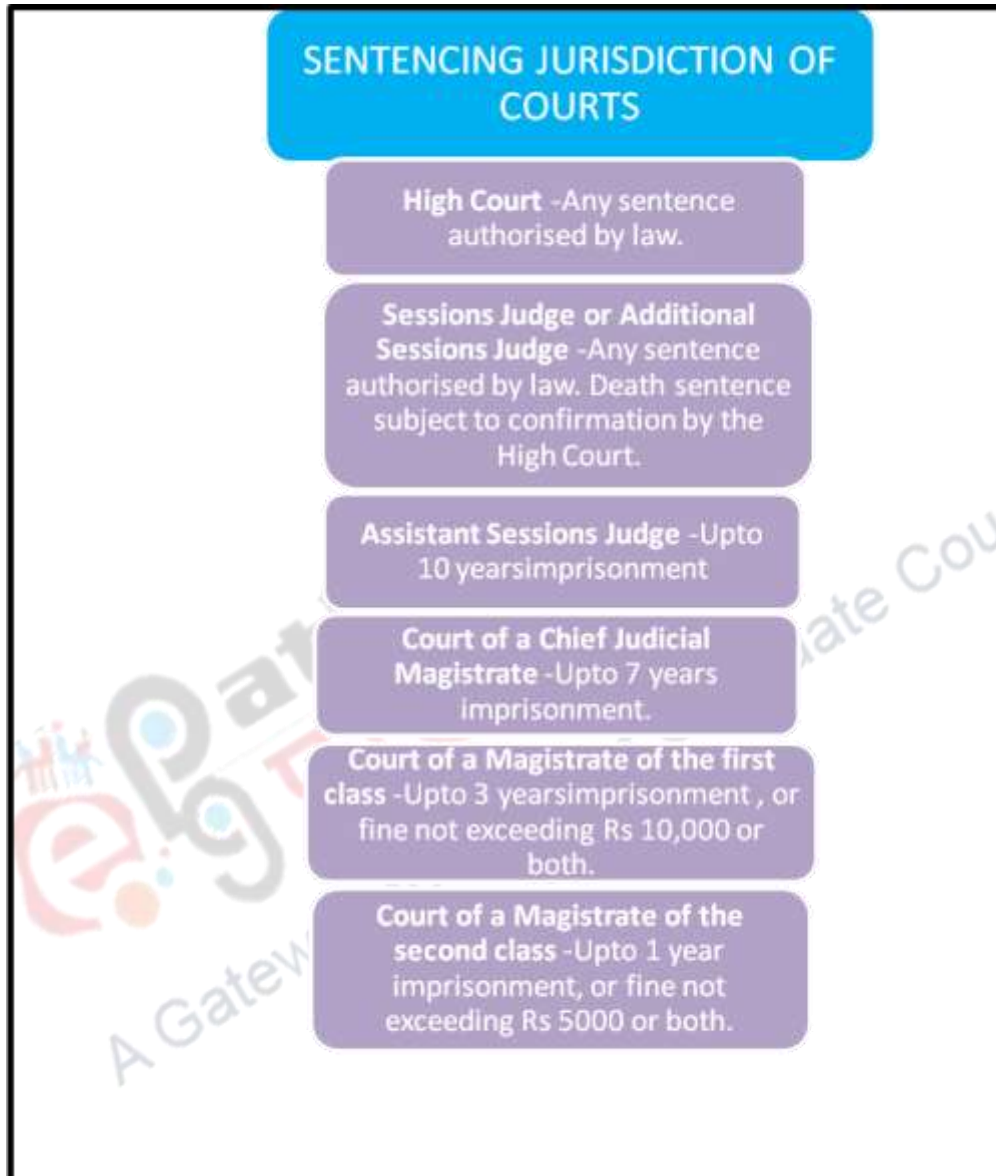


Fig. 3 Sentencing Jurisdiction of Courts

5. Correctional (Prison) system

The Court determines the guilt of the accused and pronounces the appropriate sentence. In case the court comes to the conclusion owing to the facts and circumstances of the case as well as the convict that it is better for the rehabilitative prospect of the person to release him on probation under the Probation of offenders Act 1958 read with section 360 of CrPC, then the court may release such convict under probation. However, in case a sentence of imprisonment is pronounced then the

final wing of the Criminal Justice System is activated, that is the correctional wing through the prisons system. The sentence of imprisonment in India is not punitive rather it is for using the period of incarceration for the reformation and rehabilitation of the prisoner. This is achieved through therapeutic treatment of education, labour, vocational training and yoga and meditation, so that the prisoner is reformed internally not to choose the path of crime once he goes out of the prison. Prison and its administration is a State Subject as it is covered by item 4 under List II in Schedule VII of the Constitution of India. Prison Establishments in different States/UTs comprise several tiers of jails. The most common and standard jail institutions which are in existence in the States/UTs are better known as central jails, district jails and sub jails. The other types of jail establishments are women jails, borstal schools, open jails and special jails (Crime in India, 2014).

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District jails serve as the main prisons in some of the States/UTs. States which have considerable number of district jails are Uttar Pradesh (56) followed by Madhya Pradesh (33), Bihar (31), Rajasthan (25), Maharashtra (27), Assam (22), Karnataka (19), Jharkhand (17), Haryana (16) and West Bengal (12) (Prison Statistics in India, 2014).

Nine States have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These States are Maharashtra (100), Andhra Pradesh (99), Tamil Nadu (96), Madhya Pradesh (78), Odisha (73), Karnataka (70), Rajasthan (60) and West Bengal & Telangana (33 each) while 7 States/UTs have no sub-jails (namely Arunachal Pradesh, Haryana, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi) (Prison Statistics in India, 2014).

Women jails exclusively for women prisoners exist only in 13 States/UT (Table 1.2). Tamil Nadu & Kerala have 3 women jails each and Rajasthan & West Bengal have 2 women jails each. Andhra Pradesh, Bihar, Gujarat, Maharashtra, Odisha, Punjab, Telangana, Uttar Pradesh and Delhi have one women jail each (Prison Statistics, 2014).

Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners which are broadly as follows: i) Prisoners who have committed serious violations of prison discipline. ii) Prisoners showing tendencies towards violence and aggression. iii) Difficult discipline cases of habitual offenders. iv) Difficult discipline cases from a group of professional/organised criminals (Prison Statistics, 2014).

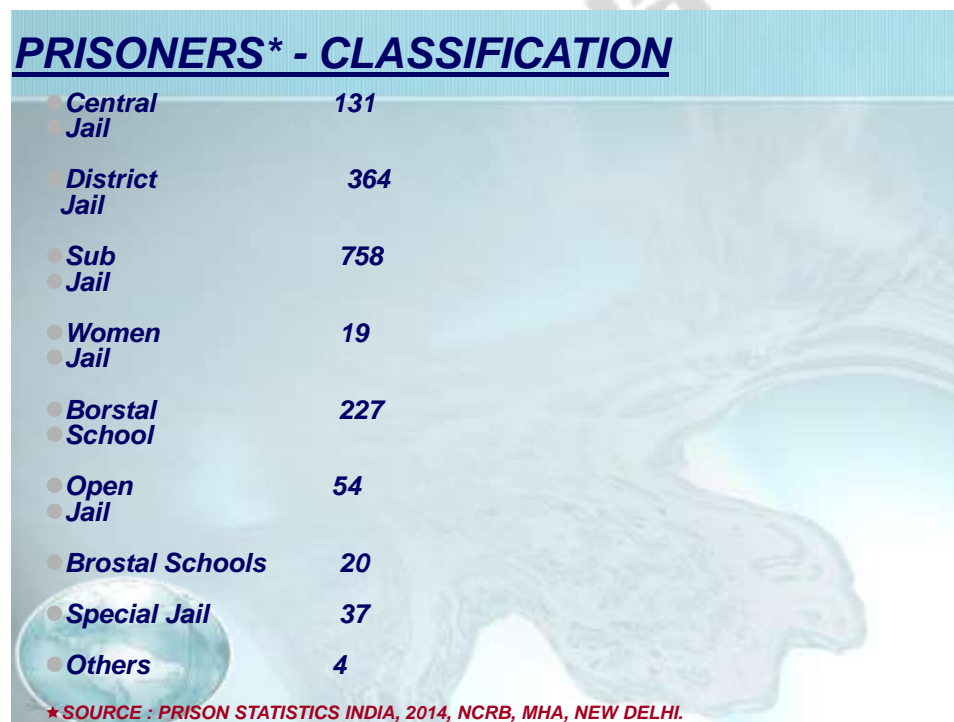


Fig. 4 Types of Correctional Institutions in India

The Custodial staffs in the prison is responsible for the maintenance of discipline and compliance of prison rules. At the very top is the Inspector General of police and the deputies. The custodial staffs which remain present inside the prison premises is headed by the superintendant of Prisons, Jailor and warder.

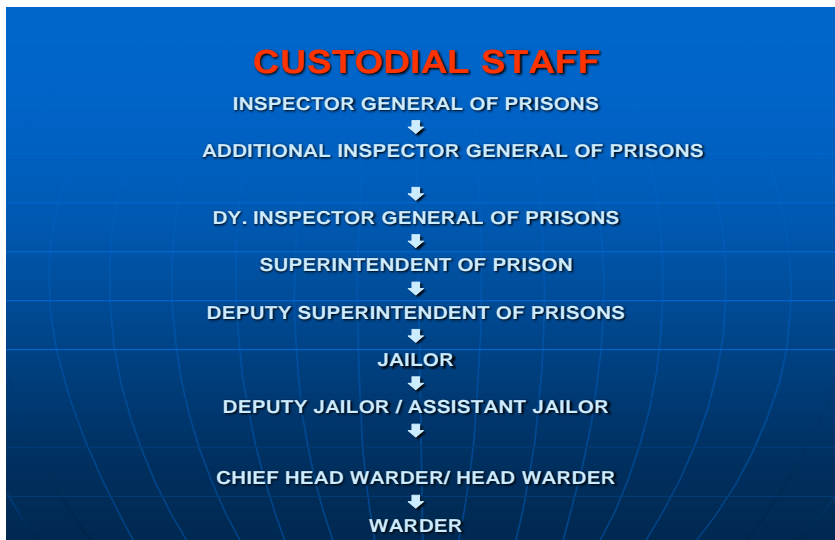


Fig.5 Custodial Staffs in the Prison

The non-custodial staffs in the prison who are responsible for the well being of the inmates include the medical staffs, and the treatment staffs, who ensure that the inmates are reformed and rehabilitated during their stay in the prison.

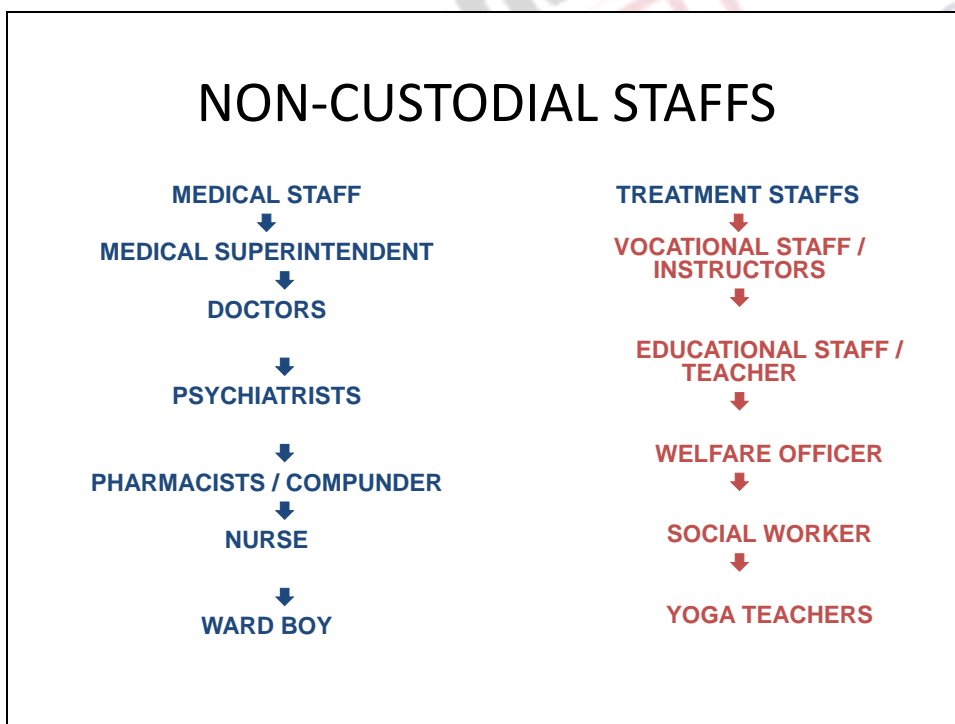


Fig. 6 Non- Custodial Staffs

5. Conclusion

The functioning of the criminal justice system is the true reflection of the peace and order that the members of the state are enjoying. The Indian Criminal Justice System, although of a common law origin but in its structure and functioning

both it has now evolved into a hybridized system. It has inculcated many inquisitorial elements where the judges have the power of inquiry and through that they are actually, participating in the truth finding process rather than the being mere fact finders. The archaic laws like the Police Act of 1861 still govern the structure and functioning of the police and so is the Prison Act 1894 in case of the prisons, which affects the efficiency dimensions of the Criminal Justice system. In every State the Criminal Justice System is expected to provide the maximum sense of security to the people at large by tackling crimes and criminals effectively, quickly and legally. More specifically, the aim is to reduce the level of crime in society by ensuring maximum detection of reported crimes, apprehension of the accused, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and their proper treatment in the prison to prevent recidivism. Clearly defined hierarchy and roles of the different actors of the various wings of the Criminal Justice System is very significant and a proper coordination between all the wings of the Criminal Justice System is the key to an efficient system.

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