

Social Defence Vision 2020

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Social defence is generally understood as the protection of society against crime through a systematically organized and coherent action by both the State and civil society. Though this term has long been in use in the criminological and penological literature, the modes and modalities of achieving its inherent objective have been shifting with the advancement in social sciences and behavioural disciplines. Even today, because of the complexity of issues involved, it has not been possible to evolve a wholly satisfactory theoretical framework for policy formulation and programme development in this field. It is true that crime is essentially an offshoot of the disorganizational process of society itself and, as such, it is difficult to visualize a system that could completely neutralize an 'aggression' which originates from within. Then, in the absence of any fool-proof theory of crime causation, it is beyond human capacity to create a society entirely free from crime. Moreover, the definition of crime itself may vary from country to country and within the same country from time to time, in keeping with the changes in social structure, cultural values and normative expectations and no single system can hold good for different situations. Despite this position, there is a candid awareness that the objective behind social defence cannot be realized merely by focussing on individuals who are recognized as offenders; it inevitably requires also reaching out to those who are vulnerable to crime. Thus, the social defence approach aims not only at perfecting the system that deals with offenders but also at forestalling conditions that generate criminality. In this process, it closely interacts with various sectors of socio-economic development in creating an environment conducive to the prevention of crime and in

mobilizing resources appropriate for the treatment and rehabilitation of offenders in the totality of their life situations.

Crime Trends

2. The phenomenon of crime has baffled humankind down the ages. It is usually explained as a by-product of the interaction that takes place between the individual and his environment. But both these aspects being dynamic in character, the prognosis of any socially deviant behavior becomes highly problematic. In fact, the perception of crime is dependent on several variables, such as the fabric of a society, the extent of which a particular behaviour is deemed anti-social and the manner in which it is sought to be tackled. For instance, in India, as in other developing countries, much of crime has hitherto been largely pulled back or absorbed by the traditionally operative informal controls of the family, the community and religion. Now, with changes in socio-economic milieu, and an increasing centralization of authority in the hands of the State, crime situation is in a state of flux. Further, in order to maintain an orderly functioning of the society in transition, there is an exaggerated need for an effective enforcement of the existing laws, and even the enactment of new laws, to adequately cope with the emerging forms and trends of crime. In any case, the reported crime would always remain a small part of crime as it permeates society, because of the intricate relationship between the growing individual and his fluid environment and the limitations of the formal system in plugging the malady at its genesis. Such a reality only makes it imperative that the crime prevention and control strategies must extend beyond the criminal justice system and integrate into sectors in which individuals are born and they live and grow. From this viewpoint, social defence as a comprehensive approach towards ameliorating conditions responsible for social maladjustment, deviance and crime gains significance.

3. Nevertheless, crime as detected and reported by the concerned official agencies is the safest way to analyzing the problem and determining its trends. According to the statistics published by the National Crime Record Bureau, while the

incidence of crime has been steadily rising, crime rate (incidence of crime per lakh of population) is maintaining pace with the increase in the general population over the last five decades. Though the crime rate is still much lower than that in many other countries, the pattern of crime surely signifies certain alarming features. For instance, the share of violent crimes, including murder, attempt to commit murder, culpable homicide not amounting to murder, dowry deaths, kidnapping and abduction, decoity, preparation and assembly for decoity and robbery, riots and arson, and rape, has increased substantially over the last four decades. These crimes not only endanger life, property and safety of the people but also pose a serious threat to public peace. Similarly, economic offences including smuggling, money laundering, tax evasion, export and import offences, drug trafficking, trafficking in cultural property, bribery and corruption, etc., are also manifesting a challenging trend in terms of sophistication, precision and modus operandi on the part of organized syndicates. There are enough indications that, in the years to come, with the development of information technology and telecommunications and the acceleration of economic activities within and across national borders, organized crime is bound to acquire a much more volitional and disruptive form. The emergence of terrorism, environmental crime, cyber crime, etc., are most ominous for a developing country like India.

Crime and Development

4. The nexus between crime and development, especially in the wake of globalization, liberalization of trade and commerce and free market economy, has been clearly recognized at various international fora. The world community is gravely concerned about the baneful effect of crime on the peace, progress and prosperity of nations. Many countries have seen as to how crime thwarts the development process, undermines human dignity and disrupts the well-being and welfare of people. It is invariably found that the development process, if not properly monitored, tends to become criminogenic. While economic development is essential to satisfy human needs and to raise living standards it could also unleash forces of social disintegration, disharmony and disorganization, unless prompt steps are taken to counteract its negative fall-out. Failure to balance both the social and economic aspects of development has led many a nation to face a chaotic situation, rampant with

crime and human misery. There is an ample evidence to surmise that unbridled economic growth is liable to push the poor, the weaker and the disadvantaged into further marginalization and vulnerability to abuse and exploitation and to their eventual induction into crime, both as offenders and victims. Being in the throes of an unprecedented development process, India has an opportunity to learn from the mistakes of others and to vigorously pursue its declared policy of economic growth with a 'human face'.

5. From the standpoint of social defence, the development process must be geared towards ensuring social justice, protecting human rights and providing for an equitable sharing of socio-cultural and economic opportunities by one and all. Any development process which destroys the self-generating and self-sustaining capacity of the people, alienates certain sections from the mainstream of social and economic life, widens the gap between the rich and the poor, intensifies ethnic and caste conflicts, and erodes public confidence in the rule of law, is socially destructive and, thus, breeds crime. History shows how an imbalanced development can stir social strife, racial discriminations, religious bigotry and fragmentation of society, and how authoritarian governance deprives people of a life compatible with human dignity. In a democratic structure like that of India, the development process has to aim at economic prosperity with social justice in which people have to be the first and the last and the poorest of the poor will have to be in the centre-stage. Such a course would certainly call for a concerted action, on the part of both the State and civil society, towards restoring human rights of the poor, nurturing their creative potentials, building their capacity to assert for legitimate needs, enhancing their knowledge, skills and competence, and reinforcing their intellectual and material resources so as to enable them to stand on their own and to bargain for a better quality of life. While the government tends to rely mainly on a trickle-down approach, civil society has to work from bottom upward in helping the poor to shape their destiny and to secure their place in society with dignity.

Poverty Factor

6. Irrespective of the debate that continues in academic circles on whether a human being is a rational – economic or emotional-social animal, the importance of

poverty factor in crime could hardly be overlooked. While poverty per se cannot be taken as a direct cause of crime, it does make individuals in stark deprivations more prone than the others to social maladjustment and to their coming in conflict with law. The situation is further compounded when, in the wake of industrialization and consequential urbanization, the poor migrants in search of livelihood, are found to cluster around slums and squatter dwellings and to live in a state of social marginality and economic neglect. It is, therefore, encouraging that the Government of India has provided a major thrust to poverty alleviation in the national development plans. A three-pronged strategy adopted to reduce poverty includes: (i) accelerated economic growth with a focus on sectors which are employment intensive; (ii) human and social development through basic minimum services; and (iii) targeted anti-poverty programmes. A priority is placed on agriculture and rural development, food and nutrition, security for vulnerable sections of society, participation of the poor in the development process, and empowerment of women, scheduled castes and scheduled tribes and other disadvantaged groups. As a result of various measures, the poverty ratio is reported to have considerably declined in the recent years. The present trend augers well for the creation of just society committed to the rule of law.

7. For this purpose, the policies for poverty alleviation will have to be vigorously pursued in the light of various civil, political, economic, social and cultural rights that all people are equally entitled to under the Constitution of India. There is a national consensus that comprehensive strategies need to be devised so that the pattern of economic growth helps the poor and the down-trodden in improving their lot. This would require not only a much larger investment on social services but also more effective measures to establish that the delivery mechanisms are non-discriminatory and the facilities created are accessible to the people at the grass-root level. In order to ascertain that the development benefits percolate down and are shared by all on an equitable basis, irrespective of their socio-cultural and economic status, local bodies and people's organizations will also have to be actively involved in the implementation of various plan schemes. People themselves will have to be sufficiently empowered to overcome poverty through self-help endeavors, collective initiatives and participation in decisions that affect their lives. While the government would be legitimately responsible for policy formulation and programme development; representatives of civil society will have to be closely associated in

making the process more transparent and accountable to people. With the globalization of national economy the obligation of multinationals, business houses and financial institutions towards protecting the rights and interests of the poor has to be clearly spelt out. Of course, in a free society, the media has to serve as a powerful agent in promoting a social climate conducive to a solidarity with the poor in their fight against poverty.

8. It is well accepted that the strategies for poverty alleviation have to evolve within the framework of social justice for which the rule of law is a pre-requisite. Though law by self cannot eradicate poverty, it can definitely contribute to the national efforts towards this end by intervening specifically in three broad areas: (i) combating such crimes as are responsible for the disruption of economy, social cohesiveness and security of people; (ii) curbing conditions which perpetuate abuse and exploitation of the socially marginalized or economically backward groups in society; and (iii) protecting human rights and interests of the poor in the administration of justice. In this process, the criminal justice system as a whole may have to undergo radical reforms by way of the rationalization of the relevant laws and, if necessary, the enactment of new laws, modernization and strengthening of enforcement machinery and of its methods and apparatuses, and a purposeful use of various social support systems in enhancing its operational coverage, institutional capacity and organizational efficiency. In responding to crimes which adversely affect the well-being of people, the legal system must constantly sharpen its teeth and plug loopholes as they come to fore. In the background of a fast changing socio-economic scenario, the courts may soon have to discard its 'hands off' doctrine towards the issues of survival and sustainability of people, in favour of a judicial security and even intervention when the human rights and interests of the poor are found in jeopardy.

Vulnerable Groups

9. Among various groups subjected to social inequalities, cultural discrimination and economic handicaps, the condition of women below poverty line is much more precarious than that of their male counter-parts. Though a variety of schemes have been introduced for their emancipation, women in India continue to be largely

dependent on and subordinated to men in different walks of life, and thus, to be devalued and socially marginalized, particularly in the lower strata. When a family is faced with any crisis, its female members suffer most and are rendered an easy prey to various kinds of abuse and exploitation. Even when recognized as offenders, they are more of a victim of situational compulsions than a perpetrator of crime. Therefore, in the planning of programmes for social defence, a vigorous drive has to be launched towards women's empowerment and gender justice and the criminal justice system has to act relentlessly against unscrupulous elements degrading their status. Already, in pursuance of its Constitutional mandate, India has enacted a number of laws to secure for women equal rights, to counter offences and atrocities against them, and to provide support services for their special care and protection. Along with various legal safeguards made available to them, a stringent action is contemplated to check crimes directed against them, which broadly fall under two categories: (i) crimes under the Indian Penal Code, such as, rape, kidnapping and abduction, homicide for dowry or dowry death or their attempts, torture, molestation, sexual harassment and importation of girls, and, (ii) crimes under special laws, such as, abrogation of their rights in the family, marriage and work place, immoral traffic, dowry, child marriage, indecent representation and commission of 'Sati'. It is however, being strongly felt that, as law alone cannot by itself change age-old traditions and attitudes that subjugate women, the whole society has to be mobilized in preventing crimes against them.

10. Doubtlessly, the economic and social marginalization of the poor deprives a vast population of children in the country of their right to grow normally in body and mind. Increasing population with limited resources intensifies the problem of survival and security of the poor, creating an environment of destitution, desperation and despair for their children. As children constitute the supreme national asset for the making of tomorrow, the failure of society to bring them up as socially healthy individuals not only multiplies poverty but also leaves them extremely fragile to withstand the onslaught of anti-social elements. Apart from a widespread violence against such children within and outside the family, the problems of child labour, child prostitution and child begging are some of the most sordid forms of child abuse. In several cities, a large number of poor children are found to be living or working on the street in search of livelihood through odd jobs in extremely sub-human and

hazardous conditions. A rising trend of the abuse of children for unconscionable gain and their instrumental use in crime, and of their transportation beyond national borders for nefarious purposes under the garb of adoption, marriage or employment, is also a matter of grave concern. Though definite provisions exist in the substantive and special laws against all such eventualities, there is wide gap between rhetoric and reality. Now that India is signatory to the United Nations Convention on the Rights of the Child, it is obligatory that the role of criminal justice system in protecting children against victimization is redefined and translated into concrete action. Obviously, there is a dire need for a thorough review of all the central and state laws concerning children so as to bring these in tune with our cherished goals.

11. It is well accepted that the criminal justice system can function as an enabling tool in the alleviation of extreme poverty by legally safeguarding the rights and interests of the weaker sections of society. India has a first-hand experience of setting in motion a host of democratic processes to resolve the problems of social inequality and class divide, including the formulation of special laws to provide a protective umbrella to all such social groups as are oppressed for centuries. The overall strategy is to secure distributive justice and allocation of resources to support programmes for the social, economic and educational advancement of the weaker sections in general and Scheduled Castes and Scheduled Tribes, Backward Classes and Minorities in particular. The protection of Civil Rights Act, 1955 has totally abolished untouchability in any form. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, aims at protecting them against any injustice and any form of abuse or exploitation. By enacting these laws, the concept of positive discrimination in favor of the weaker has been extended to the field of criminal law. The penalties prescribed in the special legislation, are more stringent than those for corresponding offences in other laws. A speedy trial of cases coming within the purview of these laws has been assured by the constitution of special courts in major cities. While the legislation is seen to have a salutary impact on the process of the desired social change, there is a strong public opinion that the problems of the weaker sections of society need to be addressed in all their facets. It is also being increasingly realized that poverty is a complex problem, both a cause and an effect of disorganization at the individual, familial and societal levels, and, as such, has to be tackled through mutually reinforcing coordinated efforts on the part of various law enforcement,

social welfare and development agencies. Indeed, the criminal justice system which is founded on the principles of fairness and equity has to prove its credibility of being equally fair and equitable to the poor as to the rich, in actual operation.

Correctional Strategy

12. In the backdrop of a rapidly changing crime situation, any action to interpret principles underlying social defence into actual practices has to start with the rationalization of sentencing policy. The penal policy should not only strive at balancing the interest of society with that of the individual involved in crime but also at addressing the plight of the victim. The range of dispositional alternatives has to be so widened as to enable the court to place a person found guilty in a setting which is most conducive to his mainstreaming. The procedure to be adopted by the court has to be so streamlined as to make it sure that a decision is arrived at not only in relation to the crime committed but also on the basis of a thorough study of the personality and background of the offender, and the circumstance in which the crime took place. Institutional treatment has to be resorted to as the last measure, only when an offender poses a real threat to public safety and peace and tranquility in the community. A community-based option for treatment has also to be based on scientifically tested and verifiable criteria. It needs to be fully appreciated that an offender placed on community correction will have a much greater stake in social conformity than the one being treated in a closed institution as a 'social misfit'. Even a non-institutional placement has to be carefully selected so as to retain, to the maximum extent possible, the usefulness of the offender to himself, his family and society. In order to ensure that the sentence is delivered in a fair, just and equitable manner, irrespective of the socio-economic status of the person involved, the State has to stand for one who cannot by himself protect his substantive and procedural rights. More importantly, the right of an accused to a speedy trial which, in the case of the poor, seems to have been severely trampled has to be restored by reinforcing the judicial system.

13. In India, as in many other countries, where most of the persons coming within the purview of the criminal justice system are involved in crime under various kinds of situational compulsions, correctional approach to crime control has to be pursued

as an integral part of the social development process. An analysis of crime statistics would show that a large segment of offenders consists of the poor, the illiterate and the unskilled. Such offenders are seen to be victimized twice: once, when they are denied of their basic human needs in open society and forced to live in a sub-culture of social marginality, and, again, when they are grinded in the mill of criminal justice for having infringed the law. An increased investment on the provision of correctional services in relation to these persons would be most productive not only in reducing crime but also in improving the quality of life among the strata they come from and are ultimately to return to. In this regard, a priority attention needs to be given to raising the standards of diagnostic, educational and developmental programmes with all the necessary technical inputs, in close conjunction with community based welfare agencies. There is no dearth of success stories in this regard but most of these have so far been confined to a few bold experiments or to some individual initiatives. It is high time that correctional measures are directed towards developing the capacity, caliber and competence of persons in conflict with law in such a manner as to assure that, after their passage through the criminal justice system, they would be able to stand on their own as dignified and law-abiding citizens. Of course, the approach towards those who indulge in crime as a way of life and refuse to understand the language of correction will have to be differentiated.

Prison Reform

14. Doubtlessly, prisons constitute the oldest and most widely used mode of dealing with offenders. In the recent years, it has also been a subject of unprecedented criticism, scrutiny and debate from the viewpoint of its social defence role. It is well recognized that as long as certain types of offenders are to be segregated from society in the interest of public safety, and are expected to return as better human beings than what they were when incarcerated, the institution of prison will have to play an important role in the dispensation of justice. However, there are several problems that prison administration is presently confronted with in discharging its public safety and reformatory functions. In India, as in many parts of the world, imprisonment continues to be applied indiscriminately and excessively, either as a convenient way of dealing with all sorts of crime or because of the non-availability or limited range of effective alternatives. In the face of competing

priorities, it is hard to mobilize adequate resources to bring in the desired systemic reforms in terms of the necessary infrastructure, scientific classification of inmates, diversification of prisons for various categories of offenders, provision of correctional services and duly qualified and professionally trained personnel to handle custodial and correctional tasks. The problem of overcrowding and a swelling proportion of undertrials among prison inmates has thrown the system hay wire. As the judicial process further speeds up and the pendency of cases in courts decreases, prison population will correspondingly multiply, because a much larger number of accused persons are on bail and awaiting trial. There is also a real need to establish appropriate linkages between institutional programmes and community-based welfare resources to ensure that the processes of recovery, reeducation and rehabilitation initiated in prisons are systematically followed up till the discharged prisoners are able to reintegrate themselves into society. What is most urgently called for is the formulation of a national policy and bringing in a basic uniformity in laws governing prisons, so that imprisonment as defined in the Indian Penal Code has the same meaning, when actually executed, in every part of the country.

15. Apart from the imperativeness of bridging the gap that exists between societal expectations and operational realities, the prisons administration has to run on the premise that its rehabilitative function can be accomplished only in an atmosphere that fosters human rights of persons in custody and generates among them a will to improve their quality of life. In this respect, the Supreme Court of India, discarding its erstwhile 'hands off' doctrine in favor of a judicial intervention when the rights of prisoners are found in jeopardy, has already enunciated three basic principles: (i) a person in custody does not become a 'non person'; (ii) a prisoner is entitled to all human rights within the limitations of imprisonment, and, (iii) there is no justification for aggravating the suffering which is already inherent in the process of incarceration. Accordingly, the apex court has issued a number of directives for prison authorities to afford to prisoners all such facilities for self-improvement and correctional therapy as are consistent with their conditions of imprisonment. Besides a detailed interpretation of the relevant Constitutional provisions, the principles embodied in various United Nations instruments, to which India is a party, have also been invoked in guiding this process. The framework laid down by the Supreme Court of India to protect the rights and interests of prisoners has far-reaching implications for prison reform in a

futuristic perspective. It not only entails a thorough overhauling of the prison administration but also an enlightened participation on the part of civil society.

16. The current emphasis on the humanization of prisons as an essential condition for invigorating their reformatory and rehabilitative role brings into focus the issue of torture. Despite a high level of denial among the concerned authorities, torture does exist in prisons broadly in three different ways. First, there is a form of torture which may be intentional in nature and resorted to against all canons of rules and regulations to 'discipline' a prisoner or to 'set him right'. It may happen sporadically but does take place when the custodian under pressure loses his balance and the prisoner is totally at his mercy. No civilized society would ever condone such an intentional torture. Secondly, there is torture incidental to the sub-human conditions prevailing in prisons, especially in developing countries. Such incidental torture has to be prevented by adhering to certain minimum standards of institutional care in terms of living conditions, basic needs and the necessary amenities and privileges to treat prisoners as human beings. And, thirdly, there is an element of torture inherent in incarceration itself, when the individual involved is deprived of his freedom and isolated from his family and the community he belongs to. This form of torture can also be considerably reduced, if not eliminated altogether, by using prisons more selectively only for offenders who endanger public safety, by enlarging the range of alternatives to imprisonment, and, even when a offender is justifiably imprisoned, by providing him with ample avenues to maintain ties with outside world, and a possibility for an early release as an incentive for good behavior and responsiveness to correctional treatment. Abolition of torture other than what is consequential to lawful sanctions is fast emerging as a vital issue of prison reform to be addressed squarely.

Juvenile Justice

17. It has long been accepted that children coming in confrontation with law, because of their physical, emotional and mental immaturity, cannot be equated with adults in terms of their culpability and accountability to crime. It is widely held that delinquency is not merely an act of social deviance on the part of a child but also a symptom of the failure of society to bring him up as wholesome individual. At the

same time, no society takes crime, even if it is committed by a juvenile, as entirely value-free and expects it to be dealt with as such. There is, however, a unanimous view that the problem must be dealt with on its growth continuum by responding to all the situations before and after the onset of delinquency. While India has chosen to achieve this objective through a single law in the form of Juvenile Justice (Care and Protection of Children) Act, 2000, many countries have formulated a separate law for delinquents vis-a-vis those vulnerable. The United National Standard Minimum Rules for the Administration of Juvenile Justice also concentrate only on children in conflict with law and other categories of vulnerable children are envisaged to be catered to within their families and communities under a welfare regime. While much would depend on the manner in which the newly enacted law is implemented on the ground, with children in the higher age group of 16 to 18 years now increasingly emulating adult role models in criminal behaviour, the juvenile justice approach will have to undergo a progressive refinement in the years to follow.

18. Significantly, the United Nations rules for juvenile justice incorporate some salutary provisions for an active involvement of civil society at various stages of the handling of juvenile offenders through the system. At the very initial stage, the police, the prosecution and other concerned agencies are proposed to be empowered with a wide discretion to divert cases from the formal system to the family and the community on a selective basis. A variety of disposition measures are contemplated, such as, care, guidance and supervision, probation, community service, financial penalties, compensation and restitution, intermediate treatment, participation in group counselling and similar activities, foster care, living in communities or other educational settings, etc. While institutionalization is thought to be a disposition of last resort, non-institutional treatment has to provide juveniles with necessary assistance, including education and vocational training in order to facilitate the reformatory process, and to mobilize volunteers and other community welfare resources for rehabilitation. When a juvenile undergoes institutional treatment, early recourse to conditional release under proper supervision and community support has been suggested. A provision for semi-institutional arrangements such as half-way houses, educational homes, day-time centres, etc., has also been made to assist juvenile to reintegrate into society. Though the new Indian law on Juvenile Justice also includes some of such features, like association of volunteers and non-

government organizations in the screening, treatment and rehabilitation of children, the provision for foster care, sponsorship and adoption among the modes of disposition, and linkages with community based welfare agencies for rehabilitative purposes, the success would naturally require a massive effort towards the mobilisation of various social support systems.

Non-Custodial Measures

19. Whereas the rationale behind the segregation from society of certain types of offenders in the public interest and their treatment in closed institutions is firmly established, the correctional potential of non-custodial measures has yet to be fully utilized in the administration of justice. Though probation as a form of non-institutional treatment of offenders under conditions of good behaviour, with or without supervision, has been in practice since the British period, the country has yet to provide a sound basis for its application on an extensive scale. Probation is still generally perceived as a lenient approach rather than a selective device for the treatment of offenders who are no threat to public safety. In fact, for want of scientifically evolved criteria to be safely relied upon in the placement of offenders in a non-institutional setting, the range of community corrections remains limited and imprisonment continues to be followed as the most convenient course, even for offenders whose institutionalization for short periods has no therapeutic value. It is true that when non-custodial correctional measures are used arbitrarily, without being resorted to on objective grounds, there is real danger of men of means taking undue advantage and abusing the system as against those who would really deserve but have no advocacy or support, and of the whole approach becoming counter-productive and coming into public disrepute. It is, therefore, necessary that a ground is prepared for community correction to prove its credentials to function, if not more, as effectively as custodial correction in reforming and rehabilitating offenders.

20. For this purpose, the United Nations Standard Minimum Rules for Non-Custodial Measures which seek to strike a proper balance between the interests of the individuals involved in crime and those of society at various stages of the criminal justice process, offer a blue-print for action and strategy. In keeping with the principles of the observance of human rights, the requirements of social justice, and

the rehabilitation needs of offenders, the rules spell out a wide range of disposition modalities at the pre-trial, sentencing and post-sentencing stages. Apart from empowering the police and prosecution agencies to discharge offenders under specified conditions, the suggested sentencing alternatives include: verbal sanctions, such as admonition, reprimand and warning; conditional discharge; status penalties, economic sanctions and monetary penalties; confiscation or an expropriation order; restitution to the victim or a compensation order; suspended or deferred sentence; probation and judicial supervision; community service order; referral to an attendance centre; house arrest; and any other mode of non-institutional treatment or combination of various measures. With a view to avoiding institutionalization and to secure early reintegration of offenders into society, the post-sentencing dispositions to be tried out are: furlough and half-way houses; work or education release; parole; remission and pardon. Obviously, the implementation of such non-custodial measures would call for the development of a scientific basis for the selection, placement and supervision of cases, treatment processes, staffing resources, community participation, etc. However, all these approaches are worth experimenting with so as to assess their suitability to indigenous socio-cultural and economic conditions.

Public Participation

21. As crime is a social phenomenon, no system for its prevention and control could ever be conceived without an active participation of the public. In fact, public participation is an inseparable ingredient of the process that defines a behaviour as crime and strives to tackle it. Whereas the critical attitude of the public that abhors crime and cries for the offender to be so punished as to become a deterrent for the others, is clearly discernible, the positive role of the public in preventing conditions which precipitate crime and in facilitating the offender to mend his behaviour and to reintegrate into society has yet to be fully recognized. Of course, the public opinion towards crime manifests in an ambivalent manner: while on one side, demanding for a stringent action against those who offend, on the other hand, pleading for the powers of those who administer punishment to be restrained and curbed. It is, therefore, logical that civil society is encouraged to take a balanced view and to guide the public in subscribing to a system that protects society against crime without impinging on the human rights of all those involved, whether as offenders or victims. For this

purpose, civil society must be closely associated with the planning and execution of crime prevention and criminal justice strategies, so that it sets a direction for a momentum to public participation in this field, at the individual, group and community levels. Civil society has to serve as the primary tool for the desired transparency and accountability in the functioning of various penal institutions established by the State to control crime. The edifice of social defence can stand only on an enlightened participation of the public as the harbinger, the means and the end of the process.

22. In the prevention of crime, voluntary organisations that spring from within society have a definite advantage over official agencies in making a dent on the problems that culminate into crime. A variety of situation-, problem- and individual-oriented approaches to crime prevention can be devised and implemented through the self-help endeavours and collective initiatives of the people themselves. A situation-oriented strategy would be based on an optimum use of all such voluntary agencies as are engaged in protecting the vulnerable, like children, women and other economically weaker or socially disadvantaged sections in society against any form of abuse or exploitation which is likely to induce asocial reaction. A problem-oriented strategy would bring within its ambit all such activities and programmes as are initiated through voluntary action to tackle social problems which have a nexus with crime. An individual-oriented strategy would obviously require working with those who, under situational compulsions, have fallen to a socially deviant behaviour and still have a chance to redeem. In all these areas, voluntary organizations have to function in conjunction with families, communities and other social institutions which have a bearing on the process of resocialization. Apart from a direct intervention in situations and problems responsible for crime, voluntary organizations can be greatly instrumental in moulding public opinion and in mobilizing social support for an effective implementation of social legislation enacted to eradicate social evils such as dowry, child marriage, 'Sati', beggary, prostitution, etc. Most of these laws contain specific provisions for public participation in different forms. Experience has abundantly shown that despite severe penalties prescribed in the law against the perpetrators, such social evils continue to persist, mainly because of the lack of public awareness about their ill-effects and the absence of an enabling social environment for the measures to succeed. It is distressing to note that, while a large number of

voluntary organizations in social welfare are being financially supported by the government, very few are really coming forth to work for the mainstreaming of social deviants.

23. The need for public participation in the treatment and rehabilitation of offenders is equally well established. The future of various non-custodial measures is tied with not only the offender's responsiveness to community correction but also the extent to which the public is prepared to extend its helping hand in the correctional process and to accept the offender within its fold. Besides adopting a positive attitude towards the rationale and efficacy of community-based treatment, the public can substantially contribute to the reformatory process by providing social and material inputs. In the sphere of institutional treatment, the public can play a significant role in two broad ways: first, by supplementing correctional programmes in custodial institutions, and, secondly, by serving as a bridge for the offender's transition from custody to free society. From this angle, the question of even privatizing prisons is being hotly debated in many countries. While a 'handing over' of prisons to private agencies may not be feasible, there is a wide scope for a constructive involvement of non-governmental organizations in strengthening the welfare content of prison programmes, especially in the areas of education, vocational training and socio-cultural and spiritual development of inmates. Further, appropriate linkages with the private sector are inescapable in the specialized treatment of terminal illnesses, including chronic drug addiction and HIV infection. The role of voluntary institutions in the aftercare and follow-up of discharged prisoners so as to facilitate their reintegration into society is quite obvious. There is, however, a strong view that public participation in institutional treatment has to be highly selective so as not to take any risk with security and safe custody. It, therefore, needs to be emphasized that whereas any transfer or dilution of the responsibility that legitimately comes within the purview of the State would be rather hazardous, civil society has every right to know as to what transpires behind walls.

24. In conclusion, it may be reiterated that as no formal system has a complete answer to the problem of crime, integrated efforts are needed to tackle the problem at its very source. The social defence approach is based on the premise that the criminal justice system by itself cannot undo such aberration of the wider socio-economic

system as are associated with crime. However, war against crime has to be waged, if not to win, atleast to be ensure that it is not being lost. Even the reduction in crime as a more realistic goal can be achieved only by extending crime prevention and control measures beyond the criminal justice system and by building these into a broader social action to curb conditions which produce crime. Such a perspective requires focussing on two major areas: (i) prevention of crime by protecting various vulnerable groups within the framework of social justice; and, (ii) treatment of offenders in a just, fair and equitable manner, with due regard to their human rights, and on the basis of a differential handling of individuals who violate law under various kinds of situational compulsion vis-a-vis those who perpetrate crime in an organized manner. While the prevention of crime would necessitate forging of constructive linkages between the formal system and various sectors of socio-economic development, the treatment of offenders would inevitably entail a progressive refinement of the criminal justice processes. With newly emerging forms and trends of criminality, some of which are much more volitional and disruptive in nature, a holistic strategy has to be worked out jointly by various criminal justice, social welfare and development agencies. Such a concept of social defence warrants not only a thorough reorganization of the traditionally operative crime control mechanisms but also innovation of and experimentation with new approaches in coping more effectively with the changing crime scenario.
