In Section 41 of the Divorce Act the following proviso is added:

> "Provided that the application with respect to the maintenance and education of the minor children pending the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent."

The above provisions were introduced in order to mitigate the delay in the procedure. It may be noted that these amendments do not refer to Judicial separation. The period of non-compliance of restitution decree under the amended Act is two years unlike other personal laws where it is only one year. Under the amended Act only the party is whose favour the decree is given is entitled to seek divorce for non-compliance. Section 21, which provides only partial legitimacy, is not change;

The most significant aspect of the amendment was to extend to all Christian women in India the gains secured for Christian women in the States of Kerala, Maharashtra and Andhra Pradesh - of making cruelty, adultery and desertion independent grounds of divorce. The amendments were also beneficial to men as they could also avail of the ground! Is of desertion and cruelty to obtain a divorce from their wives. The amendment also introduced the remedy of mutual consent divorce. Finally a consenting couple could obtain an honest and straightforward divorce with consent without the necessity of fabricating false grounds or having to wash dirty linen in public.

Another significant aspect of the amendment was to remove the ceiling set upon maintenance. The stipulation under the earlier statute was that the maintenance to the wife should not exceed one-fifth of the husband's income. While women from other communities could avail of maintenance to the extent of one-third of the husband's income, the maintenance awarded to Christian women was extremely meager and highly inadequate.

Christian women finally succeeded both of legal battles within the Courts as well as in their negotiations with the church and the state, to ward of the shackles under which they had been burdened for well over a century.

PROCEDURAL ASPECT OF THE POLICE SYSTEM WITH REGARD TO CRIMINAL INVESTIGATION

By

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Developments affecting the system during British period :

Among the problems which the Britishers had to face with regard to the system of criminal justice were the large scale participation of Muslim law officers in the process of justice, and the application of Muslim Criminal Law. Replacement of those two at various levels in various matters was

the aim which the Britishers had to pursue rigorously. Therefore, to bring about changes in the administration of criminal justice, the Britishers resorted to the use of executive as well as the legislative authority, as a result of which there arose a new system of police in a new system of criminal justice.

Among the administrative measures adopted by the Britishers reference may be made to the Proposals of Lord *Warren Hastins* (1773) and those of Lord *Cornwallia* (1790).

With regard to the legislative measures adopted a reference may be made first to the authority under which the East India Company had to adopt such measures.

The charter of 1726 had conferred powers of legislation on the Governments of the three Presidencies; Madras, Bombay and Calcutta, and the charter of 1753 had continued these powers with them. Under the provisions of these charters, the Governments of the Presidencies framed laws in the form of Regulations on a wide variety of subjects. The main theme of these Regulations was 'Procedure'. They dealt with the structure, constitution and organization of Courts, civil, criminal and revenue matters and the procedure for the enforcement of the civil and the criminal laws. The Regulations dealt mostly with matters of Police, Revenue, Customs, Excise, Salt, Opium, Coins and other matters[1].

The *Regulation of 1793* provided that any complaint to the Daroga was to be written on a stamp paper of the value of 8 annas. The main object of this provision was to check litigation over petty matters[2].

This Regulation also laid down that when the Daroga apprehended the offender he was to examine him without oath and in the event of the prisoner making a free and voluntary confession he was to be questioned fully about the circumstances of the case.

By the same Regulation the police officers were required on receiving the information of the commission of any robbery or other violent crime within their jurisdiction to go in person to the place of occurrence, to ascertain the facts and circumstances of the case. This inquiry was to be made on the spot, committed to writing and attested by three or more reliable persons and forwarded to the Magistrate. But they were not to pass sentence or to discharge the accused persons after their apprehension except in cases where they were authorised to do so by the Regulations.

By the Regulation of 1797 the Darogas of Police were required, on hearing of a person having died an unnatural death within their jurisdiction to proceed to the spot to make personal inquiries into the circumstances of the case and to reduce them to writing in the presence of reliable people of the neighbouring villages. The statement signed by the persons present was to be immediately forwarded to the Magistrate.

In cases of robbery or other heinous crimes also the police procedure was the same, and these inquiries were to be attested by three or more respectable inhabitants of the neighbourhood.

The Darogas were not to search houses for stolen property except under the warrant of a Magistrate or on very specific information in writing, particularizing the missing goods, and the place where they were supposed to be concealed. Police officers were authorized to search the houses of persons accused of counterfeiting the coin.

The Darogas were directed to maintain Thana books, paged dairies, and registers for various offences. Dawk stations were established for speedy transmission of information and reports.

1. MP Jain, Outlines of the Indian History (1972) 46
2. Gleig : life of Sir Thomas munro (1831) 441

Lastly, the Darogas were strictly forbidden to detain prisoners beyond the time indispensably necessary to make the prescribed inquiries, and in no case for more than 48 hours.

By the *Regulation of 1807* a modification was introduced to the existing criminal procedure. A warrant to arrest the accused person was to issue forthwith in cases of non-bailable offences, but, in other kinds of cases, a summons was to be issued ordinarily, for appearance. The previous rules of security or bail for the prosecutor or witnesses were abolished and personal recognizance was to be considered as sufficient[3].

By the *Regulation of 1817* the Darogas were prohibited from taking cognizance of any charge of adultery, fornication, calumny abusive language, slight trespass, or inconsiderable assault. Persons bringing forward such complaints were to be referred to the Magistrate. This Regulation was fairly comprehensive as regards rules of procedure. It laid down that upon receiving information, on oath, of a crime cognizable by the Police, the Daroga was to inquire into the circumstances of the case and examine publicly or privately, witnesses to the fact. Evidence was not to be detailed, but the substance only was to be transmitted to the Magistrate. The Daroga was to endeavour to dispatch all evidence, and to secure the attendance of witnesses in due time, so as to prevent delay in the inquiry[4].

On receiving information of cases of murder or other serious injury, the Daroga was to proceed immediately, in person, or dispatch an officer to the spot. The relations and neighbours of the deceased were to be questioned first, in case of a murder. In cases of serious injury, the wounded persons were to be asked to describe the circumstances, on oath. This enquiry was to be attested by the Daroga or the police officer, and by a sufficient number of people who might have been present.

By the *Regulation of 1821* the Police were given powers to apprehend foreign vagrants and to send them to the Magistrate.

By the *Regulation of 1831* the police was authorized to take cognizance of the offences of murder, gang-robbery, highway robbery, theft and burglary, coining, homicide, maiming.

The *Regulation of 1832* was very important insofar as it marked the end of Muslim Criminal Law as a general and compulsory system of law applicable to all Muslims and non-muslims alike. The native law officers were dispensed with and their place was taken over by the English Judges. The Government which had by this time gained the confidence of managing the affairs of the country, however, decided to continue to avail of the assistance of the respectable Indians in conducting the criminal trials in place of the Muslim Law officers[5].

To achieve the above objective, Regulation of 1832 made a number of provisions. The Judge was authorized to avail himself of the assistance of respectable Indians in one of the three ways while conducting the criminal trial. First, the Judge could refer the entire case or any point therein to a Panchayat or persons who would carry on their inquiries apart from the Court and report to the judge. Secondly, the judge could constitute two or more assessors so that he could obtain the advantage which he might be deriving from observations particularly in the examination of witnesses. Each assessor was to give his opinion separately. Thirdly, the Judge could employ the Indian as jurors.

The Charter Act of 1833 introduced drastic changes in the structure and powers of the

3. Dispatch of the madras Government dated 16-12-1812

4. Cotton, Moutstuat Elphinstone (1896)

5. Malcolm : Government of India (1873) Poona 105.

Government of India which was reconstituted on a new model, with an all-India character both in form and substance. The Governor-General of Bengal was designated as the Governor General of India and in the Governor-General in Council was vested with the powers of superintendence, direction and control of the whole civil and military Government and the revenues of India. The Act also altered the legislative system of India. Hitherto there functioned in India three legislative organs which made Regulations for the Presidency Towns and the Moffasils. The Charter Act of 1833 sought to change this system in a fundamental manner. It created an all-India legislature having authority to make laws and regulations for the whole of the territory in the possession of the Company's Government.

The Legislative Council set up by the Act of 1833 was of momentous importance from the point of view of the Growth and development of the Law in India. The Council was granted very wide powers of legislation. It could repeal, amend or alter any law and regulation in force in any part of the Indian territory; it could make laws for all persons, whether British or foreigners, native or others; it could make laws for all Courts of justice, whether established by the Majesty's charters or otherwise.

With the creation of the new legislative Council the Governments at Bombay and Madras were deprived of their law-making powers. All legislative power was centralized and concentrated in one single body, that is the Legislative Council, at Calcutta.

An important step towards fulfilling the goal of securing a uniform and simple system of law in India through the process of comprehensive consolidation and modification, to advise the newly-set up legislative Council on matters of law and to integrate and organize the scattered conflicting and incoherent system of regulations into a general system of codes was taken up by the Act when it made provision for appointment of a law Commission of India. The provision recited that it was expedient that subject to such arrangements as local circumstances might require a general system of judicial establishment and police applicable to all persons and all classes of inhabitants should be established[6].

As envisaged by the Charter Act of 1833 a Law Commission was appointed by the Government of India in 1835. The first project assigned to the Law Commission was the codification of Penal Law. The Government instructed the Commission to devote itself to preparing a draft of the Penal Code.

Under the provisions of the Charter Act of 1857 the Second Law Commission was constituted on 29th November 1853. The task assigned to the Commission was to examine and consider the recommendations of the first Law Commission for the reform of judiciary, especially, the judicial procedure and the laws of India. The Law Commission recommendation the adoption of the Codes of Civil and Criminal Procedure throughout the jurisdictions of the High Courts. The drafts of the Penal Code and the Criminal Procedure were prepared by the first and second Law Commissions. The Penal Code was enacted in 1861, and the Codes of Civil Procedure and Criminal Procedure were enacted in 1859 and 1861 respectively.

Thanks to the process of codification undertaken by the Britishers in India a uniform law of criminal procedure started taking its shape. Earlier there was no uniform law. There were separate Acts, mostly rudimentary in character, to guide the procedure of the Courts in the erstwhile provinces and the presidency towns. Those applying to the Presidency Towns were first consolidated by the Criminal Procedure Supreme Courts Act of 1852 which in course of time gave place

6. Report 1848, Para 105

to the High Court Criminal Procedure Act 1865. The Acts of Procedure applying to the provinces were replaced by the general procedure Code 1861 which was replaced by Act X of 1872.[7]

A separate chapter was devoted in this code to the powers of police officers to investigate into offences and the procedure which they had to follow in this regard. By virtue of this legislation Criminal Investigation became a distinct function of the police, and a separate institution deriving its status directly from statute law rather than from an executive authority. From that time onwards the institution of criminal[8], investigation with a distinct procedure has remained a statutory function of the Police in India.

(ii) Reform of the Law of Investigation after Independence :—The Code of Criminal Procedure first enacted by the Britishers in the year 1861 was substituted by fresh Codes, successively enacted in 1872 and 1882. It was the fourth Code of Criminal Procedure of 1898 that had spelt out the framework of investional procedures which has remained more or less unaltered as far as Police are concerned.

The Code of Criminal Procedure which was enacted in 1898 continued to be the law for three quarters of a century. It was amended from time to time, the most significant being the amendment of 1955 to simplify the procedure and to speed up trials as far as possible. Further local amendments were made by the State Legislature to bring about separation of the executive from the judiciary.

After independence a Constitution was adopted by the people which guaranteed certain rights to the people such as the right to equality, right to freedoms, the right to personal liberty *etc.* The Constitution declared that there should be equality before the law and equal protection of the laws, that no person should be deprived of his life or personal liberty except according to a procedure established by law, that there shall be freedom of speech and expression, freedom of assembly, freedom to form an association, freedom to move about and the freedom to practice a profession of one's own choice.

The Constitution has adopted the principle of Rule of Law, according to which all are equal before the laws and there is equal protection of the laws. Even the State is not above the law, but has to carry out is functions according to law. The laws passed by the Legislatures and the actions taken by the executive branches of Government have to be in conformity with these principles. All the institutions of national life including the systems of criminal justice have to observe the principles enshrined in the Constitution.

In order therefore the mould the system of criminal justice to the high ideals of the Constitution reformatory measures were adopted, which ultimately brought a new Code of Criminal Procedure into existence.

The Central Law Commission which was set up by the Central Government under the chairmanship of Mr. *X.C. Setalvad* had suggested the reform of judicial administration in its fourteenth report submitted to the Government in 1958. The law Commission dealt with certain aspects of procedure too.

Again, in its Thirty-seventh report submitted to the Government of India in December, 1967 the Law Commission had examined, for the first time, the provisions of the Code of Criminal Procedure 1898 and made recommendations section by section, from Section 1 to Section 176. The major problems of reform as viewed by the Law Commission in its Thirty-seventh report were :

7. Gibbon : Lawrence of Punjab 1876

8. Misra : Administrative History of India 244.

(a) separation of the judiciary and the executive;

(b) abolition of the jury trial;

(c) simplification of the various categories of trials;

(d) Magistrate in Presidency Towns;

(e) Abolition or retention of the ordinary original criminal jurisdiction of High Courts;

(f) the law of arrest;

(g) the law of search and seizure; and

(h) the duty to give information about offences.

The reports of the Law Commission however did not adequately deal with other aspects of procedure which had been creating difficulties for the police while conducting investigation in the field. Compliance of certain provisions in law proved unrealistic and difficulty in actual investigations, and therefore, led to the adoption of certain improper methods and practices by investigating officers to meet the requirements of the case law as it had developed over several years. In this process the ultimate disposal over several years. In this process the ultimate disposal of cases in the Court also suffered. The complainants and witnesses in cases were inconvenienced and harassed by the elaborate procedures and practices that developed in the investigational work of the police.

When the Law Commission was reconstituted in 1968 it took up the matter from the point at which it was left by the previous commission. This time a systematic examination was taken up with the object of attempting a general revision of the code.

The main task of the commission was to suggest measures to remove anamolies and ambiguities brought about by the conflicting decisions of the High Courts or otherwise, to consider local variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvements wherever necessary. Suggestions for improvements received from various sources were considered by the Law Commission. A comprehensive report for the revision of the Code, namely, the forty-first report was presented by the Law Commission in September 1969. These recommendations of the Commission were examined by the Government keeping *inter alia* the following cardinal considerations :

(a) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(b) every effort be made to avoid delay in investigation and trial which is not only harmful for the individual, but also to the society, and

(c) the procedure should not be complicated and to the utmost extent possible, ensure fair deal to the poorer sections of the community.

A bill for the purposes of revision of the Code of Criminal Procedure was introduced in Rajya Sabha on 10th December, 1970. A motion for reference to a Joint Committee of the House was adopted. The report of the Joint Committee was laid on the table of both the Houses of Parliament. Nearly 125 amendments were introduced in Lok Sabha and it was finally passed in 1973.

The Effect of revision on the investigatory functions of Police :

The important provisions of the Code of Criminal Procedure, which have an impact, after the revision of the Code, on the investigatory functions of the police, for better enforcement of law by them, are the following :

1. It is common knowledge that witnesses are generally reluctant to come

during investigation for interrogation as unlike Courts, the police officers are not empowered to pay their expenses. Now by virtue of Section 160(2) of the new Code the State Government may by rules provide for the payment to witnesses by the police.

2. In respect of cases instituted on police report, it has been specifically provided that the Magistrate may, on the application of the prosecution, issue summons to any of its witnesses directing him to attend or to produce any documents or other things (Section 242).

3. Under the Identification of Prisoners' Act, fingerprints, foot-prints, and photographs of the accused may be taken to facilitate investigation. Then again, Section 73 of the Indian Evidence Act prescribes that the Court may direct any person present in the Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. This section also applies with necessary modifications to finger impressions. With regard to the medical examination of the accused, in the absence of any special or local law like Bombay Prohibition Act, he could not be compelled to subject himself to such examination. A provision was now made in Section 53 by virtue of which a police officer not below the rank of sub-Inspector is authorised to send an accused person to a registered medical practitioner where there are reasonable grounds for believing that examination of his person will afford evidence as to the commission of an offence. The police officer can also use such force as is reasonably necessary for the purpose. In the case of a female, the examination will be done only by or under the supervision of a female registered medical practitioner. The object of these provisions is to collect more evidence in order to prove the complicity of the accused.

4. Some of the offences under the Indian Penal Code like Sections 160, 188, 201, 267, 295-A *etc.* which are important from the police point of view have been made cognizable.

5. During the course of investigation the persons summoned will make the statement with some responsibility to the investigating officer as they are now bound to answer truly all questions relating to such case except those, the answers to which would have a tendency to expose him to a criminal charge or to penalty or forfeiture. Similarly, the investigating officer will be legally bound to make a true record of the statement of the person (Section 161).

6. While making search of a place, if no independent and respectable witness of the locality is available or is willing to be a witness to the search, the police officer making the search will be legally justified to get such witness from another locality for the said search (Section 100).

Some of the changes introduced in the new Code have resulted in the curtailment of Police powers. The following are some such changes introduced in the new Code :

1. Provisions have been made by virtue of Section 438(1) of the new Code empowering the High Court or the Court of Session to grant anticipatory bail. These Courts can give direction earlier for the release of the persons on bail in the event of his arrest in a non-bailable offence.

2. Earlier bail in non-bailable offences used to be refused generally until the test identification parade was held of the accused. Now the necessity of holding such a parade by itself will no longer be a good ground for opposing grant of bail (Section 437).

3. Now if the investigation of a summons case is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the Investigation Officer satisfies the Magistrate, on the justification of the continuation of the investigation beyond the said period. In case of refusal by the Magistrate the Session Judge can direct the recommencement of investigation (Section 167).

4. Under the new Code, any person within the limit of such station having no ostensible means of subsistence or who cannot give a satisfactory account of himself cannot be arrested or prosecuted. The provisions of Section 55(b) of the old Code have been dropped.

5. Investigation of a case should now be completed in sixty days where the accused has been detained in custody. Thereafter he shall be released on bail if he is prepared to furnish bail irrespective of the nature of the offence (Section 167).

6. The Magistrate cannot authorise detention of the accused in the custody of the police beyond the period of 15 days (Section 167).

7. It has also been provided in the new Code that there will be limitation for taking cognizance of certain types of offences by Courts. (Chapter XXXVI, Sections 407 to 473). Hence the investigation has to be done expeditiously. After the expiry of the prescribed period of limitation, the trial will be barred and the Court will not take cognizance of the offence. The different tests for calculating the period of limitation have been given in the Code. The time could be extended in appropriate cases if the trying Magistrate is satisfied that the delay has been properly explained or it is necessary so to do in the interest of justice (Section 473).

8. Earlier, the law required the officer-in-charge of a police station to supply copies of the documents and other papers pertaining to the case to the accused before the commencement of the inquiry or trial. The police department is very much understaffed and has to meet a big demand with its inadequate personnel. Under Section 207 of the new Code this duty has now being given to the Magistrate who takes cognizance of the case. The Investigating Officer, however can supply copies of all or any of these documents if found convenient.

9. Formerly, the reports of certain experts like the Chemical Examiner or the Chief Inspector of Explosives or the Director of the Finger Print Bureau *etc.* were used as evidence in any inquiry or trial. But at the same time there was provision that the Court shall examine the expert if one of the parties requires. A lot of time used to be consumed in procuring the presence of the experts as they used to remain very busy in their day to day work. According to Sections 292 and 293 of the new Code the experts mentioned therein need not necessarily be summoned for oral evidence at the instance of the part. However, the Court may, if it thinks fit, call and examine any such officer.