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EDITOR'S PAGE

POLICE CORRUPTION

In July 1971, in the interim report of the Commission to Investigate Alleged Police Corruption appointed in New York, the following passage was found :

" A fundamental conclusion at which the Commission has arrived is that the problem of police corruption cannot – as is usually asserted – be met by seeking out the few rotten apples whose supposedly atypical conduct is claimed to sully the reputation of an otherwise innocent department. The Commission is persuaded that the climate of the department is inhospitable to attempts to uncover acts of corruption, and protective of those who are corrupt. The consequence is that the rookie who comes into the department is faced with the situation where it is easier for him to become corrupt than remain honest ".

In other words, a new entrant into the service is faced with a running concern of corruption and he becomes a product of the existing situation. This is probably true in some other spheres as well.

The answer lies in (i) proper recruitment (ii) good training (iii) periodical course of in-service training to all ranks (iv) fear of deterrent action against corrupt elements etc. Though many other measures can be listed out, the above appear to me as the most important.

In a book that I came across recently the following causes have been enumerated as responsible for police corruption.

(i) entry of criminal-minded recruits

(ii) bad training

(iii) bad supervision

(iv) low status of constables

(v) poor pay

(vi) corruption politically patronised

(vii) nature of the police organisation and attitudes of supervisory officers.

(viii) lack of strong community controls

(ix) lack of professional standards in the police organisation.

(x) tolerance limits of criminal and corrupt behaviour in society.

(xi) demands from members of the society for certain types of illegal services.

The problem does not appear to be totally curable by administrative solutions within the police department. Indeed police superiors have a clear and definite role to play both by example and good supervision in rooting out police corruption but steps other than good supervision are also called for when one looks at the nature of the problem.

POLICE AND OBSERVANCE OF THE LAW

By
E. L. STRACEY, I.P.,
Inspector-General of Police, Tamilnadu.

THE problem of police observance or non-observance of the law has been prominently before the public mind of late, and rightly so. For if the police do their duty well, then our only concern would be how to enable them to do it better. But if grounds exist for the feeling that the hedge is overrunning the crop, then the public would have just cause for alarm and have a vital interest in finding out how extensive the problem is, what its underlying causes are and what can be done about it.

Let me set the picture straight at the outset. Policemen, like the members of the community they serve and of which they are a part, are normally law-abiding persons who also normally observe the law in the course of the performance of their duties. Most senior police officers strive to keep it that way. Unfortunately, this side of their lives and their work, along with much of the good that they so quietly achieve, receives—by its very nature — little or no publicity. But the other side, namely, the occasions when policemen break the law, especially while discharging their functions, immediately attracts the glare of public attention and brings a bad name to the department. Well, not always perhaps, for most people, would be prone to forgive or forget a policeman cycling without a light at night when he should, instead, be setting an example to others. Or the more broad minded among you may even feel somewhat sympathetic when you hear that a constable has been dismissed for having taken a peg or two of illicit liquor, though its implications may, in fact, be far more serious than appears at first sight. Breaches of the law, when technical or trivial, though not to be condoned in policemen, are also not generally considered an outrage on society. But when you have proof of torture by the police to obtain a confession, or fabrication of evidence to get a conviction, say, then nobody is more outraged than those members of the police force who are serious about their responsibility for maintaining high standards of behaviour at all times. In fact, one feels like stepping outside the law to deal summarily with the culprit!

So while we may not disagree in our attitude towards a policeman who breaks the law, it would be useful here to stop and find out why, despite its clear directions, despite police regulations and the insistence by senior officers on clean and legal methods, there are policemen who behave in objectionable, even outrageous ways.

In the first place it would be as well to remember that the vast majority of policemen are not by nature or inclination sadists who take a delight in oppression and torture. It is only a small handful who occasionally indulge in this sort of behaviour. Secondly, even amongst those who do so, many would rather refrain, but are pressurised into it by bad superiors, whether in the department or at the political level. I am not for a moment putting this forward as justification, for no public servant may plead superior orders as an excuse for breaking the law. This applies particularly to senior officers who are supposed to know something about the law and its application, who have enough training and discernment to judge things for themselves and who are expected to have enough strength of character to be able to withstand such pressures. Even so, a few do succumb.

Pressures, however, need not only be direct and personal. Force of circumstances is sometimes adduced as justification for breach of law and convention. In the shadowy area of espionage and counter-subversion, for instance, or the merciless field of guerilla warfare, much happens that one would be ashamed to relate but which is sought to be justified on grounds of national security or the so-called "requirements of the situation". One can only hope that even in these areas, chivalry and decency have not completely died out. But what is really pitiable — because it is so avoidable — is the subordinate who errs because of the environment in which he works and the stupidity of the standards by which he is judged. It is not rare for a Sub-Inspector in charge of a police station to break the law requiring him to register a cognizable case if he feels he is not going to detect it and will be found fault with for that. His action here may evoke understanding or perhaps even sympathy. But if he resorts to cruelty and torture in order to extarct a confession, then his action cannot be too strongly condemned. You agree with me, of course—unless you happen to be the injured party or a heavy loser in the case. Then you find yourself tempted to suggest, as more than one person has

suggested to me, that if only the Sub-Inspector would give the culprit a sound beating, he would certainly be able to recover your stolen jewellery! A similar attitude is often taken by people who are harassed by hooligans. All they pray for is a policeman who is willing to lay about him with his lathi until the rowdy has finally learnt his lesson. To say all this is not to excuse such conduct, but it needs to be said if one is to understand the approbation or at least sympathy which some breaches of the law evoke. And when you consider the long hours, the tremendous strain, the public apathy and touchiness which the average policeman has to contend with, you are almost inclined to forgive his irritability which leads to the harsh word or the cuff on the ear of someone who anyway deserved it.

But none of these extenuating factors, I agree, excuses a policeman's breaking the law, and you may ask why we senior officers have not been able to bring sufficient discipline to bear on our subordinates to ensure that they abstain from behaving in this way. So far as day-to-day work is concerned, you have to remember that the police are generally a very scattered force where personal supervision is difficult to exercise. Even constables act very much on their own in far off villages and lonely roads and so it is on their self-discipline that we have ultimately to rely for their good behaviour. Exhortation on the one hand and fear of punishment on the other are not sufficient.

What about training, you ask. Are we not able to inculcate in our policemen a sense of discipline, respect for law and ordinary decency which will be their guiding principles for the rest of their service? I think that question exposes some of society's own failures. If you, as parents, have neglected the upbringing of your child, failed to instil in him that strength of character, moral courage, sympathy, common compassion, good humour and sportsmanship, all necessary foundations for proper behaviour, if his school or religion has failed effectively to supplement your efforts, then you must not expect the Police Training Schools and Colleges to succeed in one year what you have failed to do in the early lifetime of your offspring. So while we undertake to see that, as senior officers of the force, we do our fullest to imbue in our policemen that important quality called character, from which all other good qualities flow, I would ask you to ensure that you do not

neglect your own duty during the much longer period that your child is with you, and that you lay a sound foundation upon which we can build. For our part, we shall endeavour constantly to improve our training and, with your help, the environment in which we function, so that we can do so to your satisfaction.

Judicial Decisions

What the Supreme Court says about Sec. 149 I.P.C.

1956 Crl. L.J. 923 :

Section 149 – Common object – Lawful in beginning – Can become unlawful later. Persons who had come quite lawfully, in the first instance, thinking there were thieves, could well have developed an intention to beat up the "thieves" instead of helping to apprehend them or defend their properties, and if five or more shared the object of each, it would become the common object.

When persons begin to beat up the suspects, the act of beating becomes unlawful, for private persons are no more entitled to beat and ill-treat thieves than are the police, especially at a time when there is nothing beyond suspicion against them. But if five or more exceed the original lawful object and each has the same unlawful intention in mind and they act together and join in the beating, then they in themselves form an unlawful assembly.

There is no difference in principle between this and a case in which the original object was unlawful. The only difference is that a case like this is more difficult to establish and must be scrutinised with greater care.

1956 Crl. L.J. 1365 :

Section 149 – Compared with sec. 34. The leading feature of sec. 34 is the element of participation in action, whereas membership of the assembly at the time of the committing of the offence is the important element in Sec. 149. The two sections have a certain resemblance and may to a certain extent overlap, but it cannot be said that both have the same meaning (per S. K. Das, J).

1956 Crl, L.J. 1365 :

Section 149 – Elements of. The first essential element of Sec. 149 is the commission of an offence by any member of an unlawful assembly ; the second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object.

1959 Crl. L.J. 777 :

Section 149 – Meaning of the word "know". The expression "know" does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force some one is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Sec. 149.

1959 Crl. L.J. 777 :

Section 149 – Construction and scope of. The first part of the section means that the offence committed in the prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a pre-concert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Sec. 149 if it can be held that the offence was such as the members knew was likely to be committed.

Burglary in Dharmakartha's House

By

V. L. PARTHASARATHY,
Additional Superintendent of Police (Retired), Madras.

NAYAR is a tiny, off-the-beat village, about four miles from the Nallur Road junction connecting Ponneri and Minjur towns in Chingleput East District. There was no proper metal road to that village in 1945 while I was serving as Sub-Inspector in Ponneri and one had to traverse a cart track which kept changing its course according to the whims and fancies of the bullock-cart drivers. A lone, desolate temple stood in the centre of the village in magnificent ruins supposedly looked after by a none-too-interested 'dharmakartha' (trustee) to whom this episode relates. Hailing from the business community of chettiars, the trustee was fairly affluent, judged by the village standards, and owned lands as well. His social status and high temple-office would ordinarily warrant an inference of 'noblesse oblige', but actually he was of parsimonious disposition, a taste of which we were to experience one day.

That year, a burglary took place in his house in which most of his prized possessions by way of jewels valued, at the present rate, in thousands were stolen. The 'dharmakartha' was naturally crestfallen and reported the matter, the following morning, to the village Headman who in turn forwarded the report along with his in the printed form. The Head Constable duly registered the case in my absence and set on what appeared to be his maiden tour of investigation. He forthwith proceeded to the village, inspected the scene as carefully as possible and examined the complainant. Having spent a major portion of his career in the Armed Branch, his knowledge of crimes and

criminals was perforce limited and he appeared to have reached the end of his tether. He sent a note to me imploring my presence. I was at Sholavaram village, at the farther end of the station limit and in the midst of an enquiry, when I received the note. I immediately set forth on my cycle cross-country to Nayar forcing my way along interminable fields and lake bunds, a good distance of 12 miles and rugged experience too.

I reached the village a little before sun-set and found the Head Constable dutifully posting himself at the scene. My own experience in the investigation field was not much flattering either, as I had just then completed my probation. However, a careful inspection of the scene of occurrence and the clumsy way with which the crime was gone through told me that it might as well be the work of some local casuals rather than a professional, outside agency. I was willing to stake my claim and give it a try. After a hurried discussion with my Head Constable, we instituted enquiries and learnt that two of the locals were significantly absent soon after the incident from the village. Of the two one was an ex-convict which seemed to lend some credence to my theory. They were however available that evening and got at for interrogation. A convenient place was found and they were interviewed with the aid of a hurricane light (there were no electric lights in the villages). Both of them stoically maintained their innocence although their alibi seemed doubtful and unconvincing. But, as it was already late, nothing more could be done for that night excepting to wait for the dawn and verify their movements. It was then a breakthrough was achieved in this case.

As I rose to leave the place, one of the suspected turned towards the other and with a faint smile on his lips vigorously shook his head. Probably, an intense relief overcame both of them after what they considered to be a futile display of interrogative talent of this young and inexperienced sleuth! And, that proved their undoing! There appeared to be something sinister in that smile rather than an innocuous exhibition of feelings. I decided to continue my interrogation without any further let-up much to the chagrin of the Head Constable who should have been sorely hungry. And, hungry he was to his marrows for he had gone without food for the whole of that day due to the absence of any hotel in the village. The only quarter from which succour could reach him was the Village Munsiff, but unfortunately he too was away on 'irusal' (collection) duty.

However, I sent the Head Constable to explore the possibility of getting something to eat for we had more mouths to feed while I continued my interrogation.

A couple of hours later, the Head Constable returned, his eyes beaming, with a bunch of bananas which we all shared with obvious relish doing what little justice we could to our stomachs. As the questioning progressed, the suspects showed signs of cracking down for, having learnt a lesson earlier we took care to keep them separately. Perhaps, the feeling that the other would be giving in loomed large in their minds and before long, either of them came with a clean breast of the crime and his respective part in its commission. The 'senior' who had a previous conviction had secreted the jewels under the ground in a tin container near a cowshed. As it was well past midnight, the Head Constable and myself spent the remaining time keeping a watch over the suspects alternately.

At the crack of the dawn we took out the suspects and the 'senior' pointed out the cowshed. On digging the ground which bore marks of recent disturbance we found a tin container lodged underneath. I sent for the 'dharmakartha' both in order to relieve his anxiety and also to identify the contents. When he arrived, we were examining the contents and found to our satisfaction all the jewels intact. On seeing the jewels, the 'dharmakartha' gave a wild cry and swooned. In the result we had to suspend the proceedings for a while in order to revive him and on his regaining consciousness he was sent home. I assured him that we would meet him with the list of jewels.

After completing the formalities relating to the search and seizure, we returned to 'dharmakartha's office which was next to his house. It was nearing 9 a.m. and in the process of our discovery, we already missed our morning coffee or whatever that could be had in the village. The 'dharmakartha' duly identified the jewels without any further incident and seemed obviously elated at our feat. As we were giving finishing touches to the investigation, we heard the distinct noise that went in the preparation of 'dosas' next door and were much delighted at the prospect of having a well deserved breakfast. But, it was not to be. Soon, the 'dharmakartha' emerged from his house and with a dry face and seemingly injured pride told us that in that wretched village he could not even secure a handful of 'rava' to prepare 'uppumavu' for us. Well, I could see the Head

Constable fretting and fuming at the unhelpful posture of the 'dharmakartha' and it took all my ingenuity and patience to calm him down assuring him that I would stand him a good treat on the way . With the investigation at the village over, we started along with two of our new-found guests (accused) for another trek of good eight miles on foot. However, soon after we reached Ponneri, I took care to see that the Head Constable had his breakfast even though it was rather untimely.

The investigation was completed after some more check-up of the station records and a charge sheet was expeditiously sent to the Court of Sub-Magistrate, next door to the Police station. On the day the case was to be heard, I sent for the 'dharmakartha', dutifully refreshed his memory and gave him a sumptuous breakfast, the Head Constable watching me all the while with a disapproving eye. With a plea of guilty entered against the charge, the trial was quickly gone through and the Magistrate folded up the case the very day doling out appropriate sentences to both the accused. I saw to it that the 'dharmakartha' got back his jewels the same day and bade him good-bye. Even as he took leave of me and the Head Constable, I could see tears welling in his eyes.

'SPLENDID WORK'

Police – Public Relations

We publish, with grateful thanks, the letter dated 30—3—'77 received from the Madras Bus Passenger Association Joint Council, Madras-78 addressed to the Inspector-General of Police, Madras.

"I write this to thank you and officers, other ranks of the Police force for the magnificient and spelndid work done by them during the City Transport Strike and request you to convey the high appreciation by the travelling public for the selfless duty rendered by them throughout the period, easing the transport problems by round the clock service freely extended to them, by carrying them by lorries.

Words fail to express how grateful myself and other association members are for the splendid service yourself and the men under your command did to the city bus passengers, numbering twenty lakhs, whose co-operation and good wishes you can always count."

A CASE OF INTEREST

The role of F.P. and an alert F.P. searcher

By

K. RAGHOTHAMA RAO,

Director, Tamil Nadu Finger Print Bureau, Madras-4.

A young wife was found murdered on 26—10—'76 by her husband in her house at Perambur, Thanjavur East District. The weapon used being the broken glass bottle, the Finger Print Expert attached to the District Finger Print Section, Nagapattinam had no difficulty in tracing blood stained impressions on the glass pieces as also some more latent impressions at the scene of this gruesome murder when he visited the spot on 27—10—76.

A case in Perambur P.S. (Tanjore East) Cr. No. 420/76 u/s. 302 IPC, was registered and investigated into. During the course of investigation, it came to light that the name of the victim is Afrosa wife of Hithayathulla. The cause of the murder is attributed to be some misgivings between the couple on sexual matters. Though the accused in this case is known pretty well, he could not be apprehended immediately, as he absconded soon after the offence and his whereabouts were not known.

In the meanwhile, a search was made in the Finger Print records of the daily arrested persons of Single Digit Section, Nagapattinam and the blood stained impressions on the broken glass found at crime scene were found to be identical with the Finger Prints on the Finger Print slip of Hidayathullah, the accused in this case, who has had previous convictions to his discredit and whose F. P. slip was on record already. A report regarding this was sent to the Investigating Officers soon after

the matching of the prints. This facilitated the establishment of the identity of the offender beyond any doubt and a vigorous search for the accused still continued.

This being a grave crime in which the accused became out of view, the Finger Print slip of this person was given for study to all the members of the S. D. Section, so as to memorise his finger prints and look for matching prints, if received from some other Police Station for check up. As luck would have it, one of the Finger Print Searchers of this Unit was deputed to the Finger Print Bureau, Madras for performing special duty regarding renewal of finger print slips there and he was detailed to undertake disposal of search references received daily. When he was given a search reference on 23—11—76 relating to one Shamsudeen, who was arrested in Shevapet Station (Salem District) Cr. No. 1910/76 u/s. 41 (1) Cr. P.C. he took it up for working out the F. P. classification. It came as a flash to his memory that the Finger Prints of this person are not those of Shamsudeen as noted in the F. P. slip, but they belonged to the absconding murderer Hidayathulla, wanted in Perambur Station Cr. No. 420/76 u/s. 302 IPC.

No time was lost in sending a wireless message by the Director, Finger Print Bureau, Madras to the Superintendent, S. D. F. P. Section, Nagapattinam regarding the arrest of this accused by Shevapet Police Station, Salem District, who in turn intimated the Investigating Officers to apprehend the accused. No doubt, the Sub Inspector of Police, Shevapet was also informed about the complicity of this accused in a murder case, so as to detain him till he was taken custody of by the agency concerned.

Thus, Finger Prints played a prominent role, not only in establishing the identity of the offender even before his arrest, but also helped in locating the whereabouts of the accused, though he had tried to conceal his identity at the time of his arrest in a far off District, under quite a different name.

All these processes can still be quickened and result achieved even in much less a time, when the Police Computer and Miracode Encoder Operations are commenced in the very near future.

IN THE SUPREME COURT OF INDIA

Criminal Appellate Jurisdiction

CRIMINAL APPEAL NO. 195 OF 1977

(Appeal by Special Leave from the Judgment and Order dated the 25—10—1976 of the Andhra Pradesh High Court in Crl. R. Case No. 660 of 1970 and Crl. R. P. No. 646 of 1976)

Mohammad Giasuddin ... Appellant.

Versus

State of Andhra Pradesh ... Respondent.

The 6th day of May, 1977

Present:

Hon'ble Mr. Justice V. R. Krishna Iyer
Hon'ble Mr. Justice Jaswant Singh

***For the Appellant*:**

Mr. G. Venkatrama Sastry, Senior Advocate,
(Mr. G. Narasimhulu, Advocate with him)

***For Respondent*:**

Mr. P. Parameswara Rao, Senior Advocate,
(Mr. G. Narayana Rao, Advocate with him)

JUDGMENT

The following Judgment of the Court was delivered by:

KRISHNA IYER J.

Some basic issues bearing on prescription of punishments arise for judicial investigation in this criminal appeal where leave has been limited to tailoring the sentence by appellate review to fit the gravity of the delinquency and the redemption of the deviant.

The facts leading up to the conviction may need brief narration. The appellant, along with another accused deceived

several desperate unemployed young men, received various sums of Rs. 1,200/- by false pretences that they would secure jobs for them through politically influential friends and other make-believe representations. The offence of cheating under section 420 I.P.C. was made out and conviction of both the accused followed. The 1st accused (appellant before us) is a young man around 28 years old and works as a Junior Assistant in the Planning and Financial Department of the Andhra Pradesh Secretariat and the other accused is his friend who personated as a State Port Officer. Before the trial court, there was a formal, almost *pharisaic*, fulfilment of the pre-sentencing provision in section 248(2) Cr. P. C., 1973. The opportunity contemplated in the sub-section has a *penological* significance of far-reaching import, which has been lost on the trial Magistrate. For he disposed of this benignant obligation by a brief ritual :

> " I made of the accused that they were found guilty under Section 420 I. P. C. and the punishment contemplated thereof ".

Reform of the black letter law is a time-lagging process. But judicial metabolism is sometimes slower to assimilate the spiritual substance of creative ideas finding their way into the statute book. This may explain why the appellate courts fell in line with the Magistrate's mechanical approach and confirmed the condign punishment of 3 years' rigorous imprisonment. At all the three tiers the focus was on the serious nature of the crime (cheating of young men by a Government servant and his blackguardly companion) and no ray of light on the ' criminal ' or on the pertinent variety of social facts surrounding him penetrated the forensic mentation. ***The humane art of sentencing remains a retarded child of*** the Indian criminal system.

Now we enter the areas of punitive treatment of criminals, assuming that the guilt has been brought home. Certain elemental factors are significant strands of criminological thought. Since the whole territory of punishment in its modern setting is virtually virgin so far as our country is concerned we may as well go into the subject in some incisive depth for the guidance of the subordinate judiciary. The subject of study takes us to our cultural heritage that there is divinity in every man which has been translated into the constitutional essence of the dignity and worth of the human person. We take the liberty of making an ***Indian approach*** and then strike a ***cosmic note***.

Progressive criminologists across the world will agree that the Gandhian diagnosis of *offenders as patients* and his conception of *prisons as hospitals* – mental and moral – is the key to the pathology of delinquency and the therapeutic role of 'punishment'. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality of the law may vary, but is real. The basic goodness of all human beings is a spiritual axiom, a fall-out of the *advaita* of cosmic creation and the spring of correctional thought in criminology.

If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our *criminal process* is that often they are *built on the bricks of impressionist opinions and dated values, ignoring empirical studies and deeper researches.*

India, like every other country, has its own crime complex and dilemma of punishment. Solutions to tangled social issues do not come like the crack of dawn but are the product of research and study, oriented on the founding faiths of society and driving towards that transformation which is the goal of free India. *Man is subject to more stresses and strains in this age* than ever before, and a *new class of crimes* arising from *restlessness of the spirit and frustration of ambitions has erupted. White collar crime,* with which we are concerned here, *belongs to this disease of man's inside.*

If the psychic perspective and the spiritual insight we have tried to project is valid, the police billy and the prison drill cannot '*minister to a mind diseased*', nor tone down the *tension*, release the *repression*, unbend the *perversion*, each of which shows up as debased deviance, violent vice and behavioral turpitude. It is a truism, often forgotten in the hidden vendetta in human bosoms, that *barbarity breeds barbarity* and injury recoils as injury, so that if healing the mentally or morally maimed or malformed man (found guilty) is the goal, awakening the inner being, more than torturing through exterior compulsions, holds out better curative hopes.

An aside. A holistic view of sentencing and a finer perception of the effect of imprisonment give short shrift to draconian

severity as self-defeating and fillips meditational relaxation, psychic medication and like exercises as apt to be more rewarding. Therefore, the emphasis has to be as much on man as on the *system*, on the inner imbalance as on the outer tensions. Perhaps the time has come for *Indian criminologists* to rely more on *Patanjali sutra* as a scientific curative for crimogenic factors than on the blind jail term set out in the Penal Code and that may be why Western researchers are now seeking Indian Yogic ways of normalising the individual and the group.

Western jurisprudes and sociologists, from their own angle have struck a like note. Sir Samuel Romilly, critical of the brutal penalties in the then Britain, said in 1817: "The laws of England are written in blood" Alfieri has suggested: '*society prepares the crime, the criminal commits it.*' George Nicodotis, Director of Criminological Research Centre, Athens, Greece, maintains that '*Crime is the result of the lack of the right kind of education.*' It is thus plain that crime is a pathological aberration, that the criminal can *ordinarily be redeemed*, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by very early re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The *human* today views *sentencing as a process of reshaping a person* who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an in 'terrorem' outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw: '*If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries*'. We may permit ourselves the liberty to quote from Judge Sir Jeoffrey Streatfield: 'If you are going to have anything to do with the criminal courts, you should see for yourself the conditions under which prisoners serve their sentences.' In the same strain a British Buddhist-Christian Judge, speaking to a BBC reporter underscored the role of compassion:

> "Circuit Judge Christmas Humphreys told the BBC reporter recently that a judge looks 'at the man in the dock in a different way, not just a criminal to be punished, but a

fellow human being, another form of life who is also a form of the same one life as oneself.' In the context of *karuna* and punishment for *karma* the same Judge said : 'The two things are not incompatible. You do punish him for what he did, but you bring in a quality of what is sometimes called mercy, rather than an emotional hate against the man for doing something harmful. You feel with him, that is what compassion means".

(The Listener, November 25, 1976, p. 692)

Incidentally, we may glance at the prison system which leaves much to be desired in the sense of humanizing and reforming the *man* we call *criminal.*

Jimmy Carter, currently President of the United States and not a law man, made certain observations in his Law Day Speech to the University of Georgia while he was Governor of the State, which bear quotation :

"In our prisons, which in the past have been a disgrace to Georgia, we've tried to make substantive changes in the quality of those who administer them and to put a new realm of understanding and hope and compassion into the administration of that portion of the system of justice. Ninetyfive percent of those who are presently incarcerated in prisons will be returned to be our neighbours. And now the thrust of the entire program, as initiated under Ellis MacDougall and now continued under Dr. Ault, is to try to discern in the soul of each convicted and sentenced person, redeeming features that can be enhanced. We plan a career for that person to be pursued while he is in prison. I believe that the early data that we have on recidivism rates indicates the efficacy of what we've done."

In the light of what we propose to do, in disposing of the appeal, another observation of Jimmy Carter in the course of the same speech is relevant :

"Well, I do not know the theory of law, but there is one other point I want to make, just for your own consideration. I think we've made great progress in the Pardons and Paroles Board since I've been in Office and since we've reorganized the Government. We have five very enlightened people there now. And on occasion they go out to the prison system to interview the inmates, to decide whether

or not they are worthy to be released after they serve one third of their sentence. I think most jurors and most judges feel that when they give the sentence, they know that after a third of the sentence has gone by, they will be eligible for careful consideration. Just think for a moment about your own son or your own father or your own daughter being in prison, having served seven years of a lifetime term and being considered for a release. Don't you think that they ought to be examined and that the Pardons and Paroles Board ought to look them in the eye and ask them a question and if they are turned down, ought to give them some substantive reason why they are not released and what they can do to correct their defects?"

WE have dealt with the subject sufficiently to set the humanitarian tone that must inform the sentencing judge, the *Karuna* that must line his verdict. The same compassionate outlook is reflected in some of the decisions of this Court and of the High Courts indicating the distance between current penal strategy and Hammurabi's Code, which in about 1975 B. C., insisted on 'an eye for an eye, a tooth for a tooth'.

Referring to the earlier Criminal Procedure Code and its deficiency in regard to sentencing, this Court observed in *Tejani* (AIR 1974 SC 228, 236):

"Finally comes the post-conviction stage where the current criminal system is weakest. The Court's approach has at once to be socially informed and personalised. Unfortunately, the meaningful collection and presentation of the penological facts bearing on the background of the individual, the dimension of damage, the social milieu and what not–these are not provided in the Code and we have to make intelligent hunches on the basis of materials adduced to prove guilt. In this unsatisfactory situation which needs legislative remedying we go by certain broad features."

Similarly, in *Jagmohan Singh* (AIR 1973 SC 947)

thisCourt observed : 1973 (2) SCR 541, 560

"The sentence follows the conviction, and it is true that no formal procedure for producing evidence with reference to the sentence is specifically provided. The reason is that relevant facts and circumstances impinging on the nature

and circumstances of the crime are already before the Court. Where counsel addresses the Court with regard to the character and standing of the accused, they are duly considered by the Court unless there is something in the evidence itself which belies him or the Public Prosecutor for the State challenges the facts. If the matter is relevant and is essential to be considered, there is nothing in the Cr. P. C. which prevents additional evidence being taken. It must however be stated that it is not the experience of criminal courts in India that the accused with a view to obtaining a reduced sentence ever offers to call additional evidence.

However, it is necessary to emphasize that the Court is broadly concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under enquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the Cr. P. C The trial thus does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the Court.....".

The Kerala High Court, in *Shiva Prasad* (1969 Ker. L. T. 862) had also something useful to say in this regard :

"Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the Court to help it for a correct judgment in the proper personalised punitive treatment suited to the offender and the crime.....".

Likewise, Shri Justice Dua (as he then was) of the Punjab High Court had indicated the guidelines on the application of the rehabilitative theory in *Lokhraj & ors* v. *State* (AIR 1960 Punjab 482) where the learned Judge had pointed out the relevance of the offender's circumstances and social milieu, apart from the daring and reprehensible nature of the offence. The Law Commission of India (in its 47th Report) has summed up the components of a proper sentence :

"A proper sentence is a composite of many factors, including the nature of the offence, the circumstances – extenuating or aggravating – of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved".

All that we have said up to now emphasizes the need on the part of the judges to see that sentencing ceases to be downgraded to Cinderella status.

The new Criminal Procedure Code, 1973, incorporates some of these ideas and gives an opportunity in S. 248 (2) to both parties to bring to the notice of the Court facts and circumstances which will help personalize the sentence from a reformative angle. This Court, in **Santa Singh** (1976) 4 SCC 190, has emphasized how fundamental it is to put such provision to dynamic judicial use, while dealing with the analogous provisions in S. 235 (2):

"This new provision in s. 235 (2) is in consonance with the modern trends in penology and sentencing procedures. There was no such provision in the old Code. It was realised that sentencing is an important stage in the process of administration of criminal justice – as important as the adjudication of guilt – and it should not be consigned to a subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the Court to impose an appropriate punishment on the criminal and sentencing should therefore, receive serious attention of the Court. (p. 194).

Modern penology regards Crime and Criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalise the punishment so that the

reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature sometimes altogether irrelevant if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined. (p. 195)

A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances – extenuating or aggravating – of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. (p. 195).

The hearing contemplated by section 235 (2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the Court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the Court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings". (p. 196).

It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. Even so, the judge must exercise this discretionary power, drawing his inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the

personality of the crime-doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion.

Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment viz. imprisonment, simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the judge if he is to fulfil his tryst with curing the criminal in a hospital setting. May be in an appropriate case actual hospital treatment may have to be prescribed as part of the sentence. In another case, liberal parole may have to be suggested and, yet in a third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of the sentencing prescription. The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be.

Sentencing justice is a facet of social justice, even as redemption of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age.

The sentencing stance of the court has been outlined by us and the next question is what 'hospitalization' techniques will best serve and sentences, having due regard to his just deserts, blending a feeling for a man behind the crime, defence of society by a deterrent component and a scientific therapeutic attitude at once correctional and realistic. The available resources for achieving these ends within the prison campus also has to be considered in this context. Noticing the scant regard paid by the courts below to the soul of Section 248(2) of the Code and compelled to gather information having sentencing relevancy, we

permitted counsel on both sides in the present appeal to file affidavits and other materials to help the Court make a judicious choice of the appropriate 'penal' treatment. Both sides have filed affidavits which disclose some facts pertinent to the project.

We have earlier mentioned that the social abhorrence of the crime is an input, since the emphatic denunciation of a crime by the community must be reflected in the punishment. From this angle we agree with the trial court that unconscionable exploitation of unfortunately unemployed young men by heartless deception, compounded by pretension to political influence, calls for punitive severity to serve as deterrent. The crime here is doubly bad and throws light on how gullible young men part with hard money in the hope that political influence, indirectly purchased through money, can secure jobs obliquely. But then the victims of the crime must be commisserated with and in such white-collar offences it is proper to insist upon reparation of the victims, apart from any other sentence. In the present case four young men have been wheedled out of their little fortunes by two convicts and so, to drive home a sense of moral responsibility to repair the injury inflicted. we think it right to direct the appellant to pay a fine of Rs. 1,200/- which will be made over by the trial court to P. W. 1 (whose case alone is the subject of the prosecution) under Section 357 of the Code. That is to say, a fine of Rs. 1,200/- imposed will be paid over to the aforesaid P. W. 1.

What are the other circumstances which we may look into ? The appellant is a young man of 28 years. He has a degree in Bachelor of Oriental Languages and another in Commerce, which suggests that he may respond to new cultural impact. He was working as a Junior Assistant in the Government Secretariat and has now lost the post consequent on the conviction. This is a hard lesson in life. The socio-economic circumstances of the man deserve to be noticed. His parents are old and financially weak, since they and the appellant's sisters and younger brother are his dependents. The younger brother also is unemployed. These factors suggest that the economic blow, if the appellant is imprisoned for long, will be upon his brother at college and the other members of his family. Extenuation is implicit in this fact. He prays for release on probation or under Sec. 360 of the Code because he has no blemish by way of previous crime or bad official record. Having regard to his age (not immature) and the deliberate plan behind the crime operated in partnership upon

four - perhaps more - persons, we reject his request as over-ambitious. At the same time, a contrite convict, yet in his twenties, may deserve clement treatment. A just reduction of the sentence is justified and we think that incarceration for 18 months may be adequate. But this long period has to be converted into a spell of healing spent in an intensive care ward of the penitentiary, if we may say so figuratively. How can this be achieved? First, by congenial work which gives job satisfaction - not jail frustration, nor further criminalisation. We therefore direct the State Government to see that within the framework of the Jail Rules, the appellant is assigned work not of a monotonous, mechanical, degrading type, but of a mental, intellectual, or like type mixed with a little manual labour*. This will ensure that the prisoner does work more or less of the kind he is used to. The jail, certainly, must be able to find this kind of work for him, even on its own administrative side — under proper safeguards though.

Shri P. P. Rao, appearing for the State, assures us that in keeping with this constructive suggestion of the Court the jail authorities will assign to the appellant congenial work of a mental-cum-manual type and promote him to an officer-warder's position if his conduct is good. We have also made the suggestion that the appellant must be paid a reasonable fraction of remuneration by way of wages for the work done, since unpaid work is bonded labour and humiliating. This amount may be remitted to his father once in three months. Shri Rao, on behalf of the State Government, has assured the Court that immediate consideration will be given to this idea by the State Government and the jail authorities.

We also think that the appellant has slipped into crime for want of moral fibre. If competent Jail Visitors could organise for him processes which will instil into him a sense of ethics it may help him become a better man. Self-expression and self-realisation have a curative effect. Therefore, any sports and games, artistic activity and/or meditational course, may also reform. We strongly recommend that the appellant be given such opportunities by the jail authorities as will stimulate his creativity and sensitivity. In this connection we may even refer to proven advantages of kindling creative intelligence and

* Says Gandhiji in Harijan : Feb. 6, 1947 : "Intellectual work is important and has an uudoubted place in the scheme of life. But what I insist on is the necessity of physical labour. No man, I claim, ought to be free from that obligation ; it will serve to improve even the quality of his intellectual output".

normalising inner imbalance, reportedly accomplished by Transcendental Meditation (TM) propagated by Maharshi Mahesh Yogi in many countries in the West. Research projects conducted in various countries bring out that people practising such or like courses change their social behaviour and, reduce their crime-proneness. We do not prescribe anything definite but indicate what the prison doctors may hopefully consider. While it is beyond us to say whether the present facilities inside the Central Prison, Hyderabad, make it feasible for the appellant to enjoy these benefits and thereby improve his inner beings we strongly feel that the humanitarian winds must blow into the prison barricades. More than this is expected in this decade, when jail reforms, from abolition of convict's costume and conscript labour to restoration of basic companionship and atmosphere of self-respect and fraternal touch, are on the urgent agenda of the nation. Our prisons should be correctional houses, not cruel iron aching the soul.

We have given thought to another humanising strategy, viz., a guarded parole release every three months for at least a week, punctuating the total prison term. We direct the State Government to extend this parole facility to the appellant, Jail Rules permitting, and the appellant submitting to conditions of discipline and initiation into an uplifting exercise during the parole interval. We further direct the Advisory Board of the Prison, periodically to check whether the appellant is making progress and the Jail authorities are helping in the process and implementing the prescription hereinabove given. Indeed, the direction of prison reform is not towards dehumanization but rehumanization, not maim and mayhem and vulgar callousness but man-making experiments designed to restore the dignity of the individual and the worth of the human person. This majuscule strategy involves orientation courses for the prison personnel. The State will not hesitate, we expect, to respect the personality in each convict, in the spirit of the Preamble to the Constitution and will not permit the colonial hangover of putting people 'behind the bars' and then forget about them. This nation cannot – and, if it remembers its incarcerated leaders and freedom fighters – will not but revolutionize the conditions inside that grim little world. We make these persistent observations only to drive home the imperative of Freedom – that its deprivation, by the State, is validated only by a plan to make the sentencee more worthy of that birthright. There is a spiritual dimension to the first page of our Constitution which

projects into penology. Indian courts may draw inspiration from **Patanjali sutra** even as they derive punitive patterns from the Penal Code (most of Indian meditational therapy is based on the sutras of **Patanjali**).

Before we close this judgment we wish to dispel a possible misapprehension about the fine we are imposing upon the cheat although we have proceeded on the footing of his family being relatively indigent. The further direction for making over the fine to the deceivees also needs a small explanation.

There is nothing in principle, as Lord Parker pointed out in R. V. King (1970 2 All. E. R. 248) to prevent a court from imposing of fine even when imposing a suspended sentence of imprisonment. 'Indeed, in many cases it is quite a good thing to impose a fine which adds a sting.....', of course, the fine should not be altogether beyond the sentencee's means.

As to whether it is wrong to make a sort of compensation order in a case of a convicted person without much means, again, Lord Parker in **R. V. Ironfield** (1971 1 All. E. R. 202) has observed :

> "If a man takes someone else's property or goods, he is liable in Law to make restitution, or pay compensation..... A victim..... need not be put to the additional trouble and expense of independent proceedings, and certainly cannot be required to forego his rights in order to facilitate the rehabilitation of the man who has despoiled him."

Counsel for the appellant has repeated that his client is taking examination in Accountancy – an indication of his anxiety to improve himself. We have no doubt that the jail authorities will afford facilities to the appellant to do his last minute studies and take the examination and, for that purpose, allow him to go to any library and the examination hall under proper conditions of security.

The affidavit on behalf of the State indicates that a tendency to turn a new page is discernible in the appellant and this has to be strengthened imaginatively by the Jail Superintendent, if need be, by affording him opportunity for initiation into Transcendental Meditation courses or like exercises provided the appellant shows an appetite in that direction and facilities are available in Hyderabad City.

Shri P. P. Rao, for the State, has represented that the Andhra Pradesh Government is processing rules for payment of wages to prisoners who work but that it may take a few months more for finalisation. It is a little surprising that at least two decades or more have been spent in this country after Freedom discussing active programmes of correction although in some States, for long years the wage system has been in vogue. Andhra Pradesh State will rise to this civilized norm and, when it finalises rules will take care to see that the wages rates are reasonable and not trivial and that retrospective effect will be given to see that at least from October 2, 1976 (the birthday of the Father of the Nation) effect is given to the wage policy.

Shri Sastry, for the appellant, assured the Court that he had been instructed to state that Rs. 1200/- would be paid right away out of the fine imposed.

We allow the appeal in humanist part, as outlined above, while affirming the conviction. More concretely, we direct that (a) the sentence shall be reduced to 18 (eighteen) months, less the period already undergone; (b) our directions, above mentioned, regarding parole and assignment of suitable work and payment of wages in jail shall be complied with; and (c) the appellant shall pay a fine of Rs. 1,200/-. We appreciate the services of counsel Shri P. P. Rao in disposing of this appeal firstly. We may also mention that Shri G. V. R. Sastry appearing for the appellant has also helped the court towards the same end.

Dated: 6—5—1977

(Sd.) V. R. Krishna Iyer J.
Jaswant Singh J.

Advocates on Record

For the Appellant : Mr. G. Narasimhulu.

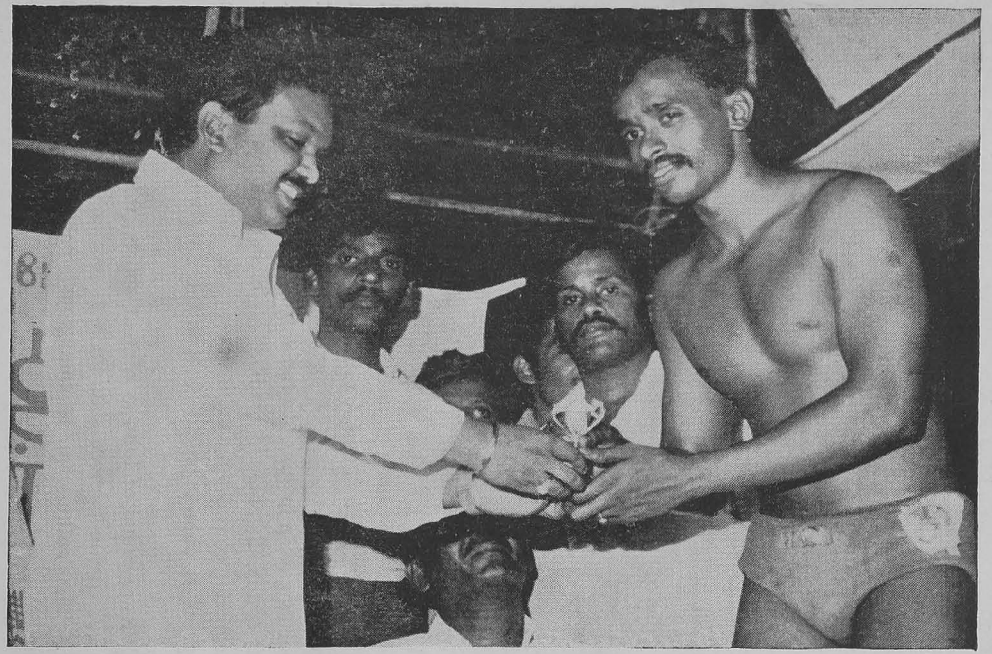
For the Respondent : Mr. G. Narayana Rao.

Sr. No. 144.

JOHN - THE SPORTS PROMOTER

When John joined the Police in the fifties, he never gave an inkling or idea of what he would be doing years later. If I remember, while at the Jam Bazaar Police Station, I had asked him to run 800 metres and 4 x 400 metres for the then Southern Range (M. C. P.) team. No one then realised the real spirit of sportsmanship in him. In the words of Thiru C. V. Raghavan, Sports editor, Samachar, Madras, 'He is no Dhyan Chand, or a Pele. But considering the interest and love for a game, the ever-green P. John lags little behind these **stalwarts'**.

We are proud of John as a great sports promoter of Volley Ball. A visit to Egmore stadium will give a glimpse of John's work. His enthusiasm is **contagious,** particularly among the youth. We are proud of him.



A. Ravichandran, R.S.I., Kancheepuram receiving a cup from Thiru C. S. Munzini, I.P.S., Superintendent of Police, Chingleput West, for winning the First Place in Weight Lifting Contest.

Dated : 24th September, 1977.

MEMORANDUM No. 5

Sub : Police–Public Relations — Sports — Second Saturday Meets.

I am happy that many Station House Officers, notably from Salem, Thanjavur, South Arcot and Pudukottai districts have conducted Police–Public Sports Meets on or about the second Saturday of this month. Neyveli Police Station has done well in organising a swimming competition.

Press reports, particularly in the vernacular papers, are excellent. This should naturally motivate the participants. During my visits to district headquarters, I would be happy to meet any promising sportsman who may be taking part in events at the time.

Organisationally, Coimbatore Urban District has given a lead in the formation of District Police–Public Sports Promotion Committee comprising of leading advocates, doctors, educationists and sports enthusiasts. This may be done in other districts also, which will help to institutionalise the scheme on a permanent footing.

The Police Training College has done well in arranging an 'At–Home' for the Inter–Collegiate athletes (men and women) attended by a few Principals also.

I hope to meet the Liaison Officers for Sports soon.

The next meeting of the Liaison Officers for Sports will be held on the 5th October 1977 at the Police Training College, Madras, when I hope to meet them. The second Saturday Sports will be held on the 8th October 1977.

(Sd.) E. L. STRACEY,
Inspector–General of Police.

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Dated :— 28—10—1977

MEMORANDUM No. 6

Sub : Police-Public Relations — Second Saturday Meets — October 1977.

The phrase "Police–Public Sports" has come to stay, thanks to the efforts and enthusiasm of Tamilnadu Police and the public at all levels.

2. At the Police Station level meets, in addition to Thanjavur, Salem and South Arcot, Dharmapuri has also arranged a number of meets during this month. South Arcot has given a lead in organising most of this month's sports meets in Schools/Colleges. This is a step in the right direction.

3. **Sportsmanship and Policemanship :** The Coimbatore pattern of Police–Public Sports Committees have been formed in some districts and such committees have a significant role to play in developing sportsmanship and policemanship.

4. Within a short period, we have succeeded in creating an environment favourable to sports. I hope to see improved performance of all our teams. An effort should be made to recruit talented sportsmen in the Police. One sportsman from the countryside, per recruitment, in each district will go a long way in building up the Police teams.

5. The next meet at all levels will be conducted on or about 12—11—1977. The Liaison Officers for Sports will meet at the Police Training College, Madras on 9—11—1977 at 9 A.M. They will bring with them organisational details of :

(a) Police–Public Sports Committees both at the district and circle levels.

(b) District Police Sports Commitees.

(c) Progress of training of athletes for the State Police Athletic Meet.

It is presumed that each district police has a Sports committee which periodically meets and plans for the improvement of sports. If not, a Sports Committee should be immediately formed and activities co-ordinated with the State Police Sports Committee ; the Chairman of the State Police Sports Committee will initiate further action on this.

(Sd.) E. L. STRACEY,
Inspector-General of Police.