Jianhong Liu · Susyan Jou · Bill Hebenton
Editors

Handbook of Asian Criminology

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Foreword

This Handbook of Asian Criminology could not come at a better time. As India's population rapidly approaches the size of China's, as Myanmar seeks engagement with peer nations that respect a Rule of Law, as research on crime and justice flourishes from Seoul to Sydney, no criminologist on earth can ignore what our colleagues are doing in Asia.

A decade ago, I told the senior editor of this collection that the "future of criminology lies in Asia." I am honored that he has often reminded me of this statement. Yet I do not claim any profound meaning for my observation. Rather, I merely matched my prediction to the demographic trends. The future of criminology must be in Asia simply because the future of most people on earth is in Asia.

What will this mean for the quality of human existence? While the struggle for food and survival remains problematic, especially in South Asia, the struggle for freedom from fear—of criminal force—seems more daunting. Across China and India, small farmers may have their land sold by corrupt local politicians, losing centuries of family investment in the land. From Afghanistan to Bangladesh, women suffer very high risks of rape or punishment if they dare venture onto the streets without a man to chaperone them. From the south of Thailand to many other locations, schools may be bombed or teachers may be murdered for teaching young girls to read.

The booming economies and gleaming modern cities of Twentieth Century Asia belie the strong traditions that hold back progress. The Indian idea of "encounter killings" as a form of summary justice by police, for example, collides with a rule of law. Yet a senior police officer who refused a politician's request to kill someone this way (making it appear to be self-defense by police against the criminal) did so on the grounds that the prospective victim had not killed anyone himself, as accused, and so the police would not kill him. Furious, the politician had the police officer transferred, and his further career advancement blocked for at least 14 years.

The good news is that this police officer held fast to the substance, if not always the procedures, of a rule of law. He did what police in the USA have long been forced to do: to survive a confrontation between democracy and due process. The apparently increasing occurrence of such confrontations describes progress, the modern communications and Internet links of a growing Indian middle class may help to raise standards of justice. Many criminals punished in the USA are later found innocent based on new DNA evidence, in cases publicized around the planet. Each of these may be a shock to

innocents about the state of justice. Yet it could also be a splendid indicator of rising integrity. It is only when cultural demands for fairness become intense enough to review the accuracy of punishment that such injustice can be revealed. More global news of such efforts, in a wide range of countries, spreads across the Internet daily and into Asia. That, in turn, makes interest in criminology grow as an extension of middle-class empathy for victims of crime and injustice.

There is another reason why the future of criminology lies in Asia. That reason is the huge desire for learning found in Asia. In the past 4 years, I have spent 20 weeks in Asia teaching police and criminologists in Turkey, Israel, India, Vietnam, Taiwan, Korea, and Australia. In each of these visits I have been impressed with the curiosity and zeal for learning I have seen. The passion for reading research articles word for word is impressive. So are the PowerPoint presentations prepared by the students I have taught, mastering complex ideas into coherent and logical connections. Their consumption of criminological research may already surpass the rest of the world's combined.

The same, of course, cannot yet be said of the production of research, at least not in the English language journals. The Asian Journal of Criminology is a bright beacon of such research. But the test of Asian research on crime will be the growth rate of publications in journals without regions: CRIMINOLOGY, JOURNAL OF EXPERIMENTAL CRIMINOLOGY, POLICE QUARTERLY, and POLICING, for example, all of which gladly accept good research done anywhere on earth. Data from Asian countries have already appeared in numerous articles, and should grow in future years as more well-trained PhDs return home from graduate schools in the North Atlantic.

The pace of research will increase even faster when Asian graduate schools rise to the volume of US and European schools in annual PhD production. Such an outcome is not far off. The key to this will be a steady commitment to empiricism, and a steadfast resistance of the siren call of moral philosophy. The discursive insights of the latter framework in criminology may mercifully jar Asian sensibilities, which may give quantitative empiricism a cultural advantage in any case.

Therein lies a paradox. To the extent that Asia comes to dominate criminology, it is unlikely to do so in a regional way. Whatever cultural dimensions criminology has—and they are many—they do not pose a barrier to building a unified, global science of crime. The effects of family bonds in preventing crime, for example, appear to be universal, and not culturally dependent. The deterrent effects of police patrols in crime hot spots may also be universal. Domestic violence is certainly found in every nation, and education for women may reduce it wherever it occurs. Asians who study these phenomena will have as much desire as criminologists from elsewhere to make and test general propositions, applying to all humans on all continents.

It is therefore possible that someday there will be no Handbook of Asian Criminology. There may be many handbooks, global in scope. There may be handbooks that tell readers of distinctive features of law and justice in different nations or regions. But what there may not be is any claim that criminology

is different in Asia, just as we would reject the idea of "German science" propagated in World War II.

If and when that day comes, it will be a long time from now. The impact of nation-states on the nature of crime and justice problems makes criminology without borders a difficult challenge. We will be many years in revealing the commonalities of science across regions and even within Asia. Until then, readers will find this Handbook indispensible.

Hyderabad, India Lawrence W. Sherman

Contents

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Progress of Asian Criminology: Editors' Introduction

1

Jianhong Liu, Bill Hebenton, and Susyan Jou

1.1 Asia and Criminology in Asia Moving Forward

It is traditional for editors to "talk up" the subject matter of their book; but in our case, arguably, the regional significance of the subject matter is self-evident. Within the Asian region, the People's Republic of China has already overtaken Japan as the second largest economy in the world and is likely to take over the top spot by the end of this current decade (*New York Times*, 15 August 2010, "China passes Japan as second largest economy"). India is moving rapidly up the ladder and will soon become the third largest economy globally. The International Monetary Fund estimates that emerging Asia will be the main propellant of world economic growth in the coming decades. Europe, the USA, and Japan face serious recession. By contrast, the public financial system of Asian countries appears in relatively good shape, with debt ratios low, banking systems healthier, and corporate balance sheets less stressed. Furthermore, large foreign exchange reserves act as an insurance against unexpected "global" shocks (Tay 2010). Wages and incomes are rising and unemployment rates are not alarming. Regional trade is at an all-time high and the dependence on the USA and Europe for exports has declined. China now ships only 35% of its exports to the USA and European Union countries (Kawai and Petri 2010).

In the coming decades, some trends in Asia will likely develop in the context of further globalization, developing regionalism and the ongoing electronic and information revolution. First, Asia is likely to develop a greater sense of regional awareness and cohesion. The continent is still comprised of subregions (Northeast, Southeast, South, Central and West Asia). But the region's existing and developing institution building (such as the Association of South East Asian Nations, Shanghai Cooperation Organisation and other, international, multi-lateral or bi-lateral groupings) will gradually lead toward a greater level of cross-Asian cooperation (Ozawa 2009). Second, the world configuration of power is becoming more evenly distributed between traditional and emerging powers. In this sense, Asia's increasing role globally is evidenced by the rise of G20 and enhancing reforms of the World Bank and International Monetary Fund (Tay 2010). And third, Asia is likely to contribute more to the mainstream of global intellectual development. Asia will substantially change its

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status as merely a recipient—or refractor and assimilator—of Western cultural tradition. With its traditional and intellectual cultures both experiencing a renaissance, Asia will provide the world with more public goods in the form of ideas, principles, and values. The result will doubtless be a fusion of cultures to the world. Cultural and religious diversity and its accommodation of these many differences is and has been a hallmark of the Asian region. Tackling future challenges across the world will require new values; Asian values attach much importance to aspects of life, such as diligence, work ethics, family cohesion, and consensus. Such values will undoubtedly contribute to the eventual pooling of shared values, which in turn will help tackle the global challenges of the twenty-first century, including crime control efforts.

As criminologists, we know that crime follows opportunity and is embedded by processes of globalization, economic growth, conflict, and social change; this is no less so in the Asian region. In Asia and elsewhere the interdependence of nation states has never been greater, and the necessary quest for security, both domestically and externally, remains as pressing as ever (Broadhurst 2006). The will to understand the operation of different criminal justice systems is also now more crucial than ever, as nations rely increasingly on mutual assistance in criminal matters. What are the crime problems of Asia? In what ways do Asian countries respond? These questions pose practical challenges for law makers and policy officials, but also of course for criminologists in Asia; and more generally draw our gaze to the development of the discipline of criminology itself in Asia. In spite of the clear evidence of institutional growth and significance of criminology in Asia, as Liu (2009), the current President of the Asian Criminological Society reminds us:

> … the pace of growth is quite slow compared with the rapid development of criminology in North America and Europe. Understanding the developing criminology in Asia requires an equally good understanding of the status of criminology in Asia, of the features of Asian cultures and societies, of the special features of crime and crime control in Asia, and of the challenges and opportunities for criminology in Asia. (Liu 2009, p. 2)

In the long view, these matters have their origins in the history of the discipline of criminology as a scholarly discipline within modern and specialized institutions (see Garland 2011; Rafter 2009). The international relations within criminology, that is, the distribution of scholarly communities, their output and communication between them, can, in our view, be heuristically characterized as center–periphery relations (see Medina 2011; Keim 2008; Hebenton and Jou 2012). From a global perspective, criminology as practiced in the United States (and maybe a congeries of other Anglo-phone countries including United Kingdom) appears to constitute the center of our discipline, whereas Asia, despite claims for the internationalization and globalization of the discipline, occupies part of a periphery. One potentially useful conceptual framework for thinking about this matter is illustrated in Fig. 1.1.

The three dimensions of scientific development/underdevelopment; autonomy/dependency; and centrality/marginality are all empirically inter-related. For analytic purposes, however, we can tease them apart. If we consider the problem of scientific development, this requires an appropriate material, institutional, and individual basis. Lack of the necessary material infrastructure, including governmental sponsorship of research and an appropriate political climate, hinders development. Authorities attitude to access to official data and publishing of findings also applies (we can witness this in the context of the practice of criminological research in, for instance, England and Wales, Wilkins (1984) referring to the 1980s and Radzinowicz (1994) referring to the 1990s). Institutional development requires sufficient general funding and adequate income possibilities for researchers. This first dimension, scientific development, is mainly determined by external factors such as availability of funding, scientific and higher education infrastructures, and local academic cultures. A second problem refers to the conditions of existence of criminology, namely the dimension of autonomy or dependency. At an ideal-type level, an autonomous criminology contains the capacity for self-reproduction and autonomous

Center-periphery relations and the internationalization of criminology

Centre	1. Infrastructure and internal organisation	*Periphery*
Development		**Underdevelopment**
	2. Conditions of existence and reproduction	
Autonomy		**Dependency**
	3.Internal position and recognition	
Centrality		**Marginality**

(adapted from Keim, 2008)

Fig. 1.1 Center–periphery relations and the internationalization of criminology

development. The structural material factors underlying the first dimension described earlier make the strength of a center (such as USA and Europe) dominant in the largely unidirectional and uncritical flow of criminological knowledge. Dependency requires researchers from the Asian region to rely upon their equivalents in the center for key concepts and theoretical capital, reducing the contribution of the periphery to a kind of "testing ground for external validity" of such ideas. Other indicators of this dimension include the origin of higher degrees obtained by university academic staff and researchers and the construction of the university academic criminology syllabus. Of course, this second dimension of autonomy or dependency can largely be seen as a product of the scientific process itself (rather than external factors). Networks and collaboration are also often illustrative of this dimension. Scholarly productivity at least in terms of English language outputs at the individual level is "highly dependent on accessing professional international networks" (Teodorescu 2000, and as noted by Medina 2011). Finally, a third problem hinges on the problem of centrality and marginality, which describes the relationship between existing criminological communities and "international scholarship." Manifestations of marginalization include: lack of visibility in internationally accessible research databases of published literature, the impact of unequal division of research labor, and the fact that center studies the periphery, and the corollary that the center is rarely the object of study by the marginal. All these outcomes are determined by processes key to the internationalization of the discipline; particularly, scientific journal publication policies combined with English as the *lingua franca* of international science. In this sense, of course, our own *Handbook of Asian Criminology* and its associated findings are part of this "internationalization" context. By these lights, publishing in the English language means being accountable to "international" standards, yet those in the periphery face genuine hurdles of budgets and often access to sufficient criminal justice system data to produce work of sufficient quality to meet "international" standards of recognition. More broadly, these external demands may diminish the periphery's willingness to engage with local problems, constantly being required to justify their research and findings in a primarily center-focused context.

When one considers Asian criminological research, the general impression these days is that it has gradually been on an upward trajectory in terms of quantity and quality; as evidence, one can take country-level reviews of research in English language outputs, for example, Liu (2007) and Zhang et al. (2008) in relation to People's Republic of China; or Hebenton and Jou (2005, 2012) in the case of Taiwan; or Chui and Lo (2008) in respect of Hong Kong. Capacity building is also evident—developments such as the founding of the *Asian Journal of Criminology* in 2006 by Springer Publishers, and the formal establishment of the Asian Criminological Society in Macao in December 2009, and with a

subregional focus, the Association of Chinese Criminology and Criminal Justice in the US (ACCCJUS), established at the San Francisco meeting of the American Society of Criminology in November 2010. An increasing number of Asian scholars are now doing research that focuses on both Asian and non-Asian topics. An increasing number of scholars of non-Asian origin are also conducting research relating to Asian phenomena. Details of the work carried out by various scholars can be found in different publications, which are becoming increasingly visible through the prism windows of the new professional associations mentioned above and through focused publications (for example, the forthcoming *Handbook of Chinese Criminology*, edited by Cao et al. 2013, forthcoming).

Despite this, however, there is countervailing news on the broader matter of Asia and internationalization. For example, Barberet (2001, 2007) used a content analysis to show that comparative research involving two or more countries occurred in only 5.8% of all American Society of Criminology presentations in the 1990s (this work has not been repeated for the new decade, as far as the authors know). Few undergraduate university programs in the United States have an international criminal justice course. The teaching of comparative methodology is also notably absent from the criminology curriculum in many universities (Barberet 2001/7). The International Division of the American Society of Criminology, is still relatively small, as is the International Section of the Academy of Criminal Justice Sciences. Coverage of international scholars in US textbooks is still rare. The proportion of international articles published in one of our field's leading journals, *Criminology*, ranged from 0 to 18% in the 1990s, averaging 7.4% (Barberet 2001). In relation to Asian countries as an object of study, the analysis of ASC presentations in the 1990s ($N=8,287$), revealed a rank order of Japan (0.42%), China (0.41), Taiwan (0.17), Hong Kong (0.12), Korea (S) (0.08), and Philippines (0.06). A more recent study (Hebenton and Jou 2012) of Asia's international criminological research "footprint" evidences the strength and diversity of publications over the last decade, 2000–2010. They chose six comparators, Hong Kong (China SAR), Japan, Korea (S), PR China, Philippines, and Taiwan. The authors, using the four premier e-databases covering criminology and the social sciences (Criminal Justice Abstracts, The US National Criminal Justice Reference Service, Thomson-Reuters Web of Knowledge, and PsychINFO), identified almost 700 separate English language publications. Within the discipline of criminology (as arguably in all fields of the social sciences), publications vary in terms of status and importance. One measure commonly used is the ISI/Thomson-Reuters bibliometric, producing among other things a "journal impact factor." According to this, the journal impact factor is the average number of times articles from the journal which have been published in the past 2 years have been cited in the Journal Citation Reports (JCR) year. If a journal has a higher impact factor, it means that the journal is often cited and is thus "more important." The 5-year journal impact factor is the average number of times articles from the journal published in the past 5 years have been cited in the JCR year. This measure is understood to be more stable than the 1-year figure. There are 31 ISI/Thomson-Reuters Web of Knowledge "criminology & penology" journals, and Hebenton and Jou looked at the performance of selected Asian comparators across the "top 20" journals. A number of interesting features were apparent from the analysis which presents cumulative proportions for the Asian comparators. Hong Kong had by far the largest proportion of papers in the 1–20 rankings; some way behind come Japan and PR China. The Philippines had the lowest proportion. Only Hong Kong had a number of publications in the 1–5 rankings over the period under study. Turning to Taiwan, of the 54 SSCI papers identified, only one of those had been placed in the "top 5"; Taiwan had a comparatively small proportion in the "top 10" over the period under review, but rising to around one-third cumulatively in the "top 20" journals. Apart from divergent performance across the Asian region, the authors conclude that the empirical consequences of center–periphery relations are also visible in these findings and that these too need greater acknowledgment and require fuller examination and understanding.

1.2 Format of the Handbook

We are of the strong opinion that the challenge for an enlightened criminology is to create a community of transnational scholars and practitioners who seek to share their research and insights about crime and its many manifestations. Jianhong Liu reminds us that crime is a general and human problem that troubles every country and thus

> …criminology is an academic response of mankind to the crime and justice problems. It is a general social science, an international science, which addresses the common human behavior of crime and its control. Despite the wide diversity of nations and cultures, there are enough common features in human criminal behavior and crime control to call for the study of shared experiences and the exchange of knowledge in dealing with crime problems in different nations and cultures. Research and practices in Asian countries should be part of the literature of international and comparative criminology. (Liu 2009, p. 7)

This *Handbook of Asian Criminology* seeks to represent the scholarly energy of a geographical area rather than a particular perspective, arena or "subfield" and in that sense is primarily an endeavor in comparative research. It is this orientation that serves to enhance the relevance of research about Asia. The Handbook has three sections, with this editors' introduction, setting out the development of criminological research on and of the region, together with a broad assessment of the varying state of crime and criminal justice research. *Section one* "Types of crime in Asia" examines the empirical research base of common and new forms of criminal activity. In addition to internationally recognized and legally categorized forms of crime (e.g., drug-related crime), this section also draws attention to the distinctiveness of socially contextualized criminal activity (cyber-crime, corruption). It provides accounts of specific forms of criminality: when, how, by whom and in what contexts they are carried out, whether and why they are increasing or declining, what particular issues they raise for criminal justice agencies, and so on. *Section two* considers the current state of crime and the criminal justice system in a number of selected Asian countries, with each chapter detailing the basic detail of crime and punishment, including a brief synopsis of the development and nature of the criminal justice system. The final section, *Section three* "Victims and Offenders" provides the reader with up-to-date accounts of both recent victim-related developments in Asia, and how such developments are evidenced in new ways of seeking "justice" for victims and working with offenders; the section includes country-specific chapters on victims of crime in the criminal justice system and specific forms of victimization, and includes research and policy development on alternatives to formal criminal justice. Expanding knowledge of "victims" has been gained from both academic research and the political impact of legislation, policy-making, and lobbying by interest groups. Much victimization is against the most vulnerable, women and children, and this section also focuses on these groups.

1.3 Limitations

Due to the practical constraints of length and the volume of potential topics that could be addressed under the banner of Asian criminology, many topics were either discussed briefly or not included in the final product. However, beyond such practical logistics, some omitted topics are indicative of an inadequate knowledge base at present. It is well known that, in many Asian countries, official data available for research use are very limited. Frequently, governments consider crime-related data to be politically sensitive and are reluctant to disclose them to researchers. Data collected by scholars are also limited, with studies scattered and intertwined in other areas of broader legal study. For instance, detailed and systematic comparisons of measures of incidence and prevalence of crime based on crime and victim surveys would be largely impossible across Asian countries. Similarly, a major feature of the Asian context is diversity across Asian societies and cultures, with different languages, different legal systems, and diversity in crime and crime control systems and

practices, and our *Handbook* can only do limited justice to the complexities.

On a further note of importance, in conversations as editors, we found ourselves frequently speaking as though criminology possessed a nationality—"American" criminology, "British" criminology, "European" criminology, and "Asian" criminology. Usually, we assumed this to be but a short-hand expression of general reference to criminology in that country or region, but sometimes we actually were talking as though criminology was endowed with a kind of national character. At stake here was our recognition that comparative analysis constitutes a particularly fruitful way to demonstrate the profound inscription of knowledge in local culture and institutions; and that in our editorial role we were engaged in a complex reflexive analysis of the functioning of the field of criminology within the Asian region as a whole and of its embeddedness. The pursuit of such an enquiry necessarily rests upon fashioning a more compelling sociological account of the development of criminology, in particular national contexts across Asia. No individual chapter in the *Handbook* is devoted to this end, nor indeed to a broader consideration of applicability of Western theories of crime and transferability to other societies. We share the view expressed by some commentators that answers to such questions will, ultimately, be empirical in nature (Zhang 2011).

Despite its necessarily limited range of topics, the *Handbook* is a landmark publication, marking a gear-change in the visibility of the research field on Asia for students and scholars alike. The *Handbook* identifies tropes, topics, and trends in criminological research on Asia, and we wish to heartily thank all our contributors for persevering and helping in the completion of this ambitious project. With its focus solely on English-language publications, our *Handbook* holds a mirror up to the criminological communities in both Asia itself and other parts of the English-speaking world. Viewed this way, it provides a sense of Asia's criminological "footprint" in the largely English language-based scientific literature. By corollary, our *Handbook* is also necessarily a crude measure of the "internationalization" of criminological work on and in Asia.

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Part I

Types of Crime in Asia

Homicide in Asia

2

Mengyan Dai

2.1 Introduction

Virtually all penal laws in the world include a prohibition against homicide. Homicide as a general term refers to all cases in which a human being kills another human being by his or her own act, omission, or procurement. However, not all homicides carry criminal culpability. Sometimes, a killing may be committed in self-defense or by accident or any other circumstances that the law permits. These are excusable homicides or justifiable homicides. In this chapter, only criminal homicide is discussed and analyzed.

Countries differ considerably in how they define homicide and its categories. Some jurisdictions further divide criminal homicide into categories such as murder and manslaughter. There are also categories of homicide based on the level of intent, such as intentional homicide and negligent homicide. Acts such as infanticide, abortion, assisted suicide, and euthanasia may be either included or excluded from the national legal definition. Therefore, caution is usually needed in comparing and explaining homicide data across countries.

This chapter first introduces the data sources of international homicide data and then describes the recent homicide trends in Asian countries. Based on empirical research, this chapter also explores some correlates of homicide trends. In addition, homicide clearance is also discussed within a comparative approach.

2.2 International Homicide Data

Homicide data are usually considered the most valid and reliable data for cross-national comparison among all internationally available violence data (Marshall and Block 2004). Comparative research on homicide has often used homicide data from three international sources, including the International Criminal Police Organization (Interpol), the United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems (UN-CTS), and the World Health Organization (WHO). The first two sources are cross-national criminal justice data sources, and the last one is a cross-national public health data source.

These three data sources often do not provide similar homicide estimates. This is partly due to definitional differences (Marshall and Block 2004). According to Marshall and Block (2004), Interpol uses the term murder rather than homicide. Murder refers to any act performed with the purpose of taking human life. This definition excludes manslaughter and abortion but not infanticide. However, after 1978 manslaughter is not explicitly excluded from the definition. In addition, Interpol does not provide data on unintentional homicide. In contrast, the UN-CTS survey includes

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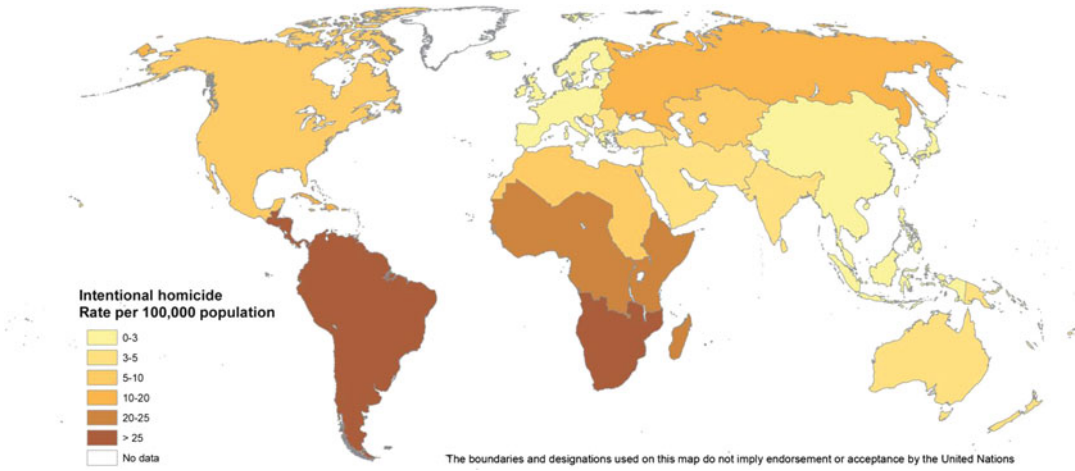

Fig. 2.1 Intentional homicide, rate per 100,000 population, by subregion, 2004 (retrieved online from http://www.unodc.org/images/data-and-analysis/homicide_rate_map.pdf)

a few categories such as total homicides, total intended homicides, attempted intended homicides, and unintentional homicides. Different countries may include or exclude euthanasia, infanticide, assisted suicide, or assault resulting in death. Unlike Interpol and UN data which collect homicide data from criminal justice agencies in member nations, WHO data are based on body counts (i.e., on cause-of-death reports submitted by participating nations) instead of incidents. Further, WHO homicide data do not include attempted or unintentional homicides (Marshall and Block 2004). Among these three sources of cross-national comparative homicide data, the WHO data are widely believed to be the most valid (Gartner 1990; Kalish 1988; Messner and Rosenfeld 1997).

The United Nations Office on Drugs and Crime (UNODC) has developed the International Homicide Statistics (IHS) which provides homicide statistics in 198 countries and territories from 2003 to 2008 (Harrendorf et al. 2010). The most recent UNODC homicide statistics can be found in its new publication, The 2011 Global Study on Homicide. The objective of this international statistics is to improve the availability of crime and criminal justice information and to expand the knowledge of crime trends. UNODC collects homicide data from a variety of data sources, including data collected by UN-CTS, data collected by other cross-national crime statistics sources such as Interpol and Statistical Office of the European Communities, international public health data such as data collected by WHO and Pan American Health Organization, and 33 national law enforcement and criminal justice data sources. One of the strengths of this dataset is that all sources used are fully referenced in the dataset and a methodological description is also provided (Harrendorf et al. 2010).

According to the IHS dataset, in 2004 the world average homicide rate was 7.6 per 100,000 population. Homicide rates (per 100,000 population) in 2004 for the 16 subregions of East Africa, North Africa, South America, Central Asia and Transcaucasian Countries, East Asia, Near and Middle East/South West Asia, South Asia, East Europe, South East Europe, West and Central Europe, and Oceania are presented in the map in Fig. 2.1. The map also suggests that the highest homicide levels are found in the Americas and Africa region, with the lowest homicide levels generally in countries of Europe. Homicide rates in Asia are also relatively low. The homicide data by country shows that in 2004 Kazakhstan, Cambodia, Democratic People's Republic of

Korea, Myanmar, and Philippines had the highest estimated homicide rates in Asia, while Hong Kong, Japan, Qatar, and United Arab Emirates had the lowest.

It should be noted that the IHS dataset does not include killings in armed conflict committed by groups of up to several hundred members. Therefore, the homicide data presented here should be interpreted with caution in countries affected by armed conflict. It is also important to note that the IHS dataset is about intentional homicide, that is, unlawful death purposefully inflicted on a person by another person. In other words, negligent homicides are not included. Thus, the method used by IHS captures the most basic commonality between the various data sources. Further, because of differences in the definition of homicide, countries may or may not count offenses such as assault leading to death, euthanasia, infanticide, or assistance with suicide in the homicide data. As a result, the differences in intentional homicide data here between countries and regions reflect not only the different numbers of killings across areas but also the extent to which countries and regions classify different types of killing as homicide (UNODC 2004).

2.3 Recent Homicide Trends in Asia

The UNODC's (2010) international homicide data can be used to depict the changes in homicide rates over time in many countries. However, as explained above, comparisons between countries should be made with caution. In addition, data recording method in one country may also change over time. The average intentional homicide rates for countries in Asia and Oceania from 2003 to 2008 are presented in Fig. 2.2. Due to the incomplete information of some countries, not all the countries are included. The homicide trends in recent

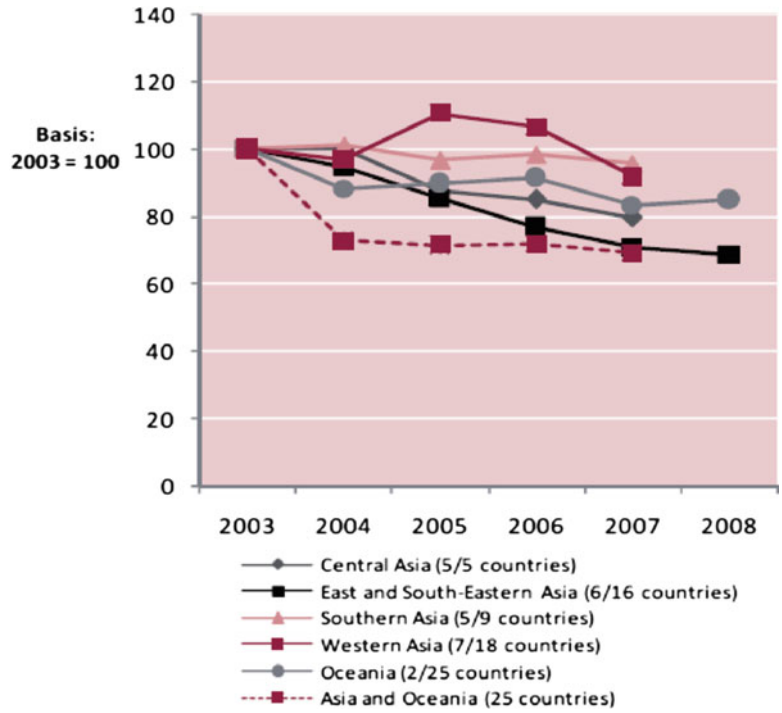

Fig. 2.2 Average international homicide rates for countries in Asia and Oceania (2003–2008) (Harrendorf et al. 2010)

Table 2.1 Homicide trends in Central Asia and Transcaucasian countries, 2003–2008 (UNODC 2010)

	2003		2004		2005		2006		2007		2008	
Country	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health
Armenia	2.48	1.96	2.45		1.79		2.44	1.89	2.31		2.53	
Azerbaijan	2.20	2.56	2.40	1.87	2.27		2.23		2.04			
Georgia	6.60		6.22	3.67	9.03		7.32		7.57			
Kazakhstan	13.28	14.74	13.85	15.99	11.87	14.33	11.30	13.28	10.75	12.70	10.56	
Kyrgyzstan	8.19	6.04	8.07	6.31	9.40	7.24	8.44	6.38	7.78			
Tajikistan	2.57	2.90	2.20	2.34	2.40	1.88	3.44		2.29			
Turkmenistan	8.78		7.81	8.82	3.34		2.89					
Uzbekistan	2.74		3.70	3.54	3.46		3.24					

Table 2.2 Homicide trends in East Asia, 2003–2008 (UNODC 2010)

	2003		2004		2005		2006		2007		2008	
Country	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health
Brunei Darussalam	0.56		1.38	1.10	0		0.53					
Cambodia	3.79		3.74	18.57	3.23							
China	1.88		1.90	2.12	1.58		1.36		1.21			
Guam	4.90		5.42		4.15		6.43		0.58			
Hong Kong	0.73		0.64									
Indonesia	0.77		0.66	9.295								
Japan	0.50		0.50	0.54	0.46		0.44		0.40		0.54	
Democratic Republic Korea				19.25								
Lao				5.17								
Malaysia	2.29			9.37	1.94		2.31					
Mongolia	13.97		13.15	3.30	12.12		12.05		11.41		7.91	
Myanmar				15.58								
Philippines	7.82		7.56	20.84	7.53		7.11		6.72		6.44	
Republic of Korea	2.12		2.29	2.21	2.23		2.25		2.32		2.30	
Singapore	0.58		0.50	1.31	0.49		0.39					
Thailand	9.97		6.55	6.75	7. 80		7.55		6.62		5.90	
Timor-Leste				12.52								
Vietnam				3.81	1.72		1.85					

years suggest that on average, homicide rates are going down slowly, and there have not been abrupt increases or decreases from year to year. The country level data collected by UNODC are also grouped by subregion and presented in Tables 2.1–2.4. Because of the discrepancies in the police data and public health data, both data are presented when available. Information of the data sources for each country can be obtained at the website of UNODC. Homicide rate is the number of homicide per 100,000 population.

Table 2.3 Homicide trends in near Middle East/South West Asia, 2003–2008 (UNODC 2010)

	2003		2004		2005		2006		2007		2008	
Country	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health	Police	Public health
Afghanistan				3.44								
Bahrain	0.43		0.98	1.12	0.55		0.94		0.53		0.77	
Bangladesh			2.59	7.79	2.24		2.65		2.45		2.56	
Bhutan	0.81		2.37	4.26	1.69		1.36					
India	2.99		3.02	5.50	2.89		2.83		2.77			
Iran	2.60		2.88	2.49								
Iraq				7.31								
Israel	3.02		2.63	4.75							2.43	
Jordan	1.91		1.83	6.83	1.20		1.74					
Kuwait	1.15			1.38								
Lebanon				2.46	2.30		0.56					
Occupied Palestinian Terr.	2.68		3.99		3.85							
Oman	0.87			1.98					0.66		0.65	
Pakistan	5.89		5.99	3.40	5.81		5.93		6.10		6.81	
Qatar	0.55		0.75	1.00	0.68		0.20		2.64		1.01	
Saudi Arabia			1.03	3.22	0.92				0.85			
Syrian Arab Republic	1.05		1.14	2.57	1.08		1.21		3.03			
United Arab Emirates	1.20		0.69	0.48	1.37		0.92					
Yemen	3.55		3.16	2.50	4.49		4.41		4.03			

Table 2.4 Homicide trends in South Asia, 2003–2008 (UNODC 2010)

	2003		2004		2005		2006		2007		2008	
Country	Police	Public Health	Police	Public Health	Police	Public Health	Police	Public Health	Police	Public Health	Police	Public Health
Bangladesh			2.59	7.79	2.24		2.65		2.45		2.56	
Bhutan	0.81		2.37	4.26	1.69		1.36					
India	2.99		3.02	5.503	2.89		2.83		2.77			
Maldives				1.73					2.99		2.62	
Nepal	3.28		2.84	13.56	2.07		1.83		2.249			
Sri Lanka	6.82		7.11	6.78	6.25		10.38		8.36		7.42	

2.4 Social Factors and Homicide

The macro-level empirical research on homicide has described and analyzed a number of factors that are correlated with homicide rates, and majority of this body of research has studied the homicide rates over time with a comparative approach. Some Asian countries and regions such as Japan, Singapore, Hong Kong, and Taiwan are often selected in the comparative research, and the social factors that have been studied in the literature include availability of firearms, use of capital punishment, youth population, population

diversity, democracy, modernization, social stress and support, and many others. This section reviews the empirical literature that has studied homicide rates in Asian countries.

2.5 Use of Firearm in Homicide

The availability of firearms often plays an important role in homicide rates. In the UNODC 2010 report of International Statistics of Crime and Justice, it is found that areas with high homicide rates are usually the areas with the highest percentage homicide with firearms (Harrendorf et al. 2010). Data from Fig. 2.3 suggest that Asian countries are similar to European countries in terms of the percentage of homicides with firearm. In contrast, Americas have the highest percentage of homicides with firearm in the world.

In a cross-national study on homicide among children, Krug et al. (1998) specifically examined the homicide rates among children in the USA with those in other countries. In this study, the selected countries were high-income countries defined by World Bank in 1994, among which Asian countries and regions included Singapore, Japan, Israel, Taiwan, and Hong Kong. The data about childhood homicide were between 1990 and 1995. Krug et al. found that among the Asian countries selected, Israel had the highest firearm-related homicide rates for children, while other Asian countries in the study had the lowest firearm-related homicide rates. However, inconsistent with the findings reported by Harrendorf et al. (2010), Israel did not have the highest total homicide rate. In fact, among the Asian countries studied, Singapore had the highest nonfirearm-related homicide rate for children and also the highest total homicide rate for children.

2.6 Capital Punishment and Homicide

Research using homicide data has explored the deterrent effect of capital punishment on homicide. The major concern of this body research is whether the threat of execution deters homicide better than other criminal sanctions. As the most serious violent crime, homicide usually receives the harshest punishment in the criminal justice system, and when available, death penalty is often used. Often, the public are strongly supportive of a death penalty for murder (Johnson 2006).

According to Zimring and Johnson (2008), Asian countries provide a better context to explore the deterrent effect of capital punishment. First, there is a great variety of political systems and policies toward capital punishment in Asia.

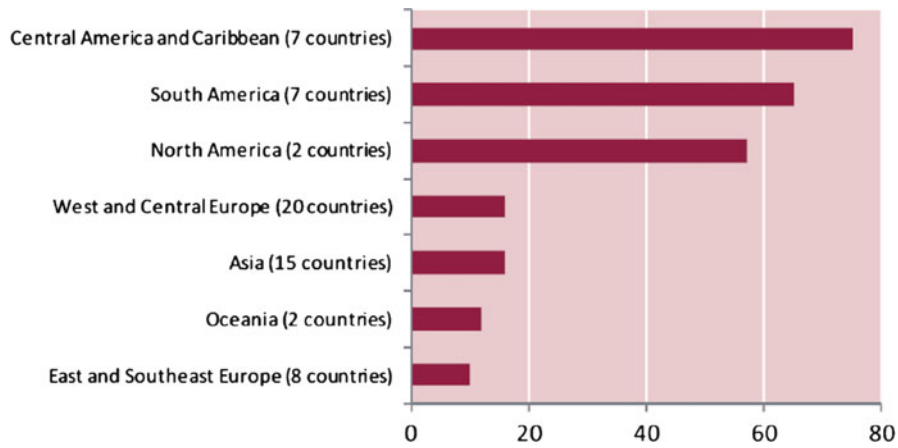

Fig. 2.3 Percent of homicide committed with a firearm, 2003–2008 (Harrendorf et al. 2010)

Second, many Asian countries are undergoing rapid changes in death penalty laws and practices. Third, Asian countries are less influenced by the European culture, which provides more social contexts for comparative analyses and theory generalization. Fourth, most of the executions in the world are carried out in Asia, ranging from 85 to 95% in recent years. In addition, about 95% of Asian populations live in the jurisdictions which use capital punishment (Zimring and Johnson 2008).

Zimring et al. (2010) studied the deterrent effects of capital punishment on homicide trends in Asia. Specifically, this study used Hong Kong as a comparison city to examine the impacts of executions on homicide rates in Singapore over time. According to Zimring et al., there are similarities between Singapore and Hong Kong with regard to many aspects including population density, annual population growth, economic growth, adult literacy, birth rate, migrants-population ratio, and life expectancy. In addition, homicide levels and trends are remarkably similar in these two cities over 35 years after 1973.

In Singapore, offenders convicted of murder will be sentenced to death. Zimring et al. (2010) combined different sources of data and described that murder executions in Singapore rose in 1992 and dropped back quickly after the 1994–1995 peak. Further, homicide trials in Singapore often take a few months with a speedy appeal process after conviction. In contrast, Hong Kong had no executions from 1967 to 1998, and since 1993, mandatory life sentences are imposed for murder.

To explore the relationship between execution rates and homicide rates in Singapore, Zimring et al. (2010) used the murder rate in Hong Kong as a control variable in the statistical analyses. They estimated 14 models of homicide trend in Singapore during 1973–2007 and its shorter trend during 1981–2007. They concluded that the changes in execution levels had no significant impacts on the homicide trend in Singapore. Specifically, the decline in homicide rate happened before the sudden increase in executions in 1992, and the changes of homicide rate over time were largely unrelated to the extent of execution.

2.7 Youth Population and Homicide

Youth violence is a widespread problem around the world, and the highest homicide rate has been usually found among males between the ages of 15 and 29. Research showed that homicide rates among youth aged 10–24 increased in many parts of the world between 1985 and 1994 (Legge 2008). The research literature provides a wealth of approaches, focusing on different levels of explanations: individual, situational, and social cultural and economic factors. Among these factors, prior research often emphasizes the importance of the socioeconomic status of the family and of youth. According to Legge (2008), the international labor data showed that working poverty among youth was especially prevalent in sub-Saharan Africa and South Asia.

Some criminologists contend that the effect of age on crime is invariant across crime categories and cultural conditions (Gottfredson and Hirschi 1990). In other words, the age effect on crime is everywhere and at all times the same because crime declines as age increases. Empirical studies on homicide rates in some Asian countries suggest that this thesis needs to be modified.

Johnson (2008), for example, described Japan's postwar homicide decline and the vanishing young killers in particular. Japan's homicide rate has dropped 70% and become one of the lowest homicide rates in the world. According to Johnson, the World Health Organization data showed that the Japan's homicide rate was 0.6 per 100,000 population in 2002, a rate that was about half the mean and the median for other developed nations. Comparing with other Asian countries, Japan also had few homicides. According to Hasegawa and Hasegawa (2000), Japan's postwar decline in homicide rate has made it an extraordinary country.

According to Johnson (2008), the most plausible explanation for Japan's homicide drop was best described demographically. Johnson found that Japan was a striking exception to the pattern found in other nations where young males were most likely to kill. Data showed that, in contrast, the most murderous demographic in Japan was

men in their 40s and 50s. In fact, Japan's homicide rate in 2000 was higher among men in their 50s than among males aged 20–24. Further, young Japanese males, those born after 1960, committed fewer murders than previous cohorts of young males did. Data showed that young Japanese males now committed one-tenth as many homicides as their counterparts did in 1955. Thus, young Japanese males not only commit fewer murders than youth in other countries, they kill far less frequently than their predecessors did in previous decades.

It is not common to find countries where the propensity to kill peaks so late. However, Johnson (2008) found that South Korea resembled Japan. Johnson collected data from the reports by the Supreme Prosecutors Office of South Korea. According to the official data, in 2004, only 13.1% of suspects indicted for homicide in South Korea were aged 30 or under. Compared with the homicide rate in Japan, South Korea's total homicide rate (excluding attempts) was a little higher at the rate of 1.67 per 100,000 in 2004. Taken together, the findings on homicide from Japan and South Korea suggest that how homicide rates are patterned can vary across countries, and the different patterns in Japan and South Korea are indeed noteworthy.

The Japanese decline is a notable trend, because homicide tends to increase during the industrialization process (LaFree and Drass 2002). However, very limited research has studied the homicide drop in Japan and especially the homicide drop among young Japanese. This body of research attempted to offer some explanations. For example, Roberts and LaFree (2004) studied the declining levels of economic stress in postwar Japan on homicide rates. Extant explanations also include social structure (Park 2006) and culture (Komiya 1999).

Hiraiwa-Hasegawa (2005) developed a risk-assessment explanation. They argue that young males became more risk averse in the postwar period. During this period time, income and educational level rose, while inequality and the average number of children per household declined due to the nation's postwar economic achievements. Further, In Japan, homicide was a very risky way of resolving conflict. First, there is a high probability that would be assailants will themselves be injured by acts of self-defense. In Japan, weapon is used in most homicides, and about 60% of all instruments of death are knives. In contrast, guns are used in only about 5% of homicides. Second, the homicide clearance rate in Japan is extremely high, and it is very likely that a successful killer will be caught by the police. Data show that the Japanese police clear about 96% of all homicides reported to the police, while the chance of getting away with murder is about 1 in 3 for America, in 4 for France, and just 1 in 25 for Japan (Finch 2001). For the above reasons, it is argued that murder is relatively rare in Japan.

2.8 Population Diversity and Homicide

Population diversity can be described along two dimensions: heterogeneity and inequality (Avison and Loring 1986). Heterogeneity is based upon the distribution of a population among groups in terms of nominal parameters such as ethnicity, race, language, or religion. Inequality refers to status distribution in terms of a graduated parameter such wealth, income, or education (Blau 1977).

Cross-national studies have often reported a positive correlation between income inequality and homicide rates. This correlation suggests that in a country where income inequality is high, homicide rate is also high, and this correlation has been observed by studies employing different samples of nations, different measures of variables, and different control variables (Braithwaite and Braithwaite 1980; Kick and LaFree 1985; Messner 1980). However, the evidence concerning the effects of heterogeneity on homicide is less clear.

Using homicide data from the World Health Organization from 1967 to 1971, Avison and Loring (1986) examined the impact of income inequality and ethnic heterogeneity on homicide rates for a sample of 32 nations and regions. This

sample included Japan, Hong Kong, Philippines, Thailand, and Taiwan. They found that the two dimensions of population diversity had significant main effects on cross-national homicide. Specifically, as heterogeneity and inequality increase, the homicide rate increases. In addition, increased ethnic heterogeneity exacerbated the impact of income inequality on homicide rates.

2.9 Democracy and Homicide

There were simultaneous increases in democratization and violent crime rates in many countries during the second half of the twentieth century. According to Potter et al. (1997), this rapid political transformation began in Southern Europe in the 1970s, spread to Latin America and parts of Asia in the 1980s, and then moved on to areas of sub-Saharan Africa, Eastern Europe, and the Soviet Union in the late 1980s and early 1990s.

LaFree and Tseloni (2006) studied whether the wave of democratization in the last half of the twentieth century could explain the global rise in violent crime rates. They collected annual time-series data from WHO on homicide victimization rates per 100,000 population in 44 countries for varying years between 1950 and 2000. Asian countries such as Japan, Israel, Philippines, Singapore, and Thailand were included in the analysis.

In this study, the democracy measure was derived from evaluations of four characteristics of national governments. These four characteristics included the competitiveness of political participation, the openness of executive recruitment, the competitiveness of executive recruitment, and the constraints on the chief executive.

According to LaFree and Tseloni (2006), violent crime rates are curvilinear with the highest rates in countries that are transitioning between autocracy and democracy. In other words, homicide rates of full democracies on average may not be significantly different from countries with autocratic governments. Further, countries moving from autocratic to transitional democracies will experience a significant increase in homicide rates.

2.10 Modernization and Homicide

The modernization perspective asserts that crime booms are inevitable results of the rapid social changes experienced by nations that are in transition from traditional to modern forms of organization (Lafree and Drass 2002). According to this perspective, crime results when modern values and norms come into contact with and disrupt older, established systems of role allocation. During the transitional period, the emerging new roles are not fully institutionalized and integrated into society, making normative guidelines ambiguous, which in turn disrupt the traditional forms of social organization. Involved in this transitional process are a wide range of concepts in criminological theories, including social disorganization, anomie, breakdown, tension, and strain. These concepts help explain why modernization is linked to rising crime rates and other forms of deviance. It suggests that crime booms are most likely to occur in industrializing societies as they are shifting from agricultural to industrial and service economies (LaFree and Drass 2002).

According to LaFree and Drass (2002), the modernization perspective emphasizes crime booms which are defined as positive, rapid, and lasting changes in crime rates. To explain crime booms and test the effects of industrialization and modernization, LaFree and Drass used annual homicide victimization data of 34 nations from 1956 to 1998 and assembled an annual time-series dataset of WHO homicide victimization rates. The sample included three industrialized countries and regions from Asia, and they are Singapore, Hong Kong, and Japan. However, all the industrializing nations in the sample were from east European and Latin American countries. In support of modernizaitonalists, this comprehensive study found that 70% of industrializing nations had homicide booms.

In contrast, fewer than 21% of industrialized nations did. Thus, Lafree and Drass concluded that homicide trends were a more urgent contemporary problem in the industrializing countries than in the industrialized countries. However, the implications of this finding for Asian countries

are limited because none of the industrializing countries in Asia were included in this analysis.

2.11 Social Stress, Support, and Homicide

Agnew (1992) points out that failure to achieve expectations may lead to such emotions as anger, resentment, rage, dissatisfaction, disappointment, and unhappiness, which are emotions customarily associated with strain in criminology. In his general strain theory, Agnew emphasized strain as the key concept for understanding and explaining crime and delinquency in general. Macro-level empirical research has considered violent crime to be major possible response to social stress. For example, in two comparative analyses of social stress in the 50 states of the USA, it is reported that stressful life events were positively correlated with all seven index crimes. Specifically, the higher the state stress level, the higher the crime rates for these states (Linsky and Straus 1986; Linsky et al. 1995).

Israel has been studied to explore the influences of social stress and social support on homicide and other violent behavior. Landau (1988) investigated at the aggregate level the relationship between the subjective perception of social stress and support and violence (i.e., homicide and robbery) in Israeli society. The analysis was based on monthly data for the years 1967–1979. Violent crime was positively related to most of the subjective stress indicators and negatively related to the subjective perception of national solidarity.

Landau (1997) reexamined the effects of social stress and social support on homicide for the years 1979–1993. According to Landau, replication over time was particularly important in the case of Israel, due to the dynamic and highly stressful characteristics of this society. The period of 1979–1993 was characterized by major crises and dramatic events in Israel's security and economy. The most salient were the war in Lebanon, the Palestinian uprising, and the Gulf War. In addition, these years witnessed times of economic prosperity as well as economic hardship, recession, dramatic increases in the rate of inflation, labor disputes, prolonged strikes, terrorist attacks, and other acts of violence.

In the follow-up study by Landau (1997), the independent variables related to stress included the state of the country and government handling (regarding general situation, economic situation, security situation, and political situation) and personal situation (personal economic situation), coping, and mood. The independent variables related to national solidarity included solidarity between ethnic groups, solidarity between religious and secular groups, and readiness for economic sacrifices. This study found that economic stress had the most permanent and consistent effects over time on homicide, and the effects of social solidarity on homicide were stable over time. The consistent and permanent effect of economic stress on homicide in both studies is especially noteworthy. The findings are also in line with a wide range of studies connecting objective economic stress factors such as inflation and unemployment with homicide.

2.12 Suicide and Homicide

There are patterns about suicide and homicide in a society, and some social factors may be correlated with both suicide and homicide. In a study of 64 countries and regions, including China, Hong Kong, Israel, Japan, Korea Republic, Singapore, Macau, and other countries in the world, He et al. (2003) examined lethal violence (i.e., suicide and homicide) during 1989–1993. The predictors of this study included factors such as income inequality, economic development, unemployment rate, and divorce rate.

He et al. (2003) found that income inequality and economic development were not related to lethal violence but were related to the tendency of suicide over homicide. In particular, high inequality reduced the tendency to express frustration inwardly against oneself and increased the tendency to express frustration outwardly against other people. Further, the economic development increased the tendency to express one's frustration inwardly against oneself and reduced the tendency of expressing one's frustration against

others. Finally, they found that divorce increased both suicide and homicide in the contemporary societies of the world.

Consistent with the findings of He et al. (2003), Japan's homicide and suicide rates are noteworthy. As a country of one of the lowest homicide rates in the world, Japan has a high suicide rate. According to Johnson (2008), postwar developments have made Japan affluent without creating extreme social inequalities or the concentrations of poverty. Empirical research shows that homicide problems are usually correlated with social inequality, and thus homicide is not a serious problem in Japan. During the postwar period, the homicide rate had reduced significantly. In contrast, suicide rate is high in Japan. The combined rate of lethal violence (i.e., homicide and suicide) in Japan exceeds that for every other industrialized nation, and it is about twice the average for all industrialized countries (Johnson 2008). Particularly, males commit about three quarters of suicides in Japan, and since 1998 the nation's suicide rate has risen substantially among several subpopulations, including young men (Miyazaki and Otani 2004). According to Johnson (2008), about 40 times more Japanese kill themselves than kill other people.

2.13 Homicide Clearance

Clearance rate is a measure of crimes solved by the police, and homicide clearance is usually relatively high among all the categories of violence. However, homicide clearance varies across country, and the Japan's high homicide clearance rate is remarkable. In a comparative study, Roberts (2008) shows that homicide clearance rates in Japan and USA are stable between 1994 and 2004. However, Japanese homicide clearance rates were around 95% compared with roughly 60% in the United States.

There are a number of reasons for the extremely high homicide clearance rate in Japan. Studies have focused on the high level of citizen cooperation and the good police–citizen relationship in Japan which are essential parts of homicide investigation (Bayley 1991; Fujimoto 1994; Rake 1987; Litwin 2004; Riedel and Jarvis 1998). In addition to these studies, Roberts (2008) has focused on the characteristics of homicides in Japan and the categorization of homicide in official statistics as an explanation for the much higher homicide clearance rate in Japan than in other countries such as the United States.

Using official summary statistics from 2000 to 2004, Roberts (2008) found that homicides in Japan contained a higher proportion of easy-to-clear cases, including those with nonfirearm weapons, family member offenders, and child victims. First, homicide clearance studies have found that cases involving a firearm weapon are less likely to clear than those involving a knife or strangulation, because of the lack of close contact with the victim and less physical evidence (e.g., offender's hair, blood, and fingerprints) (Regoeczi et al. 2000; Litwin 2004; Puckett and Lundman 2003; Addington 2006). In Japan, the general public is banned from owning firearms. Between 2000 and 2004, only 3.4% of homicides in Japan were committed with firearms, and most homicides were committed with knives, blunt objects, or by strangulation. In contrast, 65.7% of the homicides in the United States were committed with firearms. Second, homicides committed by known offenders, especially family members, have much greater chance of clearance than homicides by strangers (Riedel and Rinehart 1996; Roberts 2007). Offenders in family-related homicides are more likely to confess than offenders unknown to the victims. Also, family-related homicides tend to have more potential eyewitnesses. Third, homicide incidents with child victims have usually been found to have greater chance of clearance due to the restricted routine activities of children (Regoeczi et al. 2000; Puckett and Lundman 2003; Addington 2006; Riedel and Rinehart 1996).

Roberts (2008) also found that categorization of homicides in Japanese official statistics included attempted homicides and excluded robbery-related homicides, which could also explain the differences between the clearance rate for homicide in Japan and that in other countries. In Japan, robbery-related homicide cases were less likely than other homicides to be cleared. Between

2000 and 2004, non-robbery-related homicide clearance rates averaged 94.7%, whereas robbery-related homicide clearance rates averaged 84.9%. In recent years, about half of the Japanese cases categorized as "homicide" were actually attempted homicides. However, the clearance rates for the two types of offenses in Japan are not very different: 95.8% for attempted homicides and 93.4% for completed homicides. In sum, though categorization of homicides in Japan may be different when comparing with other countries, the overall clearance in Japan is consistently high.

2.14 Conclusion

There are a number of international homicide data sources, and three data sources including Interpol, UN-CTS, and WHO are often used by scholars to describe international homicide trends. These data sources sometime provide different estimates, because there are definitional differences among these data sources. In addition, countries vary in their legal definitions and reporting practices to the international data sources. Using these data sources, empirical research has explored homicide trends in Asia and offered a number of explanations for the homicide trends. These studies are usually at the macro-level, and the factors that have been studied include firearms, capital punishment, population characteristics (such as youth population and population diversity), and social characteristics (such as democracy, modernization, and social stress). Homicide clearance is also analysis with a comparative approach.

Though empirical research has offered a broad range of explanations for homicide trends, not all the Asian countries have been extensively analyzed. Some countries and regions (such as Japan, South Korea, Singapore, Taiwan, Israel, Hong Kong) are more studied than other countries in the comparative research. Future research should address this limitation by improving current cross-national data sources on homicide and including more Asian countries in the comparative analyses.

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Curbing Corruption and Enhancing Trust in Government: Some Lessons from Singapore and Hong Kong

3

Jon S.T. Quah

3.1 Introduction

According to Transparency International's Corruption Perceptions Index (CPI) in 2010, corruption remains a serious problem in many Asian countries. Similarly, the *Global Competitiveness Report 2009–2010* also confirms that the public trust of politicians is low in these countries. However, unlike the other Asian countries, Singapore and Hong Kong are not seriously affected by corruption as reflected in their top two ranking and scores among Asian countries on the 2010 CPI and the 2009–2010 Public Trust of Politicians indicator in the *Global Competitiveness Report.*

The purpose of this chapter is twofold. The first aim is to identify the causes of the high level of corruption and low level of public trust of politicians in Asian countries. Second, this chapter discusses how these two problems can be tackled by referring to the successful experiences of Singapore and Hong Kong. This chapter is divided into seven sections. The first two sections focus respectively on the nature of corruption and low level of public trust of politicians in many Asian countries. The causes of these two problems are analyzed in the third and four sections. The fifth section discusses government effectiveness in Asian countries according to three indicators. The sixth section identifies the lessons to be learnt from Singapore's and Hong Kong's success in curbing corruption and enhancing trust in government. This chapter concludes that it is not possible for other Asian countries to adopt Singapore's and Hong Kong's experiences because of their contextual differences. Nevertheless, these Asian countries should realize that political will is needed to curb corruption and an effective civil service is an important prerequisite for enhancing the citizens' trust in their government.

3.2 Corruption in Asian Countries

The United Nations Development Programme (UNDP 1999, p. 7) has defined corruption as "the misuse of public power, office or authority for private benefit—through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement." However, for this chapter, corruption is defined as "the misuse of public *or private* power, office or authority for private benefit." This modified version of the UNDP's definition of corruption is adopted here for two reasons: it identifies the seven major forms of corruption; and it applies to both the public and private sectors.

Table 3.1 confirms that corruption is a serious problem in many Asian countries as it shows that among the 25 Asian countries included in the 2010 CPI, only three countries have attained

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Table 3.1 Corruption Perceptions Index 2010 of 25 Asian countries

Country	Rank	Score[a]
Singapore	1st	9.3
Hong Kong SAR[b]	13th	8.4
Japan	17th	7.8
Taiwan	33rd	5.8
Bhutan	36th	5.7
Brunei	38th	5.5
South Korea	39th	5.4
Macao SAR[b]	46th	5.0
Malaysia	56th	4.4
China	78th	3.5
Thailand	78th	3.5
India	87th	3.3
Sri Lanka	91st	3.2
Indonesia	110th	2.8
Mongolia	116th	2.7
Vietnam	116th	2.7
Timor-Leste	127th	2.5
Bangladesh	134th	2.4
Philippines	134th	2.4
Pakistan	143rd	2.3
Nepal	146th	2.2
Cambodia	154th	2.1
Laos	154th	2.1
Myanmar	176th	1.4
Afghanistan	176th	1.4

Source: Compiled from http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

[a]The score ranges from 0 (highly corrupt) to 10 (very clean)

[b]Hong Kong and Macao are Special Administrative Regions of China

a score above 7.0, namely, Singapore (9.3), Hong Kong (8.4), and Japan (7.8). Among the other 22 countries, Taiwan (5.8), Bhutan (5.7), Brunei Darussalam (5.5), South Korea (5.4), and Macao SAR (5.0) are the only five countries with a CPI score of 5.0 and above. At the other extreme, there are 12 countries with CPI scores below 3.0, with Myanmar (1.4) and Afghanistan (1.4) being perceived as the most corrupt Asian countries.

Similarly, Table 3.2 provides the 2009 data on the World Bank's Control of Corruption governance indicator for 26 Asian countries and confirms that Singapore, Hong Kong, and Japan are the three least corrupt countries in Asia. Brunei, Bhutan, Taiwan, and South Korea are the other four Asian countries with a percentile rank above 70. At the other extreme, Table 3.2 also shows that Laos, Cambodia, North Korea, Afghanistan, and Myanmar are perceived to be the five most corrupt Asian countries. The remaining 14 countries had percentile ranks ranging from 13.3 for Pakistan, to 68.1 for Macao SAR.

3.3 Public Trust of Politicians in Asian Countries

As corruption is a serious problem in many Asian countries, it is not surprising that their citizens do not have a favorable view of their politicians as reflected in their distrust of politicians' honesty. Tables 3.3 and 3.4 show that among the 20 Asian countries only Singapore and Hong Kong are the

Table 3.2 Control of corruption in 26 Asian countries, 2009

Country	Percentile rank (0–100)	Governance score (−2.5 to +2.5)
Singapore	99.0	+2.26
Hong Kong SAR	94.3	+1.84
Japan	87.1	+1.35
Brunei	79.0	+0.96
Bhutan	75.2	+0.84
Taiwan	72.4	+0.57
South Korea	71.4	+0.52
Macao SAR	68.1	+0.40
Malaysia	58.1	+0.02
Thailand	51.0	−0.23
India	46.7	−0.33
Sri Lanka	44.8	−0.36
Vietnam	36.7	−0.52
China	36.2	−0.53
Indonesia	28.1	−0.71
Philippines	27.1	−0.71
Nepal	25.2	−0.75
Mongolia	23.8	−0.77
Bangladesh	16.7	−0.96
Timor-Leste	15.7	−0.99
Pakistan	13.3	−1.10
Laos	9.5	−1.14
Cambodia	8.6	−1.18
North Korea	3.3	−1.39
Afghanistan	1.4	−1.57
Myanmar	0.0	−1.75

Source: Compiled from http://info.worldbank.org/governance/wgi/mc_chart.asp

Table 3.3 Public trust of politicians in selected Asian countries, 1999–2009/2010

1999	2000	2001–2002	2002–2003	2003–2004	2007–2008	2009–2010
1. Singapore (6.36)[a]	1. Singapore (6.5)	1. Singapore (6.4)	1. Singapore (6.4)	1. Singapore (6.5)	1. Singapore (6.4)	1. Singapore (6.4)
11. Hong Kong SAR (4.92)	7. Hong Kong SAR (5.5)	10. Hong Kong SAR (4.2)	5. Hong Kong SAR (5.2)	13. Hong Kong SAR (4.4)	11. Hong Kong SAR (5.2)	15. Hong Kong SAR (4.8)
20. Vietnam (3.87)	24. Vietnam (3.4)	15. Vietnam (3.8)	12. China (4.4)	19. Malaysia (3.8)	18. Malaysia (4.6)	20. Brunei (4.4)
26. China (3.5)	29. Malaysia (3.1)	18. China (3.8)	21. Vietnam (3.8)	20. China (3.8)	22. South Korea (4.0)	26. China (4.0)
27. Taiwan (3.46)	32. China (3.0)	29. Taiwan (3.2)	24. Malaysia (3.6)	24. Taiwan (3.6)	33. Japan (3.4)	33. Malaysia (3.8)
30. Malaysia (2.95)	34. Japan (2.9)	37. Thailand (2.8)	30. Taiwan (3.2)	25. Vietnam (3.5)	45. China (3.1)	36. Vietnam (3.6)
31. Japan (2.89)	35. Taiwan (2.9)	38. Malaysia (2.8)	36. Thailand (2.6)	38. Indonesia (3.1)	52. Vietnam (2.9)	42. Taiwan (3.4)
41. Indonesia (2.26)	40. Indonesia (2.5)	40. Japan (2.6)	39. South Korea (2.3)	40. Thailand (2.9)	57. Taiwan (2.8)	52. Indonesia (3.2)
45. Thailand (2.22)	44. South Korea (2.3)	49. India (2.1)	46. Sri Lanka (2.1)	42. South Korea (2.9)	60. Thailand (2.7)	54. Japan (3.1)
48. South Korea (2.1)	47. Thailand (2.1)	51. South Korea (2.1)	50. Japan (2.0)	51. Japan (2.3)	63. Indonesia (2.6)	55. Timor-Leste (3.1)
49. Philippines (2.02)	51. Philippines (2.0)	52. Philippines (2.1)	57. India (1.9)	56. Sri Lanka (2.2)	67. Cambodia (2.6)	59. Cambodia (3.0)
53. India (1.85)	53. India (1.9)	53. Indonesia (2.0)	61. Indonesia (1.7)	72. Pakistan (1.8)	70. Sri Lanka (2.4)	67. South Korea (2.8)
		56. Sri Lanka (2.0)	68. Bangladesh (1.6)	82. India (1.7)	76. Pakistan (2.3)	71. Thailand (2.7)
		69. Bangladesh (1.6)	69. Philippines (1.5)	90. Bangladesh (1.5)	83. India (2.2)	79. India (2.4)
				94. Philippines (1.4)	86. Timor-Leste (2.1)	81. Sri Lanka (2.3)
					118. Nepal (1.7)	82. Pakistan (2.3)
					119. Philippines (1.7)	117. Bangladesh (1.8)
					122. Mongolia (1.6)	119. Mongolia (1.8)
					127. Bangladesh (1.4)	120. Nepal (1.8)
						130. Philippines (1.6)
$N=59$	$N=59$	$N=75$	$N=80$	$N=102$	$N=131$	$N=133$

Sources: Schwab et al. (1999, p. 327, Table 8.19); Porter et al. (2000, p. 253, Table 4.16); Schwab et al. (2002, p. 408, Table 7.07); Cornelius (2003, p. 619: Table 7.12); Sala-i-Martin (2004, p. 499, Table 7.10); Schwab and Porter (2007, p. 379, Table 1.04); and Schwab (2009, p. 349, Table 1.04)

[a]The score ranges from 1 = strongly disagree to 7 = strongly agree with this statement: "Public trust in the financial honesty of politicians is very high." The number in front of the country indicates its rank and the score is indicated within brackets

Table 3.4 Ranking of 20 Asian countries by average scores for public trust of politicians

Country	Total score	Average score	Ranking
Singapore	44.96	6.42	1
Hong Kong	34.22	4.88	2
Brunei	4.40	4.40	3
China	25.6	3.65	4
Vietnam	24.87	3.55	5
Malaysia	24.65	3.52	6
Taiwan	22.56	3.22	7
Cambodia	5.60	2.80	8
Japan	19.19	2.74	9
South Korea	18.50	2.64	10
Timor-Leste	5.20	2.60	11
Thailand	18.02	2.57	12
Indonesia	17.36	2.48	13
Sri Lanka	11.00	2.20	14
Pakistan	6.40	2.13	15
India	14.05	2.00	16
Philippines	12.32	1.76	17
Nepal	3.50	1.75	18
Mongolia	3.40	1.70	19
Bangladesh	7.90	1.58	20

Source: Compiled from Table 3.3

two countries which have consistently been ranked as first and second respectively for the public trust of politicians.

Table 3.4 shows that Singapore is first with an average score of 6.42, and Hong Kong is second with an average score of 4.88. Brunei is third based on its score of 4.40 for 2009–2010 only as it was not included in the previous surveys. Philippines, Nepal, Mongolia, and Bangladesh are the four countries with the lowest average scores of below 2.0. The largest category consists of these nine countries with average scores between 2.0 and 3.0 namely: Cambodia, Japan, South Korea, Timor-Leste, Thailand, Indonesia, Sri Lanka, Pakistan, and India.

Table 3.5 Level of Institutional Trust in Singapore, 2006

Institution	Mean score[a]	Rank
Police	1.89	1
Military	1.91	2
Prime minister	1.94	3
National government	1.94	3
Law courts	1.96	5
Civil service	1.99	6
Parliament	2.07	7
Town councils	2.13	8
National television	2.14	9
National newspapers	2.17	10
International television	2.20	11
Political parties	2.45	12
Nongovernmental organizations	2.73	13

Source: Tan and Wang (2007, p. 2)
[a]The mean score ranges from 1 (high level of trust) to 4 (low level of trust)

The 2006 Asian Barometer Survey on democracy and governance in Singapore has confirmed the *Global Competitiveness Report's* finding that Singaporeans have a high level of trust in their politicians. Table 3.5 shows that the 1,002 Singaporeans in the survey had the highest degree of trust in the police, followed by the military, prime minister and national government (joint third rank), law courts, civil service, parliament, town councils, national television, and the national newspapers, to name the top ten trusted institutions in Singapore.

Table 3.6 Level of Institutional Trust in Hong Kong, 2001

Institution	Very untrustworthy (%)	Untrustworthy (%)	Trustworthy (%)	Very trustworthy (%)
Military	1	16	75	7
Courts	1	17	76	6
Civil service	3	27	68	2
Television	4	27	68	1
National government	3	34	61	3
Parliament	3	36	61	1
Local government	6	38	54	1
Political parties	7	64	29	0

Source: Lam and Kuan (2008, p. 200, Figure 8.2)

In Hong Kong, the 2001 East Asian Barometer (EAB) survey asked respondents how much trust they had in eight public institutions. Table 3.6 shows that the military and courts were the most trusted institutions (82%), followed by the civil service (70%), television (69%), national government (64%), parliament (62%), local government (55%), and political parties (29%). According to Lam and Kuan (2008, p. 201), the high level of distrust of political parties among the Hong Kong respondents can be attributed to "their perceived ineffectuality and hypocrisy."

3.4 Causes of Corruption in Asian Countries

Why is corruption such a serious problem in Asian countries? Leslie Palmier (1985, p. 272) has identified three important causes of corruption from his comparative analysis of anti-corruption measures in Hong Kong, India and Indonesia. According to him:

> Bureaucratic corruption seems to depend not on any one of the [three] factors identified, but rather on the balance between them. At one extreme, with few opportunities, good salaries, and effective policing, corruption will be minimal; at the other, with many opportunities, poor salaries, and weak policing, it will be considerable.

In other words, corruption results from the combined effect of ample opportunities, low salaries, and the low probability of detection and punishment for corrupt behavior. Thus, to combat corruption effectively, the governments in the Asian countries should introduce reforms to minimize if not eliminate these three causes.

Surveys conducted in many Asian-Pacific countries confirm the significance of low salaries as this has been identified as a key cause for corruption by the respondents. For example, a 2001 national survey of 2,300 respondents in Indonesia found that low salaries were identified as the most important cause of corruption by 51.4% of the civil servants, 36.5% of the businesspersons, and 35.5% of the public (Partnership for Governance Reform in Indonesia 2001, p. 39). Similarly, the low salaries of political leaders and civil servants constitute an important cause of corruption in Mongolia as manifested in the difficult living conditions of judges in the countryside where "one out of three judges does not have an apartment. Consequently, some judges live in their office, which is clearly not desirable and does not enhance the status of the judiciary" (McPhail 1995, p. 45). In his survey of civil service pay in South Asia, David Chew (1992, p. 78) found that "despite salary revisions and dearness allowances, starting basic salaries of the five kinds of civil servants in South Asia remained very low in December 1987 by international standards." According to surveys conducted by Transparency International from November 2001 to May 2002 in five South Asian countries, the respondents in Pakistan, Nepal, and Sri Lanka were more likely than their counterparts in Bangladesh and India to identify the low wages of employees in the seven sectors as contributing to corruption (Thampi 2002, p. 9, 20, 23, 26, 28, 31, 34, 37). Hence, it is not surprising that the Third Pay Commission (1970–1973) in India asserted that "the payment of a salary which does not satisfy the minimum reasonable needs of a government servant is a direct invitation to corruption" (Das 2001, p. 105).

In 2002, Thailand's police chief, General Sant Sarutanond, bluntly admitted that Thai policemen "are undereducated and underpaid and that is the reason why they are corrupt." He explained that the starting monthly salary of commissioned police officers was 6,000 baht (US$153) instead of the 20,000 baht (US$500) needed monthly for meeting their expenses in a large city (*Straits Times* 2002, p. A5). In the Philippines, many of the employees of the Bureau of Immigration were under-qualified (they were hired because of nepotism or political patronage) and paid "starvation wages." Consequently, they succumbed to bribery because it was "difficult to survive without accepting bribes" as almost everyone was also doing it (Chua and Rimban 1998, p. 154). Many civil servants in the Philippines supplement their low wages by vending within the office, holding a second job, teaching part-time, practicing their profession after office hours, engaging in research and consultancy projects, and resorting to petty corrupt practices (Padilla 1995, pp. 195–202, 206).

Table 3.7 Ease of doing business in six Asian countries, 2011

Indicator	Singapore	Hong Kong SAR	Japan	India	Philippines	Cambodia
Ease of doing business (rank)	1	2	18	134	148	147
Starting a business (rank)	4	6	98	165	156	170
No. of procedures	3	3	8	12	15	9
Time (days)	3	6	23	29	38	85
Cost (% of income per capita)	0.7	2.0	7.5	56.5	29.7	128.3
Dealing with construction permits (rank)	2	1	44	177	156	146
No of procedures	11	7	15	37	26	23
Time (days)	25	67	187	195	169	709
Cost (% of income per capita)	19.7	19.4	20.8	2143.7	778.5	54.2
Registering property (rank)	15	56	59	94	102	117
No. of procedures	3	5	6	5	8	7
Time (days)	5	36	14	44	33	56
Cost (% of property value)	2.8	4.2	5.5	7.4	4.3	4.3
CPI 2010 rank and score	1st (9.3)	13th (8.4)	17th (7.8)	87th (3.3)	134th (2.4)	154th (2.1)

Sources: World Bank (2010, p. 153, 168, 169, 172, 187) and http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

Red tape and cumbersome administrative procedures provide ample opportunities for corruption. Red tape was an important cause of corruption in South Korea in the past as regulation was usually accompanied by red tape. A company had to submit 44 documents to apply for permission to build a factory. Consequently, it required 3 years to build a factory in South Korea instead of the two and half months required in Austin, Texas. Red tape in South Korea resulted in delay and increased the costs in time and money for business firms, which resorted to bribing civil servants to reduce delay by expediting their applications for permits or licences (Kim 1997, p. 261–262).

South Korea's experience has shown that it is possible to reduce the opportunities for corruption by cutting red tape. In 1998, President Kim Dae-Jung established the Regulatory Reform Committee (RRC) to make South Korea more business friendly by eliminating unnecessary or irrational regulations which hindered business activities or interfered in people's lives. After its first year of operations, the RRC succeeded in eliminating 5,226 or 48% of the 11,115 administrative regulations (Cho 1999, p. 3). In addition to the RRC's efforts, the Seoul Metropolitan Government launched an Online Procedure Enhancement for Civil Applications (OPEN) system in April 1999 to improve civil applications covering 54 common procedures by filing through the Internet. The OPEN system has enhanced the transparency of civil procedures and reduced the opportunities for corruption (Moon 2001, p. 41).

The best way to illustrate the linkage between red tape and corruption is to show that those Asian countries which are not afflicted by red tape as reflected in the ease in doing business are seen to be less corrupt than those countries which suffer from cumbersome administrative regulations and procedures. Table 3.7 shows that the level of perceived corruption in Singapore, Hong Kong, and Japan, where it is easier to do business, is much lower than in India, Philippines, and Cambodia, where it is much more difficult to conduct business because of the greater amount of red tape. For example, in Cambodia, which is

ranked 154th on the 2010 CPI with a score of 2.1, it takes 85 days to start a business, 709 days to deal with construction permits, and 56 days to register a property (World Bank 2010, p. 153).

Thirdly, corruption thrives in those Asia-Pacific countries where the public perceives it to be a "low risk, high reward" activity as corrupt offenders are unlikely to be detected and punished (Quah 2003a, p. 13). According to Palmier, corruption in Indonesia was rampant because it was tolerated as corrupt officials were seldom punished. He concluded that while there was strong policing against corruption in Hong Kong, "policing is very poor in Indonesia, and insufficient in India" (Palmier 1985, p. 280). Mohammad Mohabbat Khan (1998, p. 36) has attributed the high level of corruption in Bangladesh to the low probability of punishment for corrupt officials who are seldom dismissed from the civil service. Similarly, a comparative study of Bangladesh, India, and Sri Lanka found that "official punitive action has seldom been taken against corrupt officials" in spite of the large number of corruption reports (Ahmad and Brookins 2004, p. 29). More specifically, Ahmad and Brookins (2004, p. 24) found that only 15% of the 119 corruption cases in India resulted in official punitive action, followed by 10% of the 77 corruption cases in Bangladesh, and 4% of the 91 corruption cases in Sri Lanka.

In contrast, corruption is not a serious problem in those Asian countries where corruption is viewed as a "high risk, low reward" activity as corrupt offenders are likely to be caught and severely punished. In Singapore, the penalty for corruption is imprisonment for 5 years and/or a fine of S$100,000 (US$81,673 on May 1, 2011). This penalty is impartially enforced on those found guilty of corruption in Singapore regardless of their position or status in society (Quah 2007a, p. 20, 37). The anti-corruption laws are applied "strictly and consistently" in Singapore, and high-ranking corrupt officials are "dealt with in Singapore with a severity rarely seen elsewhere" (*Straits Times* 1996, p. 3). A comparative study by Robert P. Beschel Jr. (1999, p. 8) of the successful prosecution of corrupt offenders in Hong Kong and the Philippines in 1997 confirms the critical role played by punishment in curbing corruption as he found that a person committing a corrupt offence in Hong Kong was 35 times more likely to be detected and punished than his Filipino counterpart.

In short, corruption is a serious problem in many Asian countries today because of the combined impact of the low salaries of civil servants and political leaders, the ample opportunities created for corruption by red tape, and the low probability of detecting and punishing corrupt offenders. Indeed, the inability of most of these countries to curb corruption effectively reflects the lack of political will of their governments to enforce impartially the anti-corruption measures as the "big fish" (rich and powerful) are usually protected from prosecution for their corrupt misdeeds. This lack of political will is the most important reason for the rampant corruption in Asian countries.

In addition to the impartial enforcement of the anti-corruption laws by the anti-corruption agency, there are two other indicators of a government's political will in curbing corruption. First, there must be comprehensive anti-corruption legislation to prevent loopholes and periodic review of such legislation to introduce amendments whenever necessary. A glaring example of lack of political will in fighting corruption is the 15-year delay in passing the draft Anti-Corruption Law in Cambodia. This bill, which was originally introduced in 1994, was not enacted by the government's official deadline of June 2006 (MacLean 2006, p. 17; Ford and Seng 2007, p. 186). On May 16, 2006, a petition with more than one million signatures and thumbprints was presented to the Cambodian National Assembly requesting its members to urgently enact an anti-corruption law. However, this plea fell on deaf ears as Lao Mong Hay (2008) lamented that "deadlines set for the enactment of that law have repeatedly passed and the final draft has not yet seen the light of day." In October 2006, Prime Minister Hun Sen justified the delay in terms of his government's intention that the law should "be as close to perfect as possible, with workable implementation guidelines" drafted on the basis of new penal codes (*Brunei Times* 2006). This delay in enacting the Anti-Corruption Law

Table 3.8 Personnel and budgets of nine Asian anti-corruption agencies in 2008

Anti-corruption agency	Personnel	Budget	Population	Staff–population ratio	Per capita expenditure
Hong Kong ICAC	1,263	US$97.7 million	7.3 million	1:5,780	US$13.40
Singapore CPIB	86	US$11.2 million	4.83 million	1:56,163	US$2.32
South Korea ACRC	466	US$61 million	48.4 million	1:103,863	US$1.26
Mongolia IAAC	90	US$3.1 million	2.7 million	1:30,000	US$1.15
Thailand NACC	740	US$21.3 million	64.3 million	1:86,892	US$0.33
Philippines OMB	1,007	US$19.6 million	89.7 million	1:89,076	US$0.22
Taiwan MJIB	840	US$4.02 million	22.9 million	1:27,262	US$0.18
Indonesia KPK	540	US$31.8 million	234.3 million	1:433,888	US$0.14
India CBI	4,874	US$52.1 million	1,186.2 million	1:243,373	US$0.04

Source: Compiled from Quah (2011, pp. 455–456, Tables 12.9 and 12.10)

after 15 years clearly reflects the Cambodian government's lack of political will in curbing corruption (Quah 2007b, p. 7). Hence, it is not surprising that, as indicated earlier, corruption is rampant in Cambodia.

The second indicator of a government's political will is its provision of adequate legal powers, personnel and budget to enable the anti-corruption agency to perform its functions effectively. Table 3.8 provides comparative data on the budgets and personnel of nine anti-corruption agencies in Asia as well as their staff–population ratios and per capita expenditures. Among the nine anti-corruption agencies, Hong Kong's Independent Commission Against Corruption (ICAC) fares best with a staff–population ratio of 1:5,780 and a per capita expenditure of US$13.40. Singapore's Corrupt Practices Investigation Bureau (CPIB) is ranked second, with a per capita expenditure of US$2.32 and fourth with a staff–population ratio of 1:56,163.

On the other hand, the other seven anti-corruption agencies are poorly funded and staffed, with Indonesia's *Komisi Pemberantasaan Korupsi* (KPK) having the highest staff–population ratio of 1:433,888 and the second lowest per capita expenditure of US$0.14. The Central Bureau of Investigation (CBI) in India has the lowest per capita expenditure of US$0.04 and the second highest staff–population ratio of 1:243,373. South Korea's Anti-Corruption and Civil Rights Commission (ACRC) is third with a per capita expenditure of US$1.26 but ranks seventh with a staff–population ratio of 1:103,863. Mongolia's Independent Authority Against Corruption (IAAC) is ranked fourth with a per capita expenditure of US$1.15 and third with a staff–population ratio of 1:30,000. The National Anti-Corruption Commission (NACC) in Thailand ranks fifth with a per capita expenditure of US$0.33 and a staff-population ratio of 1: 86,892. The Office of the Ombudsman (OMB) in the Philippines is also poorly funded with a per capita expenditure of US$0.22, and under-staffed with an unfavorable staff-population ratio of 1:89,076. Finally, Taiwan's Ministry of Justice Investigation Bureau (MJIB) ranks seventh with a per capita expenditure of US$0.18, but it has the second most favorable staff–population ratio of 1:27,262.

The comparative analysis in Table 3.8 shows that the political leaders in South Korea, Mongolia, Thailand, the Philippines, Taiwan, Indonesia, and India must demonstrate their political will in curbing corruption by increasing

substantially the legal powers, personnel, and budgets of their anti-corruption agencies. For example, the Korea Independent Commission Against Corruption (KICAC) was not a full-fledged anti-corruption agency when it was established in January 2002 as it did not perform the major function required of an anti-corruption agency namely, investigating corruption offences, and its scope was restricted to dealing with public sector corruption only (Quah 2010, pp. 37–38). On February 29, 2008, the KICAC was merged with the Ombudsman and the Administrative Appeals Commission to form the ACRC. However, like the KICAC, the ACRC does not have the power to investigate corruption cases. The South Korean political leaders must remove these two serious obstacles to the ACRC's effective performance if they are committed to curbing corruption in their country.

Similarly, instead of strengthening the KPK, Indonesian President Susilo Bambang Yudhoyono had unwittingly undermined its effectiveness in May 2005 when he formed an anti-corruption taskforce of prosecutors, police, and auditors to compete with the KPK (Quah 2006, pp. 178–179). The conflict and competition between the KPK and the police and the Attorney-General's Office (AGO) erupted recently in the arrest of two senior KPK officials by the police allegedly for bribery. The arrest of these officials in the wake of the arrest of the KPK Chairman for murder is widely viewed as "an apparent high-level conspiracy" by the police and AGO to weaken the KPK (Osman 2009, p. A9).

3.5 Public Trust and Distrust of Politicians

In their analysis of distrust in South Korea, Jun and Kim (2002, p. 2) define trust in terms of a person's reliance on another person, namely "a person is considered reliable when the truster is completely assured that the trustee will not fail to meet the expectation of the truster in need." If trust is defined as "an attitude of optimism about the goodwill and confidence of another person," citizens are likely to trust civil servants who perform their duties effectively and to judge the government as trustworthy. Furthermore, Jun and Kim distinguish between trust in interpersonal relations and trust in institutions. Trust in interpersonal relations is assessed "through the amount of interpersonal competence that people assign others in their current roles" (Jun and Kim 2002, pp. 3–4).

On the other hand, it is difficult to apply trust in interpersonal relations at the institutional level because "as long as people engage in instrumental interactions involving technical–functional work relationships and rational exchanges to gain organizational and personal interest, trust will be difficult to develop." It is difficult to build and sustain trust in the structural relationships in institutions because of the role ambiguity of the actors and institutions involved and the nature of their interactions "which tend to be political, instrumental-rational, and restricted exchange, if not superficial, in many situations." A third difficulty is that there are many factors influencing the level of trust and solidarity at the institutional level including the individuals' "sense of organizational obligation and loyalty, commitment, shared interest, pride, roles, and the necessity for survival, growth, or change" (Jun and Kim 2002, p. 4–5). Fourth, it is also difficult to sustain the expectations of organizational members for a long time.

Finally, it is implausible to expect citizens to trust government institutions because they are "highly unlikely to know the many people working in those institutions." Indeed, trust in institutions depends on whether civil servants perform their roles responsibly and on behalf of the public. However, few citizens are aware of the complex structures and functions of government to assess the performance of civil servants (Jun and Kim 2002, p. 5). Accordingly, citizens evaluate institutions on the basis of their past role performance and the trustworthiness of their staff. Consequently, their level of trust in civil servants and government is enhanced if they perform effectively as expected. On the other hand, the level of distrust by citizens in their government and civil servants increases if they fail to meet their expectations. Opposition political leaders can feed the citizens' distrust of the incumbent government by reminding them of "past broken promises" (Levi 1998, p. 86).

According to Margaret Levi (1998, pp. 85–86), the state creates interpersonal trust among citizens by having the "capacity to monitor laws, bring sanctions against lawbreakers, and provide information and guarantees about those seeking to be trusted." However, if they are doubtful about "the state's commitment to enforce the laws and if its information and guarantees are not credible, then the state's capacity to generate interpersonal trust will diminish." Government institutions can build trust by creating "bureaucratic arrangements that reward competence and relative honesty by bureaucratic agents" because:

> A competent and relatively honest bureaucracy not only reduces the incentives for corruption and inefficient rent-seeking but also increases the probability of cooperation and compliance … and of economic growth. … To the extent that citizens and groups recognize that bureaucrats gain reputational benefits from competence and honesty, those regulated will expect bureaucrats to be trustworthy and will act accordingly (Levi 1998, p. 87).

The trust of the state influences the "level of citizens' tolerance of the regime and their degree of compliance with governmental demands and regulations." Thus, citizens distrust their government if it breaks its promises, is incompetent, and antagonistic toward them. On the other hand, they will trust government if they believe that "it will act in their interests, that its procedures are fair, and that their trust of the state and of others is reciprocated" (Levi 1998, pp. 87–88). In short, a government is considered to be trustworthy if it has procedures for policy formulation and implementation that are fair and if it makes credible commitments. In other words, the citizens in a country will trust their government if it is effective and delivers the goods. Conversely, they will distrust an ineffective government that fails to deliver the goods.

3.6 Government Effectiveness in Asian Countries

Table 3.9 shows that of the 26 Asian countries, 15 countries had registered a decline in government effectiveness between 1996 and 2009, with Mongolia showing the highest decrease of 22.7 percentile rank, followed by North Korea (18.9 percentile rank), Nepal (14.9 percentile rank), Indonesia (14.5 percentile rank), and Timor-Leste (13.8 percentile rank). Among the 11 countries which have increased their government effectiveness, the top five countries are Macao SAR, Cambodia, Sri Lanka, Hong Kong SAR, and South Korea. However, in 2009, there are only eight countries with government effectiveness exceeding the 70 percentile rank, namely, Singapore, Hong Kong SAR, Japan, Macao SAR, South Korea, Taiwan, Malaysia, and Brunei.

Table 3.9 Government effectiveness of 26 Asian Countries, 1996–2009

Country	1996 Percentile rank	2009 Percentile rank	Change in percentile rank
Singapore	96.6	100.0	+3.4
Hong Kong SAR	85.0	95.7	+10.7
Japan	85.4	86.7	+1.3
Macao SAR	65.5 (1998)	86.2	+20.7
South Korea	77.7	83.3	+5.6
Taiwan	86.9	81.4	−5.5
Malaysia	78.6	79.5	+0.9
Brunei	83.5	75.2	−8.3
Bhutan	72.8 (1998)	64.8	−8.0
Thailand	68.9	59.5	−9.4
China	57.3	58.1	+0.8
India	51.9	54.3	+2.4
Philippines	56.3	50.0	−6.3
Sri Lanka	35.0	49.0	+14.0
Indonesia	61.2	46.7	−14.5
Vietnam	48.5	46.2	−2.3
Cambodia	7.3	25.7	+18.4
Mongolia.	45.6	22.9	−22.7
Pakistan	31.1	19.0	−12.1
Nepal	33.0 (1998)	18.1	−14.9
Bangladesh	26.2	16.7	−9.5
Laos	24.8 (1998)	14.8	−10.0
Timor-Leste	24.8 (2002)	11.0	−13.8
Afghanistan	0.0 (1998)	3.3	+3.3
Myanmar	8.7	1.0	−7.7
North Korea	19.4	0.5	−18.9

Source: Compiled from http://info.worldbank.org/governance/wgi/mc_chart.asp

Table 3.10 Competence of Public Officials in Asian countries, 1999 to 2002–2003

1999	2000	2001–2002	2002–2003
1. Singapore (4.52)	1. Singapore (4.4)	1. Singapore (4.7)	1. Singapore (5.1)
2. Vietnam (4.19)	2. Hong Kong (3.8)	2. Japan (3.8)	2. Sri Lanka (4.5)
6. Japan (3.60)	3. Japan (3.6)	4. Hong Kong (3.6)	3. China (4.1)
9. Hong Kong (3.39)	4. Vietnam (3.6)	6. China (3.5)	5. Japan (4.0)
10. China (3.39)	10. China (3.4)	11. Taiwan (3.4)	9. Hong Kong (3.7)
16. Taiwan (3.28)	17. Taiwan (3.2)	25. Vietnam (3.1)	14. Vietnam (3.5)
21. India (3.07)	24. South Korea (3.0)	27. South Korea (3.0)	18. Taiwan (3.4)
34. South Korea (2.54)	26. India (2.9)	34. India (2.9)	23. Malaysia (3.1)
37. Thailand (2.45)	35. Thailand (2.6)	44. Thailand (2.6)	24. South Korea (3.1)
43. Indonesia (2.36)	37. Malaysia (2.5)	48. Indonesia (2.6)	36. India (2.8)
46. Malaysia (2.24)	43. Indonesia (2.4)	55. Sri Lanka (2.3)	37. Thailand (2.8)
49. Philippines (2.05)	45. Philippines (2.3)	58. Philippines (2.2)	46. Bangladesh (2.4)
		65. Malaysia (2.1)	67. Indonesia (2.1)
		68. Bangladesh (2.0)	68. Philippines (2.0)
$N=59$	$N=59$	$N=75$	$N=80$

N.B.: The score ranges from 1 to 7. The competence of personnel in the civil service is (1 = lower than the private sector, 7 = higher than the private sector)
Sources: Schwab et al. (1999, p. 242, Table 2.05); Porter et al. (2000, p. 238, Table 3.07); Schwab et al. (2002, p. 399, Table 6.06); and Cornelius (2003, p. 604, Table 6.06)

A second indicator of government effectiveness is provided by the *Global Competitiveness Reports'* data on the competence of public officials from 1999 to 2002–2003. Tables 3.10 and 3.11 show that the public officials in Singapore are the most competent, followed by those in Japan, Hong Kong SAR, China, Vietnam, Sri Lanka, Taiwan, India, South Korea, Thailand, Malaysia, Indonesia, Bangladesh, and the Philippines.

Thirdly, a 2009 survey of 12 Asian countries conducted by the Hong Kong-based Political Economic Risk Consultancy (PERC) found that the bureaucracy in Singapore was the most effective, followed by the bureaucracy in Hong Kong SAR. At the other extreme, the least effective bureaucracies were those in the Philippines, Indonesia, and India in descending order (see Table 3.12). Thus, it is not surprising that the levels of government effectiveness in Singapore and Hong Kong are higher than those of India, Indonesia, and Philippines because their civil services are more effective than their Indian, Indonesian, and Filipino counterparts.

In sum, the three indicators of government effectiveness by the World Bank, the *Global Competitiveness Report*, and PERC confirm that Singapore and Hong Kong have the most effective governments and civil services. As such, it is not surprising that the citizens in both countries have demonstrated a higher level of trust in their

Table 3.11 Ranking of the 14 Asian countries, 1999 to 2002–2003 by their average scores of the competence of public officials

Country	Total score	Average score	Ranking
Singapore	18.72	4.68	1
Japan	15.00	3.75	2
Hong Kong SAR	14.49	3.62	3
China	14.39	3.59	4
Vietnam	14.39	3.59	4
Sri Lanka	6.80	3.40	6
Taiwan	13.28	3.32	7
India	11.67	2.92	8
South Korea	11.64	2.91	9
Thailand	10.45	2.61	10
Malaysia	9.94	2.48	11
Indonesia	9.46	2.36	12
Bangladesh	4.40	2.20	13
Philippines	8.55	2.13	14

Source: Compiled from Table 3.10

Table 3.12 PERC's evaluation of effectiveness of Asian bureaucracies, 1998–2009

Country	1998	2001	2002	2003	2004	2007	2009
Singapore	2.73	2.80	1.70	0.57	1.63	2.42	2.45
Hong Kong SAR	2.89	4.00	3.26	3.39	3.50	2.60	3.87
Thailand	6.88	7.90	7.56	7.60	7.83	6.15	4.66
South Korea	8.27	5.00	5.50	5.00	6.33	5.61	5.83
Japan	7.13	4.00	4.33	4.25	2.05	5.51	5.92
Malaysia	6.14	6.00	6.86	5.67	7.00	6.50	6.21
Taiwan	6.25	5.71	6.17	5.50	5.50	5.43	6.77
Vietnam	9.25	9.75	7.88	8.25	8.14	7.41	7.60
China	7.63	6.50	7.67	7.67	6.03	6.83	8.17
Philippines	7.00	6.50	8.25	7.33	7.42	7.60	8.33
Indonesia	7.91	9.50	8.33	8.50	7.25	8.65	8.50
India	9.00	6.80	7.83	8.00	8.15	8.47	9.34

N.B.: The score ranges from 0 = most effective to 10 = least effective
Sources: Hussain (2009, p. C5) and Wong (2004)

governments than their counterparts in other Asian countries, as shown in Tables 3.3, 3.4, 3.5, and 3.6.

3.7 Learning from Singapore's and Hong Kong's Experiences

What can the other Asian countries learn from the experiences of Singapore and Hong Kong SAR in curbing corruption and enhancing the citizens' trust in their governments? As the major factor responsible for the high level of public trust of politicians in Singapore and Hong Kong is the effectiveness of their governments, it is necessary to identify the reasons for their effectiveness. In other words, the government must be effective in order for it to gain the public's trust. How did Singapore and Hong Kong ensure the effectiveness of their governments?

3.7.1 Favorable Policy Context

The first reason for the high level of government effectiveness in Singapore and Hong Kong is their favorable policy contexts. Table 3.13 shows that both countries are city-states with small populations, high GDP per capita, no housing shortage, high government expenditure on education, low level of corruption, and high degree of political stability. Their favorable policy contexts have enabled the governments and their civil services to implement various public policies effectively. Thus, compared to other larger Asian countries with bigger populations and rural hinterlands, the "absence of a rural hinterland" in Hong Kong and Singapore has contributed to their rapid growth which has not been hindered by their insignificant agricultural sectors (Streeten 1993, p. 199).

3.7.2 Importance of Meritocracy

The second reason for the high level of government effectiveness in Singapore and Hong Kong is the high quality of their civil services as reflected in their superior ranking on the World Bank's governance indicator on government effectiveness, the *Global Competitiveness Reports'* indicator on competence of public officials, and PERC's evaluation of Asian bureaucracies. As former British colonies, both Singapore and Hong Kong have continued the tradition of meritocracy introduced by the British by retaining and relying on the Public Service Commission (PSC) to ensure that recruitment and promotion to their civil services are based on

Table 3.13 Favorable policy contexts of Singapore and Hong Kong in 2009

Indicator	Singapore	Hong Kong
Land area	710.3 sq km	1,104.38 sq km
Population	4,987,600	7,003,700
GDP per capita	US$35,924	US$30,072
Population in public housing	82%	48%
Government expenditure on education	S$8,698.885 million (US$5,980.67 million)	HK$58,766 million (US$7,576.84 million)
2010 CPI Rank and Score	1st (9.3)	13th (8.4)
Political Status	PAP government has been in power since June 1959	Special Administrative Region of China since July 1997

Sources: Department of Statistics (2010, p. 2, 9, 13, 264); Information Services Department (2010, p. 1, 207, 449, 475); and http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

merit and not patronage. According to A.P. Sinker (1953, p. 211), a PSC has two functions: "to eliminate patronage in all its forms" and "to find the best men available and put them in." The PSC was established in Hong Kong in 1950 to advise the Governor and the Chief Executive after July 1997 on civil service appointments, promotion, and discipline "to ensure that selection processes are 'fair, meticulous, and thorough'" (Burns 2004, p. 85). Similarly, the PSC was created in Singapore in January 1951 to keep politics out of the Singapore Civil Service (SCS) and to accelerate its pace of localization (Quah 1982, p. 50).

Unlike Singapore and Hong Kong, the tradition of meritocracy has not been maintained by other former British colonies. For example, the PSC in Bangladesh has abandoned meritocracy because it is "riddled with massive corruption." Former PSC members in Bangladesh revealed that "bribes worth Tk 50 lakhs change hands daily at the commission, to determine recruitment, promotions, and other decisions. Question papers for the civil service examinations are sold to candidates for Tk 5 lakhs. Promotions are sold for Tk 5–10 lakhs, and corruption cases against civil servants, which are vetted by the PSC, are dropped for sums of Tk 2 crore during the 5 years (Shahan 2007, p. 27). Instead of maintaining meritocracy, the PSC in Bangladesh has been "considerably used as a body for the partisan appointment of Chairman and Members, and for [the] recruitment [of] pro-ruling party activists and supporters for the civil service since 1972" (Karim 2007, p. 43).

The importance of meritocracy in ensuring the effectiveness of a civil service is clearly illustrated in Indonesia, where there is no tradition of meritocracy because it was colonized by the Dutch from 1602 to 1942. Unlike the British, the Dutch did not rely on merit to recruit the local civil servants, who were appointed by hereditary succession. The lack of meritocracy was further reinforced during the Japanese Occupation as "many of the new heads of the bureaucracies had achieved their high position in the colonial days because they were loyal to the colonial government" (Hadisumarto 1974, p. 161). After independence, the appointment of senior civil servants was not based on merit but on their personal background, especially whether they had participated in the 1945 revolution against the Dutch (Hadisumarto 1974, p. 164).

During Sukarno's regime, "the principles of merit system in hiring, promoting, and firing of personnel were completely disregarded, while political and ascriptive considerations became criteria for appointment to key positions in the bureaucracy" (Siagian 1970, p. 100). Similarly, President Suharto by-passed the established mechanisms for evaluating senior military officers and promoted those politically ambitious officers who had built a good relationship with him and his family. Indeed, the selection process was designed to produce officers who were loyal to President Suharto (Kristiadi 2001, p. 102).

In short, the lack of a meritocratic tradition in Indonesia's civil service is reflected in the importance of patronage on the one hand, and the neglect of merit on the other hand in the recruitment and promotion of its civil servants. More importantly, the absence or lack of importance attached to meritocracy in the Indonesian civil service has not only undermined its effectiveness but also increased its vulnerability to corruption.

3.7.3 Attracting and Retaining the "Best and Brightest"

To attract and retain the "best and brightest" citizens into their civil services, the governments in Singapore and Hong Kong have relied on competitive salaries to minimize the brain drain of talented civil servants to the private sector. The high salaries of Hong Kong's civil servants is a legacy of its 156 years of British colonial rule which provided "generous perks and benefits" for the top civil servants but not the legislators to attract expatriate officers to work in Hong Kong. Their generous pay package includes "housing, chauffeur-driven limousines for personal use, passages, local and overseas education allowances." The high salaries that were institutionalized during colonial rule were continued after Hong Kong became a Special Administrative Region of China on July 1, 1997. An Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR was established to review and give advice on the pay of civil servants and legislative councilors. The official guiding principle for civil service pay is that it is "set at a level which is sufficient to attract, retain, and motivate staff of a suitable calibre to provide the public with an effective and efficient service, and such remuneration should be regarded as fair by both civil servants and the public which they serve." As Hong Kong's per capita GDP increased by more than two times during 1980 and 2000, the adoption of "the market principle of broad comparability with the private sector" resulted in a tenfold increase in the pay of Hong Kong's top political executive from 1976 to 2001 (Lee 2003, pp. 130, 138, 141).

In Singapore, the expatriate civil servants also received much higher salaries and more allowances than their local counterparts. This discrimination against local civil servants in the British colonies was justified by the Public Services Salaries Commission of 1919 (Seah 1971, p. 15). When the People's Action Party (PAP) government assumed office in June 1959 after winning the May 30, 1959 general election, it "found the national coffers seriously depleted" (Bogaars 1973, p. 80). Accordingly, a Cabinet Budget Committee on Expenditure was formed and it recommended the abolition of the 35% of the variable allowance (VA) for Division I officers, a 10% reduction of the VA for Division II officers, and a 5% cut in the VA for Division III officers. The government implemented this recommendation which resulted in saving S$10 million. The VAs of the senior civil servants were restored by the government in 1961 when the budgetary situation improved. In 1968, a report on public sector salaries recommended pay rises of more than 25% for most civil servants. However, the government did not accept this recommendation because it could not afford to so (Quah 2003b, pp. 147–148). Former Prime Minister Lee Kuan Yew (2000, pp. 194–195) wrote in his memoirs that after independence, he "had frozen ministerial salaries and kept public wage increases at a low level to be sure that we would cope with the expected unemployment and slowdown in the economy and to set an example of restraint."

Singapore's rapid economic growth during the 1970s resulted in higher salaries in the private sector. To curb the brain drain from the SCS to the private sector, the National Wages Council recommended the payment of an Annual Wage Supplement (AWS) or the "13th month pay" in March 1972 to reduce the wage gap in the public and private sectors. Public sector salaries were further increased in 1973 and in 1979. In 1981, the Research and Statistics Unit of the Inland Revenue Department conducted a survey on the employment and earnings of 30,197 graduates, or 81.5% of the working graduate population enumerated in the 1980 population census (Quah 1984, p. 296). The survey found that graduates in the private sector earned, on the average, 42% more than those in

the public sector (*Sunday Times* 1982a, p. 1). The PSC revealed that from 1978 to 1981, eight superscale and 67 timescale administrative officers had resigned from the SCS for more lucrative jobs in the private sector (*Sunday Times* 1982b, p. 1). To deal with these problems of wide disparity in pay between graduates in the public and private sectors, and the serious brain drain of talented senior civil servants from the SCS to the private sector, the government further revised the salaries of the administrative officers in April 1982 (Quah 1984, p. 297).

In March 1989, the Minister for Trade and Industry, Lee Hsien Loong, recommended a hefty salary increase for the SCS because the comparatively low salaries and slow advancement in the Administrative Service had contributed to its low recruitment and high resignation rates (Quah 2003b, p. 150). Similarly, in December 1993, he announced that the salaries of ministers and senior civil servants would be increased from January 1994 to keep pace with the private sector and to compensate for the reduction in their medical benefits (*Straits Times* 1993, p. 1). In October 1994, a White Paper on *Competitive Salaries for Competent and Honest Government* was presented to Parliament to justify the pegging of the salaries of ministers and senior civil servants to the average salaries of the top four earners in six private sector professions: accounting, banking, engineering, law, local manufacturing companies, and multinational corporations. The White Paper recommended the introduction of formal salary benchmarks for ministers and senior civil servants, additional salary grades for political appointments, and annual salary reviews for the SCS. The adoption of the long-term formula suggested in the White Paper removed the need to justify the salaries of ministers and senior civil servants "from scratch with each salary revision" (Republic of Singapore 1994, pp. 12–13, 18).

3.7.4 Effective Control of Corruption

Tables 3.1 and 3.2 show that Singapore and Hong Kong are perceived to be the least corrupt Asian countries according to Transparency International's 2010 CPI and the World Bank's 2009 Control of Corruption governance indicator. How did Singapore and Hong Kong succeed in curbing corruption effectively?

3.7.4.1 Creation of an Independent Anti-Corruption Agency

The British colonial government enacted the Prevention of Corruption Ordinance (POCO) in Singapore in December 1937 and created the Anti-Corruption Branch (ACB) within the Criminal Investigation Department (CID) of the Singapore Police Force (SPF) to curb corruption (Quah 2007a, p. 14). This decision to make the ACB responsible for corruption control is difficult to understand especially when the existence of rampant police corruption in Singapore was documented by the 1879 and 1886 Commissions of Inquiry (Quah 1979, pp. 24–27). Not surprisingly, the ACB was ineffective in curbing corruption for three reasons. First, the ACB was under-staffed as it had only 17 personnel to perform 16 duties including corruption control. Second, it had to compete with other branches of the CID for limited manpower and resources as corruption control was accorded lower priority than the investigation of serious crimes like murder and kidnapping. The third and most important reason for the ACB's ineffectiveness was the prevalence of police corruption which made it difficult for the ACB staff to enforce the POCO impartially toward their colleagues (Quah 2007a, pp. 14–15).

The folly of the British colonial government's decision to make the ACB responsible for corruption control was revealed when three police detectives were implicated in the robbery of 1,800 pounds of opium worth about S$400,000 (US$133,330). The involvement of these detectives and some senior police officers in the Opium Hijacking Scandal in October 1951 made the British colonial government realize the importance of setting up an anti-corruption agency that is outside the SPF's jurisdiction (Tan 1999, p. 59). Consequently, the Corrupt Practices Investigation Bureau (CPIB) was formed a year later in October 1952.

Similarly, in Hong Kong, the ACB of the CID of the Royal Hong Kong Police Force (RHKPF)

was also responsible for combating corruption from 1948 until 1971, when the ACB was upgraded to the Anti-Corruption Office (ACO), which was also ineffective in curbing the rampant police corruption. The escape of a corruption suspect, Chief Superintendent Peter F. Godber, on June 8, 1973, to the United Kingdom angered the public and undermined the ACO's credibility. Consequently, the Governor, Sir Murray MacLehose, was compelled by public criticism to accept the Commission of Inquiry's recommendation to establish an independent agency, separate from the RHKPF, to fight corruption. Accordingly, the Independent Commission Against Corruption (ICAC) was formed on February 15, 1974 (Quah 2003a, pp. 137–139).

Thus, Singapore's and Hong Kong's success in minimizing corruption can be attributed to their rejection of the British colonial method of relying on the police to curb corruption and their reliance instead on independent anti-corruption agencies like the CPIB and ICAC. It should be noted that Singapore has taken 15 years (1937–1952) and Hong Kong has taken 26 years (1948–1974) to learn this important lesson (Quah 2004, pp. 1–2). However, India still relies on the Central Bureau of Investigation (CBI) to curb corruption even though there is extensive police corruption and the CBI is part of the police (Quah 2008, p. 253).

A regional survey of anti-corruption agencies in Asian countries shows that those countries which have adopted a single anti-corruption agency are more effective than their counterparts which have relied on multiple anti-corruption agencies if their governments are committed to combating corruption (Quah 2007b, pp. 4–6). Table 3.8 shows that Hong Kong's ICAC and Singapore's CPIB were among the best funded and staffed anti-corruption agencies.

3.7.4.2 Comprehensive Anti-corruption Legislation

A second prerequisite of an effective anti-corruption strategy is comprehensive anti-corruption legislation, which defines explicitly the meaning and forms of corruption, and specifies clearly the powers of the anti-corruption agency responsible for its implementation.

The Misdemeanours Punishment Ordinance (MPO) was the first local law enacted against corruption in Hong Kong in 1898. The MPO increased the maximum penalty for corruption to 2 years' imprisonment and/or a fine not exceeding HK$500. The Prevention of Corruption Ordinance (POCO), which was enacted in 1948, provided a more comprehensive definition of corruption, and increased the maximum penalty for corruption to 5 years imprisonment and a fine of HK$10,000. The inadequate powers conferred by the POCO and its other limitations led to its review in 1968 and its replacement by the Prevention of Bribery Ordinance (POBO), which was enacted on May 15, 1971 (Kuan 1981, pp. 16–18, 23, 29).

The POBO had three significant features. First, it enabled the government to prosecute a civil servant for corruption if he could not provide a satisfactory explanation for maintaining a standard of living or controlling excessive pecuniary resources that were not commensurate with his present or past official salaries (Kuan 1981, p. 32). Second, the POBO provided extensive powers of investigation as the Attorney-General could authorize the inspection of bank accounts, safe-deposit boxes, books, documents, or articles. He could also require the suspect or any other persons to submit information, and authorize the entry into and search of any premises. Third, the POBO introduced severe maximum penalties: the general maximum penalty was a fine of HK$50,000 and 3 years' imprisonment, or on indictment, a fine of HK$100,000 and 7 years' imprisonment. The duration of imprisonment was increased to 10 years for offences involving contracts and tenders. The immediate consequence of Peter Godber's escape in June 1973 to Britain was the amendment of the POBO to remove the safeguards in the interests of the suspect, and to require a suspect to surrender all his travel documents (Kuan 1981, pp. 38–39).

The ICAC was established on February 15, 1974 with the enactment of the ICAC Ordinance, which entrusted it with the tasks of rooting out corruption and restoring public confidence in the

government. Apart from specifying the Commissioner's duties in section 12, the ICAC Ordinance also indicates the ICAC's powers. For example, the ICAC Ordinance empowers the Director of the Operations Department to authorize his officers to restrict the movement of a suspect, to examine bank accounts and safe-deposit boxes, to restrict disposal of a suspect's property, and to require a suspect to provide full details of his financial situation. These officers can also arrest without warrant for the offences indicated in ICAC Ordinance and the POBO, and they can search premises and seize and detain any evidence for such offences (Kuan 1981, p. 40).

In Singapore, corruption was made illegal in 1871 with the enactment of the Penal Code of the Straits Settlements. As indicated earlier, the POCO was enacted in December 1937 as Singapore's first anti-corruption law. However, the ACB's ineffectiveness and the involvement of police officers in the Opium Hijacking Scandal of October 1951 led to the formation of the CPIB in October 1952. The PAP government assumed office in June 1959 and demonstrated its commitment to curbing corruption by enacting the Prevention of Corruption Act (POCA) on June 17, 1960. The POCA had five important features which removed the POCO's weaknesses and gave the CPIB additional powers for performing its duties. First, the POCA's scope was broader, as it had 32 sections in contrast to the 12 sections of the POCO. Second, corruption was explicitly defined in terms of the various forms of "gratification" in section 2, which also identified for the first time, the CPIB and its Director. Third, to increase the deterrent effect of the POCA, the penalty for corruption was raised to imprisonment for 5 years and/or a fine of S$10,000 (section 5). Fourth, a person found guilty of accepting an illegal gratification had to pay the amount he had taken as a bribe in addition to any other punishment imposed by a court (section 3) (Quah 1995a, p. 395).

The fifth and most important feature of the POCA was that it gave the CPIB more powers and a new lease of life. For example, section 15 gave CPIB officers powers of arrest and search of arrested persons. Section 17 empowered the Public Prosecutor to authorize the CPIB Director and his senior officers to investigate "any bank account, share account, or purchase account" of any person suspected of having committed an offence against the POCA. Section 18 enabled the CPIB officers to inspect a civil servant's banker's book and those of his wife, child, or agent, if necessary (Quah 1995a, p. 395).

No matter how comprehensive the anti-corruption legislation in a country is, it must be reviewed periodically to remove loopholes or deal with unanticipated problems by introducing amendments or, if necessary, new legislation (Quah 2004, p. 2). For example, in 1966, the POCA was amended to ensure that Singaporeans working for their government in embassies and other government agencies abroad would be prosecuted for corrupt offences committed outside Singapore and would be dealt with as if such offences had occurred in Singapore (section 35) (Quah 1978, p. 13). In March 1989, the Corruption (Confiscation of Benefits) Act was enacted after the Teh Cheang Wan corruption scandal of December 1986 to provide for the confiscation of benefits from the estate of a defendant if he or she is deceased (Quah 1995a, p. 396).

3.7.4.3 Reduction of Red Tape

As unnecessary regulations provide opportunities for corruption, the PAP government has initiated various measures to reduce these opportunities in Singapore by cutting red tape. The Service Improvement Unit (SIU) was formed in April 1991 to improve the quality of service in the SCS and statutory boards by obtaining public feedback on the removal of unnecessary regulations. From April 1991 to March 1992, the review of over 200 rules by the SCS and statutory boards resulted in the modification or abolition of 96 rules (Quah 1995b, pp. 339–340). In May 1995, Public Service for the twenty-first Century (PS21) was introduced to improve the quality of service and prepare the SCS to welcome and accept change. As part of PS21, the Cut Waste Panel was formed in September 2003 "to receive suggestions from the public on where the government can cut waste, remove frills, and make savings in the delivery of public services" (Quah 2007c, p. 178).

The PAP government also relies on e-Government to enhance transparency and reduce opportunities for corruption by simplifying the procedures for obtaining business licences. In 2004, the On-Line Applications System for Integrated Services (OASIS) was launched to enable the public to "apply, renew, or terminate 85 different types of licences" online. Similarly, to reduce the opportunities for corruption and improve efficiency and transparency in procurement, the online procurement portal known as *GeBiz* was introduced to enable government procurement to be done through the internet (Soh 2008, p. 7).

In Hong Kong, Lam Bing Chuen (2004: 135) found that the Housing Authority's project organization had more red tape than private project organizations because of its emphasis on the control and operating systems. In 1999, the Enhanced Productivity Programme (EPP) was introduced to improve productivity through savings in such baseline expenditure as personal emoluments and departmental expenses (Scott 2005, pp. 95–96). In January 2003, Christopher Cheng, the Chairman of the Hong Kong General Chamber of Commerce, called for the civil service to change by adopting practices from the private sector, including the review of all government services to eliminate those regulations that hindered business (Cheng 2003). The EPP's first phase was completed in 2003 and resulted in savings of HK$5.4 billion or 5.2% of baseline expenditure (Scott 2005, p. 96).

In 1998, the Chief Executive launched the "Digital 21 IT Strategy" to enhance Hong Kong's information infrastructure and services. In May 2001, the "2001 Digital 21 Strategy" was introduced to further strengthen Hong Kong's position as a leader in the digitally connected world. The e-Government Programme promoted the adoption of e-Commerce in the private sector by providing e-options for more services, including e-procurement and outsourcing (Yong and Leong 2003, pp. 101–103). To reduce red tape, the government streamlined its own information technology operations by establishing the Office of the Government Chief Information Officer in July 2004 (Lam 2006).

Singapore's and Hong Kong's efforts to reduce red tape through the introduction of e-Government have reaped dividends as both countries have been ranked among the top five economies by the World Bank for the ease of doing business from 2007 to 2011. Table 3.14 shows that Singapore is consistently ranked first and Hong Kong SAR is ranked between second and fifth positions among the 175–183 economies and the 23 Asian economies included in the World Bank's *Doing Business Surveys* from 2007 to 2011. The ease of doing business in Singapore and Hong Kong SAR is a reflection of the effectiveness of their governments, the absence of red tape, and their lower levels of perceived corruption.

3.7.4.4 Punishing the Corrupt Offenders

As discussed earlier, corruption is rampant in those Asian countries where those committing corrupt acts are unlikely to be detected or punished. Consequently, the most effective way to curb corruption is to punish those found guilty of corrupt offences. The experiences of Singapore and Hong Kong demonstrate the importance of punishing corrupt offenders, regardless of their status or position, in order to deter others from being involved in corruption.

In Singapore, the prosecution rate for corruption cases has increased from 47% in 2000 to 60% in 2002. Similarly, the conviction rate for corruption cases also rose from 9 to 99% from 2000 to 2002. Furthermore, during the same period, 680 persons were charged and 293 public officers were disciplined for corrupt offences (CPIB 2003, p. 3.25). In Hong Kong, the ICAC's Operations Department completed 3,364 investigations, and 357 persons were prosecuted and 54 persons formally cautioned in 2008. In 2007, the Operations Department arrested 781 persons, of whom 23 were civil servants. The number of persons arrested for corruption and related offences increased to 936 persons, including 27 public officials (ICAC 2009, p. 39).

Thus, to minimize corruption and to deter those who are not involved in corrupt practices

Table 3.14 Ranking of 23 Asian economies on *Doing Business Surveys*, 2007–2011

Economy	2007 rank (1–175)	2008 rank (1–178)	2009 rank (1–181)	2010 rank (1–183)	2011 rank (1–183)
Singapore	1	1	1	1	1
Hong Kong, SAR	5	4	4	3	2
Japan	11	12	12	15	18
Thailand	18	15	13	12	19
South Korea	23	30	23	19	16
Malaysia	25	24	20	23	21
Mongolia	45	52	58	60	73
Taiwan	47	50	61	46	33
Pakistan	74	76	77	85	83
Brunei	NA	78	88	96	112
Bangladesh	88	107	110	119	107
Sri Lanka	89	101	102	105	102
China	93	83	83	89	79
Nepal	100	111	121	123	116
Vietnam	104	91	92	93	78
Philippines	126	133	140	144	148
India	134	120	122	133	134
Indonesia	135	123	129	122	121
Bhutan	138	119	124	126	142
Cambodia	143	145	135	145	147
Lao PDR	159	164	165	167	171
Afghanistan	162	159	162	160	167
Timor-Leste	174	168	170	164	174

Sources: Compiled from World Bank (2006, p. 6; 2007, p. 6; 2008, p. 6; 2009, p. 4; 2010, p. 4)

from doing so, honesty and incorruptibility among civil servants and political leaders must be recognized and rewarded instead of being punished. The lack of punishment of corrupt civil servants and political leaders in many Asian countries sends the wrong signal to their honest counterparts and the population at large as it makes a mockery of the anti-corruption laws and encourages others to become corrupt as the probability of being caught and punished is low. In other words, the political systems in those Asian countries plagued with corruption reward those who are corrupt, and punish those who are honest. Accordingly, these countries must reverse their system of reward and punishment by punishing the corrupt offenders and rewarding those who have abstained from being corrupt.

3.8 Conclusion

Table 3.15 shows that, unlike Singapore and Hong Kong, the other Asian countries, with few exceptions, are much larger in land area, have bigger populations, and lower GDP per capita. Politically, Singapore has been governed by the PAP government for more than five decades. The PAP's substantial majority in Parliament has enabled it to introduce many public policies including the White Paper on pegging the salaries of ministers and senior civil servants to those of six professions in the private sector. After 150 years of British colonial rule, Hong Kong became a Special Administrative Region of China on July 1, 1997. More importantly, the civil service in Hong Kong has continued to be effective during

Table 3.15 Policy contexts of Asian countries

Country	Land area (sq km)	Population (2008)	GDP per capita (2008) (US$)	Political system
Afghanistan	652,230	28,396,000	271	Presidential democracy (Islamic)
Bangladesh	143,998	161,300,000	506	Parliamentary democracy
Bhutan	47,000	691,141	1,410	Constitutional monarchy
Brunei	5,765	388,190	37,053	Constitutional monarchy
Cambodia	181,035	14,700,000	818	Constitutional monarchy
China	9,560,900	1,336,300,000	3,315	Communist state
Hong Kong SAR	1,104	6,977,700	31,035	Special administrative region of China
India	3,287,263	1,186,200,000	1,016	Federal parliamentary democracy
Indonesia	1,904,443	234,300,000	2,246	Parliamentary democracy
Japan	377,727	127,900,000	38,559	Constitutional monarchy
Laos	237,000	6,800,000	500	Communist state
Macao SAR	29.2	549,200	39,036	Special administrative region of China
Malaysia	332,665	27,000,000	8,141	Constitutional monarchy
Maldives	298	396,334	2,680	Presidential democracy
Mongolia	1,565,000	2,700,000	1,981	Parliamentary democracy
Myanmar	676,578	48,137,741	NA	Military junta
Nepal	147,181	28,800,000	459	Federal democratic republic
North Korea	120,538	22,665,345	NA	Communist state
Pakistan	803,940	167,000,000	1,045	Federal parliamentary democracy
Philippines	300,000	89,700,000	1,866	Presidential democracy
Singapore	710	4,839,400	39,663	Parliamentary democracy
South Korea	99,274	48,400,000	19,505	Parliamentary democracy
Sri Lanka	65,610	19,400,000	1,972	Presidential democracy
Taiwan	36,179	22,700,000	17,040	Presidential democracy
Thailand	513,115	64,300,000	4,115	Constitutional monarchy
Timor-Leste	14,874	1,200,000	469	Parliamentary democracy
Vietnam	331,114	88,500,000	1,040	Communist state

Sources: Compiled from Department of Statistics (2010, p. 2, 9); Economist (2010); Government Information Bureau (2010, p. 8, 639); Information Services Department (2009, p. 441, 470); and Schwab (2009, pp. 341–342)

the past 13 years. For example, contrary to the fears of some observers, the ICAC's effectiveness has not been adversely affected after July 1997. In 2001, 4 years after the handover, the ICAC Commissioner, Alan N. Lai (2001, p. 51), declared that Hong Kong's "credentials as a champion in fighting graft have remained as strong as ever."

As the policy contexts in the other Asian countries differ from the favorable policy contexts in Singapore and Hong Kong, what can the former learn from the latter? For example, is it possible for China, which is a Communist state, to learn from Hong Kong's and Singapore's experiences in curbing corruption? In his answer to this question, Anthony Cheung (2007, p. 66) suggests that "China may not follow exactly the path of Hong Kong and Singapore, in terms of shifting towards a single-ACA [Anti-Corruption Agency] approach" because "its anti-corruption drive will remain shaped by political factors and institutional constraints."

In the final analysis, whether Singapore's and Hong Kong's effective anti-corruption strategy can be transferred to other Asian countries depends on two important factors: the nature of their policy contexts; and whether their governments have the political will to implement the required anti-corruption reforms. Needless to say, it will be difficult for those Asian countries with less favorable policy contexts to adopt Singapore-style or Hong Kong-style anti-corruption reforms if their governments lack the political will to do so.

Tables 3.3 and 3.4 show that the level of public trust of politicians is much higher in Singapore and Hong Kong than in the other Asian countries, according to the *Global Competitiveness Reports* from 1999 to 2009–2010. This high level of public trust of politicians in Singapore and Hong Kong can be attributed not only to their effective anti-corruption strategies but also to their high level of government effectiveness. According to Table 3.9, Singapore and Hong Kong have the highest levels of government effectiveness among the 26 Asian countries included in the World Bank's 2009 governance indicator on government effectiveness. As only 8 Asian countries have a level of government effectiveness exceeding the 70 percentile rank, the other 18 Asian countries have lower levels of government effectiveness, ranging from 0.5 percentile rank for North Korea to 64.8 percentile rank for Bhutan.

Drawing from Singapore's and Hong Kong's experiences, those Asian countries can enhance their citizens' trust in their governments by improving their levels of government effectiveness by adopting meritocracy, paying competitive salaries to attract and retain the "best and brightest" citizens in the civil service, and curbing corruption effectively. Furthermore, while contextual differences might prevent other Asian countries from transplanting Singapore's or Hong Kong's effective strategies to curb corruption and increase government effectiveness in toto, they can, nevertheless, emulate and adapt some features of these strategies to suit their own needs, provided that their political leaders, civil servants, and citizens are prepared to pay the high economic and political costs for introducing these reforms.

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Cybercrime in Asia: Trends and Challenges

4

Roderic Broadhurst and Lennon Y.C. Chang

4.1 Introduction

Information and communications technologies (ICT) are now part of everyday life and this is illustrated by the rapid growth of the Internet and social networks in cyberspace. Whether you are searching for travel information or buying concert tickets, you can easily perform these functions at any time and in the convenience of your own home or office. ICT has thus become an indispensable function of commerce and government. With the help of computers and the Internet, businesses are now able to provide immediate services to their customers at an unprecedented level of efficiency.

However, the Internet has also become the proverbial "double-edged sword." Along with convenience comes the inconvenience of computer crime. The Internet was originally built for research and its founding protocols were designed for in-built redundancy and openness. The rapid evolution of the computer networks that comprise the Internet from a government and research focus to the e-commerce and domestic arena has provided a gateway for offenders and deviant entrepreneurs:

> The Internet was built for research, not commerce. Its protocols were open and unsecured; it was not designed to hide. Data transmitted over this net could easily be intercepted and stolen; confidential data could not easily be protected (Lessig 1999, p. 39).

The costs of cybercrime are increasing in scale and gravity as the "industrialisation" of malicious software (or crime-ware) proliferates (Ollman 2008). For example, in 2009, the United States Internet Crime Complaint Centre received 336,655 complaints reporting a total in direct losses of USD$559.7 million (AFP 2010). Given this is an estimate based on complaints to just one Internet crime reporting service in one country, the real costs of cybercrime world-wide are considerable. In short the rapid expansion of e-commerce and the Internet has brought many benefits but also the emergence of various forms of crime that exploit the strengths and weaknesses of mass interconnectivity.

> The speed, functionality, and accessibility that create the enormous benefits of the computer age can, if not properly controlled, allow individuals and organizations to easily eavesdrop on or interfere with computer operations from remote locations for mischievous or malicious purposes, including fraud or sabotage (United States General Accounting Office 2010, p. 3).

As most cybercrimes are transnational in character, inconsistency of laws and regulations across country borders makes it especially

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Table 4.1 Number of Internet users in the Asia Pacific region 2011

Rank	Country	Number of Internet users 2011	% Population 2011	% Population 2002[a]
1	China	485,000,000	36.3	3.5
2	India	100,000,000	8.4	0.7
3	Japan	99,182,000	78.4	48.0
4	Indonesia	39,600,000	16.1	1.8
5	Korea, South	39,440,000	80.9	52.7
6	Philippines	29,700,000	29.2	2.5
7	Vietnam	29,268,606	32.3	0.5
8	Pakistan	20,431,000	10.9	0.3
9	Thailand	18,310,000	27.4	5.7
10	Australia	17,033,826	78.3	46.0
11	Malaysia	16,902,600	58.8	24.4
12	Taiwan	16,147,000	70.0	49.8
13	Hong Kong	4,878,713	68.5	64.1
14	Singapore	3,658,400	77.2	55.6
15	New Zealand	3,600,000	83.9	N/A
16	Sri Lanka	1,776,900	8.3	0.8
17	Bangladesh	1,735,020	1.1	0.1
18	Nepal	1,072,900	3.7	0.2
19	Laos	527,400	8.1	0.2
20	Mongolia	350,000	11.2	1.6

Source: Internet World Stats, http://www.internetworldstats.com/stats.htm (accessed 6 September 2011)
[a]Retrieved from Broadhurst (2006a)

difficult for countries to cooperate when investigating cross-border cyber crimes. As Katyal (2003, p. 180) observed, many countries will find it increasingly difficult to enforce their national laws against activities which are considered offensive or harmful to local taste or culture. The harmonisation of cyber-laws and regulations and the building of cooperation and comity among nations are vitally important countermeasures against cybercrime. The first step in that direction was the Convention on Cybercrime proposed by the Council of Europe of 2001, which provided a common legal framework on cybercrime.

4.1.1 Internet Access and the Digital Divide in Asia

In March 2011, there were an estimated 2.95 billion Internet users in the world (Miniwatts Marketing Group 2011). Among all Internet users, 45% (about 943 million Internet users) are located in the Asia and Pacific (i.e. Asia and Oceania) region. As can be seen in Table 4.1, the "digital divide" is aptly shown by the immense diversity between countries in levels of Internet participation. China has the most Internet users in the Asia and Pacific region and indeed the world and now exceeds the numbers on-line in North America. Indeed, almost half of the Internet users in the Asia and Pacific region are located in China. India, now 100 million Internet users, is second largest and, is followed by Japan, the Republic of Korea (South Korea) and the Philippines. Countries like Japan, South Korea, Taiwan, Singapore, Australia and New Zealand have over 70% of their total population on-line as internet users whereas in developing countries like India, Pakistan, Sri Lanka, Bangladesh and Nepal engage less than 10% of the population. The Philippines, Thailand, Vietnam and to a lesser extent Indonesia have also achieved significant Internet penetration and are also growing rapidly. Although China has by far the largest

population of Internet "netizens," this still comprises only 31.8% of the total population and these are mostly urban users.

Compared with the proportion of Internet users in 2002, shown in Table 4.1 there has been a significant increase in all countries in the Asia and Pacific region in the past 10 years. For example, only 3.5% of the Chinese population were Internet users in 2002, but this increased to 36.3% by 2011. There was also a significant increase in other developing countries like Vietnam, the Philippines, Pakistan and India.

Along with the rapid rise of Internet use, cybercrime has also become prevalent in this region. However, of all the countries in the Asia and Pacific region only Japan has signed and ratified the Council of Europe Convention on Cybercrime. The Convention is the only multi-lateral instrument for the control of cybercrime and we discuss it further below. First we begin with a short introduction to the problem of cybercrime in Asia and compare the laws and regulations in Asian states with the provisions of the Convention. We also consider the challenges faced in developing effective cross-national policing of cybercrime in Asia.

4.2 Cybercrime and Its Impact in Asia

Given the expansion in Internet participation a drastic rise in cybercrime and information security problems has occurred in Japan, South Korea and greater China since 2005, according to private information security companies. For example, Symantec, a provider of computer security software, such as anti-virus tools, monitors and quantifies malicious computer activity that occurs on about 133 million computers that use their services (Symantec 2011). This describes malicious computer activities such as programs that are used to disrupt, damage or steal information from computer systems. These so-called "malware" or "crime-ware" computer codes usually include viruses, trojans, worms[1] and botnets[2] (IBM 2009; Trend Micro 2009; Wall 2007). Such crime-ware can also be purchased online from websites and underground forums or "dark" networks that include instructions on how to use such software. This enables the wider use of "attack toolkits" by non-technical actors, including criminal groups and may account for the increased prevalence of cybercrime. Along with this growth, the malware itself has evolved to adapt to countermeasures such as software programs designed to prevent and detect intrusions. Malware has also been developed to attack new devices such as smart phones and other digital devices (Symantec 2011).

Symantec also provides general Asian-Pacific-Japan region (APJ) Internet security reports that have ranked the impact on APJ countries from all kinds of malicious activities, including denial of service attacks (DDoS), botnet infections, phishing, spam and viruses. Their reports also indicate the origin of the attacks, such as the source of spam and the top countries hosting phishing sites.[3] According to their 2010 APJ report, Symantec found that

[1] A worm is a sub-class of a virus. Worms spread from computer to computer, but unlike a virus, can travel without any help from a person. The danger with a worm is its ability to replicate itself.

[2] A botnet is a network of individual computers infected with malware. These compromised computers are also known as zombie computers. The zombies, part of a botnet under the control of the botnet controller, can then be used as remote attack tools to facilitate the sending of spam, hosting of phishing websites, distribution of malware and mounting denial of service attacks. The most commonly used are centralised and P2P modes—hence the focus on command and control servers for a botnet that may comprise of thousands of zombies.

[3] The Symantec "APJ Internet Security Threat Report" measured malicious activity that mainly involved botnet-infected computers, bot command-and-control servers, phishing Web sites hosts, malicious code reports, spam zombies and Internet attack origins that took place or originated in each country. Rankings were based on a calculation of the mean average of the proportion of these malicious activities originating in each country (Symantec 2007a, b, 2008, 2009, 2011).

China ranked top in terms of malicious activities in the region, followed by the South Korea, India, Taiwan and Japan (see also Symantec 2011). As to the origin of attacks targeting the APJ region, Symantec detected that most attacks came from the USA, followed by China, South Korea and Japan (Symantec 2009). The overall impact of malicious activity placed the USA first, and China as the next most affected, but growing rapidly from 9% of such activity to 16% in 2010. Countries such as Brazil, India and South Korea account each for about 4% of such activity (Symantec 2011).

China also had the most botnet-infected computers detected in the APJ region for the period 2006–2010 while Taiwan was ranked second, followed by South Korea and India. Taipei was the city with the most botnet-infected computers in the region (Symantec. 2007a, b, 2008, 2009). A 2010 survey[4] conducted by Norton, an anti-virus provider, found that 83% of respondents from China experienced some form of cybercrime, including a computer virus or some form of crime-ware. This was much higher than the global average of 65%. Except for Japan which has a lower victimisation rate (36%), other countries in the Asia and Pacific region like Australia (65%), India (75%) and New Zealand (70%) are all higher than the global average (Norton 2010).

Malware like trojans and botnet programs are spread through social engineering techniques (Guenther 2001), i.e. methods of deception that create a false sense of trust, to gain "access information," for example a professional looking website mimicking a brand or service or via spam and phishing emails. Criminal groups are engaged in computer or network intrusions to obtain sensitive information such as identity and password information. This in turn can be used to undertake large-scale financial crime, and social engineering may be the preferred method of obtaining access to such data contained in digital devices/computers. The kinds of activities vary but encompass online scams and malware such as spyware, phishing, rootkits[5] and botnets. Malware infiltrates a computer system and may include viruses, worms, backdoors, keyloggers and trojans.

In online scams, the internet is used to reach potential victims by sending unsolicited messages pretending to originate from legitimate organisations in order to deceive individuals or organisations into disclosing their financial and/or personal identity information. Information obtained from "phishing" facilitates crimes such as financial fraud and identity theft. For example, a common form of phishing in China are lottery scams delivered by email or instant messenger that links the recipient to a fake website (cited in KIC 2011). The spread of malware is easier when a hacker is attuned to what is happening in a particular culture, and is aware of the current issues that help make the deception more effective. For example, some malware has been designed to target operating systems or websites using only Chinese language and often masked with appeals to patriotic sentiments (Symantec 2008).

Botnets are now widespread and targeted on financial opportunities. Botnets are the main mechanism for the commercialisation and industrialisation of cybercrime. Targets will include all kinds of digital devices (i.e. mobile phones, routers, switches and backup devices) as well as desk-top computers. The increase connectivity of digitized appliances linked to the Internet (e.g. vending machines, gas pumps, ATM's) and mobile phones to pay for such products will ensure that they are attractive targets. Mobile or smart phones also tend to be less well protected against intrusion than other digital devices. Real-time programs such as Instant Messaging are likely to a major risk as are social network sites where it seems many users assume safety and

[4] The survey includes the United States, Australia, Brazil, Canada, China, France, German, India, Italy, Japan, New Zealand, Spain, Sweden and the United Kingdom.

[5] Rootkits are cloaking technologies usually employed by other malware programs to misuse compromised systems by hiding files, registry keys and other operating system objects from diagnostic, antivirus and security programs.

privacy is inherent. A trend towards the development of semantic/human intelligence methods rather than syntactic measures is noted because human-based social engineering can obtain information in many cases where technological methods fail (Chantler and Broadhurst 2008).

Cybercrime in Asia as elsewhere may be caused by offenders or loose groups who are hacking "for fun" or ego-driven, but can include political or ideological motivation, hatred, or simply to earn a profit. However, the involvement of traditional criminal groups or new criminal networks is likely to be associated with financial deception and theft (Broadhurst and Choo 2011). However, when an attack occurs, it is often unclear who is behind the attack, where it originates or their motive (Barboza 2010). For example, Sony, the Japanese electronics group, was hacked into in April 2011 and the names, addresses, emails, birth dates, phone numbers and other information in respect of 24.6 million PC game customers were stolen from its servers (Telegraph 2011). Hackers could have earned a lot by on-selling this personal information to "carding" groups (websites and users with a focus on credit card fraud) or others who may use the stolen identity to de-fraud e-commerce enterprises. While Sony was pursuing legal action against the hacker groups "GeoHot" and "Graf_Chokolo," who allegedly hacked into their system, Sony suffered additional cyber attacks which included a distributed denial of service attack (DDoS): an attack which makes Web sites or other network services unavailable to Internet users by flooding it with traffic—from another hacking group "Anonymous"—an on-line activist and civil disobedience network. Although "Anonymous" are allegedly involved in the revenge, DDoS attacks on Sony over Sony's pursuit of "GeoHot" and "Graf_Chokolo," also alleged "Anonymous" hackers (Takahashi 2011), others argue that given denials by Anonymous that the motives were more likely profit-driven cyber criminals (Poulsen 2011). Such cases represent cybercrime where both profit and ideological reasons may be involved: the hackers saw Sony as profiteering from the Internet gaming industry.

4.2.1 Content Crime

Because of the political situations and the tensions between some countries in the Asia, cases of cybercrime with a political purpose are common. These can be seen between Taiwan and China, as well as between South and North Korea and Japan and China, as well as Pakistan and India (Broadhurst 2006a). For example, Taiwan's Ministry of National Defence was hacked and the computers in the Minister's Office and the Secretary's Office were infected with trojans and spyware in 2005 and in 2006. The National Security Bureau in Taiwan claimed that a Chinese cyber-army launched more than 3,100 attacks against Taiwanese Government systems in 2008, and this did not include attacks against the private sector (Chang 2011; Huang 2006; Xu 2009).

Similar occurrences can be seen between North and South Korea. For example, government agencies, banks and businesses in South Korea have suffered serious cyber attacks. The South Korean intelligence agency believes that these attacks were not conducted by individuals, but were prepared and staged by "certain organisations or states" and that North Korea was the main suspect (Parry 2009).

Since the risk of cybercrimes, regardless of motive or the role of organised crime, has expanded via botnets. How best to prevent cybercrime and to deter cyber criminals has become a major policy question for states and international agencies. The transnational nature of cybercrime basically requires that states enact laws to harmonise definitions of criminality and enhance mutual cooperation across states.

4.3 The Council of Europe Convention on Cybercrime: Budapest Convention

A key problem in the prosecution of cybercrime is that all the elements of the offence are rarely found in the same jurisdiction. Often the offender and the victim and even the evidence are located in different jurisdiction thus requiring a high degree of cooperation between the law enforcement

agencies to investigate and prosecute (Brenner 2006). The extent that Asia has been able to address the need for such cooperation is addressed by describing the first international instrument and the role it has played in developing cybercrime law in Asia.

The Council of Europe's (CoE) 2001 *Convention on Cybercrime*, often referred to as the *Budapest Convention*[6] is currently the only multi-national agreement that provides for the means to prosecute cybercriminals and represents an important attempt to regulate cyberspace. In order to harmonise criminal law and procedures across the states of Europe for the prosecution of cyber-criminals, the CoE[7] drafted a convention on cybercrime. The initiative can be traced back to 1989 when the CoE published a set of recommendations on the need for substantive criminal law to criminalise harmful conduct committed through computer networks. In 1997 the CoE formed a Committee of Experts on Crime in Cyberspace to draft a convention to facilitate States' cooperation in investigating and prosecuting computer crimes and to provide a solution to cybercrime problems through the adoption of an international legal instrument (Council of Europe 2001a, b; ITU 2009; Keyser 2003; Weber 2003). In November 2001, the *Convention on Cybercrime* was opened for signature and it entered into force on July 1, 2004 after ratification by the required minimum five member countries.[8]

The Budapest Convention is supported by the United Nations (UN) and because it also included non-Council states it can be also regarded as an international, rather than regional, treaty (Archick 2006; Csonka 2000; Keyser 2003; Weber 2003). Resolution 56/121, of the UN General Assembly noted the work of international and regional organisations in combating hi-technology crime, and stressed the importance of the *Convention on Cybercrime*. The UN also invited Member States, when developing national laws, policy and practices aimed at combating the criminal misuse of information technologies, to take into account the work and "achievements" of other international and regional agreements such as the Convention (United Nations 2002).

The CoE *Convention on Cybercrime* (hereafter the Convention) has four parts: Chapter I defines the terms used; Chapter II the measures to be taken at the national level, including substantive criminal law and procedural law; Chapter III establishes the general principles of international cooperation and mutual assistance and Chapter IV includes miscellaneous matters such as accession to the Convention.[9]

In terms of substantive laws, the Convention lists four: (1) offences against the confidentiality, integrity and availability of computer data and systems, such as illegal access of a computer system; interception of non-public transmissions of computer data to, from, or within a computer system; interference with computer data; interference with computer systems, such as computer sabotage and the misuse of computer-related devices (e.g. "hacker tools"), (2) computer-related offences, including the traditional offences of fraud and forgery when carried out through a computer system, (3) content-related offences, in order to control the use of computer systems as vehicles for the sexual exploitation of children and acts of a racist or xenophobic nature and (4) offences relating to infringement of copyright and related rights.

The procedural part of the Convention aims to enable the prosecution of computer crime by establishing common procedural rules and adapting

[6] Budapest was the city in which the Convention was opened for signature November 8, 2001.

[7] The Council of Europe (CoE), founded in 1949, comprises 45 countries, including the members of the European Union (a separate entity), as well as countries from Central and Eastern Europe. Headquartered in Strasbourg, France, the CoE was formed as a vehicle for integration in Europe, and its aims include agreements and common actions in economic, social, cultural, legal and administrative matters.

[8] Only after ratification by five states (including at least three from members of the CoE) will the Convention enter into force. Albania, Croatia, Estonia, Hungry and Lithuania were the first five states to ratify the Convention.

[9] For more detail description and discussion of the Convention, please see Weber (2003) and Broadhurst (2006b).

traditional crime fighting measures such as search and seizure, and it also creates new measures, such as expedited preservation of data. As data in cyberspace is dynamic, other evidence collection methods relevant to telecommunications (such as real-time collection of traffic data and interception of content data) have also been adapted to permit the collection of electronic data during the process of communication by police or service providers. The real-time collection of traffic data and interception of content data are the most intrusive powers in the Convention (Csonka 2000). The definition of "computer system" in the Convention does not restrict the manner in which the devices or group of devices may be interconnected. These interception powers therefore also apply to communications transmitted by means of any computer system, which could include transmission of the communication through telecommunication networks before it is received by another computer system.

The Convention also makes it clear that international cooperation is to be provided among contracting states "to the widest extent possible." This principle requires them to provide extensive cooperation and to minimise impediments to the rapid flow of information and evidence. The Convention also creates the legal basis for an international computer crime assistance network, i.e. a network of national contact points permanently available (the "24/7 network"). The network established by the Convention is based on experience gained from the network created by the G8 and co-ordinated by the US Department of Justice. Under the Convention, States are obligated to designate a point of contact available 24 h a day, 7 days a week, in order to ensure immediate assistance to investigations within the scope of the Convention. The establishment of this network is one of the most important provisions provided by the Convention to ensure that States can respond effectively to the law enforcement challenges posed by computer crime.

The Convention [Article 6(1)(a)] also prohibits "…the production, sale, procurement for use, import, distribution" of software programs with the purpose of committing crime. The intention of this provision was to prevent the crimes potentially associated with these tools by banning their creation and distribution. Use and possession are also criminalised. However, if the purpose of the program was for a legitimate purpose such as "authorised testing or protection of a computer system" then possession of such "malware" was not criminalised [Article 6(2)]. An exemption similar to the possession of certain pharmaceuticals by medical practitioners for "legitimate" use, and exceptions for forensic and preventative use was also envisaged. So legitimate industry professionals are not adversely affected but has proven a difficult law to implement, and each jurisdiction can determine what sorts of malware might trigger unlawful use. Attempts have been made to control the use of these tools in Germany (German Criminal Code Law 202c 2007), the UK, (Section 37, UK Computer Misuse Act amendment effective 2008), Taiwan (Article 362, Criminal Code) and to some extent in China (Criminal Code 7th amendment in 2009—Article 285) and Japan (June 2011 Article 168-2 Japanese Criminal Code). In July 2011 a European Union (EU) ministerial meeting proposed to make "hacking tools" illegal but the definition of a "tool" has been questioned as well as the effectiveness of such a prohibition. To date, there have been few prosecutions in jurisdictions with relevant legislation, and crime-ware is still readily available.

The continued proliferation of malware arises in part because some states continue to be the "weakest links" in the supposedly seamless cross-national security web necessary to prevent cybercrime. Indeed the involvement of the state or at least quasi-state actors in the dissemination and use of crime-ware is a considerable impediment to effective law enforcement. In some countries in Asia, the absence of appropriate laws and/or effective law enforcement enables their jurisdiction to provide safe havens for cybercriminals.

4.4 Application of the Budapest Convention in Asia

As in September 2012, the Convention has received 47 signatories and of those, 37 countries have ratified it after signing. The rapid ascension

of the Convention reflects the importance of the problem and the recognition that a multi-national approach will be needed. Most of the signatory countries are Member States of the CoE with only four non-member States (Canada, Japan, South Africa and the USA) signing the Convention. The USA was the first non-member State to ratify the Convention, however, the additional protocol to the convention which specifically address hate crime was excluded on the constitutional grounds of the right to free speech. The accession by the USA elevated the status of the Convention to an international rather than a regional treaty.

As noted, most countries in Asia are not signatories of the Convention. Although the convention is open to any non-member state wishing to join only Japan has signed the treat while Australia is likely to accede in late 2012 as the relevant Bill has passed in Senate in August 2012 (Lee 2012). Nevertheless many Asian countries have looked to the Convention for guidance on new laws.

Using the Convention as a benchmark, Microsoft (2007) investigated 14 countries[10] in Asia to see whether their computer security laws aligned with the requirements of the Convention. It shows that, in 2007, most countries in Asia could be classified as having either favourable alignment or moderate alignment. Only India and Indonesia were at that time classified as having a weak alignment. Since the Microsoft report, new laws against cybercrime have been introduced by PR China, India, Indonesia and Japan. These changes make the laws in those countries more closely aligned to the essential requirements of the Convention.

For example, amendments to the "Information Technology Act (IT Act), 2000" (India IT Act 2000) were adopted by the Parliament of India and ratified on February 5, 2009. The "Information Technology (Amendment) Act, 2008" (IT Act 2008) reflected largely the requirements of the Convention (Council of Europe 2009). Apart from unauthorised access, introduction of viruses, damage, disruption and denial of access in section 43 of the India IT Act 2000, the amendments also criminalised offences, such as using computer codes or communication devices to disseminate false information, dishonestly receiving or retaining any stolen computer resources or communication devices, fraudulently or dishonestly making use of electronic signature, password or other unique identification features of any other person (see amendments to section 66—66A to 66F). Also amendments to section 67, enhanced the punishment for publishing or transmitting obscene material in electronic form from 3 to 5 years and also impose fines from 100,000 to 500,000 Indian Rupees (approximately USD2,000–10,000). In addition, ancillary offences in the draft Right to Privacy Bill now before the Indian Parliament includes provisions against illegal interception (Venkatesan 2011). These amendments and new laws make India more aligned to the requirements of the Convention.

The Indonesian government enacted Law No. 11 of 2008 regarding Information and Electronic Transactions. It passed substantive laws similar to the Convention, including illegal access, illegal interception, data interference, misuse of devices, computer-related fraud and forgery (Noor 2010). China and Japan also amended their cybercrime laws, which aligned them more to the Convention. In China, the offence of illegal access only applied to the access to computer systems used for state affairs, at national defence facilities and in the aid of sophisticated scientific work. This was widely criticised as inadequate. Consequently, Amendment VII of the PRC Criminal Law was promulgated in February 2009, corrected this deficiency and illegal access to a computer system in areas other than those previously proscribed could be sanctioned (Article 285). The amendment also added sanctions for those who provide a tool or process, which is solely used for illegal access and unlawful control of a computer system in section 3 of Article 285—in effect potentially criminalising crime-ware.

[10]The countries investigated include Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

In 2009 Japan revised its Penal Code to further address problems of cybercrime paving the way for ascension to the Convention. The revision made punishable the creation or distribution of a computer virus, acquisition or storage of a virus, and sending emails containing pornography images to random groups of people. The amendments also strengthened investigative powers by permitting data to be seized or copied from computer servers that are connected via online networks to a computer seized for investigation. Authorities are also given the power to request Internet service providers to retain communications logs, such as the names of email senders and recipients, for up to 60 days (Kyodo 2011).

From the discussion above, we can see that countries in Asia are not only amending their laws to regulate offences against the confidentiality, integrity and availability of computer data and systems, content offences are also a focus. Publishing or transmitting obscene material (especially obscene material involving a child) is now punishable in most Asian countries.

However, there is still little consensus on what constitutes content crime within the very diverse Asian region. It has been observed that, in Asia, notions of obscenity and pornography/erotica vary widely from country to country. For example, compared to people in China, Taiwan and Hong Kong, the Japanese might have a higher tolerance to erotic materials. Islamic countries have a much less tolerant approach to obscene materials. Many have a "zero tolerance" approach where any form of nudity is recognised as being obscene (Broadhurst 2006a).

Many countries (e.g. Australia, Italy, Norway, Sweden, Switzerland, United Kingdom, China, Iran, Saudi Arabia, Burma, Vietnam, Singapore and Thailand) attempt to exercise control over undesirable or illegal content by blacklisting websites. Although there is near universal criminalisation of child pornography, most Internet content crime, including those designed to incite racial or religious vilification crime are not criminalised. Some countries (e.g. China, Singapore, Pakistan) also filter social networking sites; however, it is also evident that many attempts at blocking or filtering web access can be readily overcome (OpenNet 2010).

In summary, laws against cybercrime in most countries in Asia are either favourably or moderately aligned with the Convention. However, dilemmas still exists when it comes to the interpretation of certain types of content crime, and it is likely that Asian countries (like the USA) may only join the convention with exceptions to the protocols on content crime.

4.4.1 The Development of the Budapest Convention

Although the *Convention* is widely considered to be the first international convention on cybercrime, and is accepted as such by the UN, some countries regard it as a regional rather than international treaty. Harley (2010) argued that, although the Convention is not strictly a regional agreement, it is also not a global convention as there is only one non-Member state of the CoE (the USA) which has ratified the Convention.[11]

The degree of participation of countries in Asia region in the *Convention* is limited, and many countries have yet to fully develop their cybercrime laws to the requisite standard. For example, differences between Chinese laws and the Convention may be the reason why China has not signed the Convention. Although recent amendments to its criminal laws have made China's legal responses to cybercrime more aligned to those of the Convention, there still remains inconsistency between Chinese criminal procedural law and the requirements of the Convention, especially in regard to search and seizure for the collection and production of computer data.

Countries such as China, Russia and India were not involved in the development of the Convention and have at times argued that a UN treaty or code would be more appropriate. This seems to be reflected by a senior police officer from China who stated (cited in Chang 2012):

> …the Council of Europe has been in contact with China, trying to persuade China to amend its law to fit the requirements of the Convention. However,

[11] Japan has ratified the Convention on July 3, 2012.

> China did not care much about this issue then. And, anyway, when they were drafting the convention, they did not invite China to join in the drafting. Now they want us to join, we are not interested.

In contrast the Taiwanese Government has expressed an interest in signing the Convention on Cybercrime, but is hindered by its ambiguous political situation, where it is not recognised by the Council of Europe as a country (Chang 2012).

Given the limited degree of participation of countries in Asia in the Convention, China along with India, South Korea, and a number of other developing countries recently initiated a proposal to create a new global cybercrime treaty. More than 50% of the world's population, or an estimated 40% of all Internet users, do not come under the auspices of the CoE Convention.

The CoE's cybercrime convention needs to be expanded or re-invented to capture the phenomenal growth of the Internet especially in Asia. Previous attempts to develop a UN convention on cybercrime may also need to be re-activated as circumstances have changed considerably since the late 1990s when the CoE began the lengthy process of creating the convention through diplomatic and expert dialogue. The absence of effective regional mutual legal assistance and cooperation in criminal matters in ASEAN and wider Asia (Gordon 2009), especially cybercrime (Thomas 2009) may be addressed via another iteration of the convention engaging those parties not originally at the table.

For some developing countries, the 2002 Commonwealth Nations model law on computer-related crime and international cooperation provides guidance especially useful for those jurisdictions sharing a common legal history. Indeed it had been estimated that over a thousand bilateral treaties between Commonwealth States are required to ensure adequate mutual legal assistance (United Nations 2010).

Developing countries may be reluctant to sign on to the CoE convention because of the high standards of procedural law and cooperation required. The depth of the digital divide and the difficulties of creating consensus should not be over-estimated in the context of a UN sponsored process. Fears among the advanced technological states that a UN instrument might result in a "dumb" down version of the CoE convention will have to be addressed in order to re-activate a more widely accepted treaty format (Masters 2010). The reluctance of Brazil to sign on to the CoE convention due to concerns about the criminalization of intellectual property (Harley 2010), however, shows that agreement will not be possible on all issues. Traditions of dual criminality in mutual legal assistance matters will remain a significant hurdle and a hybrid or two-tiered universal or UN treaty in tandem with the CoE may emerge. A global convention on cybercrime was given further impetus by the recent recommendation of the 12th United Nations Congress on Crime Prevention and Criminal Justice (United Nations 2010, para 32). Given harmonisation of responses to non-traditional security threats is relatively novel, the CoE and Commonwealth examples will be useful guides to a truly universal treaty.

4.5 Future Developments in Cybercrime Law

As the Convention is based on the types of cybercrime that originated in the late 1990s, a number of new problems and attack methods are not explicitly covered by the Convention, and these will require attention in future iterations. These include the following.

4.5.1 Botnets

The use of botnets is arguably the most significant development in cybercrime to arise since the original signing of the Convention. Using large numbers of networked infected-computers, botnet operators can launch highly damaging attacks, including such serious crimes as DDoS attacks. It can also be used to send out massive numbers of spam and phishing messages. It is estimated that 80% of phishing incidents are related to botnets (Schjolberg and Ghernaouti-Helie 2011). Large

botnets with hundreds of thousands of computers have been discovered, and these have been employed for purposes of cyber-terrorism and cyber-warfare. Botnets may mimic in some ways a form of cyber-organised crime (Chang 2012).

Using bot-infected computers as springboards to launch cyber attacks, criminals can avoid investigation or disturb investigation as the compromised computers are usually located in different countries and there are still no guidelines for international cooperation on investigation. Botnets are now available for lease or purchase and can be obtained on-line for a reasonable price. Criminals without a technology background are able to launch cyber-attacks by using readily available malicious toolkits or they hire hackers to do so. As bot-infected computers' sellers and buyers can potentially be located in different countries, real-time cross-border cooperation in criminal investigation becomes essential.

4.5.2 Cloud Computing

This relatively new configuration of data storage and access is a form of shared data warehousing long used by generic service providers such as "gmail" and "yahoo" but brings new concerns in relation to cyber-security. One problem may be access to or retention of evidentiary data such as log or ISP address data, for law enforcement. "Cloud" computing provides computation, software, data access and storage services often at cheaper costs allowing users to store their data at remote storage facilities provided by service companies or to use software provided by those companies. Users no longer need to physically store their data on their own computer or buy software for themselves. While it may be convenient for users, cloud computing has the potential to become a barrier to successful crime investigation (Schjolberg 2010).

4.5.3 Anonymity and Encryption

The relative anonymity with which people conduct themselves online can lend itself to illicit activity. The use of freely available tools to mask IP addresses, locations and identities makes the task of law enforcement more difficult, as does the use of encryption programs to protect data from third party access (see Chu, Holt and Ahn 2010). While these tools also have legitimate uses, their easy availability to cyber criminals may need to be addressed in future iterations of cybercrime law. Indeed, some countries already have specific law enforcement powers to compel the release of encryption keys.

4.5.4 Social Networking

A considerable amount of cybercrime—including online harassment, stalking and child grooming—is made easier through the use of social networking sites such as Myspace and Facebook. These services are ideal for facilitating social contact and business relationships, but they also afford insufficient protection to unsophisticated and vulnerable users such as children. Greater attention to the possibilities for law enforcement monitoring of such sites, assisted by the private sector entities involved, may be required in the interests of public safety. In turn, this may necessitate a regulatory response that connects sex offenders and law enforcement databases in a more systematic way. Counter-arguments based on privacy concerns usually ignore the privacy and safety rights of victims of cybercrime.

4.5.5 A Universal Harmonised Cybercrime Law

In order to fight transnational cybercrime, it is widely agreed that there is a need for an international convention that has universal application. The EU and the USA support the CoE's *Convention on Cybercrime* and are encouraging more states to sign and ratify it. They see a process of socialising the Convention as the best way forward and are opposed to the distraction of a UN treaty and the watering down of its scope by excluding intellectual property offences, among others (USA 2011, p. 9):

> The development of norms for state conduct in cyberspace does not require a reinvention of customary international law, nor does it render existing international norms obsolete. Long-standing international norms guiding state behavior—in times of peace and conflict—also apply in cyberspace

Despite the efforts of the USA and Europe, the Convention has not reached a similar level of acceptance in other regions and countries outside the European region.

A new global cybercrime treaty was discussed at the 12th United Nation Congress on Crime Prevention and Criminal Justice in Salvador, Brazil (United Nations 2010) and a draft treaty presented by Norwegian Judge Stein Schjolberg and Professor Solange Ghernauti-Hélie from the University of Lausanne. This outlined measures similar to the Convention but took into account the criminal innovations noted above, such as phishing, bot-nets, spam, identity theft and terrorism (Schjolberg 2010). Compared with the CoE's Convention, the Draft replicated the procedural law of the convention but deleted references to intellectual property offences in cyberspace. One of the key norms and standards identified in the USA's promotion of the rule of law in the "International Strategy for Cybercrime" was the protection of intellectual property and its elimination from a proposed UN cybercrime treaty illustrated the significant differences that continue to undermine efforts to harmonise cybercrime laws. The Draft also proposed additional criminal offences such as identity theft, mass coordinated cyber-threats against critical infrastructure, terrorism and the most serious cyber-attacks including the criminalisation of crime-ware and attack toolkits. Schjolberg (2011) also proposed an international criminal court or tribunal for cyberspace because not all countries are willing to cooperate or are able to cooperate and an international criminal court or tribunal will be able to take action to investigate and prosecute transnational cyber criminals.

Russia has also sought a UN convention against cybercrime and along with China has urged the UN to adopt a voluntary code. The Russian Government has argued that the current CoE's *Convention on Cybercrime* is outdated, and did not address the problem of how to control the use of the Internet in the spread of ideas or skills relating to terrorism and cyber terrorism. Neither does the current Convention, according to this critiques put any emphasis on problems such as identity theft and the emergence of social networks and microblogs (Isakova 2011). If USA policy is any guide to the likelihood of significant changes in international approaches to cybercrime developments that restrict legitimate access to the Internet rather than combat illegal activities will be unwelcome (USA 2011, pp. 19–20).

4.6 Conclusion

This chapter briefly reviewed developments in cybercrime and the law-enforcement response in Asia. We noted the rapid rise of cybercrime as a problem and the relatively underdeveloped multilateral response to it. Although the *Budapest Convention* established a good base to harmonise the differences in laws and regulations against cybercrime between different countries, the Convention has not been widely adopted by many Asian countries or indeed as yet other parts of the world. While this may be attributable to inconsistencies with laws and regulations in some countries, for others there is reluctance to sign on to what is seen as essentially a European instrument. Even if laws are moderately or fully aligned with the Convention, they may still not wish to sign the Convention. This problem is unlikely to be solved in the near future, and may frustrate cross-national cooperation on cybercrime investigation and prosecution. With the development of new technologies such as cloud computing, "smart" phones and social media, as well as the emergence of botnets and the expansion of encryption, the Convention requires updating.

Creating a network for illegal purposes and selling or renting established botnets to commit or facilitate criminal activities along with so-called "attack toolkits" (e.g. ZeuS and Spyware) should be more widely criminalised and may help reduce organised crime in cyberspace. The widespread incidence of identity theft as a

common precursor offence requires a broad-based prevention effort (Morris 2008; White and Fisher 2008). The problem of "hate" and "content" crime will remain complex and more widespread via social networks and the under-net, but with no prospect of a universal approach although prone to over-lap with criminal activity and enterprise. The potential for mitigation of transnational cybercrime ultimately lies in effective public–private partnerships and effective international cooperation, albeit not completely dependent on an international treaty (Wall 2007). Greater understanding by government and commerce of the industrial scale of commercial cybercrime, and the recognition of a sense of "shared fate" in cyberspace, will quicken the development of multilateral responses and the capability for transnational crime control. Comity can be promoted if wealthy states and affected industries are prepared to fully aid those states or agencies less capable of enacting and enforcing appropriate laws. It can be argued, however, that a strict enforcement agenda is usually not feasible because of the limited capacity of the state, especially public policy agencies whose resources are usually rationed (Broadhurst 2006b). A risk is that over-regulation could stifle commercial and technological development in developing countries and those sceptical of an interventionist approach also argue that the marketplace may be able to provide more effective crime prevention measures (Newman and Clarke 2003) and efficient solutions to the problems of computer-related crime than the state.

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Triad, Yakuza, and Jok-Pok: Asian Gangsters in Cinema

5

Paul T. Lankin and Phillip C. Shon

5.1 Introduction

Q. Lu (aka H. Ming) fetched meals and ran petty errands for his bosses—a gopher. He was like other youths in a North American city Chinatown where he worked menial jobs in the hopes of being noticed by a Dai Lo (big brother) or a gang leader. He was eventually noticed by his first boss, A. Tran. From there, Lu's career as a gangster steadily rose, from running errands to assuming protection and security duties for Tran's gambling dens and brothels. Tran, however, was assassinated in 1991 in Toronto's Chinatown over a gambling debt. Lu's second boss, L. Cham, was also assassinated in 2000 by a hitman from Quebec. Thus, almost by default, the former gopher assumed the role of a gangster boss and took over the loan sharking and other illegal operations in the city (e.g., marijuana grow operations, gaming dens). Lu incurred a large sum of gambling debt in 2007 after a trip to Macau; his daughter reported him missing shortly after his return. In May of 2010, Lu's body, stuffed inside a barrel, was pulled out of Lake Ontario (see Lamberti 2010).

While the yakuza was inaugurated in the modern era in the ashes of post World War II (WWII) Japan by returning soldiers who provided security, order maintenance, and a preexisting distribution network for American goods and relief funds (Yamagata 2001), in addition to the usual vices such as gambling and prostitution (Saga 1991), contemporary Japanese gangsters appear to have moved well beyond the traditional forms of illegalities. In fact, the Japanese National Police Agency recently reported that the yakuza had penetrated the stock exchanges in various Japanese cities by manipulating and trading shares of publicly listed companies, thus shaking the confidence of the trading public and investors (Lewis 2008a). In fact, Japanese gangsters had gone so far as to set up ghost companies as a way of manipulating stock prices, and creating financial auditing firms to sign-off on falsified accounting and fabricated company books (Lewis 2008b).

In January of 2010, the United States Drug Enforcement Administration (DEA) officials found close to 50 g of methamphetamine hidden inside a photo album. The drugs were shipped to South Korea via Mexico and the United States using the global shipping company FedEx. South Korean law enforcement officials and DEA investigators set up a sting operation to arrest the culprits. The investigation ultimately led to the arrest of Mr. Seo and Mr. Moon, both Korean gangsters living in Korea ("South Korea, USA cooperate in crackdown on drug trafficking" 2010). Such changes in organized crime business arose, according to police, after the Korean National Police Agency began a massive crackdown against organized crime groups—gangsters—in South Korea in August of 2008, for extorting

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money from street vendors, small businesses, and entertainment agencies; it was also reported that the police crackdown on the sex trade compelled Korean gangsters (jok-pok) to seek alternative sources of income ("South Korean police plan intensive crackdown on organized crime" 2008).

Whether the illegal activity is loan sharking in Macau resulting in a contract murder in Toronto (Canada), stock manipulation and fraudulent accounting in Osaka (Japan), or smuggling narcotics to South Korea via the United States and Mexico, the examples used above illustrate the transnational and international character of organized criminal enterprises (Chin et al. 1998; c.f. Zhang and Chin 2003). For the purposes of this paper, an "organized crime group" is defined as "a structured group of three or more persons existing for a period of time acting in concert with the aim of committing one or more serious crimes or offenses … in order to obtain, directly or indirectly, a financial or other material benefit" (Finckenauer and Chin 2006, p. 22). In this paper, the term "triad" is used primarily to refer to organized crime groups that originate and operate out of Hong Kong and surrounding areas (e.g., Kowloon, Macau) (Chin 1995; Song and Dombrink 1994); the term "yakuza" is used primarily to refer to organized crime groups that originate and operate out of Japan (Yamagata 2001); the term "jok-pok" is used primarily to refer to organized crime groups that originate and operate out of South Korea. Although Lee (2006) uses the term "keondal" to describe Korean mafia-like figures, it is used in a singular nominative sense; the term "jok-pok" (people of violence), however, describes Korean organized crime groups as a collective whole, similar to the way "triad" and "yakuza" are used. In this paper, we use the broad term "Asian gangsters" to refer to organized crime groups that engage in offenses for financial and material gain from the respective countries of China (Hong Kong), Japan, and South Korea. This paper examines the portrayals of Asian gangsters in Asian (Chinese, Japanese, Korean) cinema.

There are several reasons why an examination of Asian gangsters in cinema is warranted. First, findings from previous research on Asian organized crime groups are inconsistent and peppered with incomplete findings on the types of illicit activities of the Asian crime groups. This condition may be attributed to the fact that Asian organized crime groups are exceedingly secretive and difficult to infiltrate: there has been an over-reliance on secondary sources, such as law enforcement and journalistic accounts (Zhang and Chin 2008). Consequently, this reliance on news media outlets has resulted in inconsistencies when discussing the types of legitimate and illegitimate activities of Asian organized crime groups.

For example, previous research has found that Asian organized crime syndicates have engaged in transnational narcotics trafficking and human smuggling throughout the Americas (Hudson 2003; Miro 2003; Richard 1999), while other findings have disputed those claims (Chin 2009; Finckenauer and Chin 2006; Lo 2010; Zhang and Chin 2003, 2008). With such contradictory results that emerge out of state-sponsored research and academia, popular forms of entertainment such as movies may be one of the most accessible ways that the public gains information about triads, yakuza, and jok-pok in their respective countries. It behooves us to critically examine the contents of those films to discern how they might shape the public's perception of crime groups in their countries.

Second, if movies about triads, yakuza, and jok-pok glamorize gangster life, by giving the impression that gangsters dominate cityscape and city life and live the "good life," surrounded by gorgeous women while their relations with other gangsters are marked by a code of honor and chivalry (Yin 2009), then such popularly held preconceptions about gangster life in Asian gangsters movies warrant a serious examination of their accuracy and such enduring stereotypes. Assessing the accuracy of Asian gangster stereotype in cinema is a topic that has not been addressed by previous research. This paper remedies that deficiency in the existing literature.

Third, some have asserted that the growing number of films about triads—and perhaps Asian gangster films in general—in Hong Kong may promulgate fear amongst the viewing public by sensationalizing their dangerousness and threat to society (Finckenauer and Chin 2006, p. 101). Such fear mongering in fact may empower

organized crime groups by allowing them to expand and conduct their operations without disruption and without the fear of citizen intervention (Chu 2005). Therefore, it behooves us to examine the accuracy of previous claims. Are Asian gangster films likely to perpetuate fear? We provide a provisional answer in this paper.

Fourth, we did not use representations of Asian gangsters in Western (i.e., Hollywood) films. While such a study would have been valid—and interesting—in its own right, we had serious reservations about using portrayals of Asian gangsters in Western cinema. That is because Hollywood has not been kind to Asians, Chinese men in particular. Asian women have usually been cast as the exotic, enigmatic, and sexualized "dragon lady" of the Orient (Said 1978). And rather than telling the story of Asian women and their unique and culturally nuanced histories and contingencies, they have been constructed as the object of European males' desire, as well the desiring beings of European men (Chan 2001, 2007; Kang 1993; Kim 2006). Asian men, on the other hand, have been tacitly constructed as asexual creatures (Okazaki 2002), undesirable as objects of female sexual desire, unworthy and incapable of sexual and emotional intimacy by virtue of their race and their race alone (Chen 1996). Or when Asian men have appeared in "masculine" roles, they have still been relegated as nonsexual martial artists (Chan 2000) who speak with a comedic Asian accent (Park et al. 2006), or perverts and criminals (Shek 2006).

Thus, we did not want to begin this paper with such a heavy historical baggage from the start. Instead, we wanted to examine the cinematic lives of Asian gangsters in their own turf, told by Chinese, Japanese, and Korean—Asian—screenwriters and directors, through films that were intended for those respective audiences (Park 1992). Through a critical examination of portrayals of Asian gangsters in cinema, we attempt to remedy the gaps noted in the preceding paragraphs. By doing so, we hope to be able to contribute to the literature in the following areas: (1) Asian criminology, (2) Asian gang studies, (3) Asian cinema studies, and (4) Asian masculinity.

5.2 Background

There are an abundant number of active Asian organized crime groups that are often depicted in films, in Asia, as well as internationally (Berry et al. 2003). The most prominent organized crime groups in Asia are the triads, the Green Gang, Chinese refugee gangs, the Jiaotou brothers, and common Chinese/Taiwanese street gangs who, as a whole, operate in a variety of illicit and lucrative activities (Huang 2006). These groups can be classified as traditional hierarchies, hybrid organizations, and/or criminal networks (Xia 2008). The triads are the largest international Asian organized crime groups with over 300 factions known as "umbrella groups," such as the Sun Yee On, 14K, and Wo Shing Wo (Chu 2005; Bolz 1995; Finckenauer and Chin 2006). Although Asian organized crime groups vary in size, flexibility, and structure, monopolistic organizations such as the triads have a multigenerational hierarchy that is universal, regional, and territorial in their illicit activities to ensure stable clientele and long-term profits (Zhang and Chin 2003; Berry et al. 2003).

Internationally, triads have begun to form affiliations with other criminal syndicates and entrepreneurs, such as the tongs in the United States, in order to expand their operations and influence globally (Bolz 1995). While common parlance conflates triads and tongs as synonymous entities, there is a distinction that needs to be made. Triads are a criminal group whose sole purpose is to make money through illicit activities such as extortion, drug trafficking, gambling, and racketeering (Finckenauer and Chin 2006). Tongs, on the other hand, are community and civic organizations within Chinatowns; and while tongs originally began as operators of opium dens and gambling halls, they are more accurately described as intermediaries between ethnic Chinese community and the English-speaking world—a community self-help organization (Chin 1995). That fact, however, does not mean that tongs do not exert influence—positive and negative—in their communities (Kelly et al. 1993a, b). As Asian organized crime groups form relationships and

cooperate with other triad factions, criminal syndicates, and tongs, such connections have the potential to enhance international economic opportunities, concurrently planting the seeds of institutionalization (Hagedorn 2009; Joe 1994). Triads have presently cooperated with organizations who were once rivals and other Asian crime syndicates to create a cohesive structure that allows them to take advantage of weaknesses in international law enforcement, borders, and governments (Zhang and Chin 2003).

The literature on Asian organized groups is marked by inconsistencies regarding the extent and characteristics of illicit criminal activities of Asian organized crime groups in the area of human smuggling and drug trafficking. Often, law enforcement and the media report and accept the validity of Asian organized crime groups as the responsible culprits of the two preceding illegalities (Chin 1996). Bolz (1995) reported that Asian organized crime groups have dominated these industries through false front triad-owned travel agencies, where they have planned routes, false identification papers, and worldwide associates that assist them. As an example, it was alleged by the United States State Department that Hana Tours, a travel agency located in Seoul, South Korea, falsified employment information on visa applications for their female clients. The diplomatic cable from the American embassy in Seoul alleged that Hana Tours would flood the consular office with 20–30 visa applications in the hopes of getting six to nine women through (Richard 1999).

Miro (2003) also alleges that Asian criminal organizations—triads, yakuza, "Korean-Mafia"—are extremely active in Latin America, engaging in the trafficking of women, human smuggling, narcotics distribution, and counterfeit production and sales. Similarly, Husdon (2003) posits that triads, yakuza, and "Korean-Mafia" operate out of the Tri-Border area of Argentina, Brazil, and Paraguay, extorting ethnically owned businesses and engaging in the manufacture and sale of counterfeit goods. As it relates to trafficking of women, Richard (1999) states that such offenses necessitate intercontinental cooperation and collaboration, for women who are trafficked must travel from the country of origin through transit countries, and ultimately, to destination countries, which require the complicity of entrepreneurs in the private sector, immigration agencies, and law enforcement. Academic researchers, however, claim that narcotics trafficking and human smuggling out of Asia are carried out by independent entrepreneurs who form temporary criminal enterprises that are opportunistic and nonhierarchal, ranging from three to five individuals (Zhang and Chin 2003), or in exceptional cases, one talented person (Sein 2008).

Again, although most research acknowledges that Asian organized crime syndicates are involved in the production and international distribution of narcotics, some have disputed claims of transnational drug trafficking and human smuggling on the part of Asian crime groups (e.g., Chin 2009; Dupont 1999; Zhang and Chin 2003, 2008). That challenge to findings from operational based studies materialized from the painstaking and diligent work from those who have carried out in-depth qualitative fieldwork with the major players in the illicit enterprises of Asian organized crime groups (Chin 1996, 1999, 2009; Zhang and Chin 2001, 2002, 2003, 2008). As an example, the Golden Triangle, located in the border areas of Thailand, Burma, and Laos, is one of the largest producers of heroin in the world, but the individuals operating in it are not part of any organized crime syndicate (Dupont 1999; Chin 2009). Asian organized crime groups often decline to participate in these trades as it is inherently risky, highly competitive, and expensive and has the potential to destroy their gangs (Joe 1994; Zhang and Chin 2003). Asian organized crime group members and leaders have, however, become opportunistically involved in the drug trade and smuggling activities as entrepreneurs (Soudijn and Kleemans 2009).

Despite such noted inconsistencies, there is consensus as to the types of illicit activities Asian crime groups undertake. Triads, yakuza, and jok-pok operate sophisticated multimillion-dollar industries in cross-national narcotics trafficking, counterfeiting, prostitution, arms trafficking, gambling dens, extortion, armed robbery, credit card theft and fraud, loan sharking, money

laundering, fraud, contract killings, and the kidnapping and trading of women and minors for entertainment industries (Bolz 1995; Berry et al. 2003; Chin 1996; Finckenauer and Chin 2006; Hughes et al. 2007; Huang 2006; Kelly et al. 1993a, b; Lindberg et al. 1998). These organized crime groups not only have the reputation to allow them to engage in such activities, but they also have the skills (e.g., specialized workers) and connections to maximize profits while expanding across international borders (Edwards and Levi 2008; Chu 2005; Xia 2008).

Asian organized crime groups are able to effectively operate illicit activities precisely because they have motivated customers who demand their services (Edwards and Levi 2008). For example, Dupont (1999) stated that there are over fifteen million opium addicts in China, making the heroin industry a high-demand, multibillion-dollar industry. To meet that demand and to evade detection, Asian crime groups employ tactics (e.g., compartmentalization) to avoid detection (e.g., use of runners and enforcers). For example, enforcers are responsible for ensuring the safety of the organized crime group and its markets while runners perform the risky task of transporting large quantities of contrabands (Levitt and Venkatest 2000). Those employed in such roles accept the risks of the job, including death, injury, and arrest. However, Asian gangs have often employed the vulnerable, impoverished, and unemployed by delegating risky tasks to them (e.g., drug mules) due to their expendability (Dupont 1999; Huisman 2008).

In addition to their illegitimate activities, Asian organized crime groups also have legitimate and semi-legitimate businesses as they become institutionalized (Hagedorn 2009). Asian crime groups cloak their criminal identities in the guise of legitimacy and benign sociality by penetrating into politics and to uphold some sense of "Mianzi" or "face" (Chin and Godson 2006; Huisman 2008). The triads, yakuza, and jok-pok have been known to invest in legitimate businesses such as bars, restaurants, hotels, casinos, and the entertainment industry (e.g., film production companies; talent scout agencies) (Chu 2005; Edwards and Levi 2008). They also have been known to be involved in semi-legitimate businesses such as debt collection companies, security firms, consulting companies, nightclubs, and loan companies (Huang 2006; Litner 2004). These businesses are used to increase their economic capital, expand their empire, and financially support their illegitimate activities. Edwards and Levi (2008) and Chin (1996) state in their research that Asian organized crime groups use these businesses as fronts for illicit businesses such as protection rackets and extorting local independent Asian businesses.

To operate in both transnational and locally based legitimate and illegitimate markets, Asian organized crime groups have effectively used intimidation, threats, and violence against other criminal syndicates, criminal entrepreneurs, law enforcement, and government officials or the general public (Chu 2005; Lindberg et al. 1998). The use of violence creates absolute power that protects and establishes control of monopolistic enterprises (Huang 2006; Xia 2008). This control is commonly done through shootings, kidnappings, assassinations, car bombings, assaults, and intimidation (Litner 2004; Lo 2010). For example, in the 1990s, Asian gangsters intimidated individuals and actors to gain control of the film and entertainment industry (Chu 2005). One of the most prominent forms of violent crimes committed by Asian organized crime groups is that of extortion, as gang members intimidate and threaten violence for "money" (e.g., protection fees) and political considerations (Chin 1996).

Asian organized crime groups also engage in intra-gang and intergang violence. Intra-gang violence is based on the strict codes of conduct and oath allegiances, as members are obligated to remain faithful to their groups based on fear of severe gang discipline (Zhang and Chin 2003; Bolz 1995). Intergang violence is more frequent as violence can erupt due to disrespect, settling conflicts, and eliminating competitors from specific markets (Chin 1996). However, Asian organized crime groups try to avoid violence all together as it provides unwanted attention that could disrupt gang activities (Joe 1994).

The methods employed by Asian crime groups have also affected government as well. Graft and bribery of public officials for "favors" has resulted

in what has been termed "protective umbrellas" (Van Duyne 1996). A "protective umbrella" is made up of corrupt members of political parties, army officials, and the police, who often cooperate and provide favors and privileged information to Asian organized crime syndicates; known as "black gold politics" (Huang 2006; Zhang and Chin 2008; Lo 2010), public officials in turn receive cash, drugs, lavish dinners, and sexual favors from crime groups in exchange for confidential information. The effect of "protective umbrellas" is to weaken the state's legitimacy as the government has protected criminal enterprises by providing financial support and political information to these organized crime groups (Chin and Godson 2006; Huang 2006; Xia 2008). It has been shown that Asian organized crime groups have cooperated with members of political parties by providing services such as kidnapping and assassinations and in return for some legal leeway which allows them to operate with immunity (Litner 2004). For example, if organized crime syndicates in Hong Kong are deemed patriotic and concerned with Hong Kong's prosperity, they are given patriotic immunity in the crimes they commit despite the fact they pose a long-term social, political, and economic threat (Bolz 1995; Lo 2010).

Triads, yakuza, and jok-pok have always been in the public spotlight because of the menacing ways they are portrayed in film and in the media. However, in reality, most gangsters are less colorful than the portrayals in Asian gangster cinema (Litner 2004). For instance, some have contended that the Asian film industry has offered glamorized depictions of these secret societies of gangsters which has created myths and misconceptions (Zhang and Chin 2003). The media has often accepted the exaggerated and stereotypical views of Asian gangsters without reliable empirical evidence which has contributed to the inconsistencies reported in the literature (Zhang and Chin 2008; Chin 1996). Zhang and Chin (2008) found that Asian crime syndicates may be more of a cultural icon in the media as they are only involved in about 5–10% of all crimes. This finding is consistent with Chu's (2005) findings that most of the public in Asia do not feel like their everyday lives are affected in any way by Asian gangsters.

We contend that there needs to be serious attention placed on Asian gangsters in cinema to determine the validity of these portrayals for several reasons. First, much of the existing scholarly work inconsistently reports on the types of illicit activities of Asian organized crime syndicates, specifically those of human smuggling and drug trafficking. As there is no universal consensus, Asian gangsters in cinema play a significant role in how the public perceives organized crime groups and their activities, which may lead to the creation and perpetuation of undue fear in the public (Chu 2005). Second, scholars have often blamed the media for manipulating the fear surrounding Asian organized crime groups; however, no scholarly work has examined how these gangster films may perpetuate fear. This deficiency may be due to the lack of research that examines Asian organized gangs and their popular representation. Gangster films may also create unrealistic expectations of glamour and excitement amongst marginalized adolescents who may be allured to such thug life based on inaccurate portrayals. It is therefore necessary to examine if the portrayal of Asian gangsters leads to the creation of fear and false expectations of good life in the viewing public. Third, victims of Asian crime groups may be reluctant to report their victimization (e.g., extortion) to authorities or even family members (Chin 1996); if the potential discourse around victimization is shrouded in secrecy and threats, the fictional criminal activities of gangsters in films may be the only source of information about the crime groups. It therefore behooves us to examine the portrayals of Asian gangsters and their illicit activities in cinema to discern the public stereotypes such films may engender in viewers. The purpose of this study is to build upon previous literature by examining the activities of Asian gangsters in film, their accuracy, and the effects such films may cultivate in viewers.

5.3 Asian Gangsters in Cinema

Films exert an effect on two levels. At the macro-level, they critique society, its ills, and evils; at the micro-level, they proffer identification fantasies for individual viewers (Black 1991). That is, films in general, and crime and justice films in particular, criticize the way the governments and criminal justice systems mistreat their citizens and prisoners, or illuminate tyranny and police abuse of power; films may also invite viewers to relish the heroic and yet defiant nature of an outlaw or a rogue hero. Films perform this double move: they reflect and reify culture and ideology as culture (Rafter 2006). Films are also intensely private and secretive sources of emotions, for each viewer must decipher the plot and viscerally experience the emotions of the protagonists, antagonists, heroes, and antiheroes. That's why films allow viewers to experience joy, elation, fear, and repulsion. Some have argued that such emotions can be replicated on a national level. For instance, national specific cinemas produce cultural myths and identification structures that reinvigorate a sense of nostalgia and community in the viewers (Park 2002). Yet, despite such private character of films' intent and enjoyment, they are also public in another way in that they are shaped by social, economic, and political forces external to the films themselves.

For example, scholars have noted that the tenor of yakuza movies changed from pre-WWII assembly line production movies with no definitive national identity to ones that attempted to affirm a positive and strong sense of Japanese identity in the wake of defeat in WWII (Schilling 2003). Yakuza movies portrayed gangsters as mythopoeic figures, solitary rule breakers leading a lonely existence, with the aim of being reintegrated back into society. Honk Kong films, too, experienced such a shift (Lu 1997). Films that were produced out of one major production company repeatedly portrayed male figures who were mired in an unexplainable supernatural force and attempting to extricate themselves from it (Pang 2002). Rather than the confidence and bravado exhibited by earlier characters in previous cinematic periods (Lu 1997), Pang (2002) notes that Milky Way films of the 1990s showed anxiety; such a trend in the storylines of films reflects the cultural and economic uncertainty following the Asian financial crisis of the 1990s.

The recent successes of Korean directors and films, such as Park Chan-wook and *Oldboy*, on the international circuit also highlight the role of extraneous factors that affect the quality and content of films (Shim 2006). The history of films in Korea illustrates the external factors and their impact on the contents and quality of film rather well. Korean films were heavily censored by the Korean Government officials until the late 1990s (Park 2002). Only after the directors were released from the tyranny of censorship did international blockbusters such as *JSA* and *Shiri* emerge from the Korean cinema landscape (Doherty 1984; Park 2002).

That is to say that government censorship of films and other works of art is, in turn, tied to political stability. Dictatorships and authoritarian regimes—governments that are not democratically formed—worry that artistic content that criticizes and challenges the regime's legitimacy will lead to political unrest, which then they must repress using coercion. Again, South Korea is a good example. Under the totalitarian regime of Park and Chun, films that criticized the government in any way were censored (Lee 1980; Suh 1982). Only when this government control of arts was lifted did creative works emerge. Thus, the nexus between film, society, culture, and government is intertwined in complex ways that mutually reinforce one another. Films can be sources of enjoyment, but they can also be the impetus for political protest and insurrection. Other scholars have already attested to the perception altering effects of crime programs (Dowler et al. 2006; Paulsen 2002; Websdale and Alvarez 1998). This leads us to ask what viewers of Asian gangster films might see. How are such films likely to affect viewers? To answer that question, this study analyzed films in the gangster genre in the respective countries of China (Hong Kong), Japan, and Korea.

All of the films viewed were foreign language films that had English subtitles. One of the authors happened to be an Asian gangster film aficionado who selected films that would portray the most plausible, realistic, and authentic representations of triads, yakuza, and jok-pok. Asian gangster films in particular are a genre that is quite limited in popularity and viewership. Consequently, little is understood by outsiders concerning the categories of Asian gangster films outside of their respective countries, much less to the wider, international, English-speaking viewers. With the predominance of Western culture in cinematography, authentic Asian gangster films are susceptible to be ignored or disregarded by non-Asian viewers as they may encounter difficulties in understanding and relating to the characters in the film due to cultural differences and biases. Despite this limitation, a handful of the films in this study have received some international recognition, and are highly acclaimed by zealous movie aficionados. For this study, we selected, viewed, and coded this genre of often neglected films, with particular attention being paid to the legitimate and illegitimate pursuits of the crime groups, as well as the characteristics and features of violent acts. In the following sections we discuss two themes that emerged from the unmotivated viewings, and which require further scrutiny based on limitations reported in previous works: the varieties of illicit activities of triads, yakuza, and jok-pok, and the characteristics of violence used in the film.

5.3.1 Illicit Activities of Asian Gangsters in Film

The illicit activities depicted in triad, yakuza, and jok-pok movies demonstrate the full range of illicit activities of Asian gangsters in the films, in ways that are consistent with those reported in the literature on Asian organized crime groups (Bolz 1995; Berry et al. 2003; Chin 1996; Finckenauer and Chin 2006; Hughes et al. 2007; Huang 2006; Kelly et al. 1993a, b; Lindberg et al. 1998). International drug trafficking in particular was a recurring and popular theme throughout the gangster films in all three of the countries examined.

The Hong Kong-based film *Protégé* (Chan 2007) explicitly examines the international heroin trade as it relates to the Golden Triangle, as well as the moral conflict that the hero (Nick) faces and attempts to resolve. The film opens with voice-over narrative asking the question why people use drugs. That question, as well as the scene, brims with tension, almost echoing the inner conflict of the principal character. The scene begins with a close-up of Nick and then pans out to an apartment which looks unkempt and dirty; viewers then are treated to a panoramic shot of Nick, only to discover that the person who has posed that question is a uniformed police officer.

True to the form and character of cops/robbers genre of Hong Kong style action films (i.e., *Hard-Boiled*), Nick is an undercover cop who has managed to infiltrate a crime group that specializes in the production and distribution of heroin. Nick manages to secure the trust of Quin, the leader, and after a show of loyalty, he is named the next successor. Viewers are led to experience Nick's struggle to be good (by fulfilling his police mandate) or evil (by assuming his role as the next drug king). But in addition to such individual moral choices and conflicts that define the hero's role, viewers are also treated to the elaborate and transnational character of the heroin trade in Asia.

Quin takes Nick to Bangkok and then Burma to meet various warlords (e.g., Wa State, Shan State) as part of his "apprenticeship." Viewers see that the Golden Triangle is controlled by a private military that is financed by proceeds from the international drug trade; Nick learns the supply and demand side of the drug trade as the warlords show Nick "World Drug Reports" prepared by the United Nations that is used to forecast worldwide demand and sales projections. Such depictions of the Golden Triangle are consistent with the literature as the individual warlords seen in the film operating the transnational heroin trade are not part of an organized crime syndicate (Dupont 1999). The drug warlords are merely independent criminal entrepreneurs (Chin 2009). During this trip, Quin proffers advice to Nick that is relevant to this study when he warns to "never

take risks" as there is "no room for error in this trade." This statement is similar to the literature, as Asian organized crime syndicates forego transnational drug trafficking due to the inherent risk, which is why organized crime groups can be seen trafficking and distributing various narcotics cross-nationally rather than internationally (Zhang and Chin 2003).

In addition to the international character of the drug trade, Protégé (Chan 2007) also provides an intricate and operational view of the situational contingencies that drug distributors and producers must negotiate. Viewers are treated to the fact that Nick's outfit has established an elaborate "runner system," in addition to a highly disciplined and sophisticated communication protocol (i.e., use of prepaid cell phones which are promptly disposed after an operation) that is involved in the distribution of narcotics as a way of eluding police detection and seizure. This tactical "runner system" shows members of Quin's organized crime group engaging in sophisticated countersurveillance and anti-surveillance measures such as changing carriers and cars repeatedly to ensure that the heroin reaches its destination.

The use of such a "runner system" is a reality, as Levitt and Venkatest (2000) state that the runners have the risky task of avoiding police seizure transporting large quantities of narcotics by whatever means necessary. This enterprise is fairly elaborate as it has specialized workers known as "head chefs" who manufacture the drug in gang-operated warehouses to make distribution easier. By employing skilled workers such as the "head chefs" seen in the film, Edwards and Levi (2008) and Chu (2005) corroborate the accuracy of the movie's portrayal as it allows them to successfully engage in drug trafficking activities.

The film *Sympathy for the Underdog* (Shundo et al. 1971) depicts a yakuza gang leader (Gunji) and his loyal followers who are forced out of Tokyo and into the smaller town of Okinawa after a failed assassination attempt on a boss (Oba) of a more powerful sovereign yakuza gang by one of Gunji's men. In Okinawa, Gunji's yakuza gang attempts to affirm his gang's legitimacy by using threats, violence, coercion, and the yakuza's feared reputation to gain control of various legal and illegal operations. Throughout the film, various professional and nonprofessional organized crime syndicates are seen discussing or participating in assorted ventures such as protection rackets, illegal smuggling of American alcohol, contract killings, operating of brothels (e.g., exotic dancers and prostitution), illegal gambling halls, entertainment businesses (e.g., clubs), and local harbor. Greed and the need for control over these competitive multimillion-dollar industries are observed inducing violence or turf wars with other criminal enterprises as each gang seeks dominance in specific markets that are usually restricted to specific gangs or territories. As local Okinawan gangs feel threatened and "squeezed out" of their once dominant position in their business operations by Gunji's yakuzas, they call on Oba and the mainland (Tokyo) yakuza to assist them to eliminate this threat in order to regain control over their markets and provide Oba with the opportunity for revenge for the attempt on his life.

These illicit activities are also prevalent in such Japanese yakuza films such as *Street Mobster* and *Pale Flower*. The film *Pale Flower* (Iwatsuki et al. 1964) illustrates the daily operations of an illegal gambling hall. A yakuza gangster (Muraki) mentors and collaborates with his love interest (Saeko) in cheating other yakuza gangsters in high stakes games for large financial gains. This relationship leads to a destructive and deadly outcome as Saeko's need for excitement results in her inevitable demise. Gambling dens and more sophisticated, elaborate activities are also portrayed in the film *Street Mobster*. In *Street Mobster* (Fukasaku 1972), a yakuza gangster (Isamu Okita) tries to reestablish his standing with his boss (Yato) and an aspiring gangster (Kizaki). Isamu is recently released from prison, only to find a significantly advanced criminal world than that when he received his prison sentence. Throughout the film, Isamu can be seen trying to restore his yakuza gang's dominance in markets as they actively involve themselves in competitive markets such as gambling dens, extortion rackets, kidnapping, procuring women for brothels, and operating semi-legitimate entertainment businesses (e.g., bars and clubs). Similar

to the film *Sympathy for the Underdog*, Isamu failed to adapt to the changing ways of the yakuza. He resorts to physical and violent encounters with opposing gangs who also strive for control and power which ultimately results in the death of Isamu.

The depictions in all three of the noted Japanese yakuza films provided accurate and consistent portrayals of yakuza's illicit activities in relation to the literature. The effective visual representations of the yakuza's use of violence, threats, and intimidation against other criminal syndicates allow for these gangs to operate in their varied and extensive sophisticated multimillion-dollar industries as stated by Chu (2005) and Lindberg et al. (1998). These criminal tactics allow the gang to protect and establish power and dominance over their monopolistic enterprises by effectively mitigating future threats or competition (Huang 2006; Xia 2008). Such practices allow the various yakuza families to successfully manage and control their gambling dens, extortion rackets, kidnapping, and trading of women for entertainment industries, as shown in films, specifically *Sympathy for the Underdog* (Bolz 1995; Kelly et al. 1993a, b; Lindberg et al. 1998).

A South Korean film that focused on organized crime drug enterprises is the classic gangster film *Friend* (Seok and Kwak 2001). In the film, Joon-Suk and Dong-Su are best friends who grew up in the same neighborhood, both admiring the lifestyle of Joon-Suk's father who is a powerful boss in a local organized crime group. As the years pass, they lose contact and join separate organized crime groups. Joon-Suk assumes the role of a leader of a criminal organization after the passing of his father, while Dong-Su becomes a powerful leader of Joon-Suk's rival organization. The potential conflict between the two principal characters is set.

In the film, Joon-Suk's crime group engages in illegal deep-sea fishing (e.g., shark fins) while Dong-Su's group participates in illegal bidding through extortion in the construction trade; Dong-Su's group also specializes in trafficking and distribution of Philopon. Despite having shared commonalities when growing up, both Joon-Suk and Dong-Su are now involved in a competitive and rival crime groups, putting business before past friendship. Such a capitalistic view of relationships is consistent with the literature as Dupont (1999) stated that high demand makes Asian crime groups actively participate and compete in the market. Both gangs in the film acknowledge that this business is very gang-oriented and monopolistic.

The sophisticated drug enterprise is reflected in the Hong Kong blockbuster *Infernal Affairs* (Lau et al. 2002) as well. Philosophically, the film deals with the battle between good and evil, duty versus desire; such a moral debate is contextualized in the lives of an undercover cop who is planted as a mole in the triads and a triad member who is planted as a mole in the police force. The film unfurls the war, violence, and conflict between the police and the triads over the organization's illicit activities, between forces of good and evil. The main premise of this movie is that both the police and the triads have infiltrated each other's organizations. Lau King Ming is an inspector in the police working undercover for triad leader Hon Sam. Lau is paid to tip Sam off to any raids or other police activity. However, Superintendent Wong Chi Shing also has penetrated Hon Sam's crime group with an undercover officer (Chen Wing-Yan). Triad boss Sam can be seen in the film operating a strict enterprise where Chen is forced to sniff and taste the powder to ensure that it is the best quality to traffic and distribute. In the film, once the quality of the narcotics has been verified by members, the triads begin importing shipments of "AA+Cocaine" from Thailand. Despite being tipped off by Chen, Sam monitors police channels to ensure the protection of his enterprise from the police.

A Bittersweet Life (Park et al. 2005) depicts the violence that surrounds a gang's illicit businesses. The main character, Kim Sun-Woo, is an enforcer and manager of Mr. Kang's (boss) hotel. As an enforcer, he ensures the protection and security of the organized crime group's legitimate and illegitimate enterprises against competing rival gangs. This criminal organization owns and operates the hotel where it employs Russian and Filipino women as "dancers" for their clubs, entertainment businesses, and prosti-

tution. Through legitimate "front" businesses such as the hotel, they are able to increase their revenue while being able to discretely transfer money without suspicion. According to Chu (2005) and Edwards and Levi (2008), Asian organized crime groups have been known to be involved in legitimate and semi-legitimate businesses such as bars and restaurants which is consistent with the film's portrayal. However, as Sun-Woo's boss says, "You can do a hundred things right, but do one thing wrong and it can destroy you." This may be why the gang is not seen involved in the narcotics market, as the risks are too great.

The film *Failan* (Ahn and Song 2001) is a love story told through the life of a petty Korean gangster (Lee Kang-Jae). Lee Kang-Jae is a loser in all sense of the word. He is old, but garners none of the respect of a person his age; although he is the longest serving member of his gang, even his juniors will not show him the proper deference. In fact, the opening scene shows Kang-Jae coming home to a filthy apartment (after he is released from jail for having sold pornography to a minor) that he shares with his fellow gang member; as part of his homecoming, his roommate tells him that he has been demoted to a bouncer in the bar/nightclub that his crime group operates. The illicit activities of Kang-Jae's crime group are revealed when a female character, Failan, is introduced.

One of the illicit money-making schemes that Kang-Jae's group engages in is providing women to bars and nightclubs as hostesses. Kang-Jae's group operates an employment agency as a front, which then provides falsified documents to the women; to extend the women's stay in the host country, the crime group uses its members to fraudulently marry the women to provide them with permanent residency status. The nominative husband is paid a kickback for his services while the crime group "sells" the women to bars, nightclubs, and any employer who is willing to pay upfront the large sum of money spent to carry out the operation, plus the profits. Although the primary storyline unfolds between Kang-Jae and Failan, the film provides a fairly sophisticated account of illegal and exploitive labor practices as well as trafficking of women. The film thus at least partially corroborates the findings of previous works which claim that crime groups' involvement is an integral component of the human smuggling and trafficking business at some level (Chin 1999; Kwong 1997).

5.3.2 Violence

Throughout nearly all of the movies examined, there were countless—too many to count—depictions of assaults, stabbings, and murder. In the gangster film *Friend* (Seok and Kwak 2001), the reputation of jok-pok's penchant for violence and the fear they instill is clearly visible when a teacher who disciplines Joon-Suk by lashing him with a stick realizes his faux pas. When the teacher realizes that Joon-Suk's father is a jok-pok (Korean organized crime group) *doo-mok* (leader), he quickly regrets his actions as he fears violent retaliation. The effect of a reputation for violence and the fear it generates ensure that their members are not harassed; such an instrumental view of a "badass" reputation is consistent with the literature (Chu 2005; Katz 1991). Later in life, as a mob war looms between Joon-Suk and Dong-Su's gangs, Joon-Suk can be seen in one scene training gang recruits how to kill with a knife, preparing them for "war." However, even though protection from one's own gang is an integral part of being a gangster, it is not absolute, as violence can be committed within the gang, amongst themselves. Intra-gang violence is seen depicted in *Friend* when Dong-Su is betrayed and murdered violently by his own men, as well as his rivals, for not following protocol when dealing with a vulnerable rival leader. Such depictions are consistent with Zhang and Chin's (2003) findings that if leaders or members feel that the gang's code of conduct is broken at any time it could result in immediate and severe discipline.

Respect and violence loom rather large in the ethos of Asian gangsters. For example, when Joon-Suk is asked why he did not deny ordering the hit of his friend Dong-Su, despite the fact that bribery had already been paid to court officials, and all he had to do was deny that he knew the

co-accused, he says: "That would have been humiliating. Me and Dong-Su are gangsters. Gangsters shouldn't be humiliated." Such a proclamation is consistent with what Huisman (2008) stated when describing "Mianzi," as gangsters try and keep "face." Losing face ("Mianzi") is a principal reason for violence in the film *Election* (Law et al. 2005). As the respected elders of the triad gang, known as "uncles," vote and elect Lok as the new leader, Big D loses the election and seeks revenge on the elders who did not vote for him. In one scene, Big D's underlings kidnap two of the elders who did not vote for him, put them in a nailed crate, and roll them down a hill, because when one loses an election it means loss of "Mianzi." This loss of face is why Big D seeks retaliation for this perceived dishonor as he feels the need to restore his honor within the gang. However, Big D overcomes his bitterness when Lok offers him a high position within the gang which results in Big D showing his loyalty by murdering betrayers within the gang to promote Lok's supremacy. Despite this loyalty, and oaths of allegiance to the triad code, Lok murders both Big D and his wife after Lok finds out of a previous assassination plot by Big D. Such a turn of events is consistent with previous works which state that strict discipline is associated with breaking the loyalty oaths, and as Lok states in the film, "loyalty aside, you should put yourself first" (Zhang and Chin 2003).

Intra-gang and intergang violence is a common theme in Asian gangster cinema as seen in the film *A Bittersweet Life* (Park et al. 2005) which depicts the violence that surrounds a gang's illicit businesses. The use of enforcers like Kim Sun-Woo is consistent with Levitt and Venkatest's (2000) findings that enforcers are used to ensure that the gang's criminal businesses are protected through violence, threat, and intimidation. The film depicts multiple portrayals of intergang violence as Sun-Woo is constantly fighting with his gang's rival, specifically Baek Jr. Previous literature has stated that violence erupts in settling conflicts and eliminating competitors, and the storyline behind *Bittersweet Life* attests to the potential for intergang violence (Chin 1996). In one scene, Sun-Woo and another gang member engage in a violent altercation with Baek Jr.'s men for overstaying their welcome in their hotel. For doing this Baek Jr. orders that Sun-woo apologize.

When Sun-Woo refuses to apologize, he is followed back to his residence, severely beaten, tortured, and buried alive, but manages to survive this ordeal. When Sun-woo discovers that his own Boss Kang was involved in his beating for not following orders, he feels betrayed. This betrayal causes Sun-Woo to seek out another organized crime group who dealt specifically in arms trafficking to exact revenge. When Sun-Woo's motives are discovered by the gun dealer, a shoot-out erupts, with Sun-Woo killing everyone. In the end there is a violent altercation, resulting in the deaths of Baek Jr., Kang, multiple underlings, and eventually the death of Sun-Woo, but not before completing his revenge. Although Chin (1996) states that intergang violence is more frequent, several of the films provide rather visual representations of intra-gang violence, while only a few depict intergang violence.

Violence in Asian gangster cinema is not limited to intra- and intergang violence. The film *Infernal Affairs* (Lau et al. 2002) bases itself on the war and violence between the police and the triads. The triads in the film also are involved in frequent shoot-outs with police, police chases, and murder. The triads in this film murder Superintendent Wong Chi Shing by severely beating him and throwing him off a roof when he fails to reveal the identity of his undercover officer. Based on the film, it can be perceived that violence, murder, and death are very prominent in organized crime. This pattern can further be seen in the movie as Mr. Lau ends up killing his boss Sam, Chen, and other gang informants to protect his identity and self-interests. As Berry et al. (2002) put it, sometimes money, power, and self-interest are where the gangsters' loyalty lies. This film is consistent with Litner (2004) and Lo's (2010) findings that shoot-outs with law enforcement, murders, and assaults are the most commonly used approach to ensure protection of their illicit activities from police intervention. Japanese yakuza gangster films often sensationalize and glamorize the violent lifestyle of the

yakuza through graphic visual representations that include shootings, stabbings, assaults, assassinations, and bombings, resulting in multiple deaths. In the film entitled *Yakuza Demon* (Naitô and Miike 2003), a small time (three members) yakuza family called the Muto family of the Date clan attacked the top echelon of the dominant Tendo yakuza family. The outcome resulted in the Tendo family seeking revenge on the much smaller Muto family. Seiji the "Ripper" is a member of the Muto family who planned and orchestrated the murder plots of the Tendo bosses which resulted in devastating carnage through the use of automatic weapons, shotguns, and bombs. Seiji's boss, Muto, who had no knowledge or involvement in the plot is attacked, beaten, and killed while he was incarcerated. Yoshi, the other member of the Muto family, is shot and killed while at the beach. Seiji's friend, who supplied him with weapons, is discovered hanging from a crane and eventually Seiji is murdered in an onslaught of gunfire while attempting to flee on a boat in order to save his life. However, Muto's wife is allowed to live because, as one gangster stated, "we shouldn't kill women, we should fuck them." Despite this, violence against women is still seen in Japanese gangster films, as shown in *Street Mobster* when Isamu's "girlfriend" is shot and killed alongside him by the rival yakuza gang (Fukasaku 1972). In Japanese yakuza films, murder is not restricted by sex or gender.

Violence is predominant in other Japanese yakuza films such as *Sonatine* and *Sympathy for the Underdog*. In *Sonatine* (Mori et al. 2003) a yakuza leader (Murakawa), along with some subordinates, is ordered to go to Okinawa to assist allies who are currently in a war with a rival yakuza gang. The importance of the war is downplayed at the beginning of the film, yet, throughout the film, Murakawa and his Yakuza soldiers repeatedly come under fire from the opposing group in their residences, bars, and on the beaches of Okinawa. Eventually all of Murakawa's friends and allies are killed. The movie culminates in a gun battle at the opposing gang's compound, with Murakawa emerging the victor. Ultimately Murakawa commits suicide. This outcome is similar to *Sympathy for the Underdog* (Shundo et al. 1971) as after Gunji and his associates were run out of Tokyo, they reacted with violence, shootings, and stabbings in order to create fear and intimidation in order to regain control over their illicit operations, which is consistent with the literature (Huang 2006; Xia 2008). The constant conflict in this film is similar to Chin's (1996) findings that intergang violence is often necessary to settle conflicts or eliminate competitors from specific markets. When the head of the mainland yakuza family discovers where Gunji is located, he seeks out the help of local Okinawa gangs, resulting in a final shoot-out. This battle resulted in the deaths of Gunji and his soldiers as well as Oba and the leadership of the mainland yakuza.

Rather than basing these films strictly on their illicit enterprises, Asian gangster films have often glamorized violence, as exaggerated violence in films perpetuates fear and chaos in communities where Asian criminal organizations operate. Literature has shown authentic Asian organized crime groups use violence, threats, and intimidation to protect their illicit enterprises, while Asian gangster films seem to emphasize violence to provide entertainment and excitement (Chu 2005). Such an assertion is inconsistent with Joe's (1994) findings which indicate that violence is only used when necessary to protect the business ventures because it can significantly hinder profit by bringing unwanted attention on the gang.

5.4 Cultivating Inaccurate Stereotypes About Asian Gangsters

Our examination of Asian gangsters in cinema, as it pertains to their legitimate and illegitimate activities and violence, found that the violence depicted in the films dominates over the portrayal of their business ventures. Although the films did portray legitimate and illegitimate business activities, the majority of the films significantly downplayed their importance to the point where they almost become auxiliary. From a filmmaker's point of view, representations of the details of a crime group's business activities may not allure viewers to the universalizable aspects of storytell-

ing. There is, after all, nothing sexy or glamorous about counting money or bragging about tenfold increase in profits for various crime groups. However, that omission may serve to cultivate the viewer's perceptions in a particular way.

As previously noted, almost all of the films dealt with drug trafficking and distribution as the prominent source of income for organized crime groups in Hong Kong and South Korea. Other crimes that were depicted in these films showed brief representations of prostitution, gambling, arms trafficking, loan sharking, and protection rackets. All of the depictions of their businesses in film are consistent with the literature (Bolz 1995; Berry et al. 2003; Chin 1996; Finckenauer and Chin 2006; Hughes et al. 2007; Huang 2006; Kelly et al. 1993a, b; Lindberg et al. 1998; Song and Dombrink 1994). However, when comparing the films' depictions with the literature, there is a lack of substantial coverage of other illicit activities of actual organized crime groups, such as contract killings, kidnapping for ransom, armed robbery, fraud, and trading of women and minors (Bolz 1995; Berry et al. 2003; Huang 2006).

By sensationalizing and focusing only a few types of violent and illicit activities, the films ignore that these organized crime groups operate a highly secretive, sophisticated, and structured syndicate in various legitimate and illegitimate markets. If the public were to take the films as accurate portrayals of the gang's activities, then such representations may create misconceptions about the actual activities of the gangs in a larger context. Viewers may conclude that the harms produced by the gangs may be minimal. The directors of each film seem more interested in providing sensational entertainment at the cost of realism. But then again, filmmakers are not documentary makers.

The findings reported here are consistent with Litner's (2004) and Zhang and Chin's (2003) comment that Asian gangsters were less colorful in their portrayals in cinema. Our study indicates that violence in Asian gangster cinema permeates across national boundaries and cultures, which could result in potentially misleading perceptions that these groups pose a threat to the safety and well-being of the citizens in the gang areas of influence. Through repeated depictions of brutality, murder, torture, assault, and fighting in the films, people may automatically accept all of these crime groups to be problematic for society as these films help validate public fear. Due to the extreme nature of the visually graphic violence in Asian gangster cinema, the films manipulate and perpetuate fear, thereby making viewers susceptible to perceived stereotypes of traditional organized crime syndicates (Finckenauer and Chin 2006; Kelly et al. 1993a, b; Lindberg et al. 1998). Another perspective may be that the hyperbolic forms of violence may shape the attitudes and perceptions of viewers in the opposite direction.

Our work indicates that despite the manifold array of illegal enterprises of triads, yakuza, and jok-pok in the films, the visual representation of violence is what leaves a lasting impression in the cinematic experience of the viewers. The type of violence that we found is something that is qualitatively different from Western films in the same genre. Using again the classic Korean gangster movie *Friend* as an example, Joon-Suk sets up Dong-Su to be killed by his men as well as one of his own lieutenants. In that scene, as Dong-Su is about to enter his car, his trusted lieutenant grabs him from the rear while another stabs him in the back with a "fish knife" (the most commonly used weapon in Korean gangster movies); as Dong-Su fights off his attacker and attempts to run away, he is attacked again by another gangster assigned to complete the killing.

Dong-Su is stabbed no less than twenty-nine times, three from an overhand hacking motion and the rest in a direct frontal thrust to the stomach; at one point, viewers are treated to the sound of the blade making dull noises against the concrete post, as the blade enters and exits the flesh and makes contact with the concrete post that Dong-Su is leaning on as he is being stabbed; the attacker is carrying out the killing in a scared frenzy. Dong-Su senses that fear and the nervous energy of a first-time killer, and tells him, as he lay dying, "You've done enough; I've eaten enough." That is, you have stabbed me enough times for me to die; you have done your job well. As the camera pans out to a shot of Dong-Su quivering like a fish out of water as his life passes

from his body, there is no glamour in the life of a gangster. There is only the brutality, the coldness of the blade, and the relentless pouring of rain—death. That is the moral message that is etched into the minds of viewers.

The same message is conveyed to the audience in *Breathless* (Jang and Yang 2009). Although the title given is "breathless," the actual meaning in Korean translates, literally, to "shitfly"; that title most felicitously reflects the life of Korean jok-poks who earn their money by serving as muscle for politicians and wealthy business owners who need to clear out destitute residents out of slums to make way for new condominiums. *Breathless* tells the story of Sang-Woon, a petty Korean gangster who works for his friend, a loan shark; and throughout the movie, viewers get a glimpse of the underside of Korean gangsters and the people from whom such gangsters eke out a living: poor, miserable men addicted to gambling who have squandered away their fortunes and incurred the debts of loan sharks. In this raw, in-your-face look at gangster life in Korea, we again see the terminus of that life: Sang-Woon is first struck on the head with a hammer by an unruly client who cannot pay; and when he exercises compassion and decides to come back another day, his underling uses the same hammer and strikes him on the head repeatedly until he dies; but before Sang-Woon dies, viewers are treated to the gurgling sounds of blood caught in his throat, as he is struggling to utter his last words: "I have to be somewhere." The pathetic life and death of a gangster who feeds on the bottom of society are visually articulated in that scene of death. There is no glamour; there is no glory; there is only the gurgling sound of blood caught in Sang-Woon's throat, and the flies that will feast on his death. There is no hero to be found anywhere. This absence of a hero is one way that Asian gangster films differ from their Western counterparts (Rafter 2006).

To claim that gangster movies may unduly influence youths to be drawn toward gangster life as a result of glamorization of gangsters seems a bit premature and difficult to understand, for there is little that is glamorous about gangster life as indicated from our work. Asian gangster movies may make the top bosses look enviable with their flashy suits and nice cars, but the life of gangster underlings, and even gang *dai-los*, *oyabuns*, *doo-moks*, and *hyoung-nims* meet the same fate as their subordinates, an ignominious and impersonal death from a fish knife or a gun. Again, there is little that is admirable or glamorous about being betrayed and stabbed to death by a trusted subordinate if one is a boss. There is little honor in betrayal.

5.5 Future Trends

If Asian gangster movies glorify and glamorize gangsters and their life, as some researchers have claimed (Yin 2009; Chin and Godson 2006), such findings may be explained by the presence of a distinct style. The triads, yakuza, and jok-pok in all of the films had a unique language of their own, a speech pattern and vocabulary of motive, and style that marked them as such; furthermore, they all had a stylish manner of dress and comportment in ways that signified their identity as a "badass." Their body markings—scars and tattoos—bore the corporeal evidence of a life of agonistic struggle and triumph. Finally, the gangster films dramatized and foregrounded the relationships among men, qua men, and as brothers, and constructed the men as masculine subjects, without the stereotype and prejudice embedded in white-dominated Western films. That is, the Chinese, Korean, and Japanese men played the part of men, as men. In that sense, it is that image of a masculine figure that may be the primary source of attraction for disenchanted and marginalized youths across Asia, and not necessarily the gratuitous violence in the films. The pursuit of masculinity and the ethos and rituals of being an Asian gangster may be worth pursuing in the future.

The films that we chose for this project were selectively sampled; there are literally hundreds of films in the particular genre that present the activities of triads, yakuza, and jok-pok. For future works, a more comprehensive review of films would add an additional empirical bite to this exploratory project. Such a project, if carried

out properly, may be used to verify the authenticity of such films as well. But much more importantly, these types of films may be one way to reach out to disaffected youths who may be contemplating joining a gang; coupled with a former gang-member-turned interventionist, the films may be used as topics of focus groups to tell and share the reality of gangster life to those who are most likely to be wooed and targeted for recruitment. Such a noble objective would not be hyperbole or fiction.

5.6 Conclusion

We began this paper with the story of Q. Lu. He met a fate similar to other fictional gangsters covered in this paper: he met a cold and ignominious death, stuffed inside a barrel and dumped into a lake. The business activities of Asian gangsters in the films appeared to be consistent with the findings from previous literature; the films reflected illicit businesses such as human smuggling, narcotics smuggling and distribution, and loan sharking. Contrary to previous findings, however, our work indicates that Asian gangster films do not seduce viewers to interpret gangster life as one of glamour and excitement. In fact, we have argued that the opposite may be true, for the extent and gratuity of violence found throughout the Asian gangster films militate against any appeal to gang membership and gang life. Fictional gangsters—and perhaps actual gangsters as well—end up in prison or die a cold and brutal death. That may be the very moral message originally intended by the filmmakers, for art appears to imitate life.

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Intellectual Property Crime Online in Asia

6

David S. Wall and Majid Yar

6.1 Introduction[1]

The marriage of digital and networked technologies has resulted in the World Wide Web and the cyberspace it creates being constructed of informational flows that express ideas. It is the control over the means by which these ideas are expressed which lies at the heart of the various contemporary debates over intellectual property, regardless of jurisdiction. The products of the marriage of digital and networked technologies are global and they affect the Asian continent as much as any other, with the possible exception of Antarctica—for obvious reasons. Yet, understandings, especially in the West, of Asian jurisdictions are pre-problematised and pre-sensitised to the impacts of what are perceived as IP crimes because of prior and broader concerns over their relatively low enforcement of patents, trademarks and copyright IP law by international trade partners (mainly major western nations). Such concerns are expressed through mechanisms such as the US Special 301, which is an annual review of intellectual property protection and market access practices in foreign countries.[2] These concerns are also embodied in the World Trade Organisation (WTO) Trade-related aspects of Intellectual Property Rights (TRIPS), which is a multilateral international agreement on intellectual property.

In response to direct international pressure to reform their IP regimes, Japan (Tessensohn and Yamamoto 2005) and Taiwan (Chiang 2012) have introduced specialist IP courts in 2005 and 2008, respectively, to increase enforcement of IP law and reduce litigation waiting times. The main concerns of the IP courts are typically patents and copyright (Chiang 2012), but online IP issues, which are the focus of this chapter, are quite different in nature. They tend to include the appropriation of trademarked symbols of trust, using the Internet to steal intellectual property, artefacts and industrial secrets. Furthermore, online IP issues in Asia tend to have different (informational) characteristics to the main IP debates and fall outside the remit of the IP courts. The paradox is that not only is the degree to which low IP law enforcement in Asia contestable because "IP theft" is often cultural issue, but also the IP issue in Asia has become politicised as outlined above, with Asia becoming the "criminal other" (see Yu 2003, and also Schwabach 2008). In the online world the basic technical IP issues remain similar to elsewhere.

The informational flows that span the Internet's various networks are the product of creative

[1]This chapter develops and builds upon Wall and Yar (2010)

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[2]See further, International Intellectual Property Alliance (IIPA) www page <http://www.iipa.com/special301.html>

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intellectual labour over which some form of moral or financial claim can be made to ownership. They range from the software codes that construct the architecture of the World Wide Web to a range of ingenious intangible artefacts that have become the new real estate of virtual worlds. Not only has there been a fiercely contested struggle over whether or not these, sometimes valuable, artefacts can be owned, but there have also been many instances where individuals have sought to appropriate them from their authors. The fight that is taking place to control this "intellectual real estate" has now become a prominent feature of debates over the Internet because they tend to focus upon issues relating to the ownership and control of an environment that was initially designed to facilitate the free flow of information.

The ability of networked technologies to disseminate, share or trade informational or intellectual properties in the form of text, images, music, film and TV through information services is what has made the Internet and World Wide Web what it is today, and same ability is arguably driving the further development of the information age. Networked information technologies are, however, not simply characterised by informational flows. It is significant that these flows are also networked and globalised (see Wall 2007, p. 50). These three qualities, on the one hand, give the authors, creators or their licensees—who have a right of ownership or control over the creations—a highly efficient means by which to disseminate their "properties". On the other hand, however, the very fact that they are informational, networked and globalised means that traditional physical and/or "centralised" means of controlling intellectual properties can be circumvented. The increased market values of informational property in an information age combined with relatively low levels of control that can be exerted over them simultaneously creates new opportunities and motivations for unauthorised appropriation or use—what has become known as cyber-piracy. Yet, these debates are also taking place within the context of changing cultural, social and legal meanings of intellectual property. It is a process of change that is beginning to challenge conventional orthodoxies and legal attitudes towards intellectual properties.

This chapter critically explores what is being understood as online intellectual property crime. The first part looks at how intellectual property is being transformed by new technologies and why it has become significant to the emerging information economies. The second part looks at "virtual theft" and specifically at how different forms of informational intangibles (virtual intellectual property online) are being appropriated and causing concern for creators and owners: intellectual property piracy of music, video and software and the theft of virtual artefacts. Part three discusses critically some of the broader issues that are emerging in the debate over intellectual property online.

6.2 How Is Intellectual Property Being Transformed by the Internet?

We begin here by briefly mapping out just what is meant by the term "intellectual property" and intellectual property law. Intellectual property is the creative product of intellectual labour and is manifested in the form of the so-called intangibles, such as ideas, inventions, signs, information and expression. Whereas laws covering "real" property establish rights over "tangibles", intellectual property laws establish proprietary rights over "original" forms of intellectual production (Bently and Sherman 2001, pp. 1–2; WIPO 2001, p. 3). Intellectual property can take a number of recognised forms—patents, trademarks, trade secrets, industrial designs and copyright.[3] Copyright establishes the holder's (e.g. an author's) rights over a particular form of original expression (WIPO 2001, pp. 40–41). Typical objects of copyright include literary, journalistic and other writing, music, paintings, drawings, audio-visual recordings and (most recently) computer software. As the term suggests, copyright law grants the holder rights over the copying,

[3] This chapter deals with the concepts of, and different types of, intellectual property and issues relating to the Internet, rather than specifically focusing upon intellectual property law. Each jurisdiction has its own intellectual property laws.

reproduction, distribution, broadcast and performance of the designated "work" or content. In essence, the holder retains ownership of the expression and the right to exploit personally or by licensing its copying, distribution or performance in return for the payment of a royalty or a fee. Thus, for example, if you purchase a CD recording of songs, you have ownership over the tangible object (the CD), *but not of the musical content* of the CD, whose ownership remains with the copyright holder. Therefore, you are legally prohibited from multiply copying, distributing, broadcasting or performing the content without authorisation from the holder and the payment of some agreed compensation. A trademark, in contrast, is "any sign that individualises the goods of a given enterprise and distinguishes them from the goods of its competitors." (WIPO 2001, p. 68; BBC 2008). Trademarks indicate the source of the product, such that the consumer can distinguish it from the products of other manufacturers. Words, such as slogans and company names, drawings and symbols like logos and audible signs such as music can all function as trademarks (WIPO 2001, p. 70; BBC 2008). The recognised holder of a trademark enjoys proprietary rights over its use, and other parties are prohibited from using the holder's mark to (mis) identify their own products (Bently and Sherman 2001, pp. 900–901). Patents have as their object inventions (products or process) over which the state grants the inventor rights in relation to the exploitation (e.g. manufacture and sale) of the invention. Once an invention is patented, it cannot be exploited by any party without the prior permission of the patent holder (WIPO 2001, p. 17). Historically, patents have been associated with tangible properties such as the chemical formulae for pharmaceutical drugs, or the design specifications of engineered objects such as electronic circuitry or mechanical components. However, in recent years patent protection has come to also cover intangible properties, especially computer software (which is also additionally afforded protection via copyright) (Stobbs 2000). Therefore, taken together, intangible or intellectual properties are created and defended through copyright, trademark and patent laws.

The "digital revolution" brought about by networked information technologies has had profound consequences for the various different forms of intellectual expression. The ability to digitally copy, transfer or transmit the expression of ideas in the form of code has enabled the perfect reproduction of such content, without deterioration or degradation. Thus a digital copy of say a film, image or sound recording is indistinguishable from the "original" and can subsequently be copied endlessly without any loss of visual or auditory detail (Yar 2006a, p. 97). Since the Internet is essentially a network designed to enable the effective, fast and worldwide transmission of digitised code, it has become the perfect medium through which such content can be freely circulated, copied and exchanged. Moreover, the rapidly falling costs of the equipment and services necessary to make and share such copies, such as personal computers, CD- and DVD-burners, hard disk storage and broadband Internet access, have enabled users to share digital content at very little marginal cost (Yar 2005; 2006b).

A distinctly visible expression of the new informational order that is emerging in the information age has been the dramatic rise in the overall number of registrations for trademarks and patents, combined with a new aggression in the application of intellectual property laws to protect both properties and the expression of the ideas they implement. Information is now routinely becoming commoditised as intellectual property, including some previously in the public domain. Not only is this practice encouraging the growth of a new political economy of information capital and new power relationships (see Boyle 1996), but the value inherent in it is also encouraging new forms of deviant behaviour to appropriate the value of informational content.

In this way, cyberspace today not only challenges our conventional understanding of ownership and control, but it also blurs the traditional boundaries between criminal and civil activities along with some of the principles upon which our conventional understandings of criminal harm and justice are based. A good example here is a reduction in the ability of prosecutors to prove the offender's intention to permanently deprive

another person of his or her digital informational property as would be required under s. 1 of the Theft Act 1968 in the UK. Consequently, important questions remain unanswered as to what online intellectual property crimes actually are and to what extent they differ from other activities that we currently recognise as intellectual property crime. Wall (2007) argues that Cybercrimes are behaviours that are mediated by networked technologies with the premise that were those technologies to be removed then the cybercrime activity would cease. Using this criteria Intellectual property crime online is no different and satisfies the criteria as a cybercrime. It is, however, important to distinguish between Intellectual property crimes that use the Internet and intellectual property crimes that take place in cyberspace.

6.3 Intellectual Property Theft[4]

We can break down the types of losses that are incurred by victimisation through virtual theft. Indeed, here we encounter a basic conceptual inconsistency because as stated earlier, digital media can be reproduced exactly. In fact digital media are simulacra (Baudrillard 1994), copies without originals, rather than copies. Because the point in question here is the "owner"s' lack of exclusive control over the property, the metaphor of piracy is probably more generally appropriate than that of theft—although the latter is commonly featured in many of the online crime narratives.

At the heart of the cyber-piracy debate is the ability of those with legitimate rights to digital intellectual properties to maintain their control over them. The problem of regulating cyber-piracy is largely one of policing its usage, because digital property, whether in written, musical or video form, has the unique characteristic of being stored as code and, as stated earlier, being produced in its original form each time the file is run. Digital copies are identical, which creates new problems for controlling their dissemination in ways that preserve income streams. They are very different in nature to intellectual properties reproduced by analogue technology, such as vinyl records or film, which degrades in quality with each generation of copy. This characteristic emphasises the value of the original artefact, but also instils an informal policing mechanism into the process. Without adequate controls in place the value of digital property can (arguably) be lost very quickly. Consequently, running in parallel to the growth of the Internet has been an increase in the number and complexity of intellectual property laws and regulations relating to trademarks, copyright and patents; see for example the debates over the changes in privacy and publicity laws in the USA (Boyle 1996; Madow 1993). These laws have intensified the debates over piracy. Thus, the intersection of the medium of cyberspace and more restrictive intellectual property laws became quite a potent combination, especially at a time when, as Baudrillard observes, economic activity has become the outcome rather than the cause of cultural values and norms (Baudrillard 1994, 1998). Importantly, the fact that productive ideas can now be put into place without the need for expensive mechanical manufacturing processes means that the monetary value of those ideas is further enhanced. These forms of intellectual property, trademarks, domain names and character merchandising are becoming the real estate of cyberspace—especially where the IP is linked to the architecture of the Internet (e.g. domain names). Thus the virtual terrain of cyberspace is marked by the struggle for control over this "intellectual" real estate and its value increases in proportion to the strength of the legal and technological control that exists over its dissemination. The downside is that this control makes it all the more desirable as something to be acquired for use or to be sold on.

Intellectual property piracy follows the centuries-old practice of hijacking value by counterfeiting products (through design piracy) and making copies of the original and then passing them off as originals. The trademark originally emerged as a trusted sign to counter piracy by indicating to the purchaser that the product is genuine and produced by quality manufacturers (see Sherman and Bently 1999). However, in the age of mass

[4]This section is drawn from Wall (2007), pp. 94–101.

consumption the trademark has acquired its own status and value, independent of the quality of work—especially when linked to brands. For goods carrying trademarks, the Internet has become a natural marketplace,[5] especially following the popularity of e-commerce and Internet auctions such as eBay. These sites became a natural forum for selling counterfeit branded hard goods, such as watches and designer clothes and accessories, and also counterfeit branded *soft* goods that have been copied and packaged, or made available to download, and they still are, despite judicious policing efforts. Thus it is unsurprising that one of the most commonly reported forms of misrepresentation on Internet auction sites is selling counterfeit goods that are advertised as authentic items. There is a growing body of evidence that auction sites are extensively used for trading counterfeit DVDs, CDs and computer software packages, as well as counterfeit clothing, perfumes and other items (Enos 2000; MPAA 2003, p. 3).

In many ways, these examples follow the *mens rea* (guilty mind—intent) and *actus reus* (guilty act) of traditional piracy and the primary concern of victims, the intellectual property right holders, is to restore any income lost by piracy that would otherwise have been enjoyed had the goods or services been purchased legitimately. However, other new forms of counterfeiting are emerging solely within the confines of cyberspace that require a further examination. Take, for example, a situation where pictures of a famous pop star are appropriated from (usually official) Internet sites, scanned from physical sources or digitally created by "morphing" different images together. The pictures are then packaged in a glossy, professional format with some additional explanatory text, and then sold through some form of cyber-shopping mall or topic-specific social networking sites typically to young customers who purchase them in good faith. To frustrate detection, the site may be on a server in the USA and the proceeds paid into a bank account halfway round the planet. The whole operation might take as little as a few days, and by the time the deception has been detected, the proceeds of the scam have been removed from the bank account and the perpetrators gone. Alternatively the images may be traded online for other similar pirated informational products. Such piracy does not stop with images, it could just as easily be software, music or video as the later discussion outlines.

The appropriation of informational property may be motivated by libertarian (see Akdeniz 1997)[6] artistic, moral, even educational reasons and not simply by the prospect of financial gain. See, for example, the three culturally different, yet significant, examples of the protection of popular iconography through the WWW with regard to Elvis Presley (imagery), the Tellytubbies (trademark) and the pop-group Oasis (copyright) in Wall (2004, 2007, p. 98) and more latterly the ferocity of the anti-piracy campaigns. Although not explored in detail here, these and many more examples nevertheless demonstrate the gravity that owners of intellectual property rights attach to threats to their interests. They also illustrate the new dilemmas that intellectual property right holders face with regard to the paradox of circulation and restriction in an environment of participatory consumption, which requires them to carefully balance their need to restrict the unauthorised circulation of their informational property to maintain income streams whilst also allowing enough circulation of the properties to allow the market to consume it as culture in the broadest sense and enabling it to reach new markets (Wall 2004, p. 35).

Informational piracy differs from traditional intellectual infringement because it blurs the boundaries between criminal and civil actions. It is where owners' intellectual property rights in images, trademarks, copyrighted texts or general character merchandising are threatened by theft or release into the public domain of the Internet. The threat is not just the loss of income streams, but also of the "dilution" of a "property"'s value.

[5] Quick Reference Sheet of Felony Charges to Consider and Relevant Issues to Consider in Typical Intellectual Property Cases <http://www.usdoj.gov/criminal/cybercrime/ipmanual/chart.htm>

[6] Akdeniz describes the case of the Jet Report which was released into the public domain on ethical grounds.

Dilution is a term used in intellectual property law to describe the reduction in value through unrestricted use, but is also a key part of the argument used to justify legal sanctions against infringers. The additional problem for intellectual property right holders and for law is that the Internet also facilitates new types of participatory consumption and development of informational properties. Indeed the "wikinomics" of the digital economy, as it has been named (Tapscott and Williams 2007), actively requires the release of some aspects of intellectual property into the public domain so that participants can contribute to it. We return to this discussion later, but the remainder of this section focuses upon specific areas of intellectual property piracy: music, video and software and the theft of virtual artefacts.

6.4 Music and Video Piracy

Music: If P2P software transformed information sharing, then the invention of MP3 (music) and MP4 (video) file formats has, respectively, transformed the distribution of music and video. In the case of the former, as long as the appropriate P2P software is available, the music files can be downloaded to a computer's sound system, a portable MP3 player or directly onto a CD Rom or Minidisc. The recording of music in a computer-readable format was previously possible; however MP3 compression techniques reduced the files to manageable or transferable sizes. Consequently, devices from the early Rio Diamond MP3 player through to the more recent generation of I-Pods have been specifically designed to play MP3 files. Opinions on the morality and legality of MP3 are divided. On the one hand the record companies and a few rock bands argue that the distribution of unauthorised MP3s is causing the death of popular music by giving away hard-earned and expensive properties and denying the authors the rewards that they deserve. For example, the International Intellectual Property Alliance claims that in 2009, across 15 selected countries alone, music "piracy" accounted for US $1.5 billion in losses. Notably, a number of Asian countries featured in these statistics, including China ($466.3 million in losses), Philippines ($112.1 million), Indonesia ($24.7 million) and Malaysia ($23.5 million) (Havoscope 2010). On the other hand, a strong counter-argument is emerging that questions the claims of the music industry. A report by the Australian Institute of Criminology argued that the music industry cannot "explain how it arrives at its statistics for staggering losses through piracy" (Greene 2006). Evidence is also beginning to suggest that illicit MP3 downloads are in fact helping to promote music culture and also expand the capacity of the market. Not only can individual musicians now obtain immediate exposure to a much broader section of the public without having to become contracted to record companies, but also MP3 has arguably broadly stimulated the market for old as well as new popular music. Even CD sales, it is alleged, are going up and not down. Oberholzer-Gee and Strumpf questioned industry claims in their 2004 research into the impact of downloads on physical CD sales with the observation that "downloads have an effect on sales which is statistically indistinguishable from zero" (Gibson 2005; Schwartz 2004; Potier 2004). Furthermore, this claim is strengthened by the commercial success of recently introduced, and authorised, pay-to-use MP3 sites, such as I-Tunes, e-music and others, and, of course, the popularity of new MP3 playing hardware devices, such as the I-pod. Additional evidence of this trend is found in empirical research conducted in 2005 by *Leading Question*, which found that online file sharers actually buy more music, up to four and a half times more in legal downloads (Leading Question 2005; Gibson 2005).

The counterclaims described earlier illustrate the dynamics of a power play in which the recording industry's highly publicised private legal actions have been framed within a crime discourse to tame the MP3 download market. As soon as the technology of MP3 began to gain popularity, legal actions were launched by the Recording Industry Association of America (RIAA) and British Phonographic Industry (BPI) on behalf of the music industry. They invoked copyright laws and brought lawsuits against MP3 bulk uploaders. Perhaps uniquely, few of the 15–30,000 or more

cases brought against individuals have actually gone to court, with the most being settled privately (Vance 2005). Subsequent rogue (lawyer) actions, from 2009 onwards, in the form of speculative invoicing by ACS:Law and others, created so much negative publicity that the industry representatives distanced themselves from the actions. Favouring instead the prosecution of commercial uploaders (Wall 2011), though not before launching a publicity campaign that warned the public of the damage caused to the music industry and society in general by suggesting that the proceeds of piracy supported organised crime. The impact of both actions and publicity has, however, been to create an illusion of certainty of prosecution and to exercise a broad chilling effect upon illegal downloading behaviour.

Video (*Film and Television*): MP4, or MPEG-4, is a computer file compression format that, like MP3 with music, allows video, audio and other information to be stored efficiently in one file. Within a P2P network MP4 files have transformed the dissemination of video, film and televisual materials. Newly released films can, for example, be illicitly videoed in cinemas and then converted into MP4 files, as can television programmes. Similarly, DVDs can be ripped and all can be sold, or traded through illegal "film portals" or across P2P networks. DVD manufacturers initially protected their products with a security device; however this was broken by a descrambling program, DeCSS, written by Jon Lech Johansen (also known as "DVD Jon") so that he could watch his own DVDs on his Linux-powered PC. He also posted details of his descrambler on the Internet that led to him being prosecuted "largely on the behest of the Motion Picture Association of America (MPAA)" (Leyden 2003). The case for the prosecution argued that by sharing his DeCSS descrambler with others over the Internet, Johansen made it easier to pirate DVDs and therefore acted illegally. The case was thrown out by the Norwegian court on the grounds that the DVD scrambling codes had prevented Johansen from using his Linux PC to play back the DVDs he'd bought (Cullen 2004: *Public prosecutor v Jon Lech Johansen* 2003).

The failure to convict Johansen did not prevent the MPAA from continuing to protect its interests. From 2004 onwards, legal actions have been brought against file sharers, particularly the film indexing sites and television download sites (BBC 2005c). The latter action was significant because of the increased use of the Internet as the broadcasting medium for television and the blurring of the boundaries between the two: "as TV-quality video online becomes a norm" (BBC 2005a). Like the music downloading cases, the MPAA's actions were framed within an even stronger crime discourse that was driven by anti-piracy advertisements showing at the cinema and also on DVDs and containing very vivid crime imagery alleging that piracy supported organised crime and terrorism. This discourse is supported by studies claiming that illicit P2P movie sharing is on the rise, especially in regions such as the Asia-Pacific, as access to high-speed broadband services becomes more common (Mookerji 2009). However, as with the cases against individual music file sharers, most of the video download cases appear to have been settled privately and the practice of speculative invoicing by entrepreneurial law firms has shifted from music to adult films (Wall 2011). The actions and crime discourse have, as with MP3, also created a chilling effect on downloading behaviour and evidence of a decreasing volume of downloads is an indication of this trend, although it is an area that requires further research. Initially, these P2P-related actions against individual infringers took place alongside legal actions brought against film Web sites that pose as legitimate film and music download services (BBC 2005g). The current practice is to focus prosecutions upon the latter.

6.5 Software Piracy

The final aspect of IP piracy that currently excites major concerns within cybercrime debates is the illegal distribution of software over the Internet. Illicit software was initially distributed through BBS bulletin boards and later across P2P file sharing networks such as "Drink or Die" (USDOJ

2002; BBC 2005b). The distribution operations were either for profit or for trading (though not necessarily for profit), or to fulfil a broader ethic of helping the Internet community. The latter function is often referred to as Warez, which is a leetspeak (e.g. uses non-alphabetical numbers that resemble syllables or sounds in words) derivative of (soft)wares, but also tends to signify copyrighted software that has been illegally offered for trade, but usually not for profit.[7] The computer software industry claims large financial losses to such violations. Global losses were pinned at $51.4 billion for 2009 (BSA 2010, p. 1). Eastern-Central Europe is deemed to have the highest "piracy" rate, where 64% of all software is claimed to be an illegal copy; however, rates are also high for North America (21%) and Western Europe (34%) (BSA 2010, p. 5). About 60% of software in use in the Asia-Pacific region is allegedly pirated, with "emerging" markets such as China identified as especially problematic (BSA 2010, p. 3). Whilst the figures are high, the methodologies used to calculate the losses typically tend to rely upon estimations based upon the generalisation of limited statistics produced by a business victimisation survey.

6.6 Stealing Virtual Artefacts

An emerging problem is the unauthorised appropriation of virtual artefacts that are the product of intellectual labours and which have been created in virtual environments. For many years, for example, the trade in "game cheats" has been a long-standing practice. Cheats are virtual artefacts that enable players to map their way through computer games more quickly or gain access to hidden spaces within them. Some cheats exploit flaws in gaming programmes, while others are strategically placed there by the games-makers in order to sustain players' interest in the game. The problem with "cheats" is to be able to identify those that are illicit and those that are the legitimate product of game designers. Perhaps the most infamous "cheat" in recent years has been the software called "Hot Coffee" which unlocked secret sex scenes in *Grand Theft Auto: San Andreas* (BBC 2005c; 2005d). Because of these additional scenes, the rating of the game was subsequently changed to "Adult", which along with the additional publicity attracted by litigation helped to ensure that the game became one of the most popular of all-time. Interestingly, there is also a growing online market in the sale or trade of other "cheat"-type activities outside the gaming world, such as assignments by students (plagiarism) on auction sites and P2P networks.

An interesting development in computer gaming has been the increased criminal exploitation of gaming artefacts that have strategic importance in online role play gaming, for example in Project Entropia.[8] Players need to obtain artefacts that sustain their place in their games and help them progress through it. The artefacts are therefore highly desired because they represent not only high levels of ability and power but also the hours of labour put into their construction. Because of this, players are willing to pay large amounts of real money for them. In 2004, a virtual island was sold on eBay for $26,500 (£13,700) and in 2005 a virtual space station went for $100,000 (£56,200) (BBC 2005f). The space station was to be used as virtual nightclub to which users paid entry for access and whilst inside were exposed to real-time advertising as in a real nightclub.

Consequently, the high values of these artefacts have generated a string of new criminal opportunities. Already there have been examples of buyers being defrauded through e-auction sales, artefacts being stolen, by hacking, from players' accounts and even an "online mugging" where a Japanese student was subsequently arrested for using automated bots in a "first person shooter" game players to make his avatar move faster than other players and shoot with pinpoint accuracy, thus attacking fellow players and stealing items (BBC 2005e). Police in Korea,

[7] "Among warez users, there is often a distinction made between "gamez" (games), "appz" (applications), "crackz" (cracked applications) and "vidz" (movies)." Wikipedia <http://en.wikipedia.org/wiki/Warez>

[8] Project-entropia.com

Taiwan and also Japan, countries where computer gaming is massively popular, have in recent years had to respond to requests from gamers to investigate the theft of their "magic swords"—items obtained in computer gaming environments through intense labour.[9]

The challenges that these forms of offending pose for criminal justice systems are considerable, not least because the victims can point to real economic harms done to them through the illegal usage, or sale, of their "virtual currency". At the forefront is the question of how best to legally represent the loss in the victims' interests. In their discussion of virtual property crimes, Lastowka and Hunter (2005, p. 300) argue that the analogy of theft is inappropriate because it implies the destruction of existing value. They favour instead the language of offences such as "counterfeiting", which takes into consideration the fact that the "criminals" are actually creating illegitimate value (Lastowka and Hunter 2005, p. 315).

6.7 Outlining the Debate over Intellectual Property Online

The emergence of intellectual property violations as forms of criminal behaviour must be placed in the context of wider legal, political, economic and social processes, since it is in these spheres of action that the definition of what counts as or constitutes crime ultimately emerges. Below we shall discuss relevant developments in the areas of (1) intellectual property law; (2) policing and (3) cultural rhetoric of anti-piracy discourse.

One of the most significant legal developments in recent years has been the incremental criminalisation of intellectual property offences. In the past, violations (such as those related to copyright) have been largely tackled through a range of *civil* remedies available to copyright holders—such as injunctions, "delivery up" or destruction of infringing articles and payment of damages (Bently and Sherman 2001, pp. 1008–23). Even where the law made provision for criminal prosecution of IP violations, there tended to be few such actions—for example, between 1970 and 1980 there were less than 20 prosecutions for copyright offences in the UK (Sodipo 1997, p. 228). This may be attributed to a number of factors, including the relatively low priority accorded to intellectual property crimes by overstretched and under-resourced criminal justice agencies; the public concern and political emphasis on more visibly "harmful" offences, such as "street crimes" and violent crime; difficulties in policing and intelligence gathering and the reluctance of public prosecutors to involve themselves in a notoriously complex and specialised domain of law. However, recent years have seen moves to redress such copyright violations, bringing them increasingly under the sway of criminal sanctions. This has taken three main forms.

6.7.1 Increased Willingness to Use Existing Criminal Sanctions Against "Pirates"

There has been increased willingness to use existing criminal sanctions against "pirates", encouraged both by greater political sensitivity to IP rights and their economic importance and by concerted application of pressure through lobbying by the copyright industry. One key means in achieving this has been the formation of industry organisations (such as the Alliance Against Counterfeiting and Piracy (AACP) and the Federation Against Copyright Theft (FACT) in the UK) that conduct investigations and gather information on "piracy" activities, and lay complaints before public prosecuting authorities (Sodipo 1997, p. 229; Bently and Sherman 2001, pp. 1030–31). Recent years have seen a number of high-profile piracy cases in which such procedures have led to criminal convictions carrying substantial custodial sentences—for example, in 2002 a FACT investigation led to a 4-year prison sentence for the convicted "pirate" (Carugati 2003). The overall number of criminal prosecutions for copyright violations has also increased massively—in 2000 alone, there were over 500 such cases in the area of music (CD) counterfeiting alone (Home Office 2002, p. 2).

[9]Interview with Korean Police Chiefs by David Wall, October 2008.

6.7.2 Incorporating Additional Provisions for Criminal Sanctions into National Laws and International Treaties

In recent years the incorporation of additional provisions for criminal sanctions into both international treaties and national laws has taken place. At the national level, we can note for example Section 107 of the Copyright, Designs and Patents Act (1988) in the UK, which places local administrative authorities (such as Trading Standards departments) under a duty to enforce criminal copyright provisions, and significantly strengthens the penalties available in comparison to the previously existing Copyright Act of 1956 (Dworkin and Taylor 1989, pp. 121–122; Bently and Sherman 2001, p. 1031). In the USA, the No Electronic Theft Act (1988) makes provision for up to 3 years imprisonment for convicted "pirates"; it also extends the applicability of sanctions beyond those engaging in piracy for commercial gain, to include for example the not-for-profit digital trading engaged in by file-sharers (Drahos and Braithwaite 2002, p. 185). Concerted political pressure has been brought to bear on governments in Asia to enact additional legal prohibitions against piracy in its various forms. Recent years have seen initiatives to introduce new copyright laws in countries such as Thailand, the Philippines and Korea (Bangkok Post 2009; Baldemor 2010; Pfanner 2011). At an international level, Article 61 of the 1994 TRIPS agreement establishes a *mandatory* requirement for signatories to make criminal provisions against commercial copyright violations. Hence the extensions of available criminal sanctions and the greater willingness to pursue them have, taken together, significantly reconfigured piracy, rendering it graver in an attempt to stem its growth.

Already noted has been the recent increase in policing and enforcement activity, in which industry organisations are playing a leading role. It is also worth noting here the proliferation of industry-financed "anti-piracy" organisations whose *raison d'etre* combines research, intelligence gathering, policing, education and lobbying activities. The past two decades have seen the creation of the Counterfeiting Intelligence Bureau, the International Intellectual Property Alliance, the International Anti-Counterfeiting Coalition, the Alliance Against Counterfeiting and Piracy, the Coalition for Intellectual Property Rights, the Artists Coalition Against Piracy, the aforementioned AACP and FACT as well as numerous existing trade organisations that have established specialist groups and initiatives to combat film piracy (such as the MPAA and the RIAA). Such organisations purport to "lift the burden of investigation from law enforcement agencies" (AACP 2002, p. 2) by engaging in a range of increasingly intensive policing activities. Where public agencies have been reluctant to invest time and resources in tackling IP violations, industrial and commercial interests have "filled the void". In addition to intelligence gathering and undercover operations, they have attempted to bring intellectual property crime into the criminal justice mainstream through, for example, the appointment of specialist liaison personnel to "assist" and "advise" responsible agencies in the detection and prosecution of "copyright theft". Recent years have seen such organisations step up their activities in "emerging markets" such as the Asia-Pacific region, discerning the low priority that is currently given to intellectual property rights enforcement; for example, in China IP enforcement is an administrative rather than criminal justice matter, resulting in very limited levels of police attention (IIPA 2011, p. 1). Governments have themselves responded to concerted pressure from these groups by establishing intellectual property strategies and specialist units within criminal justice agencies to address intellectual property violations. The UK, for example, has the local trading standards organisations which operate at a local level; the e-crime unit of the Serious and Organised Crimes Agency, SOCA (from 2012 part of the UK National Crime Agency), investigates serious national infringements. In the USA there is the FBI's Internet Fraud Complaint Centre (IFCC), which also takes on the responsibility for policing some intellectual property crimes. At an international level, Interpol has established an Intellectual Property Crimes Unit

(2002) and there are concerted efforts at the EU level to strengthen EUROPOL's powers of enforcement in the area of intellectual property.

6.7.3 The Development and Implementation of "Anti-piracy Education" Campaigns

Recent "anti-piracy education" campaigns involving both copyright industries and public agencies have given particular focus to young people because of their apparently disproportionate involvement in illegal Internet downloading, copying and distribution of copyrighted materials. Recent years have seen numerous "educational" programmes produced by umbrella organisations that represent various sectors of the copyright industries—software, music and/or motion pictures. Such programmes typically provide a range of materials, exercises and gaming activities that are intended for use in the classroom, thereby incorporating anti-piracy into the school curriculum. Programmes typically target younger children between the ages of 8 and 13. For example, there is the Friends of Active Copyright Education (FA©E) initiative of the Copyright Society of America—their child-oriented program is called "Copyright Kids". Also notable is the Software and Information Industry Association (SIAA)'s "Cybersmart! School Program". A third is the Business Software Alliance (BSA)'s "Play It Cybersafe" program featuring the cartoon character Garret the Ferret aka "The Copyright Crusader". A fourth campaign is produced by the Government of Western Australia's Department of Education and Training, and is called "Ippy's Big Idea". A fifth campaign is the MPAA's "Starving Artist" schools' road show. This is a role-playing game designed for school children, which was taken "on tour" in 2003 in 36,000 classrooms across the USA. The game invites students "to come up with an idea for a record album, cover art, and lyrics" (Menta 2003). Having completed the exercise, the students are told that their album is already available for download from the Internet, and are asked "how they felt when they realized that their work was stolen and that they would not get anything for their efforts" (Menta 2003). Similar IP education campaigns have been launched in Asia-Pacific countries including China, Singapore, Malaysia and Hong Kong (ABAC 2007). All such campaigns attempt to create a moral consensus that unauthorised copying is a form of theft, and as such as immoral as stealing someone else's material possessions; moreover, they also target the children's parents in an attempt to warn them of the possible legal repercussions if their children are caught engaging in piracy.

All of the foregoing developments have served to progressively shift intellectual property offences into the space of criminal conduct. However, as Becker (1963) notes, it is by no means given that those targeted with stigmatising labels of criminality and deviance will automatically accept such labels. Rather, they may resist such efforts, seeking to deflect the label by defending their activities against those who seek to position them as "outsiders". Such reactions may be considered as instances of what Sykes and Matza (1957) call "techniques of neutralisation". These techniques serve as vocabularies of justification by which the potential "deviants" deflect negative labels, turning accusations of moral delinquency back upon their accusers. Prime among these techniques are those of the "denial of harm" (the assertion that no real social damage is caused by the behaviour in question) and "denial of the deniers" (the assertion that those who mount accusations are themselves corrupt, immoral or otherwise hypocritical). Moments of reaction-resistance have clearly emerged in response to moral entrepreneurs' constructions of Internet piracy as a form of criminality. Music fans, committed to the free circulation and appreciation of popular culture, have established Web sites where such rhetorical defences are mounted. For example, the activists of BOYCOTTRIAA.com stated in 2005 that:

> Boycott-RIAA was founded because we love music. We cannot stand by silently while the recording industry continues its decades-long effort to lock up our culture and heritage by misrepresenting the facts to the public, to artists, the fans and to our government. (BOYCOTTRIAA.com)

Through such responses, acts of copying and culture sharing are defended as principled stands

against corporate interests who are charged with being the true "villains" in the unfolding confrontation between producers and fans. However, the lines of division within this battle to define criminality are further complicated by the indeterminate role played by recording artists themselves. On the one hand, artists have played a pivotal role in the entrepreneurship that has sought to define Internet copying as harmful and socially unacceptable. For example, the famous controversy over Napster's online music file-sharing service first hit the headlines as a result of legal action taken by the band Metallica (Marshall 2002, p. 9). Other prominent anti-Napster performers included Madonna and Mick Jagger. In contrast, other artists have made common cause with file-sharers, choosing instead to direct their criticisms against the recording companies rather that the fans. In 2000, rock musician Courtney Love (singer with Hole and widow of rock icon Kurt Cobain) launched what has been dubbed the "Love Manifesto", a critical reflection on intellectual property theft, artists and the recording industry. Love began her "Manifesto" thus:

> Today I want to talk about piracy and music. What is piracy? Piracy is the act of stealing an artist's work without any intention of paying for it. I'm not talking about Napster-type software . . . I'm talking about major label recording contracts. (Love 2000)

She went on to claim that standard practice within the recording industry deprives musicians of copyrights, and the monies advanced to artists are largely recouped from them by the industry under "expenses" for recording and promotion. As a consequence, the musicians see little return from their efforts and, she opined, "the band may as well be working at a 7-11" (Love 2000). In fact, it has been argued that piracy is in the financial interests of most recording artists; most performers make their living from concert performance, and this is best supported and promoted by having their music circulated as widely as possible, including via copying. As musician Ignacio Escolar has put it: "Like all musicians, I know that 100,000 pirate fans coming to my shows are more profitable than 10,000 original ones" (Escolar 2003, p. 15).

6.7.4 The Need to Rethink Intellectual Property Rights Management and Reverse the Decriminalisation of IP Piracy

What the previous discussion indicates is a process by which intellectual property piracy is increasingly becoming framed by crime debates without any clear evidence that this process will solve the problem. This suggests that the perceived problem—the nature of the piracy—may actually require some critical revision. An emerging and very real problem for intellectual property right holders and also for law and its related regulations is the very real shift that is now taking place in the ways that intellectual properties are being consumed in the information age. At the level of computer programming, we have already seen the "open source" movement make major contributions to the development of powerful operating systems such as Linux. The main principle behind the open source movement is that core computer code is freely circulated so that individuals can perfect or develop it themselves and then recirculate for the benefit of others. In this way, the group effort makes the object of everyone's labours stronger and also much more powerful than one individual could possibly manage. At the broader level of the general consumer we are also witnessing significant new types of participatory consumption (prosumption). Sophisticated new software ranging from blogging technology, through to image manipulators, through to recording and publishing software have enabled consumers of information, music, text and images (moving and still) to create their own "mash ups". In other words, software is enabling consumers to combine together the different parts of different intellectual properties that they particularly enjoy to create something entirely new that they consume themselves and also share with others.

In both of the examples illustrated above, the consumers also become producers or "prosumers". Not only does this cause them to fall foul of conventional IP laws, especially in the second example, but they are also increasingly demanding recognition of, and rights to, their

contributions to the intellectual properties that they have enhanced. This "wikinomics" of the digital economy (Tapscott and Williams 2007) actively requires entirely new ways of thinking with regard to intellectual properties. Not least, the release of some aspects of intellectual property into the public domain so that participants can contribute to it. This process is counter-intuitive to conventional practices; however, Tapscott and Williams argue that allowing participatory consumption has considerable value to IP rights owners and, furthermore, it does not necessarily require core intellectual property to be released, only that which enables participatory consumption. Plus mechanisms could be created—depending upon the characteristics of the intellectual property in question—that would allow prosumers to gain recognition and even income from their contributions. Importantly, such a revision of conventional approaches to IP would also halt the increasing criminalisation process to the benefit of all.

6.8 Conclusions

This chapter has illustrated how inventive, reflexive and responsive computer-assisted or -mediated intellectual property crime can be and also how close it sits to legitimate business opportunities. It also shows how the virtual bank robbery, the virtual sting and virtual theft are areas of harmful/criminal activity that are rapidly evolving along with technological developments. As they evolve, they create new challenges for law enforcement. For example, in the UK, machines cannot be deceived, only the people who use them; data cannot be stolen; fraud and deception are still to be fully established as specific crimes (despite new Fraud Laws) and trade secret theft is still not an offence—only the way that the information was obtained. In other jurisdictions, including some Asian countries, such laws do exist, yet the practice of enforcement is low. But this disparity not only creates problems for law enforcement but also raises a question as to whether law is the most effective local solution to what has become a global problem. The example of music and movie file sharing is a graphic illustration of where private corporate interests compete with the public interest and capture the crime agenda.

The bulk of this chapter has focussed upon fraudulent behaviour with regard to intellectual property that has been driven by the desire for economic or informational gain. This profile will gradually broaden as new opportunities for offending are created by the convergence of networked technologies of the home, work and leisure with those managing identity and location. Importantly, this new world of convergence will be characterised more and more by information brokering; thus "information capital" will become increasingly more valuable. As a consequence, we shall probably see a further rise in the extent and breadth of information theft. Future intellectual property crime debates will therefore more intensely focus increasingly upon the rights relating to the protection of information and also the restoration of information and reputation once compromised.

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"Opportunist" Insurance Fraud Under Different Political Economies: Taiwan (Asia) and Europe Compared

7

Susyan Jou

7.1 Introduction

Although the exact detail will vary across legal systems, in most advanced democratic countries, the legal definition for fraud activities in relation to any of the parties generally requires the presence of at least three elements: material misrepresentation, in the form of concealment, falsification, or untruth; intent to deceive; and aim of gaining unauthorized benefit. At the practical level, insurance fraud has many dimensions—especially given the phenomenon's evolving and dynamic nature. Many commentators classify fraudulent activities under three main categories: exaggeration of an otherwise legitimate claim; premeditated fabrication of a claim; and fraudulent known disclosure or misrepresentation of material facts.

Both legal and practical definitions "share the distinctive common characteristic that, unlike bad debts, for example, or conventional property crime such as burglary, they are not self-disclosing. Their essence is to appear as normal and to be processed and paid in a routine manner" (Clarke 1990, p. 1). It follows that insurers will normally only have an idea of the nature and extent of a fraud if they take specific detection measures.

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However, neither the legal nor the practical definition distinguishes the individual opportunist from "organized" insurance fraudsters. Nevertheless, this kind of distinction is certainly recognized within the private insurance industry itself, which has concentrated its investigative resources on forms of "organized" activity—while recognizing that there is much "padding" and claims-inflation activity by "ordinary" opportunists.

In this study, it is contended that the analytical distinction is important because the social reactions to the two types of fraudster are constructed in a very different way under conditions of political economy and culture. Arguably, the motivation and epidemiology of "organized" insurance fraud are in general similar to other types of "organized" criminal activity—broadly understood as the same across the world. This "hard-core" fraud, in Ericson and Doyle's (2004) words, occurs when someone deliberately plans or invents a loss covered by their insurance policy in order to receive payment for damages that may or may not be real. The "social reaction" to organized insurance fraud in all political economies and cultures is arguably the same—that is, they are, like violent and sex criminals, seen as "criminal actions" and morally culpable (Coalition Against Insurance Fraud, CAIF 2007).

Prevention measures and more regulatory activity against organized insurance fraudsters are seen as legitimate by the private insurance industry, the State, and the general public. However, in relation to "opportunist" fraud, in

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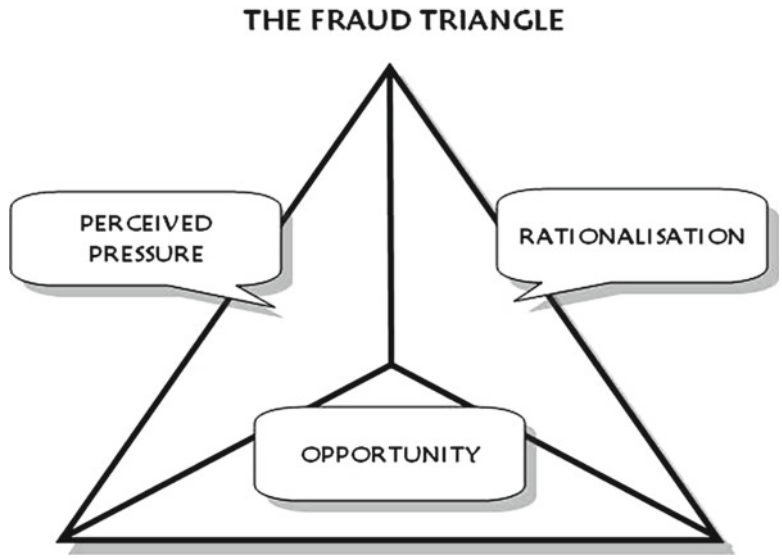

Fig. 7.1 Donald Cressey's "the Fraud Triangle"

many countries people often deny "opportunist" fraud as fraud or a crime. Again in Ericson and Doyle's (2004) expression, "softcore" insurance fraud refers to policyholders exaggerating otherwise legitimate claims or when an individual misreports previous or existing conditions to obtain a lower premium on his or her insurance policy. In a survey by the Insurance Council of Australia in 1993, 14% of those interviewed regarded padding a claim as acceptable. In the 2002 survey, the percentage had risen to 18%. Other similar surveys done by the Association of British Insurers in 2002 showed that 7% of respondents in the UK admitted to having made a fraudulent insurance claim, and 48% in the UK did not rule out making a false claim in the future. More interestingly, 40% of respondents believed that exaggerating a claim was acceptable or marginal behavior. 29% in the UK thought that making up a claim was acceptable or borderline (CAIF 2007). In the USA, nearly one of four Americans say it is acceptable to defraud insurers and some 24% say it is quite or somewhat acceptable to bilk insurers (CAIF 2007).

Why is "opportunist" fraud so perceived? Why do people "neutralize" their behavior in this way ? Why do some countries take a more proactive approach to such "crime" than others? Some criminologists have previously considered these matters. Take Cressey (1953, 1986) for example; he pointed out (see Fig. 7.1) that there are three elements that can and will be found in all fraud cases, organized or opportunist: namely, opportunity, perceived pressure, and rationalization. The triangle has also indeed been used as a model of fraud prevention. Of the three elements, financial pressures are considered to be the most important. Among others, greed, luxurious lifestyle, debts, unexpected financial crisis (i.e., unemployment, natural disaster), poor investment, and a lack of family/relative supporting system are the most common. The relationship between financial pressure and opportunist fraud is well explained by this model.

For many ordinary people, "softcore" fraud is "acceptable." Many ordinary people who have the experience of buying an insurance policy or making a claim share some of these views. Rationalizations do help fraudsters conceal their true unlawful motivation and explain their actions and feelings in a way that is less threatening to their sense of self. In terms of opportunities, a fraud arises when there is a lack of control to prevent it, a lack of access to relevant information, and a lack of adequate audit trails or attitudes such as ignorance, apathy, incapability, and incapacity.

In a 2001 US survey nearly 10% of respondents said they would commit insurance fraud if they knew they could get away with it (Coalition Against Insurance Fraud 2008a, b). And about 30% would not report insurance scams committed by someone they know. In other words, if antifraud measures are not taken or enforced seriously, opportunity knocks.

Cressey's fraud model, illustrated in Fig. 7.1, has been well received by criminologists and practitioners; however, it arguably fails to capture how or why the political economy and the nature and dynamics of the modern insurance industry affect the form of the three elements and increase moral hazard of the insured and the moral risk of the insurance industry. Here we define moral hazard as the insured not entering the contract in good faith or where he/she has an incentive to take unusual risks in a desperate attempt to make profit, and moral risk as market misconduct in the structure and culture of the insurance industry. In reviewing the terminology "moral risk," Ericson and colleagues consider and critique the traditional definition of moral hazard (Ericson et al. 2000; Ericson and Doyle 2006). Arguably, neoliberal societies (e.g., the USA or the UK) emphasize self-governance and individual responsibility to create greater risk, individual responsibility, and insecurity, and therefore, produce more financial pressures, rationalization, and opportunity for padding a claim. In social democratic society (e.g., Finland or Sweden), the social welfare tradition and the perception of social insurance can reduce these financial pressures and rationalization to commit a fraud. The financial pressures motivate people to commit fraud and at the same time trigger a more proactive reaction from insurance companies or the State. And the changing nature of the insurance industry from a mutual trust system within a homogeneous group to a more investment-oriented and anonymous system allows both policy holders and insurers to rationalize their frauds and creates more opportunity to commit it. For the insured and the insurers, the insurance business has changed into a more investment-oriented and anonymous arrangement, in contrast to the previously envisaged charitable and altruistic one. Inevitably, the insured and the insurers together construct greater moral risk of opportunist fraud in the modern insurance industry.

Furthermore, the triangle model has nothing to say about how differential reactions to opportunist fraud are constructed under different political economies.

Prima facie, the common rationales to "crack down" on opportunist insurance fraud are the following:

- The perceived seriousness of opportunist fraud by the industry
- Costs to the industry
- Threat the "honest" insured
- Shame and fear

If all the rationales hold true, there should be little difference in industry and government reaction to the problem across countries. However, this is not the case. Ericson and Doyle (2004) noticed that antifraud publicity campaigns started in the last two decades in Canada, the USA, and the UK. Taiwan and China, on the other hand, only launched their campaigns in the past 5–10 years (Jou and Hebenton 2007). Until the mid-1990s, Finland and Sweden had not yet taken much formal action to tackle opportunist insurance fraud (Niemi 1995). Obviously, perception and reaction to insurance fraud under differing political economies merit further investigation.

This paper thus will investigate how political economy and the changing nature of the modern insurance industry reshape Cressey's original triangle model. We also analyze the "what and why" of antifraud prevention measures and how they are differently understood in three selected countries (selected as an ideal-type analysis representing neo-liberalist, social democratic, and Confucian political economic regimes).

7.2 Political Economy and Opportunist Insurance Fraud

Neo-liberalism refers to the late twentieth century revival of the nineteenth century approach to free-market capital known as economic liberalism. The general ethos is individualism rather

than collectivism (Cavadino and Dignan 2006, p. 440). Scholars usually agree that the neoliberal model has some basic common characteristics: there is to be a minimal state; market fundamentalism is stressed; emphasis is placed not only on risk management but also on risk taking; individual responsibility is underscored. Each individual is to be his or her own personal security market and other consuming interests (Ericson et al. 2000). Concepts such as risk, risk-taking, individualism, insecurity, and uncertainty commonly dominate the neo-liberalism literatures (Lash and Urry 1987; Esping-Andersen 1990; Beck 1992). On the other hand, what are the assumptions underlying the social democratic model of society? Le Grand (1997) argues that this type of society assumes that the state and its agents are both competent and benevolent. That is, whoever operated the state can be trusted to work primarily in the public interest. Politicians, civil servants and bureaucrats, and managers are supposed accurately to define social and individual needs. In short, the society based on high taxation and social security involves a belief in people's sense of altruism or at least of an adherence to collective solidarity.

In a society under the influence of Confucianism, mainly in East Asia, great emphasis is placed on collectivism, family responsibility, and a cooperative social security net. The State and the family are seen as primary sources for dealing with risks and losses. For example, in Chinese culture, people still believe that the best insurance one can buy is to have as many sons as one can. Note that it's "sons" not "daughters," because married daughters would not be considered as part of the family and therefore are not responsible for their parents' welfare or illness. Gradually, and in the twenty-first century, the cultural values of "filial piety and *Guanxi* (friendship or connections)" in countries like Taiwan, Singapore, or China have adapted to the marketization of society, interlocking with modern financial systems (Tang 2005). The State both finances and provides the supply of basic social services such as education, health care, social care, and full pension plan (for some selected groups). However, the services are limited and exclusive. They do not fully cover all risks throughout a person's life span. They also exclude the individuals who have property, reasonable income, or a family and especially a well-to-do family. Because of collective responsibility, the State and the family do not encourage risks and risk-taking. Risk management strategies to them tend to be "having some personal savings in the bank," "having more filial and loyal children," and "extending more ties of friendship as safety nets." If a person has none of the above, the State will provide them as basic social services. Thus if a Chinese or Taiwanese citizen turns to buy private insurance its meaning culturally would be better understood as akin to "an investment to make more money" or "to benefit their family members" than a self risk management tactic.

In sum, we can characterize individual responsibility, self-governance, risk management, as well as risk taking as central values for neoliberal society whereas collectivism, altruism, trust, and equality characterize social democratic society. Collectivism, family responsibility, and cooperative social security net, on the other hand, play important roles in Confucian society and culture (for a powerful analysis of cultural collectivism/individualism and its consequences see Hofstede 2001; Hofstede and Bond 1988) (see Table 7.1). How do these different political economies (and cultures) help determine reactions to opportunist insurance fraud? One way of understanding these relationships is to consider how the political economy and culture interact to produce moral hazard and moral risk.

7.3 More Risk Leads to Greater Moral Hazard

Both Giddens (1995) and Beck (1992) argue that the notion of risk is accompanied by the rise of insurance. In modern society, not only are there risks like natural disasters as in ancient times but also risks from human forces, or what Giddens might call "manufactured uncertainty or manufactured risks" (Giddens 1995) which operate significantly under human agency (i.e., environmental pollution, traffic accidents). The insurance

Table 7.1 Characteristics of three political economic regimes

Socio-economy	Neoliberal	Social democratic	Confucian
Economic model	Free market, free choice	Universalistic	Quasi-market
Role of the State	• Minimum governance • Limited state welfare	Great state welfare	Relatively limited state welfare
Role of individual	Individual responsibility	Collectivism	Collectivism
Risk	• More risks • Encouraging risk taking • Self risk management	• Less risks • Encouraging risk taking • Less risk management	• Less risks • Discouraging risk taking • Informal risk management
Social relationship	Distrust, contractual	Trust	Trust within inner relationship circle
Assumptions on human nature	Self-interest	Altruism	Mutual help within inner relationship circle
Country exemplars	USA, UK, Canada, Australia	Norway, Finland, Sweden	China, Taiwan, Singapore

business is all about making people plan and discuss their risks in monetary terms as well as to help them reduce financial pressures resulting from possible risks and losses.

Moreover, as risk increasingly becomes an integral part of the free market economic system, certain risk taking and calculations assume new respectability. Risk taking in neoliberal society especially has a positive meaning now: the chance of hitting a big win, of getting more on the back side than one invests on the front side. Wall Street (New York) and the City of London are full of winners in this system. To deal with highly encouraged risk-taking attitudes and behaviors, rational calculation of possible loss and getting insurance cover is viewed as a purely economic decision. Paying premiums act as an appropriate incentive and are calculated to diminish financial losses. However, moral hazard increases drastically with the insured risk takers. The insurance policy will arguably encourage them to take more risks resulting in actual dangers that the insurer has to pay for. And padding a claim is also an economic calculation of the insured to get a "fair share back." A field experiment in Boston (USA) undertaken by Tracy and Fox (1989) found that auto body repair estimates were significantly higher with insurance coverage than without, regardless of the type of car, extent of damage, sex of driver, and location of shop. For car owners with insurance, they did not want to spend more time to acquire a second opinion. For automobile garages, they knew their clients with insurance would not bother to question their estimates either. For both parties, padding an automobile bodily injury claim is what they "deserve" from the insurance company.

Therefore, arguably in a neoliberal society, more risks lead to more pressures which expand the size of the insurance market. The booming insurance market however brings an additional quantum of moral hazard in terms of encouraging people to take more risks and helping them rationalize the claim padding behavior.

7.4 More Individualism Leads to Greater Moral Hazard

After World War II, neo-liberalism promoted the idea of strictly individualistic conceptions of self-help, replacing more efficient cooperative risk-bearing techniques. Insurance emerges as the most efficient secular risk-bearing system to handle the economic hazards. Government tries to shed responsibilities and transfer them to the private sector, i.e., the insurance. Such an approach to insurance is seen as positive and quickly accepted. In an individualist society, social network security is perceived less desirable than market insurance. Thus, individualism not only off-loads government responsibility but also discourages the cooperative social security net. That is to say, family, relatives, or friends are no longer part of the risk management system. This would take away the individual's understanding of

collective morality, the value of others apart from money and losses, inevitably resulting in greater moral hazards in insurance relationships (Ericson et al. 2000). Rationalization of opportunist fraud occurs when society loses its collective morality and other values, apart from money values. This is also evident when the government and the industry start their antifraud campaigns and seek to introduce more regulations to prevent opportunist fraud.

7.5 Insecurity Leads to Greater Moral Hazard

As we know, the social democratic model promises security whereas neoliberal society promises insecurity. Which one of the political economies would result in greater moral hazard? One argument is that social democratic society creates a culture of dependency (Giddens 1998). Instead of the desirable emphasis on risk-taking and enterprise, there is risk minimization, avoidance, and aversion that create human and institutional inertia (Ericson et al. 2000). Because the State offers generous benefits, citizens are expected to pay high taxes as their "premium," and it makes it easy for ordinary people to morally rationalize a fraudulent claim to social insurance benefits. What about moral hazard for private insurance? Arguably, the moral hazard for private insurance would eventually be minimized where the culture of social democratic society discourages the consumption of private insurance and when bureaucratic inefficiencies make it easy to commit benefit fraud.

In distinction to the welfare state, the sense of insecurity in neoliberal countries appears for opportunist fraudsters to override any notion of the prospect of getting caught. Economic insecurity brings more perceived risk and financial pressure which encourage ordinary people to participate in dishonest forms of economic behavior (Gooby et al. 1999). The low cost and the preserved rewards associated with means-tested schemes make padding a claim highly incentive. On the other hand, the image of insecurity and uncertainty is so well exercised and successfully constructed that the insurance industry is able to sell more unnecessary policies to the insured. Over-insurance provides people with opportunities to exploit. Opportunity arises in the case of over-insurance, when the amount insured is greater than the actual value of the property insured. This allows the insured to make profits by acting less prudently—either in relation to themselves or in relation to their property, or to destroying their property or purposely staying in hospital longer because the payment they receive from their insurers is of greater value than the property or time they lost and the pain they have been through.

7.6 The Changing Nature of Modern Insurance and Opportunist Insurance Fraud

Aside from external influences, the internal working environment of the insurance industry has also independently evolved in modern society.

Today's insurance is far more complex than in earlier times. Even though the fundamental idea of risk management, the equitable transfer of the risk of a loss, from one entity to another, in exchange for a premium remains the same, the changing nature of insurance business leads to a rise of what Ericson and Doyle (2006) called "moral risk" which is institutionalized in the structure and culture of the insurance industry. Arguably, that moral risk is situated within specific aspects of the "new" insurance, namely, "scientific" underwriting process, responsibilization of the individual consumer, and the vision of insurance as a high-profit/investment-oriented enterprise.

7.7 The "Scientific" Development of Underwriting and Responsibilization of the Individual Leads to Greater Moral Risk

In traditional insurance, the character of a large number of homogeneous exposure units allows insurers to benefit from the so-called law of large numbers. However, today's insurance practices

are, on the contrary, an attempt to pool all populations based on a "scientific" selection of risk factors calculated by experts.

Glenn describes underwriting as a "ticking boxes" process (Glenn 2003, p. 133). Underwriters tick off boxes on an application and match them to a set of clearly defined criteria. Glenn argues that it is a more subjective than objective judgment when underwriting for insurance. But the fact of the matter is that with the competition in the market as well as the legal responsibilization of the individual consumer, more and more underwriters don't even bother to pay a home visit or check whether the object being insured actually exists before they write up a policy (Jou and Hebenton 2007; Niemi 1995).

Since insurance shifts risk from one party to another, it is essential that there must be utmost good faith and mutual confidence between the insured and the insurer. In a contract of insurance the insured knows more about the subject matter of the contract than the insurer. Consequently, he/she is duty bound to disclose accurately all material facts and nothing should be withheld or concealed. Any fact is material, which goes to the root of the contract of insurance and has a bearing on the risk involved. If the underwriter knows little about the insured or purposely leaves the consumer an opportunity to mislead or conceal relevant information to sell more insurance, moral risk arises.

Objectively "ticking off" the boxes creates a more heterogeneous pool, a pool with lots of anonymous "outsiders." Responsibilizing the individual consumer produces further moral risk. The "scientific" underwriting process, including pooling heterogeneously, along with the responsibilization of the individual consumer destroys the trust system, consequently making it easier for insureds to rationalize their fraud.

7.8 An Enterprise Focused on Profit and Investment Enhances Moral Risk

How does an insurance company make large profits out of "insuring people's life or property loss?" It is clear that the nature of the gift relationship in insurance has long since changed in modern society. The transformation from mutual assistance to the marketplace signals a drastic departure from a system of a gift relationship to an economic type of exchange. While status prescribed reciprocal types of exchange, market relationships are regulated by contract and not obligation.

Today's insurance goes beyond safeguard and mutual help—instead presenting as a finance and investment industry. The invention of the "whole" life insurance product is a good example.

7.9 Three Cases: The UK, Finland, and Taiwan

Our analysis has demonstrated the role of political economy in relation to moral hazard and how moral risk is embedded within the changing nature of the modern industry itself. We now turn to consider three countries, the UK, Finland, and Taiwan, to further illustrate the relationship between political economic regimes and opportunist insurance fraud. In our ideal-type comparison, the UK is selected as representative of an advanced free market society with limited and fewer welfare services, Taiwan is a market society interlinked with some degree of state-provided provision and informal risk management culture, and Finland conversely provides a generous welfare regime with strong protective state provision (the heuristic value of typologies is now widely recognized for comparative research in the social sciences—see Esping-Andersen 1990; and more recently the work of Hall and Soskice 2001). The ideal-type comparison is often linked to the approach and work of Max Weber; it is common in economic literature. An ideal type is neither an average type nor a simple description of the most commonly found features of real-world phenomena. Thus one does not construct an ideal type of "bureaucracy" by finding the features that are shared by real "bureaucracies." Nor is ideal used normatively in the sense of a desirable objective. In essence, it is a heuristic device, or a method of investigation.

7.10 Opportunist Insurance Fraud in Three Countries

The Association of British Insurers reports that between 1996 and 2006, claims paid have increased by 42%, from £13.4 billion in 1996 to £19.1 billion in 2006 (ABI 2007). Among the different types of insurance, motor claims was the most frequent, about £8 billion (about 43%) in 2006, followed by £4.6 billion property claims and £2.8 billion health and accident claims (ABI 2007). An ABI booklet published in 2006 declared that bogus and inflated insurance claims in the UK cost over £1.5 billion every year. ABI also surveyed 1,100 companies and found that the majority of fraudulent claims arise from the exaggeration of genuine incidents. Up to 15% of commercial insurance claims in their survey were exaggerated in this way (ABI 2005). Another independent survey undertaken in 2002 by Karstedt and Farrall (2006) found that 7% of interviewees aged 25–65 admitted to have padded an insurance claim in their lifetime and 22% had the intentions to do so. Karstedt and Farrall refer to people who commit such crime, along with other types of "everyday crime," as "those who think of themselves as respectable citizens, and who would definitely reject the labels of "criminals" and "crime" for themselves and their actions" (Karstedt and Farrall 2006, p. 1011). This is simply another way of describing "opportunist" insurance fraud.

In Finland, it is estimated that every year, insurance companies uncover 45–55 million euros in fraudulent insurance scams. In a survey carried out by the Federation of Finnish Financial Services 2007, 5% policyholders scam money from insurance companies; 30% of them approved of exaggerating damages when filling out insurance (a close definition of "opportunist fraud"). About half of the claims concern damages to automobiles, and one-third of the claims for household or company damages (YLE News 2008).

In Taiwan, as of 2008, no survey has yet been undertaken to estimate the extent of insurance fraud. It is usually estimated that 10% of the total claims is fraudulent by one accepted rule of thumb (based on the surveys done in the USA or Australia). In one open speech delivered by the Taiwanese Chief Commissioner of the Financial Supervisory Committee, she mentioned a likely loss in the range of NTD 130 billion (approximately three billion euros—at May 2008 exchange rate) insurance fraud in 2006 based on estimates in the USA (Taiwan Insurance Bureau 2008). There is no evidence to check the validity of this estimation. However, in one telephone poll, 38% of respondents were said to have made a claim, and almost 80% of them successfully obtained their compensation from insurance companies (Taiwan Institute of Insurance Industry 2005). If we calculate the probability of a claim denied by insurance company as possible fraudulent cases, it would come up with 8% (possibly overestimated). If this number is close to the reality, and given a total of NT$1,300 billion insurance claims every year, the possible cost of fraudulent claims amounts to about NT$104 billion annually. The most popular claims came from life and damages/theft to the automobiles (about 60% of total nonlife insurance claims) and then came marine, fire, and personal injuries each accounting for 10% of the total nonlife claims (Taiwan Insurance Bureau 2008).

Table 7.2 summarizes key facts of insurance fraud in the three countries. As expected, the UK and Taiwan have higher estimated opportunist insurance frauds and much higher costs to the industry than Finland. One common characteristic across the three countries is that automobile insurance claim happens to be the most popular insurance type (and yet perhaps the easiest type to pad a claim?).

7.11 The Rise of Antifraud "Campaigns": The Public Discourse

Traditionally, and certainly prior to the late 1980s, most insurance companies, regardless of country location, sought not to draw attention to their level of individual fraud victimization. Presumably, this was due to the fact that the insurance companies have a strong motivation

Table 7.2 Insurance fraud in three countries

Dimensions	UK (2006)	Finland (2007)	Taiwan (2006)
The total annual claims	£ 19.1 billion	US$2.2 billion	NT$1,300 billion
Estimated insurance fraud	7–15%	5%	8%
Type of policy most claimed	• Automobile • Property/accident/health	• Automobile • Property damaged/theft	• Life • Automobile
Cost of insurance fraud	£1.5 billion	45–55 million euros US$100–200 million	NT$104 billion (2 billion euros)

and resources to cope with the offences and to deal with their "loss." After all, insurance companies have the ultimate power to decide if a policy is granted or a claim can be compensated. In addition, it is believed that the insurance companies can pass the cost of fraudulent claims to other policyholders by simply increasing premiums. Clarke (1989) suggests that fraud appears as an embarrassment to the insurance industry, because it is a symbol of violation of the values of service, fair dealing, and utmost good faith on which it is historically proud to act.

However, due to the discovery of the large hidden costs of insurance fraud by the insurance industry, some countries even by the mid-1960s were advocating early recognition of the problem and the need for collective reaction to it. Of those countries, the USA is the global pioneer in terms of seeking to raise public awareness and seeking prevention of insurance fraud (Clarke 1990).

However, arguably public perception is quite different when compared with the industry itself. In a recent ABI publication, it emphasizes that "opportunist insurance fraud is dishonest, ultimately costs everyone all money. And there is a high chance of being caught" (ABI 2006, p. 3). Such aggressive publicity appears to sit uneasily alongside the views of the public-consumer. In qualitative research done by ABI in 2005, a panel of employees of 1,100 companies were interviewed by the researcher about a series of scenarios and asked in which circumstances people were most likely to commit fraud. The research found that 36% of the panel stated that they would be tempted to commit fraud to avoid disciplinary action, 33% would do it for personal financial gain, and 27% for work-dissatisfaction or revenge on their employers (Association of British Insurers 2005). Avoidance and dissatisfaction obviously fit the definition of "rationalization" in the fraud triangle model. The motivation of personal financial gain certainly indicates the financial pressure on these employees. These are all "predicted" by the triangle model.

Another notable study argues that British consumers develop a sense of anomie from the unfair and unethical business practices in the neoliberal marketplace and this allows them to justify their "everyday crime" such as padding a claim (Karstedt and Farrall 2006). According to Karstedt and Farrall, the major reasons given for committing these everyday crimes are (1) the fear of becoming a victim of crime and shady practices in the marketplace; (2) distrust of market agents and their practices; and (3) legal cynicism—the extent to which people feel disengaged from legal norms. These three elements of anomie in the market economy affect people's motivation to cheat on insurance claims.

Yet, arguably, the three elements proposed by Karstedt and Farrall do not really take our understanding beyond the level of discussion of rationalization in the fraud triangle model. Nevertheless, their study is valuable in emphasizing "the crimes of everyday life reflect the changes of the economy at the late twentieth century. The result of which has been a 'cornucopia of new criminal opportunities'" (Karstedt and Farrall 2006, p. 1012). A free market is always seen to produce an abundance of new legal/illegal opportunities. The rise of unfair and unethical practices by business and dishonest and unlawful behavior by consumers destroys any preexisting bases of traditional morality, especially in regard to fairness and justice. On the basis of the results of these kinds of studies, one can see that public perception of "opportunist" insurance fraud in the UK may sit uneasily alongside that of the

industry. The public justifies/rationalizes their misbehavior as "hitting back." The industry attempts to label such "opportunist" fraud as being "shameful." Nonetheless, the perceptions of the public and the industry all are shaped by a hidden but common denominator—the new neoliberal market economy embraced by the UK since the early 1980s.

Only in the mid-1990s did the Finnish insurance industry begin to pay more attention to analyzing the characteristics of potential policyholders and the possibilities of preventing fraud by reducing opportunities for fraudulent activity (Niemi 1995). Violation of social norms is not a major concern for opportunist fraud among the Finnish public, especially the younger generation. A survey done by the University of Turku in 2003 showed that the public's views on insurance fraud have not changed much from 1996. The older the person, the more serious they considered the fraud to be (Morse and Skajaa 2004, p. 148). The policy of insurance companies is guided by economic reality. Niemi admits that prevention and control of insurance fraud in Finland are not motivated by any considerations of the public interest. For the State, one goal in making insurance fraud a criminal offence is the maintenance of general respect for the law. The insurance industry has to solve insurance fraud independently of the State because such frauds are widely regarded as "private business." This perspective can be seen in terms of the published "good practice guidelines for insurance investigation" regulated by the Federation of Finnish Financial Services (FFFS 2006). The regulations specify that "fraud prevention is part of insurers' social responsibility" (FFFS 2006). That is to say that for the State and the people in Finland, insurers hold primary responsibility for dealing with insurance fraud.

Finland, as a welfare state, has had low confidence in "privatization" since 1990s. For the public in Finland, there exists the question of why the insurance industry had not taken a more proactive approach to the prevention of insurance fraud. Contrary to Taiwan's or the UK's case, the Finnish preferred that the insurance industry took private investigatory action, instead of calling for greater cooperation or help from police, prosecution, court, or other State agencies. Where such cooperation was sought, the view was that the insurance industry ought to "buy in" the services of police and other state agencies. Turning to the situation in Asia, Kim and Kwon in their recent work on Korea point out that "neither the government nor the insurance industry paid close attention to the issue of insurance fraud until the Asian economic crisis" (Kim and Kwon 2006). The Asian economic crisis in 1997 caused a near-perpendicular depreciation of the currency, economic uncertainty, and social insecurity. During this crisis, some people throughout Asia were under severe financial pressures and inflicted self-injury or caused damage or staged fires to their factories, companies, or property in an attempt to gain compensation from insurance (Kim and Kwon 2006, pp. 136–137). If this is the case in Korea as Kim and Kwon described, it is important to note that Taiwan shared a similar experience in the late 1990s. News media indicated a rise of public awareness, and alerted the government as well as the insurance industry. Furthermore, in the late 1990s, the Taiwanese Government embraced a fully open and transparent international financial market, and increasing incidents of insurance fraud then come along with the expansion in market business in insurance. The insurance division which had been established in 1991 then merged with the banking and investment industry regulators into the Financial Supervision Commission in 2004. In the same year, the life and nonlife insurance industry associations funded the Insurance Anti-Fraud Institute (IAFI) to respond to a perceived increase in insurance fraud.

7.12 Reactions to Opportunist Insurance Fraud in Three Countries

7.12.1 The UK

Of all the areas of insurance fraud, arson (fire) seems to have offered the most legitimate opportunity to attract attention from the UK Government. The Fire Loss Bureau was

established as early as 1975 funded by a number of insurance companies to control the losses from fraudulent arson (Clarke 1989). The involvement of the public sector, namely, police, Home Office, and forensic services, has greatly assisted the prevention of opportunist fraud.

On the other hand, insurance companies recognized that the industry suffered from nonprofessional fraudsters and from changes in attitude on the part of the insured population, who increasingly regard insurance as fair game (Clarke 1990, p. 18). Learning from American experience (because Americans identified the problem at a relatively early stage and was quick to act) (Morse and Skajaa 2004), the British started to take public initiatives on insurance fraud in the mid-1980s. In 1987, a Motor Insurance Anti-Fraud and Theft Register was established by all motor insurers to collate losses (Cullis 1987). The data collection and analysis have proved that the information sharing was useful to discourage attempts to make false claims. Since then, the innovation and implementation of data mining techniques have become a powerful measure for insurance companies to screen high-risk underwriting and to identify suspicious claims. The creation in 2006 of an Insurance Fraud Bureau to improve the capability of member insurers to prevent, detect, and investigate organized insurance fraud was a major development financed by the insurance sector itself (Jou and Hebenton 2007).

Other reactions against fraud more generally in the UK include the emergence of a new profession: the fraud investigator or counter-fraud specialist (Button et al. 2007). The background to this profession dates from 1979 and now totals more than 8,000 people across the public sector and a large number by private enterprises (for example, Button et al. estimate that six largest banks alone have 2,500 in-house investigators).

The legal response to fraud prevention is evidenced as part of the Financial Service Act of 1986. A year later, the Serious Fraud Office was set up to improve the investigation and prosecution of serious and complex fraud. After a long process of consultation and review, a specific Fraud Act (2006) was brought before Parliament, establishing a high-level government Fraud Review Team overseen by the Financial Services Authority reporting on strategic action. The Fraud Act specifically defines fraud as being committed when a person "makes a false representation," "fails to disclose information to another person which he/she is under a legal duty to disclose," or abuses a position in which he/she is "expected to safeguard, or not to act against, the financial interests of another person." The penalties for fraud under the Act are imprisonment up to 10 years, a fine, or both (Ormerod 2007).

7.12.2 Finland

In Finland, insurance supervision is regulated by the 1999 Act on the Insurance Supervision Authority, and special enactments regarding the insurance industry. The task of the Finnish Insurance Supervisory Authority is "to promote the financial stability of insurance and pension companies as well as other operators in the insurance industry, while maintaining confidence in the insurance business" (FIN-ISA 2007). Insurers are expected to reduce opportunities for the policyholders to commit fraud against them and to detect and investigate any detected fraud and, where needed, report to the authorities. The government plays a supervision role to the industry rather than becoming involved in preventing and controlling insurance fraud.

Before 2007, the main organization responsible for antifraud campaign work was the Federation of Finnish Insurance Companies (FFIC). The FFIC was a joint body for insurance companies operating in Finland, representing their interests to government authorities, other trade organizations, and the public. It worked to promote insurance business, adequate risk management, and effective loss prevention, setting out from the idea of insurance. At the beginning of 2007, as a result of a merger between the Finnish Bankers' Association, the FFIC, and the Employers' Association of Finnish Financial Institutions, the Federation of Finnish Financial Services was set to start operations. The new FFFS aims "to secure the industry a benign operating environment, well-functioning financial

markets and effective payments transmission systems and to support new opportunities offered to members by Public-Private Partnership arrangements". It indeed acts as a liaison point for information between insurers and with external bodies.

Most insurance companies establish their own fraud units or insurance investigators who specialize in crime investigation. In addition to setting up special investigation units and governing under the ISA and FFFS regulations, Finnish insurers have access to two antifraud databases, a claims database and another set up for fraudulent claims (Morse and Skajaa 2004, p. 148). The joint claims register is set up with an aim to prevent customers from getting compensation from several insurers for the same loss. Over time, the claims register also reveals persons that sustain losses of a certain kind exceptionally often. As customers are told about the existence of a claims register when they file a claim, or even earlier, the role of the claims register as a fraud deterrent is significant. The second one, the fraudulent claims database, contains details of customers who have committed insurance fraud. Recently, extensive work in insurance fraud investigation has resulted in new prevention tools devised in cooperation with other European insurers. Prevention of life and pension insurance fraud operates through a network built between insurers and security authorities.

7.12.3 Taiwan

Turning to Taiwan, in 2003 the Financial Supervisory Committee reformed and enhanced the capacity of the main government agency, the Taiwan Insurance Bureau, to supervise the insurance industry [Act Governing the Establishment of the Financial Supervisory Commission, Executive Yuan (Promulgated on July 23, 2003)]. As part of the reform, the Bureau was tasked with developing policy on the control of insurance fraud. In pursuit of its aims, the Bureau established the IAFI in 2004 to coordinate relations between the insurer, insurance development association, prosecutor's office, police, fire department, and other sector professionals (see Jou and Hebenton 2007). The Bureau's main tasks include acting as a liaison in multi-governmental agencies meetings with the industry; establishing the nonlife insurance compulsory reporting and information enquiry systems across insurers in 2004; promoting share insurers' online information with prosecutors for cases involving suspicious claimants and failure to disclose relevant information; regulating the insurance companies to set up an investigation unit or hotline for claims; raising public awareness about insurance and the nature of insurance fraud; and promoting new measures that allow for insurance fraud cases to be heard in specialized courts (such as the existence of economic crime specialized court). Compared to many other western countries, it is clear that most preventive actions to control insurance fraud are initiated and promoted by the State rather than the private sector.

7.13 Comparative Analysis

For the UK and Taiwan, broadly similar responses can be seen, though over different time periods, namely, (1) the establishment of an anti-insurance fraud organization to coordinate across insurers; (2) creation of an appropriate database across insurers and implementation of new data mining or intelligent analysis technique/software; (3) publicity on insurance fraud both organized and opportunist types as a serious crime; (4) prosecutions and convictions with tougher penalties; (5) closer work with police and insurance industry; and (6) establishment of in-house fraud investigation units. At present, Finland is seemingly reluctant to take a more proactive role in fighting opportunist insurance fraud on a comprehensive scale.

The UK began preventive actions in the 1980s and got even more proactive in the last decade, while Taiwan began its efforts in 2003. In Finland, selected measures like sharing database information and forming in-house fraud investigation units

began only at the turn of the twenty-first century. Another difference that can be identified is that most of the UK responses involved cooperation and greater effort by the industry itself, whereas in Taiwan, the government set out the first moves to push insurers, working within multi-governmental agencies, and Finland seems to grant more responsibility to individual insurers and later the FFFS.

By comparing the three countries, it is evident that the criminalization of opportunist insurance fraud, the response to it, the selection of private/public involvement, and the making of individual/cooperative efforts are indeed derived from the characteristics of the wider political economy. In the UK and Taiwan, an estimated 7–8% of insurance claims are fraudulent. Both countries have embraced the abundant opportunities provided by the market economy and yet suffer from the inevitably higher moral hazard and moral risk consequence upon it. An important distinction, however, is that opportunist insurance fraud in the UK appears to be portrayed as a "moral war" between "rotten" business and "dishonest" customers whereas in Taiwan it is perceived both as threat to national and social security and as an individual financial problem. The reason for this lies in Taiwan's singular political relationship to the People's Republic of China. As a close neighbor, China has a less regulated market and combined with possibilities of frequent travel, it is seen as the source of an increasing number of overseas staged accidents/deaths and as a market for stolen automobiles and parts. A further reason is the recent breakdown of traditional family ties in Taiwan, which is seen to weaken the informal security net and place more pressure on individuals. These explanations are commonly accepted by government, criminal justice agencies, and the public in Taiwan. Finland, on the other hand, in general has been less willing to work with the insurance industry; hence "opportunist" insurance fraud remains a private matter to be solved by individual insurance companies or seen simply as a threat to private corporate security.

7.14 Conclusion

This paper began by considering the difference between organized and opportunist insurance fraud. Organized crime is well described in the existing published literature, and indeed the opportunist fraudster can be seen as someone who recognizes the advantages provided by the situation. Using the fraud triangle model proposed by the American criminologist Donald Cressey, it is easy to understand opportunist insurance fraud via increasing pressure, rationalization, and criminal opportunity. In the insurance and risk management literature, moral hazard by the insured is believed to be the cause of all insurance fraud. Prevention hence can be easily undertaken via direct reduction in opportunities and criminalization via severe penalties. Data sharing and mining, network analysis, specialized investigation units, claim management strategies (i.e., more obstacles in the way of making a claim), prosecution, conviction, and public shaming are taken to be useful measures to prevent it.

Such a fraud triangle model however understates the reasons why the making of and reaction to opportunist insurance fraud take different pathways in different countries. Moral hazard theory also un/consciously underestimates the moral risk caused by the competition of the insurer and the professional (i.e., medical profession, car technicians, or police who are sometimes linked to the occurrence of insurance fraud). Furthermore, two issues remain puzzling from the existing criminological theory and moral hazard theory: one is how insurance companies, given the estimated grand scale of insurance fraud, seemingly have been largely unaffected and manage to remain highly lucrative. The second puzzle is that current prevention measures seem to be rather silent on reducing individual pressures and appear ineffective in engaging with the average person's moral rationalizations about their everyday crime—for instance—the padding of a claim.

What is missing in this picture? Put simply, it is the even larger picture (context). The fraud triangle model and moral hazard/risk theory successfully capture aspects of insurance fraud.

Unfortunately, neither tell us much about the making of opportunist insurance fraud in a comparative sense and neither explain why advanced preventive measures taken by for example the USA, the UK, or Australia are unable to stop opportunist fraud from being perceived as "acceptable" by large segments of the general public. As we have demonstrated in this paper, antifraud activities are best regarded as the classic example of "social reaction"—the more activity one devotes to investigating, the more one "uncovers" the extent of the problem. Analyzing perception and action on opportunist insurance fraud in the USA in the 1970s, the UK in the 1980s, and Taiwan and Finland in the turn of twenty-first century demonstrates a good comparative case-study of the process of "social reaction." The earlier the reaction, the more serious opportunist fraud is discovered. Moreover, the earlier the country opens up to a neoliberal free market economy, the harsher the moral hazard and moral risk it encounters. It is no coincidence that the rise of opportunist insurance fraud has been concurrent with macro-level change at the level of the political economy in each country. This study's analysis suggests that the political economy helps shape popular sentiment to insurance fraud.

In our comparison, the neoliberal UK has one of the largest insurance markets in the world, and faces "serious problems" of opportunist insurance fraud. Taiwan, a society with arguably a mixture of market and Confucianism ideology, also holds one of the largest insurance sectors, and suffers to a broadly similar extent on fraud. The classical social democratic country, Finland, possesses a smaller insurance market and suffers less from opportunist fraud. The public discourse of and social reaction to opportunist insurance fraud further demonstrate how the politics of economy interplays with the fundamental question of "who to blame" in three countries. In the UK, there is a perception gap between the insurer and the insured on "who to blame." As addressed earlier, the insurer blames the dishonest and greedy policyholder and the public blame it on unethical and rotten business practice. The government obviously takes the insurer's side and initiates a more proactive reaction to prevention. In the case of Taiwan, opportunist fraud is perceived as a threat to national security, social security, and personal financial desperation. The blame is directed both to its political opponent, China, and to decline in family ties and low self-control among individuals. By doing so, the government is able to engage itself in prevention and control policy and of course downgrades its responsibility and accountability to deal with the macro-level problems of economic crisis in the past 10 years. The Finnish public blames recent changes in terms related to wider welfare privatization. Thus, in Finland, it is undoubtedly the insurance company's responsibility to use their own resources and initiate preventive and control actions. The government plays a rather neutral role between the insurer and the insured.

Our findings sit alongside the work of Baker and Simon (2002), Ericson et al. (2000), and Ericson (2007). Manufactured risk, risk-taking, individualism, and insecurity in the neoliberal market society help create the atmosphere of "anxiety" in everyday life. More signs of fear and more security products are made available—especially when government and family are no longer seen as "capable"—it is now the responsibility of individuals. Market society is saturated with fears—fear of risk, fear of not taking risk, fear of the withdrawal of the State, fear of the breakdown of family support, and fear of insecurity. The huge growth in the market for insurance is undeniably facilitated by the summation of knowledge of "fears." Arguably, people with greater anxieties "consume" more un/necessary insurance policies or are over-insured. Scientific underwriting and the investment vision of modern insurance, on the other hand, also act to trigger moral risks, that is, to endorse the imaginary risks and to promote/sell more unnecessary insurance policies to insecure people. The chance to profit from losses incites the unscrupulous to fraudulent behavior. When deceptive insurance sales become institutionalized, it certainly makes the insurance business a troublesome practice in terms of generating more opportunist fraud (Ericson and Doyle 2006).

Julian Le Grand, the British social policy theorist, has an interesting metaphor, where in the context of the interplay of contemporary

government policy and behavior, one can, he says, distinguish a "knave" strategy on "knightly" behavior and a "knight" strategy on "knavely" behavior (Le Grand 1997). Le Grand defines "knaves" as people motivated primarily by their own self-interest, "knights" are predominantly public spirited or altruistic, and "pawns" are people who are essentially passive or unresponsive (Le Grand 1997, p. 154). Arguably, the politics of the neoliberal economy is a "knave" strategy which introduces manufactured fears and anomie in modern life that, in turn, incentivizes the average person to act as an opportunist fraudster or a criminal of everyday life—to be "knaves" regardless of their human nature as knights, knaves, or pawns. And it is this bigger picture in relation to opportunist insurance fraud that is missing in both the basic fraud triangle model and moral hazard theory. In an investigation using an ideal-type typology, and examining macro-level political economy and culture, it is easy to be accused of naïve reductionism—but our view is that such interrelationships need to be fully recognized at the explanatory level while also noting that the nature of such relationships is likely to be highly mediated rather than simple and direct, and indeed will require the use of different methods and sources of data to explore their complexities.

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Drug Abuse and Drug Trafficking in Asia

8

Huan Gao

8.1 Introduction

With rapid globalization, illicit drug trafficking and misuse have become worldwide phenomena from which almost no nation has immunity. Due to the availability of drugs and cultural traditions of using illicit drugs, different types of drugs may be trafficked and abused in different regions and countries. Based on the types of drugs trafficked and abused, three dominant transnational drug markets are recognized globally, namely, markets for heroin, cocaine, and cannabis. While the markets for these traditional drugs have tended to remain steady at the global level over the past decades, amphetamine-type stimulants (ATS) have quickly gained popularity worldwide, in particular among a young user population.[1]

Asia is renowned for its long history of opium cultivation and use. For this reason, the world's three largest opium producers are all located in Asia. Before Afghanistan's opium production surpassed that of the Golden Triangle in the late 1980s, Myanmar, as the major opium producer in the Golden Triangle, was the world's top opium-producing country. It is now the second largest (UNODC 2010d).[2] Lao PDR is the world's third-largest opium producer. In addition to producing the most opium, Afghanistan also produces the most cannabis resin (UNODC 2010a).[3] Asia, more precisely Southeast Asia, also claims the biggest share of the world's ATS market. Myanmar is also a major methamphetamine producer (UNODC 2010d), and India has become a source of ketamine (UNODC 2010c). Illicit drugs produced/manufactured in Asia are not only trafficked and consumed inside Asia, but they are also distributed to the underground market in other continents, such as North America and Europe.

Illicit drug trafficking has brought about significant societal, political, and legal consequences for Asian countries, in particular the major producer countries (Cornell and Swanström 2006; Dupont 1999). Studies have found that illicit drug trade in Asia has been closely linked to social instability, widespread official corruption, and transnational crime in the region (Chalk 2000; Cornell 2006). The drug trade not only challenges the national sovereignty of states (Dupont 1999) but also poses increased threats to

[1] According to the reports from the United Nations, ATS refer to a group of synthetic substances comprising amphetamine, methamphetamine, methcathinone, and ecstasy-group substances (MDMA and its analogues). In different countries, ATS street names may differ (UNODC 2009b).

[2] There are four countries in the Golden Triangle: Myanmar, also known as Burma, Lao PDR, Vietnam, and Thailand.

[3] This estimation was based on the high resin yields measured in Afghanistan (145 kg/ha), which are four times higher than those in Morocco (36 kg/ha measured in 2005)—another major cannabis production country (UNODC 2010a).

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both regional and international security.[4] As the second-largest illegal transnational business in the world (next to the arms trade), the illicit drug trade's link to terrorism has been also observed by scholars (Jackson 2006; Mccoy 2000).

In Asia, a major source region for opium, cannabis, and ATS, the number of people who abuse illicit drugs is significant. The social harms brought about by illicit drug abuse are enormous. Asia, home to two-thirds of the world's population, has the second-highest HIV infection rate in the world. As of 2009, 4.7 million people in Asia were HIV infected. The high HIV infection rate is primarily drug related. The HIV infection rate among injecting drug users (IDUs) is as high as 16%, and in some countries, such as Thailand and Vietnam, the infection rate has reached 30–50% and 32–58%, respectively (UNAIDS 2010). The HIV/AIDS epidemic in Asia affects not only the drug users themselves but also their families, communities, and many aspects of the larger society as well. According to the United Nations Human Development Programme (UNDP) (2010), most of the world's multidimensional poor live in Asia (51% in South Asia and 15% in East Asia and the Pacific). The impact of HIV/AIDS on Asian countries, in particular those countries in poor economic shape, has been particularly devastating.

Due to the substantial consequences of illicit drug trafficking and drug abuse for Asian countries, this chapter focuses its discussions on two central issues: illicit drug trafficking and drug misuse in Asia. The first part of the chapter introduces illicit drug production in major producer countries in Asia as well as current markets and major drug trafficking routes; the second part of the chapter shows drug consumption patterns in Asia, the social consequences of drug use, and treatment modalities provided for drug users. Responses of the criminal justice system and an assessment of the effectiveness of the policies will also be addressed for both sections.

[4] For instance, countries in central Asia, on the major drug trafficking routes from Afghanistan to the Russian Federation and Europe, have seen national security at all levels impaired (Cornell 2005).

8.2 Drug Trafficking in Asia

The legal framework for addressing illicit international drug trafficking is based on three major international drug control treaties: the Single Convention on Narcotic Drugs of 1961 (as amended in 1972), the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Following these treaties, the Commission on Narcotic Drugs and the International Narcotics Control Board were established. According to the United Nations, drug trafficking is defined as a global illicit trade involving the cultivation, manufacture, distribution, and sale of substances subject to drug prohibition laws. To advance the understanding of illicit drug trafficking and consumption in the world, the General Assembly of the United Nations in 1998 mandated UNODC to publish comprehensive data about the world's drug production, trafficking, and consumption. Starting in 1999, UNODC began to publish its annual report *Global Illicit Drug Trends*. In 2004, UNODC merged *Global Illicit Drug Trends* and the *World Drug Report.* In its report published in 2010, the United Nations identified three major illicit drug markets worldwide: the heroin market, the cocaine market, and the ATS market.[5] In general, different drug markets have shown different trafficking patterns: heroin and cocaine trafficking is mainly involved in long-distance trafficking between continents while ATS and cannabis resin trafficking is primarily limited to the producers' regions (UNODC 2010a).

8.2.1 Opiate and Heroin Market in Asia

According to the *World Drug Report* (2010), global opium poppy cultivation declined to 181,400 hectares (ha) in 2009, a 23% reduction

[5] While cannabis production is found throughout most of Asia, it is not covered by *World Drug Report* 2010 because cannabis is mainly consumed locally in producer countries and is not subject to transnational market analysis (UNODC 2010a).

compared to 2007. While both global opium and heroin production fell since 2007, a significant increase in opium production (from 4,346 to 7,754 mt) in 2009 was evident (UNODC 2010a). In Afghanistan, the world's leading opium producer, the total opium poppy cultivation in 2010 largely remained the same as the previous year's at 123,000 ha, representing two-thirds of the opium cultivation in the world. However, yield fell from 56.1 to 29.2 kg/ha due to a plant disease (UNODC 2010b).[6] In Myanmar, the second-largest opium production country, the opium poppy cultivation began to surge in 2006 (from 21,600 ha in 2006 to 38,100 in 2010) (UNODC 2010d). Lao PDR is still ranked as the world's third-largest producer of opium; however, its cultivation has significantly decreased in recent years (Reid et al. 2006).

Although Afghanistan has cultivated opium for centuries, opiate production began to surge in the 1990s. The Soviet Union's withdrawal in 1989 and the country's breakup in early 1991 are viewed as two major events that boosted Afghanistan's opium production (Mccoy 2000). Before the Taliban took power in 1996 and established the Islamic Emirate of Afghanistan in Kabul, the country was largely controlled by regional powers (Cornell 2006). Until today, the central government's inability to exercise its administrative power over different regions in the country is still the primary reason that opium cultivation thrives. Ninety-eight percent of opium production in Afghanistan is concentrated in nine southern and western provinces—areas under the strong influence of antigovernment elements or organized criminal networks. The United Nations Department of Safety and Security (UNDSS) classified the security level of these provinces as high or extreme risk (UNODC 2010b).

Lack of security is also the main reason the Golden Triangle was at one time able to become the world's largest opium cultivation area. In Myanmar, the major producer country in the Golden Triangle, opium production regions are occupied by ethnic opposition groups that have a self-administrated autonomy outside government control (Kramer et al. 2009). Another similarity shared by Afghanistan and Myanmar is poorly developed local economies. According to the UNDP 2010 report, the Human Development Index (HDI) for both Afghanistan and Myanmar was in the low development category with a gross national income (GNI) per capita at $1,419 and $1,591, respectively. Opium production areas in these countries are found in extremely poor areas. A survey conducted in Afghanistan indicated that farmers were motivated to cultivate opium poppies mostly for economic reasons (47%) (UNODC 2010b).

Regardless of increasing heroin use in Asia in recent years, western Europe and the Russian Federation are still the two largest heroin consumer markets worldwide (UNDOC 2010a). For this reason, drug trafficking routes have been developed with a purpose of connecting the producer countries with these two consumer countries. Due to Afghanistan's proximity to western Europe and the Russian Federation, illicit drugs from there are trafficked mainly to these two destinations via three major drug trafficking routes: the Balkan route, the Northern route, or what might be called the Pakistani route, where neighboring Pakistan is simply used as a distribution center. Iran and Turkey are the major transit countries of Balkan route, and Central Asia is responsible for drugs trafficked from Afghanistan to the Russian Federation.[7] Among Central Asian countries, Tajikistan is the most vulnerable nation affected by drug trafficking due to its long shared border with Afghanistan. Weak border control and ethnic connections on the two sides are also contributing factors (Engvall 2006).[8] Drug trafficking in Tajikistan is primarily small scale; for example, about 80% of seizures made from

[6]The average farm-gate price of dry opium at harvest time (weighted by production) in 2010 reached $169/kg (a 164% increase) compared to 2009. As a market response, the gross income for farmers also increased 36% (to $4,900) (UNODC 2010b).

[7]Central Asian countries include Tajikistan, Uzbekistan, Turkmenistan, Kyrgyzstan, and Kazakhstan.

[8]The Tajio population, situated mostly in the northern border area, constitutes 20–25% of Afghanistan's population.

2005 to 2007 totaled 10 kg or less, with the average size of 2.6 kg (UNODC 2010a). In the third drug trafficking route via Pakistan, drugs are trafficked to many destinations, including Iran (with Europe as the final destination), Africa, the Middle East, and other Asian countries (UNODC 2010a).

Myanmar, the second-largest opium-producing country, is also central to the global heroin trade. Its drug trafficking pattern has been greatly shaped by changes in the consumer market. While in the past heroin produced in the Golden Triangle area primarily supplied North America and non-Asian markets, beginning in the 1990s heroin trafficking became more focused on the Asian market, in particular East Asia (Dupont 1999). With China's economic reform and resulting open-door policy in the late 1970s, more border crossings were created along the border of China and Myanmar. China, initially a gateway for drugs trafficked to other Southeast Asian countries and North America, has gradually become a major consumer market with more than one million heroin users currently. As observed at cross-border drug trafficking points between Myanmar and China (Chin and Zhang 2007, p. 5), drug trafficking patterns similar to those in Central Asia have become apparent: drugs trafficked in large quantities have largely disappeared; instead, small quantities carried by large number of individuals are typical.

8.2.2 Amphetamine-Type Stimulants Market in Asia

ATS have gained popularity worldwide in the past decades. At present, the manufacture of ATS has spread throughout more than one-third of the countries in the world (UNODC 2010a). Asia, in particular East and Southeast Asia, has become the home of the world's largest ATS manufacturers. Unlike plant-based drugs, ATS can be made in small clandestine laboratories as long as the precursors are available. Unfortunately, China and India are the world's two largest producers of ephedrine and pseudoephedrine—the precursor chemicals for ATS.[9,10] Due to the concealed nature of ATS manufacture, only very limited number of ATS laboratories are uncovered by law enforcement. For example, in Myanmar, a major ATS producer in Asia, only 39 manufacturing facilities (mostly small scale) have been detected over the past decade (UNODC 2010c). Because of the clandestine nature of ATS production, it is impossible to estimate its scope. Clearly, gathering global ATS data is an urgent need.

In response to the increase in ATS manufacturing, UNODC launched the Global Synthetics Monitoring: Analyses, Reporting and Trends (SMART) Program in 2008. The region of East and Southeast Asia was chosen as the first focus region due to the area's extreme ATS problems. The first SMART annual report was published in 2009, and the second report became available in 2010. The data for these reports were gathered from the Drug Abuse Information Network for Asia and the Pacific (DAINAP), which was initiated by the United Nations Office on Drugs and Crime in 2005.[11] In general, those countries (or regions) with a longer history of ATS abuse, such as Japan, the Philippines, Singapore, and Taiwan, have well-maintained national data collection systems in place (Humeniuk and Ali 2004). Although South Asia was also included in SMART, only very limited information is available because unified national reporting systems largely do not exist in those countries.

While ATS manufacturing originated in Europe, it is evident that the abuse of ATS has quickly increased in Asia in the past decades. Responding to changes in drug-use culture and, most importantly, pursuing huge profits from the

[9] Ephedrine seizures, reported by India since 2002 (126 kg), reached their peak in 2008 (1,284 kg) (UNODC 2009b); in China, it was reported that a total of 1,113 tons of precursors were seized in 2008 (NNCC 2009).

[10] Alternative precursors are also detected in MDMA manufacture and substitute drugs (such as safrole-rich oils from Southeast Asia), which are not under international control or regulated by Asian countries (UNODC 2010a).

[11] DAINAP is an Internet-based drug use information system which has 11 participating countries, including 10 countries from the Association of Southeast Asia Nations (ASEAN) and China. Information from DAINAP was supplemented with data from government sources and secondary research.

underground drug market, heroin manufacturers have diversified their production by either including synthetic drug manufacture or completely replacing heroin production (Humeniuk and Ali 2004). Now Myanmar has become the main producer of opium, heroin, and ATS in Asia. China is also considered a major producer of methamphetamines in Asia—1 of 31 countries where the largest number of ATS laboratories have been detected (UNODC 2010a). In South Asia, India is the main source of manufacture and trafficking of ATS. India has become a source of ketamine largely because the drug is manufactured legally in the country. In spite of increased controls on the substance by the Indian Government, the drug continues to be trafficked to countries in East Asia (UNODC 2008).[12] The quantity of ketamine seized by Indian law enforcement agencies has continuously increased over the past 5 years (UNODC 2010c).[13] ATS manufacture and trafficking have also been active in other regions of Asia. The Middle East has emerged as a major new market with demand for pills called *Captagon,* the brand name for Fenethylline (or Phenethylinne), a member of ATS. It was reported that close to 30% of global ATS seizures in 2007 were made in the Near and Middle East (UNODC 2009c). For the first time, ATS laboratories have been located in Iran and Sri Lanka (UNODC 2010a).

As reviewed in this section, Afghanistan and Myanmar are the two major players in the world's illicit drug market in Asia. Drug markets centered in those countries have also been firmly established. Though it is relatively easy to identify drug-producing countries, it is more difficult to locate major drug trafficking routes due to their dynamic nature. As observed in Afghanistan and Myanmar, the emergence of drug trafficking routes is determined by two major factors: the location of the producer market and the location of the consumer market. How drug trafficking routes develop is primarily determined by the distance between these two markets. In the case of heroin trafficking, there is a subtle difference between the Afghanistan and Myanmar markets. While heroin produced in Myanmar tends to be trafficked within the region, heroin produced in Afghanistan is trafficked to regions beyond Asia. Unlike the heroin market, however, ATS produced in Asia is consumed locally, and intraregional drug trafficking is more typical with its relatively less expensive network and quick money return (Dupont 1999).

8.2.3 Criminal Justice Responses to Drug Trafficking

With increased globalization and economic activity between countries, it becomes more challenging to control drug trafficking. While geography plays an important role in drug trafficking, as reviewed previously, a country's political, social, and economic factors are also linked to the effectiveness of its criminal justice system's responses to drug trafficking. Above all, the weakness of state institutional capacity is one of the major concerns in responding to drug trafficking (Jackson 2006). Weak states are more vulnerable to the drug trade, and the drug trade in turn further weakens the state's administrative power (Cornell and Swanström 2006), as is evident in Afghanistan's and Myanmar's experience with the drug trade. In Myanmar, due to the cease-fire agreement between the government and armed ethnic opposition groups, the latter gained a self-administered autonomy that rendered them largely out of the government's control. Meanwhile, drug production and trafficking are also driven by local economic factors. For example, in Tajikistan, about 30% of its population is financially depending on the illicit drug business. Largely due to this reason, it is not unusual that Central Asian countries' budgets rely heavily on drug trafficking, as demonstrated in Kyrgyzstan and Tajikistan (Jackson 2006). In Myanmar, the

[12] Ketamine has also emerged as an adulterant in the manufacture of ecstasy in East and Southeast Asia (UNODC 2008).

[13] The quantity of ketamine seized by Indian law enforcement has increased from 60 kg in 2005 to more than 1 mt in 2009 (UNODC 2010c).

Burmese Government also acquires a substantial amount of money from drug lords. For this reason, drug control in Myanmar is often politicized and pursued without much vigor (Chin 2009).

Meanwhile, the failure to control drug trafficking effectively in Asia is also attributed to widespread corruption among government officials, even top officials in major producer areas such as Afghanistan and Central Asian countries. Government officials frequently get involved in criminal networks and drug trafficking. It certainly weakens border control when corruption became so prevalent. For example, on the northern border of Afghanistan, a major drug trafficking route to Central Asia, border security is largely out of the control of the central Kabul administration. On the side of Central Asia, a similar level of corruption exists (Walker 2005). In East Asia, corruption has also spread among government officials and members of the security forces (Dupont 1999). Controlling drug trafficking certainly imposes challenges to these undeveloped states.

In terms of a legal framework to stop drug trafficking, Asian countries have adopted harsh drug policies against drug-related offenses, including the death penalty. All six countries listed by the International Harm Reduction Association as high commitment states, where the death penalty is exercised with regularity, are located in Asia: China, Iran, Saudi Arabia, Vietnam, Singapore, and Malaysia. The majority of executions for drug offenses are carried out by these countries (Gallahue and Lines 2010). According to the Criminal Law of P. R. China, drug dealing is strictly prohibited; criminal responsibility for heroin dealing or trafficking is determined by the quantity of drugs involved; the death penalty might be imposed on whoever sells or traffics more than 50 g of heroin, or 1,000 g of opium. Regardless of harsh punishment on drug offenses, not only did the total amount of illicit drugs trafficked in China tremendously increase in the past two decades, but a wide variety of illicit drugs, such as ATS, also began to emerge in the underground drug market one after another.

8.3 Drug Misuse in Asia

According to the Word Drug Report (2010), between 155 and 250 million people (3.5 to 5.7% of the world's population aged 15–64) abused illicit drugs at least once in 2008. The largest drug use population (129–190 million) used cannabis.[14] In 2009, opiate users were largely from East/Southeast Asia (2.83–5.06 million), with users in the Near and Middle East as the second (1.89 and 3.82 million) (UNODC 2010a). The ATS user population ranked second (between 14 and 53 million), and they were primarily methamphetamine users.[15, 16] It is predicted that the ATS user population will exceed that of opiate and cocaine users soon.

Regardless of types of drugs abused, between 16 and 38 million drug users (10–15%) in 2008 were "problem drug users" (UNODC 2010a).[17]

8.3.1 Patterns of Illicit Drug Abuse in Asia

Opium has been used in Asia for several centuries both for medical and recreational purposes, but its popularity has diminished with the emergence of ATS.[18] While heroin still ranked as the

[14] Between 12.8 and 21.8 million people (0.3–0.5% of the world population aged 15–64) used opiates in 2008 (UNDOC 2010a). In Asia, opiate users were largely from East/Southeast Asia (2.83–5.06 million) (UNDOC 2010a).

[15] Ecstasy users were also included in this category (between 10.5 and 25.8 million), but ketamine users were not counted (UNDOC 2010a).

[16] While amphetamine is preferred in Europe, about half of the stimulant users in North America use methamphetamine (UNDOC 2009c).

[17] UNODC defines "problem drug users"—those who inject drugs and/or are considered dependent, facing serious social and health consequences (UNODC 2010a, p. 16).

[18] Between 12.8 and 21.8 million people (0.3–0.5% of the world population aged 15–64) used opiates in 2008 (UNDOC 2010a). In Asia, opiate users were largely from East/Southeast Asia (2.83–5.06 million) (UNDOC 2010a).

primary drug of use in China, Malaysia, Myanmar, Singapore, and Vietnam, most countries in Asia witnessed stable or decreasing trends in heroin use (including Myanmar, an opium producer country). Lao PDR is the only country in Southeast Asia that reported increased opium use in 2009 (UNODC 2009c). As a general phenomenon, both opium and heroin use tended to decline in Asia while the use of methamphetamine pills has increased tremendously (UNODC 2009c; UNODC 2010d). However, in Afghanistan, illicit drug use has shown a completely different pattern. Cannabis, opium, and heroin are the top three drugs abused there, with a significant increase in opium and heroin use since 2005 (53% and 140%, respectively) (UNDOC 2009a).[19]

In East and Southeast Asia, ATS, in particular methamphetamine, make up one of the top three drug categories consumed in all countries in the region. While methamphetamine is a primary drug abused in East and Southeast Asia, the so-called *captagon* (often containing amphetamine) has gained popularity in the Near and Middle East (UNDOC 2010c). It is evident that drug use culture in these countries is beginning to favor ATS substances. At the present time, more than two-thirds of the world's ATS users live in the region, and the number is still growing (UNODC 2010c). Regardless of differences in social, cultural, and economic factors, young people in the area are more likely to use ATS in club settings for social, recreational reasons or simply to improve productivity and concentration (Humeniuk and Ali 2004; UNDOC 2009c). Unlike in Afghanistan, young people in the Golden Triangle (Wa area), with its increased involvement in the methamphetamine trade, have begun to switch their drug use preference from opium or heroin to methamphetamine, and a large consumer market for ATS use also has formed in Thailand (Chin 2009). The abuse of methamphetamine began in East Asian countries at different times. In Japan, methamphetamine use began as early as the 1940s after the Second World War (Sato 2008); in South Korea it emerged in the mid-1980s (Chung et al. 2004). However, in China, ATS use did not start until the early 1990s.

To understand the scope of illicit drug abuse, some Asian countries or regions, such as China, Hong Kong, Macao, Malaysia, Myanmar, and Vietnam, maintain a system of registration for apprehended drug users. According to these databases, China, Indonesia, the Philippines, and Thailand all have drug use populations of more than one million. However, the real number of drug users is estimated to be much larger because many drug users may never have been caught by police, in particular ATS users. Only a few Asian countries use a national household survey (as does Thailand and the Philippines) or national surveillance of drug use (as does China and Cambodia) to compile information about drug users (Devaney et al. 2007). However, in South Asia, the data system often fails to differentiate between various synthetic drugs (UNODC 2010c).

As indicated in the United Nations report, the lack of data in some parts of Asia and the Pacifica Islands is still an obstacle to estimating the scope of the drug use problem (UNDOC 2010a). According to the UNODC, while cannabis users and opiate users are reported systematically by Asian countries, ATS and cocaine users are only reported by East/Southeast Asian countries; for all other regions, including South Asia, Central Asia, and the Near and Middle East, not even estimates can be provided (UNODC 2009c). To improve the understanding of ATS abuse in Asia, UNODC Regional Centre for East Asia and the Pacific launched the project *Improving ATS Data and Information Systems (TDRASF97)* in 2002 in an attempt to aid the countries in the region in developing and analyzing their national data.[20] As previously addressed, the SMART Program

[19] In Afghanistan, there are approximately one million adult drug users, who represent about 8% of the population aged 15–64 (UNDOC 2009a).

[20] Countries participating in the project are Cambodia, China, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, and Vietnam while government agencies in Australia, Brunei, Darussalam, Japan, Malaysia, and Singapore participate in the network. The project is supported through funding provided by the governments of Australia and Japan (UNODC 2007).

was created in 2008. According to its report, it is estimated that between 3.4 million and 20.7 million persons in the region used amphetamines in 2009 (UNODC 2010c).

8.3.2 Consequences of Illicit Drug Abuse

Illicit drug abuse has significant consequences for both the individuals who abuse drugs and society at large. While drug users quite often are involved in income-generating activities to finance their drug use, substance abuse also brings about other social harms, HIV/AIDS in particular. Drug injection and needle and syringe sharing have been linked to increased HIV/AIDS. While injection is commonly used to administer heroin, it is also used to administer ATS in some Asian countries with growing numbers (Devaney et al.2007; Humeniuk and Ali 2004; Kramer et al. 2009).[21] Since the first case of HIV due to drug injection in Asia was identified in Bangkok in 1987, the drug-related HIV infection rate has substantially increased in the region (UNDOC 2009a).

One of the most problematic issues related to injection is needle and syringe sharing. In a recent large-scale survey ($N=2,614$) conducted in Afghanistan, the majority of IDUs (87%) had shared a needle and syringe with other drug users (UNDOC 2009a). A cross-sectional study conducted in Vietnam among young and female drug users under age 25 recruited from drug treatment centers ($N=560$) and the community ($N=240$) also indicated that over half of them began injecting heroin or opium (57%) after a year's smoking. Among injectors, 23% shared needles and 71% were sexually active (among them, 77% had unprotected sex) (Thao et al. 2006).

Among the world's drug use population, a large number of users inject drugs—between 11 and 21 million people worldwide are injection drug users. Although the heroin epidemic emerged in China only in the late 1980s, China has been listed as one of the four countries worldwide with the largest population of IDUs.[22] According to the United Nations, East and Southeast Asia is reported as one of the regions in the world (and the only region in Asia) with both the largest number and highest concentration of HIV infection rates (UNODC 2009c).[23] In 2008, 4.7 million (3.8 million–5.5 million) people in Asia were living with HIV, the second-highest concentration in the world next to sub-Saharan Africa. India alone accounts for roughly half of Asia's HIV prevalence. In the same year the total number of AIDS-related deaths in Asia reached 330,000 (260,000–400,000). For East Asia, the rate of HIV-related mortality in 2008 was more than three times higher than that in 2000 (UNAIDS 2009).

Infection rates among IDUs in northern Myanmar are among the highest in the world. Myanmar, Cambodia, and Thailand are the countries affected most by HIV/AIDS in Asia (Kramer et al. 2009). In Central Asia, countries that are located on the main drug trafficking route with high concentrations of poverty and poor health care systems, such as Uzbekistan, Tajikistan, and Turkmenistan, have been struck much harder by HIV (Walker 2005). A survey conducted with female regular sex partners of drug users and injection drug users ($N=4,612$) in Bangladesh, Bhutan, India, Nepal, and Sri Lanka also indicated a low condom use rate (21%) between male drug users and their female sex partners. Due to the high HIV infection rates in these countries, a big concern is whether HIV infection will easily spread to the general population (Kumar et al. 2008).

8.3.3 Criminal Justice Responses to Substance Abuse

Illicit drug use is highly criminalized in many Asian countries. With a rapidly increasing prison

[21] The most common means of administration for ATS substances are smoking, snorting, and fume inhaling.

[22] China, the United States, the Russian Federation, and Brazil together account for 45% of total IDUs (UNODC 2009c).

[23] This report also included Eastern Europe and Latin America (Eastern Europe and Central Asia also had very high HIV infection rates).

population and annual arrest rates, Southeast Asia would appear to have the toughest laws in the world against drug users (Gallahue and Lines 2010). Myanmar is one of those countries that has criminalized drug addiction. According to its antidrug law published in 1993, if drug addicts fail to register with government medical facilities or are unsuccessful in treatment, they are subject to 3–5 years' imprisonment (Kramer et al. 2009). In Thailand, according to its "war on drugs" policy initiated in 2003, drug users who failed to participate in the drug treatment programs provide by the government were subject to the compulsory drug treatment for 4 months (Vongchak et al. 2005). In Afghanistan, consumption of opium products may also result in a prison term for 3 months (Todd et al. 2005). Harsh punishment for substance abuse raises concern about compulsory drug treatment centers in some Asian countries, which often have exercised arbitrary detention and failed to follow due process of law (Harm Reduction International 2010).[24] As a result, a large number of drug users have been incarcerated merely because of drug consumption. For example, in Thailand, the number of drug-related incarcerations increased five times (from 12,860 to 67,440) between 1992 and 1999 (Beyrer et al. 2003). In China, while the central government began to emphasize community-based treatment programs in the recent years, the total number of drug users who served time in compulsory treatment programs still reached 173,000 in 2009 (NNCC 2010). As far as incarceration is concerned, inadequate health care inside these facilities is another issue. Forced or involuntary testing for HIV in compulsory drug rehabilitation centers has also been reported in several countries, such as China, Malaysia, and Vietnam (Harm Reduction International 2010).

Despite such deterrents to drug use, post-release relapse rates are extremely high in Asian countries. A study conducted in China with female heroin users indicated that the success rate among those who were released from compulsory treatment programs was extremely low (Gao 2011). Another study that examined recidivism rates of male drug users in Taiwan suggested that the recidivism of illicit drug users in Taiwan after detoxification in the detention center was substantially high (Chiang et al. 2009). Meanwhile, regardless of growing drug-related prison populations, no Asian prisons have needle and syringe exchange programs inside the facilities, and India, Indonesia, and Malaysia are the only countries that provide limited opioid substitution programs to inmates (Harm Reduction International 2010). In recent years, a change in antidrug laws from compulsory rehabilitation to community-oriented programs has been witnessed in Asian countries. For example, in China, 47,000 drug users were directly admitted to community-based treatment programs together with 35,000 drug users who were released from compulsory rehabilitation programs (NNCC 2010).

While incarceration of drug users alone has seldom led to successful abstention, drug treatment programs have been viewed as a more effective approach to changing drug users' behaviors. However, drug treatment programs are only provided to limited number of drug users globally. In 2008, there were only between 12 and 30% of problem drug users worldwide who had received treatment though the majority of them felt they needed it (UNODC 2010a). Hong Kong opened the first methadone maintenance treatment (MMT) in Asia and was credited for its overall quality and wide coverage (Reid et al. 2008). Thailand, Indonesia, China, and Malaysia, all developed the program one after another. After China initiated its methadone program in 2003, more than 500 methadone treatment clinics were developed in 23 provinces (including autonomous regions and municipalities) by the end of 2007; in all, 95,000 drug users were treated (Yao 2008). Several other Southeast Asian countries are also making efforts to develop meaningful drug treatment programs. In 2008, Vietnam initiated its pilot methadone treatment program with 1,800 heroin users and plans to develop the program across the country (Hung 2010). Cambodia, which has been criticized for its boot-camp style

[24] Forced detoxification and labor are also commonplace inside these facilities (Harm Reduction International 2010).

compulsory drug rehabilitation centers, opened its first methadone clinic for heroin users in 2010 (De Launey 2010). However, there are still no drug treatment programs available for addicts in the Wa area of Myanmar—an area with severe drug trafficking and abuse problems. Drug addicts there have to deal with their addiction all on their own (Chin 2009). While there are other drug-related programs available for traditional drug users, such as needle and syringe (NSP) and opioid substitution therapy (OST) programs, only just over half the countries in Asia have these programs. In several Asian countries, the current drug laws of Asia are a major obstacle for the implementation of these programs. For example, Malaysia, Thailand, Brunei, Hong Kong, and Macao do not allow needle–syringe exchange programs (Reid et al. 2008).

While traditional drug treatment programs in Asia focus on opiate dependency due to the large number of opium and heroin users in Asia, the dramatically increased ATS use population in the region certainly demands new treatment programs for ATS users. However, only very limited treatment services are currently available to them, including specialized drug treatment services provided in general hospitals, and psychiatric facilities (UNODC 2010c).

8.4 Future Trends and Conclusions

The previous sections briefly reviewed and discussed illicit drug trafficking and abuse in Asia. Although the illicit drug trade is involved in a complicated chain network, only drug production, drug trafficking, and drug consumption are essentials. Drug trafficking connects the drug supply with drug demand so that the illicit drugs can reach the end customers—drug users. The large profits obtained from illicit drug trafficking suggest that this illegal business will not vanish in the near future. What we have learned from past experience is that it is impossible to completely remove drug trafficking businesses from the underground drug market even by using the toughest sanction on drug offenses—the death penalty. As reviewed previously, while most Asian countries have adopted harsh sentencing policies against illicit drug trafficking, it is still a thriving business in the region. Soon after one drug trafficking network is destroyed, a new one will emerge and replace the previous one because of the internal drive for profits.

Regarding illicit drug production in Asia, as previously addressed, the two largest opium and heroin producer countries, Afghanistan and Myanmar, are located in Southwest Asia and Southeast Asia, respectively. While these two nations have different social, economic, and cultural traditions, they share one thing in common: opiate poppy production areas located in poor areas of these undeveloped countries. According to the Afghanistan Opium Survey by the United Nations and field research conducted in the Golden Triangle (Chin 2009; Kramer et al. 2009), the main reason farmers cultivate the opiate poppy is survival. In the case of the Golden Triangle, farmers in both Myanmar and Laos have not been provided alternative livelihoods despite opium bans, which not only cut off the farmers' financial sources from opium cultivation (UNODC 2010b). Realistically, there is no reason to believe that opium cultivation will be eliminated from the area if farmers cannot find a legitimate way to make a living. Rather, they may choose to cultivate opiate poppies secretly in remote sites that may be hard to detect by outsiders (Chin 2009).

While the primary reason for farmers to cultivate opium is to secure family income, the government's determination to ban opium may have a strong impact on its cultivation. In a survey conducted in 2010 with farmers in Afghanistan, the farmers (25%) listed the government ban on opium cultivation as a primary reason for stopping opium cultivation (UNODC 2010b). This finding suggests that if the central government of these drug producer countries and the countries making up the drug trafficking gateways had a strong determination to control illicit drug production, this determination would produce some significant impacts on drug production. However, there are three major obstacles to reach this goal. As suggested in the fieldwork conducted in Myanmar, the illicit drug trade—drug money

coming from drug lords—has contributed greatly to the Burmese Government's financial sources. Therefore, drug control in Myanmar is very much politicized rather than put into action (Chin 2009). Compared to Afghanistan, the Myanmar Government is under pressure both from international society and its neighboring countries, in particular the Chinese Government, to control its drug cultivation. Still, the fact that the central governments in both Afghanistan and Myanmar can hardly control their opiate cultivation areas is another obstacle for implementing any meaningful solutions. Lastly, impoverished economies in these major producer countries and countries on the major trafficking routes make it impossible to make any radical changes without financial support from the international society. It should be understood that drug trafficking is not independent from all the other problems that these drug-producing countries face.

Based on the available information, while global seizures of ATS have remained at very high levels in recent years, due to the clandestine nature of ATS manufacture, it is even more difficult to estimate the scope of the problem and make corresponding strategies. Based on increasing demands from the consumer market, more and more young people favor these synthetic drugs, providing sufficient reasons to believe that the manufacture of ATS will not shrink in the near future. Meanwhile, the sharp increase in the heroin price in 2009 due to reduced yield related to poppy disease also forced some heroin users to switch to synthetic drugs. With demands from the consumers' market and the convenient access to the two largest ATS precursor countries, Indian and China, there is no clear indication that the ATS production and abuse will go down, at least in the near future.

For certain geographic areas where opium or heroin use has been a tradition, the influences of traditional drugs will remain. For example, according to a recent survey conducted in Afghanistan, more than half of the drug users had placated their children with opium, and drug users quite commonly had at least one other family member who was also a drug user (UNODC 2009a). With family traditions like these, the influence of traditional drugs on the next generation is apparent. The most troublesome issue for drug users, however, is access to drug treatment programs. The lack of treatment facilities, in particular in poorly developed areas such as the border of Myanmar, Thailand, and China, intensifies demand (Chin 2009). While Central Asia is one of the few regions in the world where the HIV epidemic remains clearly on the rise, strong resistance to OST still widely exists. For example, such a program was discontinued by the Uzbek Government in 2009 (Latypov 2010). In addition, while the demand for special health care is high among drug users, such facilities are rare among Asian countries (Reid et al. 2008).

Illicit drug trafficking and abuse have been global issues for centuries. Based on a historical analysis of several countries' successful experience (the United States, China, Turkey, and Thailand), Mccoy (2000) suggests that supply reduction is the key to success while the role of the state is critical, in particular, in increasing state control over illicit drug production regions and restraining official corruption. Based on the observation of the Golden Triangle, other scholars agree that while supply reduction is essential, a successful strategy also needs to include demand reduction (Chalk 2000; Chin 2009). Specifically, the implementation of crop-substitution programs in producer countries, a far-reaching mass movement against illicit drug abuse, and increased international and intra-regional counter-narcotics cooperation and enhanced border control and anticorruption measures seem more promising (Chalk 2000; Mccoy 2000; Walker 2005). Due to increased globalization, importantly, any interventions should be coordinated regionally or internationally, as proposed by the United Nations (UNODC 2009c).

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Human Trafficking in Asia

9

R. Thilagaraj and S. Latha

9.1 Introduction

Human trafficking is a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or under-employed, and who may lack access to social safety nets, predominantly women and children in certain countries. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions. The full dimensions of the problem of human trafficking are difficult to measure as there is no database in that particular country. We do not know, however, that human trafficking is a major source of profit for organized crime syndicates, along with trafficking in drugs and guns. The scope of the problem in the Asian Countries is serious. Victims are often lured into trafficking networks through false promises of good working conditions and high pay as domestic workers, factory and farm workers, nannies, waitresses, sales clerks, or models. Trafficked victims suffer extreme physical and mental abuse, including rape, sexual exploitation, torture, beatings, starvation, death threats, and threats to family members. It is believed that most victims who are trafficked are isolated and remain undetected by the public because (1) the strategies used by the perpetrators isolate victims and prevent them from coming forward, and (2) the public and the victim service providers have only recently become aware of this issue and may not be familiar with how to recognize or respond to trafficking victims. This chapter covers the forms and trends in trafficking in Asian Countries, sources and destination of trafficking, and preventive and protective measures adopted in each country. In Asia, there is a general lack of hard data on this topic. However, it is possible to glean some valuable insights from studies on related activities. These studies can frequently provide an indication of the scale of trafficking in the region. Although not comprehensive in scope or coverage, the following estimates do present convincing evidence of the existence of a growing trafficking problem in this part of the world as well. Global surveys conducted by UNDOC, US Department of States, and UNDP provide a bird's eye view of trafficking scenario throughout the world. The UNAIP has compiled the Mekong Region Human Country Datasheets on human trafficking for the Greater Mekong region which includes countries like China, Cambodia, Vietnam, Laos, Thailand, and Myanmar. This chapter also mostly relies upon the data provided by these agencies.

There are a number of definitions given by many international agencies. In this chapter, the

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following definition of the UN is adopted to define trafficking:

> "The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another or debt bondage, for the purpose of exploitation which includes prostitution or for placing of holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described."

9.2 Types and Major Forms of Trafficking

Human trafficking is occurring in various forms for various purposes. Among them trafficking for commercial is widespread and most of the victims are women and children in vulnerable situations. This apart, trafficking for forced labor is more in many of the Asian Countries. Various forms of trafficking in Asian countries are given in Table 9.1.

Table 9.1 Types and major forms of trafficking in Asian countries

Country	Forms
Cambodia	Commercial sexual exploitation, domestic servitude, begging, labor, marriage, construction, agriculture, and fishing (China, Ministry of Public Security 2009a)
China	Forced marriages, illegal adoption, sexual exploitation and labor exploitation (UNIAP 2007)
Myanmar	Forced labor, domestic servitude and commercial sexual exploitation, forced street hawking and begging, or to work in shops, agriculture, or small-scale industries (Archavanitkul 1998)
Thailand	Forced labor in fishing-related industries, factories, agriculture, construction, domestic work, and begging, commercial sexual exploitation(UNIAP 2007)
Bangladesh	Forced labor, domestic servants, and prostitution (China, Ministry of Public Security 2009b)
India	Forced labor, sex trafficking, domestic servants, beggars, and agricultural workers
Nepal	Forced labor and sex trafficking (Nepal Office of the National Rapporteur on Trafficking in Women and Children 2008)
Sri Lanka	Sex trafficking, domestic child sex tourism (Squire and Wijeratne 2008)
Pakistan	Forced labor, forced marriages

9.3 Trafficking Trends

9.3.1 Cambodia

Cambodian men, women, and children migrate to Thailand, Malaysia, and other countries for work, and many are subsequently subjected to sex trafficking or forced to labor in the Thai fishing and seafood processing industry, agricultural plantations, factories, domestic servitude, begging, and street selling. The number of workers who migrated to Malaysia for employment through Cambodian recruiting companies has increased significantly since 2008. In 2010, licensed Cambodian labor recruitment agencies—members of the Association of Cambodian Recruiting Agencies—trained and sent 16,395 workers to Malaysia, of which 11,918 were females trained as domestic workers. The Cambodian Department of Anti-Trafficking and Juvenile Protection data for 2003–2006 suggests a growing trend in persons arrested; 36 persons arrested in 2003, rising to 73 in 2005 and 65 in 2006. In terms of victims trafficked, the same agency's data provides a breakdown by gender in the period 2003–2006. In 2003, the figure was 674 (all women); in 2004 the figure was 633 (of these some 54 were male); in 2005, 615 (19 men); and in 2006 the figure had dropped to 292 (of which 9 were men).

9.3.2 China

International Labor Organization found that forced prostitution, the entertainment industry, hairdressing, massage parlors, brick kilns, and manufacturing and forced begging are the key sectors of employment for trafficked victims in

Table 9.2 Trafficking prosecutions and convictions in China—2010

2008	2009	Category
1,353	1,636	Women/children trafficking cases prosecuted in Chinese courts
2,161	2,413	Individuals convicted of a trafficking crime
1,319	1,475	Individuals convicted and sentenced to more than 5 years imprisonment, life imprisonment or death
61%	61%	Convictions given sentences of more than 5 years imprisonment

Source: The Mekong Region Human Country datasheets on human trafficking 2010

Table 9.3 Human trafficking cases, offenders, and victims in Laos—2008 and 2009

Category	2008	2009
Total trafficking cases	38	50
Alleged offenders	23	74
Victims	49	103
Cases forwarded to the prosecutor's office	8	8
Cases that lacked sufficient substantive evidence with which to pursue criminal prosecution	30	–
Cases still under investigation	–	26

Source: The Mekong Region Human Country datasheets on human trafficking 2010

China (China: International Labour Organization 2009). China has the world's largest number of Internet users and young girls are sexually exploited through this medium. Table 9.2 reveals that there has been an increasing trend of women and children trafficked and persons convicted for trafficking for more than 5 years.

9.3.3 Japan

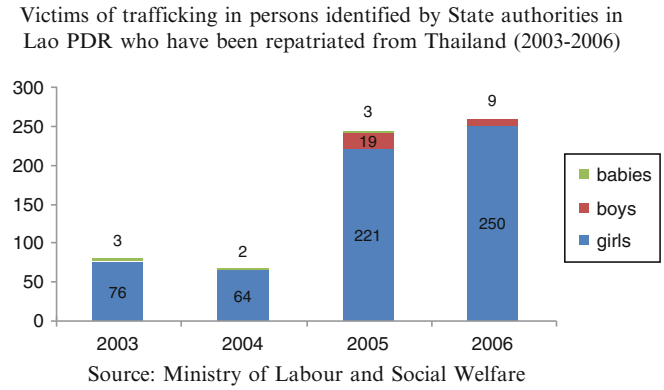
Many of the trafficking victims were coerced into commercial sexual exploitation in strip clubs, sex shops, hostess bars, private video rooms, escort services, and mail-order video services. NGOs reported that in some cases brokers used drugs to subjugate victims. Women also voluntarily migrate to work in Japan but are later coerced into exploitative conditions. They are usually held in debt bondage for $26,000–$43,000 for their living expenses, medical care, and other necessities. There are 60,000–70,000 Filipina dancers in Japan (Calvez 1998). Trafficking laws exist but are not effectively enforced (Ganjanakhundee 1998). There are more than 150,000 foreign women in prostitution in Japan; more than half are Filipinos; and 40% are Thai. (CATW 1998). There were 19 human trafficking cases investigated in Japan in 2010, and 28 in 2009.

9.3.4 Lao PDR

Current trafficking trends in Lao PDR include domestic trafficking of women and girls for sexual exploitation in the entertainment sector and labor exploitation of men and boys on plantations (see Table 9.3). The total official number of Lao victims of trafficking in 2009 is 128. This includes both cross-border and domestic trafficking. In 2009 the Ministry of Labor and Social Welfare received 155 returnees from Thailand (148 girls and 7 boys), 144 were children (Lao Department of Social Welfare, 2009). Also see Fig. 9.1. Main Employment Sectors of Trafficked Persons in Lao PDR for the domestic trafficking victims are mainly found in the entertainment sectors. Internationally, Lao PDR victims of trafficking work in domestic services, the entertainment sector, agriculture, fisheries, and garment factories.

9.3.5 Myanmar

Reports indicate a trend of trafficking of women from Myanmar to China, for forced marriage with Chinese citizens. Girls and young women with low incomes are vulnerable to labor or sexual exploitation. Most of the Myanmar victims of trafficking typically find themselves working in the sex industry, in labor exploitation such as in factories or working on plantations, fishing boats, or in marriages with Chinese men. Some girls are taken by means of deception, but increasingly they are informed that they will marry Chinese men. They are prepared to accept the marriage arrangement, as they have few options. According to Myanmar's Anti-Trafficking Unit, the total number of trafficking cases in 2009 was 155. Of these, 85 cases involved forced marriage, 19 cases involved forced prostitution, 13 cases



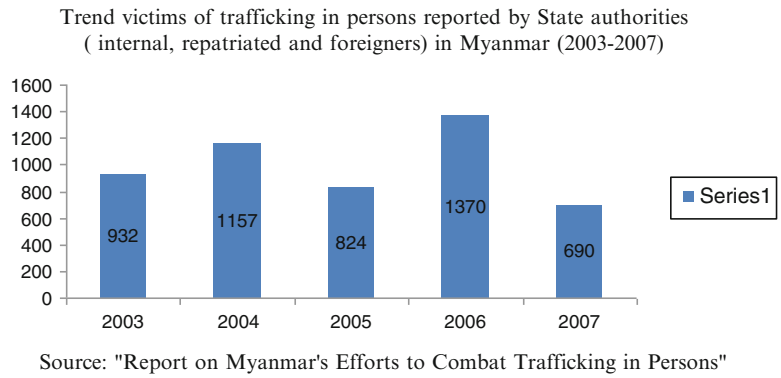


Fig. 9.1 Victims repatriated from Lao to Thailand (2003–2006)

Fig. 9.2 Victims Myanmar, 2003–2007

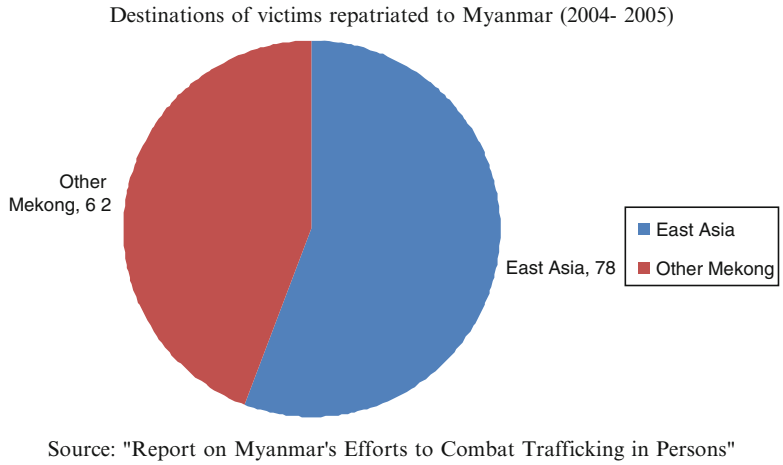


Fig. 9.3 Victim repatriation to Myanmar, 2004–2005

involved forced labor, and 8 cases involved child trafficking (Myanmar Anti-Trafficking Unit 2010). See Figs. 9.2 and 9.3 on numbers and destinations of repatriation.

9.3.6 Thailand

There has been an increase in the number of younger people migrating from neighboring

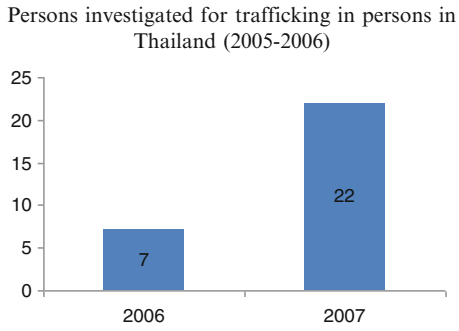


Fig. 9.4 Thailand, investigations, 2005–2006

Table 9.4 Number of victims of trafficking in Thailand from other countries

Nationality of women and children trafficked	Cambodia	57
	China	2
	Lao PDR	195
	Myanmar	260
	Vietnam	11
	Unidentified	5
	Total	530

Source: The Mekong Region Human Country datasheets on human trafficking 2010

Mekong countries as well as women from distant countries such as Russia and Uzbekistan that are vulnerable to being trafficked into the Thailand commercial sex industry. Main Employment Sectors of Trafficked Persons are migrants who have been forced, coerced, or defrauded into forced labor or commercial sexual exploitation. Trafficking victims within Thailand typically work in fishing, seafood processing, low-end garment production, and domestic work. See Fig. 9.4 on investigations and Table 9.4 for nationality of victims trafficked, 2010.

9.3.7 Vietnam

Vietnam is predominantly a source country for victims of trafficking. See Fig. 9.5 for investigation data 2003–2007. Vietnamese girls are trafficked into China, Taiwan, South Korea, and Singapore via the brokerage of fraudulent marriages by licensed and unlicensed migrant labor recruitment agencies. Vietnamese children are trafficked for adoption by foreign families (often Chinese). Vietnam is increasingly a destination for child sex tourism, with perpetrators from Japan, the Republic of Korea, China, Taiwan, the UK, Australia, Europe, and the USA. Men of Vietnamese minority ethnic groups are trafficked into labor exploitation in mines and brick factories in China. Main Employment Sectors of Trafficked Persons are sexual exploitation, domestic labor, mining, construction, fishing, forced begging, selling of flowers and lottery tickets, and manufacturing (China, Ministry of Public Security 2009a).

9.3.8 India

In India, the National Crime Records Bureau, a federal organization at the capital, Delhi collects, compiles and disseminates statistics on crime nationwide. This statistics is published as "Crime in India" every year. Crime in India exclusively publishes a chapter on human trafficking which includes the offences registered under Indian Penal Code (IPC). The publication "Crime in India, 2009" reports crime-wise statistics and accordingly Table 9.5 shows the trends of human trafficking under various laws from 2005 to 2009.

The number of cases registered under human trafficking during the year 2009 is given in Table 9.5. While such a situation persists an applaudable *action research* was conducted by National Human Rights Commission (2005). This is the first study on the victims of trafficking or survivors conducted in India and a detailed review on the same is given below.

Some of the important facts given in the CATW fact book are given below:

- India, along with Thailand and the Philippines, has 1.3 million children in its sex-trade centers. The children come from relatively poorer areas and are trafficked to relatively richer ones (Wadhwa 1998).
- In cross-border trafficking, India is a sending, receiving, and transit nation. Receiving children from Bangladesh and Nepal and sending women and children to Middle Eastern nations

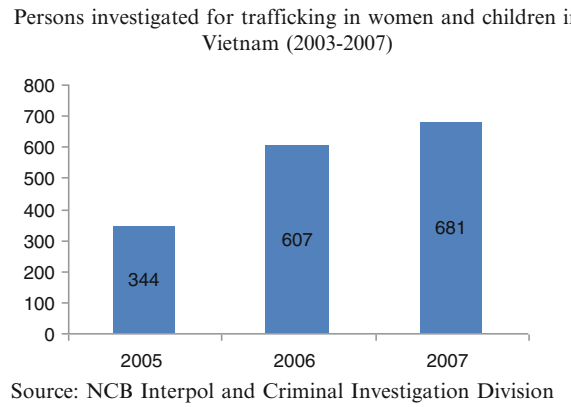


Fig. 9.5 Vietnam, investigations, 2003–2007

Source: NCB Interpol and Criminal Investigation Division

Table 9.5 Numbers of various crimes under human trafficking during 2005–2009 and percentage variation in 2009 over 2008

	Year					
Crime head	2005	2006	2007	2008	2009	Percentage variation
Procuration of minor girls (Sec. 366-A, IPC)	145	231	253	224	237	5.8
Importation of girls (Sec. 366-B, IPC)	149	67	61	67	48	−28.3
Selling of girls for prostitution (Sec. 372, IPC)	50	123	69	49	57	16.3
Buying of girls for prostitution (Sec. 373, IPC)	28	35	40	30	32	6.7

Source: Crime in India—2009

is a daily occurrence. India and Pakistan are the main destinations for children under 16 who are trafficked in south Asia (Iijima 1998).

- More than 40% of 484 prostituted girls rescued during major raids of brothels in Mumbai in 1996 were from Nepal (Iijima 1998).
- The brothels of India hold between 100,000 and 160,000 Nepalese women and girls, 35% were taken on the false pretext of marriage or a good job (Coomaraswamy 1997).

9.3.9 Bangladesh

Bangladesh is predominantly a source country for victims of cross-border trafficking due to migration in search of employment. Many border areas are frequently used as land routes for trafficking. There are 111 Indian enclaves in Bangladesh and 51 enclaves of Bangladesh in India. Research carried out by the Bangladesh National Women Lawyers Association (BNWLA) has shown that these enclaves have been used as recruitment and collection sites by traffickers (Gazi et al. 2001). See Table 9.6.

9.3.10 Nepal

Nepal is primarily considered a country of origin—a source for the trafficking of men, women, and children. The girls end up in brothels in India or Pakistan or in Middle Eastern or South Asian countries (Times of India 2003). Within Nepal, there has been some attention on the foreign child sex tourism trade within the country. Nepal also has a system of bonded labor where entire families may be bonded and forced to work in a range of occupations. This is especially so among lower castes and socially marginalized groups, who are particularly vulnerable to dominance and exploitation. Overall Government efforts for 2006 are summarized in Table 9.7.

Table 9.6 Trafficking arrests, prosecutions, and convictions for Bangladesh (2002–2008)

	2002	2003	2004	2005	2006	2007	2008
Arrests	60	72	–	150	–	106	178
Prosecutions	–	–	70	87	70	101	90
Convictions	3	17	42	36	43	20	37
Sentences	Ranged from 20 years to life	–	–	27 life sentences	4 death sentences; 32 life sentences	18 life sentences; 2 lesser prison terms	26 life sentences; 11 lesser prison terms

Source: Trafficking in persons report, 2003–2009

Table 9.7 Efforts taken by the Government of Nepal to prevent and protect victims of trafficking in 2006

Interception prevented from being trafficked	Application received for missing women and children	Found children and women	Counseling on safe-migration	Reintegrated
2,398	638	100	26,729	2,372

Source: Maiti Nepal. Office of the National Rapporteur on trafficking in women and children, 2006

Table 9.8 Trafficking crime trends in Sri Lanka

Year	Offence	Cases recorded	Cases pending	Convictions
2004	Trafficking	16	16	0
2003	Trafficking	9	8	0
2002	Trafficking	37	35	0
2001	Trafficking	29	28	0
Year	Offence	Cases recorded	Cases pending	Convictions
2004	Abduction/kidnapping	868	675	21
2003	Abduction/kidnapping	829	599	26
2002	Abduction/kidnapping	739	594	13
2001	Abduction/kidnapping	767	616	40

Source: Terre des hommes Foundation Lausanne (Tdh) and South Asian Partnership Sri Lanka (SAPSRI), 2008

9.3.11 Sri Lanka

Sri Lanka is primarily a source country with men, women, and children being trafficked primarily for labor and also for commercial sexual exploitation, including domestic child sex tourism. There may also be a small but significant trafficking of women into Sri Lanka from countries such as Thailand, China, and the members of the former USSR for commercial sexual exploitation. There are also recent concerns about trafficking for employment to the Middle East as well as Singapore among other countries. Men and women are offered jobs as domestic workers, construction labor or in other factories like garments. Trends are given in Table 9.8.

9.3.12 Pakistan

Pakistan is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically forced labor and prostitution. The largest human trafficking problem is bonded labor, concentrated in the Sindh and Punjab provinces in agriculture and brick making, and to a lesser extent in mining and carpet-making. The number of convictions under

Prevention and Control of Human Trafficking Ordinance (PACHTO) was 357 in 2008, and 385 in 2009.

9.4 Source and Destination Countries

We now turn from country trends to source and destination more generally across Asia. Table 9.9 specifies the source countries for persons trafficked into each Asian country and key destination countries for the victims of each Asian country to other countries.

9.5 Status of Asian Countries According to "Trafficking in Persons" Report, 2011

The State Department of the United States publishes its official "Trafficking in Persons" Report every year. This publication represents an updated, year-on-year, global look at the nature and the scope of trafficking in persons and the broad range of actions taken by each country.

TIP Report, 2011, evaluates the performance of 150 countries in terms of their compliance with the minimum standards of the Trafficking

Table 9.9 Source and destination across Asia

Country	Source for the country	Destination from the countries
China	Outside China—Vietnam, Russia, Korea, and Myanmar Inside the country—Yunnan, Guizhou, and Henan provinces (The National Working Committee 2004)	Thailand, Malaysia, and some countries in Africa, Europe, and America For domestic victims: Fujian, Guangdong, Shandong, and Henan
Japan	China, Indonesia, the Philippines, and Vietnam	East Asia, Southeast Asia, Eastern Europe, Russia, South America, and Latin America
Laos	Inside—Champasak, Saravan, Savannakhet provinces, and the capital, Vientiane (Lao Department of Social Welfare 2009)	Thailand, Malaysia, and China (US State Department 2006)
Myanmar	Yangon Division, Mandalay Division, Northern Shan State, Kachin State, Bago Division, Mon, Magway Division, Kayin State, Bago (West), and Ayeyarwady (Myanmar Central Body for Suppression of Trafficking in Persons 2010)	Thailand, Malaysia, and China (World Vision)
Thailand	Cambodia, Lao PDR, Myanmar, Russia, Southern China, Uzbekistan, and Vietnam Inside—Ranong Province, Tak Province, Kanchanaburi Province, Ubon Ratchathani Province, Mukdahan and Nong Khai Province. Srakaew Province, Surin and Trat Province	Australia, Bahrain, Brunei, Canada, Germany, Indonesia, Israel, Japan, Korea, Kuwait, Libya, Malaysia, Maldives, Qatar, Saudi Arabia, Singapore, South Africa, South Korea, Taiwan, Timor Leste, the UAE, the USA, and Vietnam (Ministry of Social Development and Human Security 2010)
Vietnam	Cambodia	China, Cambodia, Lao PDR, Malaysia, Taiwan, South Korea, Japan, Thailand, Indonesia, and the Middle East
Bangladesh	India and Pakistan	Saudi Arabia, Bahrain, Kuwait, the United Arab Emirates (UAE), Qatar, Iraq, Lebanon, and Malaysia
India	Nepal and Bangladesh	Middle East and the United States
Nepal	Bangladesh	Gulf countries, Malaysia, Israel, South Korea, Afghanistan, and Libya
Sri Lanka		Kuwait, Jordan, Saudi Arabia, Qatar, Lebanon, the United Arab Emirates (UAE), Oman, Bahrain, and Singapore
Pakistan	Afghanistan, Azerbaijan, and Iran	Gulf States, Iran, Turkey, South Africa, Uganda, and Greece

Source: Authors compilation (2012)

Victims Protection Report (TVPA) of 2000 (reauthorized in 2003 and then in 2005). Tier I countries are deemed to be in full compliance. Tier II countries are not in compliance but are making significant efforts to become so. Tier III countries are not compliant and are not making significant efforts toward that end. Most of the Asian countries are assigned Tier 2 status as they do not fully comply with the minimum standards for the elimination of trafficking, however, are making significant efforts to do so, despite limited resources. Four countries—China, Thailand, Vietnam, and Bangladesh—were put on the Tier II Watch List due to its failure to provide evidence of increasing efforts to combat trafficking, particularly its failure to convict traffickers and public officials involved in trafficking. In terms of organizational infrastructure and efforts at prosecution and prevention, the following is a concise summary by Asian country.

9.6 Prosecution

9.6.1 Cambodia

Cambodia has a specialized Anti-Human Trafficking Department and Juvenile Protection Police Department. Officers from these departments, in cooperation with prosecutors, carry out investigations, apprehensions, arrests, prosecutions, and convictions. Cambodia has a focused campaign dedicated to combating human trafficking. Also there is a cadre of specialist judges and prosecutors with strong understanding of the issues and sensitivities concerning human trafficking cases in Cambodia (CMS 2009).

9.6.2 China

Both local and central governments provide funding for anti-trafficking activities in China. In 2009, a large, nation-wide campaign was launched by Ministry of Public Security to combat different forms of trafficking. The campaign has initiated a number of good practices in suppressing trafficking crimes and rescuing victims, including setting up DNA database, joint action of multifunction police, and immediate response mechanism. Campaigns of combating forced prostitution, illegal employment, and rescue of street children and child beggars are launched effectively.

9.6.3 Japan

Japan does not have comprehensive anti-trafficking laws, and does not keep statistics on the number of trafficking cases. The government reported prosecuting and convicting five individuals in 2009 under Penal Code (Article 226). Cooperation between the different bureaucracies that handle trafficking cases is not always conducive to establishing a clear statistical record that includes prosecutions, convictions, and sentencing. Japan's 2005 amendment to its criminal code, which prohibits the buying and selling of persons, and a variety of other criminal code articles and laws, including the Labor Standards Law, and the Law for Punishing Acts Related to Child Prostitution and Child Pornography criminalizes trafficking and a wide range of related activities. However, it is unclear if the existing legal framework is sufficiently comprehensive to criminalize all severe forms of trafficking in persons. The 2005 Criminal Code amendment, prohibiting the buying and selling of persons, prescribes penalties of up to 7 years' imprisonment, which is sufficiently stringent.

9.6.4 Laos

The specialist unit for law enforcement/prosecution in Lao PDR is the Anti-Trafficking Division (ATD). The ATD and the Department of Investigation are responsible for collecting evidence for trafficking cases and submitting it to the Prosecutor's Office for trial in the Supreme Court. In cooperation with international agencies, the Government of Lao PDR has been working to strengthen the legal sector in order to bring more trafficking offenders to justice (DSW 2009).

9.6.5 Myanmar

The specialist units for prosecution in Myanmar are the Anti-Trafficking Unit (at the central level) and the Anti-Trafficking Taskforce (at the provincial level, located in 22 townships). The human resources for prosecution include members of the Myanmar Police Force, prosecutors, and judges. Special courts dedicated to hearing trafficking cases are established in 2010 (MHA 2010).

9.6.6 Thailand

The Anti-Human Trafficking Division (AHTD) focus solely on human trafficking, including male victims of trafficking. The Office of the Attorney General also has a Centre against International Human Trafficking (CAHT), which is responsible for prosecuting trafficking cases. The Department of Special Investigations (DSI) under the Ministry of Justice (MOJ) is involved in investigating human trafficking cases that are deemed to be "special cases." Thailand has an Anti-Trafficking in Persons Fund which may be used for the prosecution of cases related to cross-border human trafficking.

9.6.7 Vietnam

The departments/ministries that work cooperatively to prosecute trafficking cases include the following: The Investigation units at all levels of the Ministry of Public Security; The Border Guard Command; The Ministry of Justice, and The Supreme People are Court and the Supreme People's Prosecutorial Office. An Assessment of the Legal System in Vietnam in comparison with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, is completed by the Ministry of Justice in cooperation with the UNICEF and the UNODC. (China, Ministry of Public Security 2009b)

9.6.8 Bangladesh

The Government of Bangladesh showed progress in convicting sex traffickers of females, but not traffickers of men, during the reporting period; however, the government drafted an anti-trafficking law that includes criminal prohibitions for all forms of trafficking, with stringent sentences, and submitted the proposed law into the parliamentary process in December 2010. During the reporting period, the government obtained the convictions of 42 sex trafficking offenders and sentenced 24 of them to life imprisonment under Sections 5 and 30 of the Repression of Women and Children Act; 18 were sentenced to lesser prison terms. This is an increase from the 32 convictions obtained in 2009, with 24 offenders sentenced to life imprisonment. The government prosecuted 80 cases involving suspected trafficking offenders and conducted 101 investigations, compared with 68 prosecutions and 26 investigations during the previous year. Fifty-three prosecutions resulted in acquittals; however, under Bangladeshi law the term "acquittal" also can refer to cases in which the parties settled out of court or witnesses did not appear in court. Most sex trafficking cases are prosecuted by 42 special courts for the prosecution of crimes of violence against women and children spread throughout 32 districts of the country; those courts are generally more efficient than regular trial courts. The Ministry of Home Affairs' Anti-Trafficking Monitoring Cell continued to collect data on trafficking arrests, prosecutions, and rescues. The Government of Bangladesh did not provide data on investigations, prosecutions, convictions, and sentencing of public employees complicit in human trafficking. The country's National Police Academy continued to provide anti-trafficking training to police officers who went through entrance training.

9.6.9 India

The government made progress in law enforcement efforts to combat human trafficking. India

prohibits and punishes most, but not all, forms of human trafficking under a number of laws. The government prohibits bonded and forced labor through the BLSA, the Child Labor (Prohibition and Regulation) Act (CLA), and the Juvenile Justice Act. Moreover, these prison sentences were rarely imposed on offenders. India also prohibits forms of sex trafficking through the Immoral Trafficking Prevention Act (ITPA). Prescribed penalties under the ITPA, ranging from 7 years' to life imprisonment, are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The ITPA also criminalizes other offenses. ITPA crimes, however, are frequently tried under magistrate courts, which limit sentences to 3 years, whereas rape cases are generally tried under Sessions courts which permit the maximum sentences according to the law. Indian authorities also used Sections 366(A) and 372 of the IPC, which prohibit kidnapping and selling children into prostitution, respectively, to arrest and prosecute suspected sex traffickers. Penalties prescribed under these provisions are a maximum of 10 years' imprisonment and a fine. A court in the State of Tamil Nadu in July 2010 issued a landmark conviction of 5 years' imprisonment and a fine to three bonded labor perpetrators. The Government of India's "Comprehensive Scheme for Strengthening Law Enforcement Response in India" earmarked $12 million over 3 years to implement the nationwide anti-trafficking effort.

9.6.10 Nepal

Nepal prohibits most forms of trafficking in persons, including the selling of human beings and forced prostitution, through its HTTCA, 2008. Prescribed penalties range from 10 to 20 years' imprisonment, which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. According to the Office of Attorney General, 174 offenders were convicted in 119 cases tried in court under the HTTCA; 71 cases resulted in convictions and 47 cases resulted in acquittals in Nepal's 2009–2010 fiscal year. This compares with 172 offenders convicted in 138 cases tried in court, with 82 cases resulting in convictions and 56 case acquittals, in the previous fiscal year. The much lower number of convictions reported in the 2010 Report represented only convictions obtained from the Supreme Court, while the numbers offered above represent convictions obtained from district courts. Some Foreign Employment Tribunal case convictions under the Foreign Employment Act may have involved human trafficking. In 2010; the government established a special unit to investigate human trafficking within the Central Crime Investigative Bureau. There were no trafficking related investigations, prosecutions, or convictions of government officials for complicity in trafficking during the reporting period. Between January and March 2010, according to official statistics, the Maoists discharged the 2,973 child soldiers they recruited during the 10-year conflict, some of whom may have been trafficking victims.

9.6.11 Sri Lanka

The Sri Lankan government increased law enforcement efforts in addressing human trafficking cases. Sri Lanka prohibits all forms of trafficking through an April 2006 amendment to its penal code, which prescribes punishments of up to 20 years' imprisonment. Amendments passed in 2009 to the Foreign Employment Act expanded the powers of the Sri Lanka Bureau of Foreign Employment (SLBFE) to prosecute recruitment agents who engage in fraudulent recruitment, prescribing a maximum penalty of 4 years' imprisonment and fines of $1,000, and restricting the amount that employment agent can charge. In March 2011, three traffickers were convicted and sentenced to 9 years each for forcing women into prostitution, in one case. This is the first recorded convicted case under Sri Lanka's counter-trafficking amendment. The Attorney General's Department claimed two additional convictions in 2010 for violations of the penal code's statute on child sexual exploitation; both convictions may have involved human trafficking crimes. Both convictions resulted in

suspended jail sentences. Each trafficker had to pay a fine of approximately $900, and one had to pay compensation of $450 to the victim. In January 2011, the National Child Protection Authority (NCPA) completed an investigation and could not determine the whereabouts of the remaining boys allegedly in armed service with the Tamil Makkal Viduthalai Pulikal (TMVP)/ Karuna Faction; some of these boys may be trafficking victims. The Sri Lankan Police continued to teach a counter-trafficking module to all police recruits during their basic trainings

9.6.12 Pakistan

The Government of Pakistan made progress in law enforcement efforts to combat human trafficking in 2009. While the lack of comprehensive internal anti-trafficking laws hindered law enforcement efforts, a number of other laws were used to address some of these crimes. Several sections in the Pakistan Penal Code, as well as provincial laws, criminalize forms of human trafficking such as slavery, selling a child for prostitution, and unlawful compulsory labor, with prescribed offenses ranging from fines to life imprisonment. Pakistan prohibits all forms of transnational trafficking in persons with the Prevention and Control of Human Trafficking Ordinance (PACHTO); the penalties range from 7 to 14 years' imprisonment

9.7 Protection and Prevention

9.7.1 Cambodia

Screening and identification of victims of trafficking in Cambodia is undertaken with reference to the Law on Suppression of Human Trafficking and Sexual Exploitation (2010). Some organizations, such as the IOM and Legal Support for Children and Women (LSCW), use their own tools to identify victims. State-run shelters for victims of trafficking in Cambodia operate based on the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking, 2007 and minimum standards for protection of the rights of victims of human trafficking. Privately run shelters use their own operational procedures, for example, those shelters run by World Vision Cambodia. Post-harm assistance is provided to victims of trafficking in Cambodia, including rescue, repatriation, reception in home country, family tracing, family assessment, reintegration, short/medium/long-term shelter accommodation, medical, legal, psychosocial, education and vocational education assistance, and case follow-up. There are many government and non-government victim assistance agencies in Cambodia which provide shelter and other forms of post-harm assistance.

Cambodia has bilateral agreements on recruitment in place with Thailand, Malaysia, South Korea, and Japan. Several national training programs are conducted for frontline anti-trafficking officers in various provinces. Awareness-raising and educational campaigns on human trafficking and safe migration are conducted by a host of government and non-government agencies A child-safe tourism campaign to prevent trafficking in the tourism industry focused on the urban areas of Cambodia, including Phnom Penh, Siem Reap, and Sihanoukville.

9.7.2 China

In China, only women and children can be legally recognized as trafficking victims. Victims are generally found through police raids or via information provided by members of the public or shelter staff, though there are some victims who self-report to police. Victim identification is carried out by police officers according to the Articles 240 and 241 of the Criminal Law of the People's Republic of China. With the support of other ministries and NGOs, the Ministry of Public Security (MPS) and Ministry of Civil Affairs (MCA) provide temporary relief and return and reintegration assistance to victims of trafficking. China has a total of 1,372 administration and relief shelters and over 200 Child Protection

Centers located in cities across the country, which provide temporary support to trafficking victims. In 2009, shelters across the country have provided relief services to over 12,000 trafficked women and children, some referred by police while others were self-reported. Responsibility for repatriation is shared between the Chinese Police and shelter staff, sometimes with the assistance of non-government partners such as Save the Children. Statistics on the number of victims repatriated from China are not widely available. One media report suggests that in 2009, 272 victims were repatriated from China to Myanmar.

Throughout 2008 and 2009, bilateral meetings between Lao PDR and China, and Lao PDR and Vietnam were held with the aim of estabishing similar agreements. These include the Memorandum of Understanding between Lao PDR and Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children (2005), and the Thai–Lao Cross Border Collaboration on Tracing Missing Trafficked Victims in Thailand (2008–2011). The Lao Government is also developing a National Training Manual on human trafficking to strengthen the capacity of front-line officers to undertake counter-trafficking activities and promoting counter trafficking initiatives, led by the Ministry of Public Security.

9.7.3 Japan

The number of trafficking victims identified overall by the Japanese government declined for the fourth consecutive year. Police authorities identified only 17 victims in 2009, down from 36 victims in 2008, 43 in 2007, 58 in 2006, and 116 in 2005. Government efforts to protect Japanese child sex trafficking victims reportedly improved, but the government did not report the number of such victims identified. Although the government claims the availability of a long-term residency visa for trafficking victims, no foreign victims have ever been granted such a visa. In 2009, Japan decreased its funding to the IOM from $300,000 to less than $190,000 for repatriation and reintegration assistance, which has had a detrimental effect on victim assistance efforts in the country, resulting in foreign victims unable to return home and victims unable to obtain reintegration assistance.

The Japanese government made limited efforts to prevent trafficking in persons with assistance from international organizations and NGOs. The government continued distribution of posters and handouts to raise awareness about trafficking. Authorities also continued law enforcement training at the National Police University and with IOM assistance. In July 2009, the government established a temporary working group, which included NGOs, to develop a new National Action Plan to combat trafficking, which was released in December 2009, though the new action plan does not include NGO partnerships. Japan is not a party to the 2000 UN TIP Protocol.

9.7.4 Lao PDR

Lao PDR has a working group led by the Anti-Trafficking Division, the counseling center of the Lao Women's Union, the Department of Social Welfare, and the Prosecutor's Office dedicated to victim identification. In 2009, the Ministry of Labor and Social Welfare has started two new support shelters for vulnerable populations including victims of trafficking. One shelter located in Savannakhet is supported by Acting for Women in Distressing Situations (AFESIP), and the other shelter in Champasak province is under the supervision of the Ministry of Education and is supported by Village Focus International. There are now five shelters in Lao PDR which provides support to vulnerable populations including victims of trafficking. This support includes medical assistance, legal assistance and consultation, and vocational training. The organizations which assist in repatriation are Laos Women's Union, IOM, AFESIP, Friends International, Village Focus International, and World Vision. Child safe tourism campaign, run by the Lao National Tourism Administration during the 2009 Southeast Asian Games (SEA) and National radio campaign, run by Lao National Radio, were organized to raise awareness about human trafficking, safe migration, and child rights.

9.7.5 Myanmar

There are temporary shelters for victims of trafficking gives certain vulnerable areas in Myanmar where the rescued victims are kept for 3 days and then transferred to shelters for 2 weeks. These shelters provide counseling and guidance. They are also given vocational training, and they are reintegrated into their families.

In 2009, awareness-raising efforts were conducted both within Myanmar and abroad by the Central Body for Suppression of Trafficking in Persons and other governmental and non-governmental agencies. These include the introduction of trafficking awareness into the curriculum of some schools and two trafficking workshops involving 115 employment agencies.

9.7.6 Thailand

Standard operating procedures have been developed for the return and reintegration of victims. They are offered medical, legal, psychosocial, recreational and educational services, as well as livelihood training. The Ministry of Social Development and Human Security also plays an active role in victim identification. In 2009, 513 persons were discharged from shelters housing trafficking and other vulnerable victims. The Royal Thai Government through various organizations has launched several campaigns through radio, television, print, and electronic media to raise public awareness and their cooperation in the fight against human trafficking.

9.7.7 Vietnam

In Vietnam, Ministry of Labour and Women's Union established centers for victims of trafficking, and these shelter programs provide psychological support for returned victims from the time of their arrival at the shelter up until reintegration into their communities. They will engage in vocational training of their choosing or attend school and receive psychological support. Vietnam's Immigration Department is the lead agency, and works in cooperation with relevant agencies including the IOM, Oxfam, AAT-AFESIP Vietnam and immigration units from provincial police departments, to identify and receive victims from abroad. The Border Guard Command is the primary agency for identifying and receiving self-returned victims or rescued victims via land borders.

The Vietnam Government is creating awareness programs about human trafficking to the public at a large scale through various media. They have also identified the vulnerable areas and imparted vocational programs and provided employment opportunities. Working with various Ministries and Departments within the Government of Vietnam, the Vietnam Women's Union published brochures and books on anti-trafficking, for distribution across the country and coordinated public broadcasts.

9.7.8 Bangladesh

The Government of Bangladesh made some efforts to protect victims of trafficking over the past few years. Bangladesh's courts and police refer some victims of trafficking to NGO shelters; other times, those victims were either self-identified or identified by an NGO. One hundred thirty-seven victims (83 adult women, 0 adult men, and 54 children) were self-identified or identified and rescued by law enforcement officials or NGOs. There are nine homes for victims of trafficking attached with these centers, in cooperation with NGOs, providing legal, medical, and psychiatric services. Law enforcement personnel encourage victims of trafficking, when identified, to participate in investigations and prosecutions of their traffickers by providing transportation to courts. At least 36 Bangladeshi sex trafficking victims were repatriated to Bangladesh from India from 2010 to 2011, although repatriation remained a challenge for other victims. Bangladesh established a trafficking task force with India.

9.7.9 India

The Government of India has taken initiatives to prevent human trafficking particularly among women and children through number of measures. Significant among them are Watch Dog Committees at village level, homes for rescued women for rehabilitation, toll-free help lines for women and children and many other homes. The Village Level Watch Dog Committees are formed in each village. The Committee monitor group movement of children in and out of villages, Watch out for brokers, keep a watch on the extremely poor families and mainstream children—see at least such children come to the school.

A number of homes are run by the States with the financial assistance given by the Ministry of Women and Children, Department of Social Defence, and Ministry of Social Justice and Empowerment. The homes are viz., short stay homes, swadhar homes, ujjwala homes, and rescue homes. The States also have counseling centers for women and girls who are in moral danger or abandoned by their families. Ministry of Women and Child Development (MWCD) funded 331 Swadhar projects—which helps female victims of violence, including sex trafficking—and 134 projects and 73 rehabilitation centers in 16 states under the Ujjawala program—which seeks to protect and rehabilitate female trafficking victims—and 238 women's help lines. This is an increase from the previous year. Foreign victims can access these shelters. Some trafficking victims were penalized for acts committed as a result of being trafficked. NGOs asserted that some parts of Andhra Pradesh, Maharashtra, Goa, Bihar, Delhi, Tamil Nadu, and West Bengal continued to make progress in not criminalizing sex trafficking victims. Reports indicated that some foreign victims continued to be charged and detained under the Foreigners' Act for undocumented status. The Government of India successfully repatriated seven Bangladeshi trafficking victims from Chennai in 2010 with the assistance of NGOs, and repatriated 29 Bangladeshi victims from Maharashtra in 2010–2011, although repatriation remained a challenge for other victims. India established a trafficking task force with Bangladesh which held three meetings.

Rescue Homes are also run by many States. Women who are rescued by the Police and those facing trial in the Court of law are given shelter during the trial period. They are provided with free shelter, food, clothing, medical care, and also vocational training.

India made uneven progress in its efforts to protect victims of human trafficking. Indian law enforcement and immigration officials continued to lack formal procedures for proactively identifying victims of trafficking among vulnerable populations, such as children at work sites, females in prostitution, or members from the disadvantaged social economic strata in rural industries. NGOs reported hundreds of more rescues and release certificates and issued particularly in Tamil Nadu, Andhra Pradesh, Karnataka, Uttar Pradesh, and Bihar.

9.7.10 Nepal

The Government of Nepal does not have a formal system of proactively identifying victims of trafficking among high-risk persons with whom they come in contact. During the last year, the Ministry of Women, Children and Social Welfare (MWCSW) fulfilled a commitment reported in the 2010 TIP Report to open and partially fund five NGO-run shelter homes for female victims of trafficking, domestic violence, and sexual assault; a total of eight NGO shelters are now given some funding by the government. As of February 2011, 77 victims were in those shelters. During the year, the government of Nepal fulfilled a second commitment to open 15 emergency shelters across the country for victims of trafficking and other forms of abuse. All facilities that assist trafficking victims were run by NGOs and most provided a range of services, including legal aid, medical services, psychosocial counseling, and economic rehabilitation. The Nepal Police Women's Cells reportedly sustained partnerships with NGOs to ensure that victims were provided with available shelter; however, it is unknown how many survivors received

assistance. The government did not encourage trafficking victims to participate in investigations against their traffickers. Judges reportedly often took an adversarial, rather than impartial, stance when dealing with trafficking victims.

9.7.11 Sri Lanka

The government made limited progress in protecting victims of trafficking during the year. The government forces foreign trafficking victims to remain in Sri Lanka if they are witnesses in a case until evidence has been given. The Sri Lanka Bureau of Foreign Employment (SLBFE) operating nine short-term shelters in 2010 in Jordan, Kuwait, Libya, Oman, Saudi Arabia, and the United Arab Emirates as well as an overnight shelter in Sri Lanka's international airport for returning female migrant workers who encountered abuse abroad. The Ministry of Child Development and Women's Affairs (MOCDWA) has a memorandum of understanding with IOM to establish a shelter which can house 10–15 women and child victims of trafficking and abuse. Government personnel did not employ formal procedures for proactively identifying victims. The Commissioner General for Rehabilitation, with the assistance of the NCPA, continued to operate two rehabilitation centers specifically for children involved in armed conflict, some of whom may be trafficking victims, in partnership with UNICEF. The government did not encourage victims to assist in the investigation and prosecution of trafficking cases; instead, they sometimes forced victims to testify if they chose to file charges. In addition, prosecutors were prevented under Sri Lankan law from meeting with witnesses outside of formal court proceedings. Thus, they had to rely on police to convince a witness to testify.

9.7.12 Pakistan

The Government of Pakistan made some progress in its efforts to protect victims of human trafficking. The government continued to lack adequate procedures and resources for proactively identifying victims of trafficking among vulnerable persons with whom they come in contact, especially child laborers, women, and children in prostitution, and agricultural and brick kiln workers. The expanded protection services overseas and provided medical and psychological services to Pakistani trafficking victims in Oman. Some NGOs and government shelters, like the Punjab Child Protection and Welfare Bureau, rehabilitated and reunited children with their families. Female trafficking victims could access 26 government-run Shaheed Benazir Bhutto Centers and the numerous provincial government "Darul Aman" centers offering medical treatment, vocational training, and legal assistance. In September 2009, the government opened a rehabilitation center in Swat, which included a team of doctors and psychiatrists, to assist child soldiers rescued from militants.

The government encouraged foreign victims to participate in investigations against their traffickers by giving them the option of early statement recording and repatriation or, if their presence was required for the trial, by permitting them to seek employment. Foreign victims reportedly were not prosecuted or deported for unlawful acts committed as a direct result of being trafficked. The Punjab Child Protection and Welfare Bureau continued to fund 20 community organizations aimed at preventing child labor trafficking. The federal and provincial governments developed and began implementation of the Child Protection Management Information System, a national monitoring system that collects district-level data in five thematic areas, including child trafficking.

9.8 Conclusion

Trafficking is one of the worst and most brazen abuse of human rights violations. The continuum of violence against poor women and children for commercial sex and forced labor in inhuman conditions are the manifestations of embedded discriminations based on gender, class, caste, ethnicity and socioeconomic position. A review

of this chapter on human trafficking situation in various Asian countries reveals that only a tip of the iceberg of the problem has been addressed and a lot more has to be researched. Asian countries with a culture of strong values based on human rights and fundamental freedom should come together to fight against trafficking and take it as a serious social issue to be addressed. There should be a collective fight against this modern day slavery by all the stake holders in these countries of Asian Region through an effective partnership of governmental and non-governmental organizations.

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Terrorism in Asia: A Persistent Challenge Sustained by Ideological, Physical, and Criminal Enablers

10

Paul J. Smith

10.1 Introduction

On November 26, 2008, ten Pakistani militants traveled in a fishing boat from Karachi, Pakistan southward toward Mumbai, India. Once near Mumbai, they transferred to an inflatable dingy with an outboard motor. Upon reaching shore, they divided up into small teams, each with a specific objective in mind. The first team headed toward the Chhatrapati train station, which was nominally guarded by the Railway Protection Force (RPF) that soon found itself outgunned. The terrorists roamed throughout the station, shooting innocent civilians indiscriminately. Eventually, armed police units would arrive, putting pressure on the team, which then dispersed toward the Cama and Albless Hospital, where they were able to kill more people (BBC News Timeline 2008).

Meanwhile the second team dashed off to Nariman House, a commercial–residential complex administered by the Jewish Chabad Lubavitch movement. The team moved into the building, took 13 people as hostage (five of whom would later be killed). At one point, Indian security services intercepted a call between one of the terrorists and one of his handlers: "Brother, you have to fight. This is a matter of prestige of Islam," the voice urged, "You have to fight for the victory of Islam" (India Ministry of Foreign Affairs 2008). The terrorists then prepared for a police assault, which eventually came, resulting in their deaths.

The third team traveled to the landing site of the Oberoi-Trident Hotel, where they shot people indiscriminately. At one point in their assault, they called local media outlets and demanded that the Indian government release all Mujahiddin fighters being held in Indian prisons. As with the second team, members of this team were in telephonic contact with their handlers; one handler instructed a militant to concentrate on shooting the foreign hostages (including a Singaporean national) and to avoid hitting Muslims who might have been staying at the hotel.

Finally, the fourth team headed directly to the Leopold Café. Upon entering the restaurant, two attackers (Abu Shoaib and Abu Umer) began shooting patrons indiscriminately; eventually eight would be killed (Agence France Presse 2009). They then headed to the Taj Mahal Palace and Tower Hotel. They meandered through the hotel, shooting people and throwing grenades as the opportunities presented themselves. At one stage, an attacker was ordered by his Pakistani-based handler to set fire to the hotel. After 60 h of terrorist violence, Indian security forces were finally able to subdue the attackers (Richman 2010). However, the terrorists managed to kill at least 195 people during a 3-day period.

Any views or opinions in this essay are the author's own and do not necessarily reflect official positions of the US Naval War College, the US Department of Defense, or the US Government.

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In subsequent months and years, India and other governments conducted numerous investigations into the background of the Mumbai attack. One major break occurred when a Pakistani-American named David Headley was captured at the Chicago airport. Officials would later determine that Headley had conducted surveillance missions for the LeT (and by some press accounts, its patron, the Pakistan Inter-Services Intelligence (ISI) directorate). Headley would later tell the US and Indian investigators that the LeT had trained him in various camps in the early 2000s and that, as of 2006, he began working directly for Sajid Majid, a high-ranking operations commander within LeT. He was trained in both surveillance and counter-surveillance techniques, which allowed him to stay undetected in India while gathering information on future targets (Burke 2011).

Overall, the Mumbai attack indicated LeT's desire to expand its jihadi agenda beyond Kashmir and into India and beyond, particularly with its decision to include Jewish and Western targets (Tankel 2011). Second, the attack reinforced the importance of the firearms assault as a supplement to the classic explosives methodology commonly associated with contemporary terrorism. As a recent RAND study noted: "[The] firearms assault, while not as deadly as mass-casualty bombings, can be an effective tactic in creating prolonged chaos in an urban setting" (Rebasa and Blackwill 2009). Third and perhaps most significant, the Mumbai attack was an indicator that the global center of gravity for terrorism had shifted to Asia, particularly South Asia and to a lesser extent, Southeast Asia. This is a significant change from the era of the 1960s through the 1980s, when global terrorism was almost invariably linked to the Middle East or Europe and was sustained and nurtured by Cold War hostility and competition.

10.2 Terrorism in Asia: A Brief Survey

Terrorism is typically defined as violence threatened or actually committed by nonstate actors against a state or its agencies for the purpose of achieving some sort of political goal. The US Department of State offers a similar definition: terrorism is "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience" (Hudson 1999). Terrorists understand the power of symbols, which is why they generally select their targets carefully. By focusing on a symbolic target—for example, a Western luxury hotel located in an Asian city—terrorists hope to generate a "high-profile impact on the public of their targeted enemy or enemies with their act of violence" despite the fact that they typically have limited resources (Hudson 1999).

In Asia, there is no single type of terrorism. Some terrorism, such as the Maoist/Naxalite terrorism, is ideological and pursues a redistributive Marxist agenda. Other types of terrorism are clearly religious in nature (often reflecting an extreme or militant interpretation of a religion). Some terrorist groups have largely local agendas, while others subscribe to larger transnational goals. The following section provides a survey of some major terrorist organizations or movements in Asia by subdividing the region into four subregions (by descending level of severity): South Asia, Southeast Asia, Central Asia, and Northeast Asia.

10.2.1 South Asia

South Asia is emerging as the center of gravity for global terrorism. The three countries of this subregion that have the greatest threats are, in descending order, Afghanistan, Pakistan, and India. In 2010, Afghanistan experienced the greatest number of terrorist attacks in the world (3,306), generating 3,202 fatalities (only Iraq had a higher number of fatalities that year). Pakistan follows closely behind Afghanistan, with 1,331 attacks and 2,150 fatalities. India comes in third, with 860 attacks and 809 fatalities. The numbers wounded in Afghanistan, Pakistan, and India in 2010 were 4,847, 4,522, and 906, respectively (National Counterterrorism Center 2011).

In the aftermath of 9/11 and subsequent global concerns about terrorism, Afghanistan assumed

great prominence and is the focus of one of NATO's (in the form of the International Security Assistance Force, or ISAF) most significant military mission. As of December 2010, more than 2,270 foreign troops (including 1,440 US and 346 British soldiers) had been killed since the beginning of the Afghan war (IHS Jane's 2011a). Terrorist attacks are rife, and are generally associated with the activities of the Afghan Taliban, the Haqqani network and, to a lesser extent, Lashkar-e-Taiba, all of which are supported by Pakistan (Tankel 2011). In April 2011, Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, broke diplomatic protocol by accusing Pakistan's Inter-Services Intelligence (ISI) directorate of having powerful links to militants (particularly those associated with the Haqqani network), which are fighting American and other NATO forces (Khan 2011).

In contrast with Afghanistan, Pakistan hosts a veritable pantheon of insurgent or terrorist organizations—with active ones numbering more than 40—ranging from sectarian groups to transnational jihadi organizations. Among the more prominent are the Paikistani Taliban (Tehrik-i-Taliban), Lashkar-e-Toiba (LeT), Jaish-e-Mohammed, Lashkar-e-Jhangvi (LJ), Sipah-e-Sahaba Pakistan (SSP), Jammu and Kashmir Liberation Front, among many others. Tehrik-i-Taliban (TTP) was established in 2007 by a *shura* of 40 senior Taliban leaders, who envisioned that the TTP would act as an umbrella organization. Based in the FATA and key districts of the North-West Frontier Province (NWFP), the TTP seeks to, among other things, fight against NATO forces in Afghanistan and perform "defensive jihad against the Pakistan army"(Abbas 2008). Meanwhile, Lashkar-e-Jhangvi acts as the "lynchpin of the alignment between al-Qaeda, the Pakistani Taliban and sectarian groups"(International Crisis Group 2009b).

The United Nations Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaeda, Osama bin Laden, and the Taliban (hereafter the "1267 Committee List") lists four South Asian organizations, all of which are based in or have a substantial presence in Pakistan: Jaish-I-Mohammed , Lashkar-e-Tayyiba, Lashkar I Jhangvi, and Harakat-Ul Jihad (United Nations 2011). These disparate groups have been linked to shocking levels of violence, particularly during the past 10 years. From 2000 to 2010, Pakistan witnessed more than 9,387 deaths attributed to terrorist or insurgent attacks, while more than 19,819 individuals were wounded in such attacks (National Counterterrorism Center 2011).

Of the various groups, Lashkar-e-Toiba is viewed as a group that is adopting an increasingly global agenda, not only because of its role in the 2008 Mumbai attacks, but also because of its increasing presence around the world. Former head of US Pacific Command, Robert Willard, testified in 2011 about LeT's efforts to expand its presence and influence throughout South Asia, particularly Sri Lanka and the Maldives (Roul 2010). Moreover, Willard noted that "LeT deliberately targets westerners and specifically engages coalition forces in Afghanistan." (Willard 2011b). As a result, US Pacific Command is actively building up state capacity in Nepal, Bangladesh, Sri Lanka, Maldives, and other locations due to evidence of growing LeT presence or influence (Willard 2011a). LeT also has linkages to Europe and North America. When asked about allegations of Pakistan's linkages to LeT, Willard responded that the question of Pakistan's support of LeT (particularly via its Inter-Services Intelligence directorate) was a "very sensitive one" and the subject "continues to be a discussion item between the United States government and the Pakistan government in Islamabad"(Willard 2011a).

Like Pakistan, India is home to a range of terrorist groups and movements. Traditionally, much of the violence has been associated, one way or another, with Jammu and Kashmir, but an increasing portion is also related to insurgencies in India's northeastern states. For example, in 2008, over 404 civilians were killed in militant violence in India's northeastern region (Srivastava 2009). Much of the violence is linked to smaller insurgent groups in Assam, particularly as the more established United Liberation Front of Assam (ULFA) has become weaker (Srivastava 2009).

In addition, India is plagued by the Maoist (Naxalite) insurgency, which has now spread to 22 out of 28 states in India (Srivastava 2009).

Between 2008 and 2010, more than 2,600 civilian and security force personnel were killed by Naxal-related violence in India (Press Trust of India 2011). The Naxal movement gets its name from an armed uprising that occurred in Naxalbari, West Bengal in 1967. Adopting the teachings of Mao Zedong (as they interpret them), the Maoists regularly target "class enemies, petty bourgeois, police informers" either by murder or by sentencing them to various penalties through their "People's Court"(Asian Centre for Human Rights 2006). However, the Maoists are increasingly facing a dilemma: the more they rely on terrorism to force their will on the government, the more they risk alienating the local population on whose support the insurgency is dependent (Srivastava 2009). Overall, terrorism has been less of a challenge in India compared to Pakistan; nevertheless, more than 6,896 individuals have died in India as a result of terrorist or insurgent attacks; another 13,951 have been wounded since 2000 (National Counterterrorism Center 2011).

Bangladesh was once considered a country where terrorism was in a state of ascendancy, particularly with the activities of Jamaat ul-Mujahideen Bangladesh (JMB) and an array of smaller groups. JMB was notable for its attack on August 17, 2005, in which the group executed 459 near-simultaneous bombings that killed 2 and injured 100 (IHS Jane's 2010a). However, the government has taken decisive measures—including specific measures against the JMB—to mitigate terrorism in the country. Between 2005 and 2010, for example, only three civilians were killed in attacks linked to Islamist militants. This contrasts starkly with the number killed by Left Wing Extremists (from 2005 to 2010, there were 50 casualties—including 46 terrorists—associated with left wing extremism). Bangladesh hosts a plethora of leftist militant groups, including the Purba Banglar Communist Party, the PBCP (Janajuddha), PBCP (M-L Red Flag), PBCP (M-L Communist War), Biplabi Communist Party, among others (South Asian Terrorism Portal 2011).

Other countries in South Asia have either comparatively or substantially reduced risk in terms of terrorism. Sri Lanka, for instance, was once known as the center for some of the most violent terrorism perpetrated by the Liberation Tigers of Tiger Eelam (LTTE). However, with that group having been defeated in 2009, the threat has largely dissipated, although there are concerns about an LTTE revival within the very large and globally dispersed ethnic Tamil diaspora.

10.2.2 Southeast Asia

Southeast Asia is the subregion with the second most severe level of terrorism. The three most significantly affected countries are Thailand with 418 attacks and 265 fatalities, the Philippines with 260 attacks and 176 fatalities, and Indonesia with 18 attacks and 12 fatalities. The number of wounded in Thailand, Philippines, and Indonesia during 2010 was 736, 290, and 25, respectively (National Counterterrorism Center 2011).

Officially, the 1267 Committee lists three groups in Southeast Asia: Jemaah Islamiyah, the Abu Sayyaf Group, and the Rajah Solaiman Movement. Among these various groups, Jemaah Islamiyah (JI) stands out as having had the most influence (and destructive impact, particularly in Indonesia). On October 2002, JI conducted its most lethal attack in its history: an attack on the tourist destination of Bali. Simultaneous bombings killed more than 200 people (mostly tourists). Later, Indonesian police arrested Abu Bakar Bashir, who was subsequently convicted but later released (Indonesian officials subsequently convicted Bashir in 2011, following a third prosecution). In August 2003, a JI suicide bomber attacked the JW Marriott Hotel in Jakarta, which killed 11 individuals. In October 2003, Indonesian prosecutors convicted Imam Samudra for his role in masterminding the Bali bombings. In October 2005, JI conducted its second attack in Bali, by deploying 3 suicide bombers; over 20 people, mostly tourists, were killed. In September 2004, JI bombed the Australian embassy, an attack that killed 11 and injured another 200.

JI's bombing successes have, paradoxically, led to its diminution as a powerful organization. Aggressive policing by Indonesia, particularly its Detachment 88, has resulted in more than 450

arrests (and 250 convictions) of JI members. This has spurred divisions and disputes within the organization, resulting in at least two main wings: the Hambali wing and the Mainstream wing (Abuza 2010). The Hambali wing—once led by Noordin Top prior to his demise—having re-cast itself as "al-Qaeda in the Malay Archipelago" sought to engage in robust attacks against Western targets, while the Mainstream wing sought to maintain a lower profile (to fend off police actions and arrests) and focus on sectarian conflicts within Indonesia's outer islands (Abuza 2010).

On September 17, 2009, Indonesian police held a news conference in Jakarta in which they announced the death of Noordin Muhammad Top, who had been killed in a police assault on the safe house where he and others had been hiding. Top led a Jemaah Islamiyah splinter group and was known for his bomb-making skills. Having evaded police for years, Top was linked to a series of violent attacks, including suicide bombings against the Australian Embassy in Jakarta (2004), three Bali cafes (2005) and the more recent attacks against the J.W. Marriott and Ritz-Carlton hotels (July 2009) (Mydans 2009).

Many observers noted that, notwithstanding the elimination of Top, militancy in Southeast Asia was not necessarily in decline. The Jakarta-based newspaper *Republika*, in an editorial, warned that the ideology of radicalism developed by Top and others like him "continues to grow among certain groups in our society" (Jakarta Republika 2009). Indonesia, as the largest Muslim-majority country in the world, is often celebrated for its secular and relatively liberal democracy; simultaneously, however, the country harbors a significant level of support for radical Islamist ideologies and moreover, during the past three legislative elections, "around 10% of voters have chosen to support radical Islamist parties—a higher percentage than in Pakistan" (Barton 2009).

As JI has been weakened by effective Indonesian law enforcement, it has retreated into a somewhat latent mode. In some cases, leaders from JI have moved to other groups. Abu Bakar Bashir founded a new group, Jama'ah Ansharut Tauhid (JAT), in 2008. The JAT was created as a result of disagreements between Bashir and other members of the Majelis Mujahidin Indonesia (MMI). JAT was designed to cast off some of the political baggage that JI had accrued (International Crisis Group 2010). Bashir envisioned that the new organization would focus on public outreach and education. Its official goal was to "revitalize the Islamic movement in support of full victory for the struggle of the Indonesian faithful"(International Crisis Group 2010). Similar to JI, JAT followed strict Salafist teachings, including those of Abdullah Azzam and Sayid Qutb.

Despite the fact that it is only 4 years old, JAT has become influential in Indonesia. However, the organization ran afoul with Indonesian authorities when a training camp in Aceh, allegedly run by JAT, was discovered (International Crisis Group 2010). The discovery of the camp appeared to undermine previous assertions by JAT leaders that the group was eschewing violence. In March 2011, during the trial of Abu Bakar Bashir, Abdul Haris, the leader of JAT's Jakarta chapter, revealed that during a meeting at a restaurant, Bashir requested that Haris and others help raise money for a military training camp in Aceh Besar (BBC Monitoring Asia Pacific-Political 2011).

Overall, effective law enforcement actions by the Indonesian Government have greatly diminished JI's power and most recently its successor JAT organization. However, the threat of violence continues unabated in Indonesia; for instance, on April 22, 2011, Indonesian police disrupted a bombing plot intended to be timed with the Easter holiday. Five bombs, containing in aggregate over 150 kg of explosives, had been buried next to a gas pipeline located beside Christ Cathedral at Serpong, West Jakarta. Police were uncertain if the plot was designed by the country's two main jihadist groups (JI and JAT), or one of the newer, smaller groups (Alford 2011).

Police concern about the smaller organizations is well-founded, particularly as a number of them have adopted violent tactics as their primary raison d'etre. Such groups include the Fahrul Tanjung Group in Bandung, which was responsible for the March 15, 2010 attack on a police

station and the assassination of a police constable. Another is the Tim Ightiyalat (from Klaten, Central Java), responsible for a "crude bombing campaign against police posts, churches, and a few mosques" (International Crisis Group 2011a). A third is the Medan Group, responsible for the robbery of a Medan branch of the CIMB bank in August 2010 (International Crisis Group 2011a).

The Philippines contains the other two 1267 Committee listed groups: Abu Sayyaf Group and Rajah Solaiman Movement (Philippines). Abu Sayyaf Group split off from the Moro National Liberation Front (one of two major separatist organizations in the southern Philippines) in 1991. The group's founder, Abdurajak Janjalani served as a fighter in the anti-Soviet resistance fight in Afghanistan during the 1980s. The group's first attack occurred in 1991, when an ASG operative threw a grenade at two American evangelists, killing both (Council on Foreign Relations 2011). In subsequent years, the group conducted a series of kidnappings involving Filipino nationals and international tourists (Council on Foreign Relations 2011).

The Rajah Solaiman Movement was founded by Ahmad Santos in the late 1990s, following his conversion to Islam. The Rajah Solaiman shares similar goals with other Islamist organizations and is believed to have formed an alliance between two Al-Qaeda linked organizations: ASG and JI (BBC News 2005). In addition, members of Rajah Solaiman allegedly conducted one of Southeast Asia's most lethal attacks: the 2004 sinking of a ferry near Manila that killed more than 100 people (BBC News 2005).

In addition to Islamist groups, the Philippines also hosts a major Marxist group, the New People's Army (NPA). As the armed wing of the Communist Party of the Philippines, the New People's Army is a classic communist insurgency that would seem—like the Maoists in India—to be somewhat of an anachronism during the post Cold War era. Nevertheless, the group is quite active and boasts more than 8,500 troops (IHS Jane's 2011b). Recently, following a 7-year impasse, the CPP-NPA and the Philippine Government agreed to resume negotiations in Oslo, Norway. At their February meeting, both sides agreed to establish an 18-month timeframe for the talks.

In the southern Philippines, the Moro Islamic Liberation Front (MILF) is behind one of the country's most significant insurgencies (although Manila is keen to avoid labeling the MILF as a terrorist organization, notwithstanding the fact that the MILF has been known to host foreign jihadis within territory that it controls) (International Crisis Group 2011b). The Philippine Government has been engaged in protracted negotiations with MILF, in an attempt to secure a sustainable peace agreement. One key obstacle has been certain MILF hardliners, including Ameril Ombra Kato who recently broke off with MILF to form (along with thousands of his followers) the Bangsamoro Islamic Freedom Fighters (BIFF) (Malinao 2011). Another obstacle is corruption in the existing Autonomous Region of Muslim Mindanao, which is used as "ammunition by critics to argue against any plan that would result in an expansion of its powers or territorial reach" (International Crisis Group 2011b).

In addition to listed terrorist groups, Southeast Asia also hosts a number of second-tier or next generation terrorist groups or independent individuals. For example, in Southern Thailand, anti-government insurgent violence (resulting in more than 3,300 deaths) has been conducted by a nebulous collection of individuals and groups, the most prominent of which appear to be the BRN-Coordinate (Barison Revolusi National-Coordinate) and the Patani United Liberation Organization (PULO) (IHS Jane's 2008). Currently, the most violent region of Southeast Asia, from a terrorism casualty perspective, is southern Thailand. Since 2004, nearly 4,000 people have lost their lives in violence perpetrated in just three Muslim-majority provinces, Yala, Pattani, and Narathiwat (roughly two-thirds of the casualties have been Muslims) (IHS Jane's 2011e).

Similarly, Indonesia hosts a number of groups that do not receive the same spotlight as that devoted to Jemaah Islamiyah. Some of these second-tier groups include (or have included) Ring Banten (an offshoot of the historically rooted Darul Islam movement), Mujahidin KOMPAK, Jama'ah

Tauhid wal Jihad, Hizb-ul-Tahrir Indonesia (HTI), among others (Chalk 2009; International Crisis Group 2009a). Some of these groups have strong (current or former) affiliation with JI, while other groups act independently or pursue different goals. In the Philippines, a previously unknown group, the Bansamoro National Liberation Army, recently claimed responsibility for a bomb attack in late September 2009, which killed two American soldiers and a Filipino marine (Jacinto 2009).

10.2.3 Central Asia

Central Asia is the third most serious subregion in terms of terrorism, although comparatively, its situation is much more benign when compared to South or Southeast Asia. Tajikistan reported the most serious attack in 2010 (1 attack causing 2 fatalities, wounding 28), while Kyrgyzstan reported 1 attack (no fatalities, 7 wounded) (National Counterterrorism Center 2011). According to the NCTC database, Kazakhstan, Uzbekistan, and Turkmenistan did not report any terrorism incidents in 2010. Nevertheless, there remains at least a latent threat of terrorism.

The UN 1267 Committee lists only one terrorist group based in—or with substantial presence in or linkage to—Central Asia: Islamic Movement of Uzbekistan, a group that was much more powerful in the 1990s compared to today. In 1999 and 2000, the IMU was accused of launching attacks into Uzbekistan and Kyrgyzstan from the Ferghana Valley. However, US operations in Afghanistan, following the 9/11 attacks, led to the destruction of several key IMU bases. From that time, the IMU, or its remnants, regrouped in Pakistan, especially within the tribal lands of the country's northwest region. Later, the group spawned an offshoot organization, the Islamic Jihad Union (IJU), which has maintained a presence in North Waziristan in Pakistan's Federally Administered Tribal Areas (FATA) (IHS Jane's 2010b).

Both the IMU and IJU threaten not only Uzbekistan, but also neighboring Kyrgyzstan and Tajikistan, particularly as these countries have less governance capacity and less ability to control unauthorized border crossings. Another group in Central Asia is Hizb ut-Tahrir (HuT). The HuT is considered a major threat within Uzbekistan, although the group generally does not conduct violent attacks. Instead, it fights its own "war of ideas" by disseminating propaganda that urges people to return to "an Islamic way of life" (IHS Jane's 2011d). The HuT advocates the creation of a central Asian caliphate. In Uzbekistan, mere possession of HuT literature is a criminal offense, with potential jail terms as long as 10 years. In Tajikistan, thousands of HuT followers have been arrested and imprisoned (IHS Jane's 2011d).

In Kazakhstan, terrorism appears to be much less of a challenge compared to its neighbors, particularly after the Kazakhstan Government declared 13 organizations, including Al Qaeda and the Islamic Movement of Uzbekistan, to be terrorist or extremist organizations, thus prohibiting all of their activities within the country. To demonstrate its determination to enforce the ban, the Kazakhstan Government sentenced an activist to 2 years in jail for his "involvement in the operations of the Hizb-ut-Tahrir-al-Islami religious association"(Interfax 2011). A month earlier, the same court sentenced another two men for varying jail terms for their membership in the Hizb-ut-Tahrir organization (Interfax 2011).

10.2.4 Northeast Asia

Of the four subregions of Asia, Northeast Asia appears to have the least amount of threat.

According to the NCTC database, China experienced the greatest number of terrorist attacks during 2010 (1 attack with 6 deaths and 15 wounded) (National Counterterrorism Center 2011). The other major countries in the region—including Japan, South Korea, Taiwan, North Korea, and Mongolia—have no recorded incidents. This was not always the case, however. North Korea has played the role of state sponsor of terrorism, For example, on November 28, 1987, two North Korean agents blew up Korean Air Flight 858, and then swallowed cyanide capsules (although only one actually died). In Japan, the Japanese Red Army (Sekigun) was prominent during the 1960s and 1970s. In the 1990s, the

religious group Aum Shinrikyo emerged as a significant threat and conducted a major chemical attack on Tokyo's subway system in 1995, which killed approximately 12 people and injured more than 5,000.

Nevertheless, today, most terrorism seems to be concentrated in, of all places, the People's Republic of China. The U.N. 1267 Committee officially lists the East Turkistan Islamic Movement (ETIM), which has been described as a terrorist organization by the Chinese Government (although many reports suggest that ETIM's level of threat and operational capacity have significantly declined). China's terrorism concerns center around the Xinjiang Uighur Autonomous Region (XUAR), which is home to roughly eight million non-Han Uighurs and other minorities.

Beijing characterizes unrest in Xinjiang as being a manifestation of the "three evils," namely terrorism (恐怖主义), separatism (分裂主义) and extremism (极端主义) (Dreyer 2005). In January 2002, the Chinese Government issued a report titled "East Turkistan Terrorist Forces Cannot Get Away with Impunity" (Xinhua 2002). The report asserted that since the 1990s, "the 'East Turkistan' forces inside and outside Chinese territory have planned and organized a series of violent incidents in the Xinjiang Uygur [Uighur] Autonomous Region of China and some other countries" (Xinhua 2002). The report further alleged that from 1990 to 2001, East Turkistan terrorists (both within China and abroad) were linked to over 200 terrorist incidents in Xinjiang "resulting in the deaths of 162 people of all ethnic groups, including grass-roots officials and religious personnel, and injuries to more than 440 people" (Xinhua 2002).

Subsequently, China officially listed four groups that it deemed instigators of terror. They included the East Turkestan Islamic Movement, or ETIM (东突厥斯坦伊斯兰运动), the East Turkestan Liberation Organization, or ETLO (东突厥斯坦解放组织), the World Uighur Youth Congress, or WUYC (世界维吾尔青年代表大会), and the East Turkestan Information Center, or ETIC (东突厥斯坦新闻信息中心). Of the four groups, ETIM seems to have had the most credible relationship to terrorism, particularly given past ties to Osama bin Laden and the Al Qaeda organization (Mackerras 2007).

China attributes a number of domestic plots to these organizations or to the general movement underpinning them. One of these plots occurred on March 7, 2008 when a China Southern Airlines jet took off from Urumqi (capital of the northwest Xinjiang Uighur Autonomous Region) and flew toward Beijing. After 2 h into the flight, the plane made an emergency landing in Lanzhou, capital of neighboring Gansu Province. Authorities later reported that they had captured a 19-year-old female ethnic Uighur (and an apparent accomplice), whom they accused of attempting to set fire to the airplane while in flight. The Chinese government later characterized the act as "organized and premeditated" (Xinhua 2008). Other plots were uncovered, particularly around the time of the 2008 Olympic Games (Straits Times 2008). In April 2008, Chinese officials announced that they had broken up a terrorism conspiracy involving 35 members of the East Turkestan Islamic Movement (ETIM). A Chinese official reported that the group "had plotted to kidnap foreign journalists, tourists and athletes during the Beijing Olympics" (Johnson 2008).

In July 2009, China witnessed a major outburst of ethnic unrest in Xinjiang. The riots, first led by ethnic Uighurs, were then followed by revenge attacks by ethnic Han Chinese. Overall, more than 190 people were killed and more than 1,600 were arrested. The chaos prompted China's President, Hu Jintao, to abruptly return home from the G8 Summit, being held in Italy. Since that time, Beijing has significantly increased law enforcement presence in the Xinjiang region and has, periodically, uncovered plots and conspiracies which Chinese officials allege are indicative of a persistent challenge of terrorism.

10.3 Asia's Ideological Enabling Environment

The global shift of terrorism to Asia is driven by a number of ideological, functional, and criminal enabling factors. Perhaps the most powerful of

these is the role of ideology. Terrorism is, after all, violence committed as part of a larger campaign to achieve political ends. As would be expected, there is no single ideological driver that pervades such a vast region. In some countries (such as the Philippines or Thailand), local insurgencies have an Islamic character—and sometimes even deploy jihadi ideas—but their struggle is largely local in nature: "The minority groups involved in these struggles fight for separation or autonomy from the existing political regimes that they perceive to be guilty of imposing discriminatory policies" (Helfstein 2008).

Yet even these movements can be heavily influenced by international trends. In Southern Thailand, although insurgent violence is perhaps more genuinely "local" than most of the region's other insurgencies, it is also apparent that militant groups are increasingly invoking global jihadi narratives and images—including referring to southern Thailand as *Dar al-Harb* (House of War)—as part of their recruitment efforts (International Crisis Group 2009c). As Thitinan Pongsudhirak has argued: "The heightened awareness of Muslim identity worldwide in the aftermath of September 11 provides a context for local Muslim grievances in Thailand's deep south" (Pongsudhirak 2007). However, at the same time, it is important to draw a distinction between "Muslim grievances" and ultimate objectives, which may diverge substantially with organizations with more global agendas. An editorial in a prominent English-language Thai newspaper stated that Malay separatists are not interested in taking over the Thai state (in contrast with the former Communist Party of Thailand); instead, the Malays "just want their homeland back" (The Nation [Thailand] 2011).

In other cases, the agenda of a particular group may expand along a spectrum of motives, encompassing both the local and the global. In these cases, the persistent grievance narrative may relate to the abuse of Muslims around the world. As Kumar Ramakrishna has noted: "The suffering of Muslims anywhere, especially where the United States is directly involved—as in the instance of collateral civilian casualties in Iraq and Afghanistan—can, as liberal Muslim scholar Akbar Ahmed points out, be 'used by extremists' to 'reinforce this feeling that all Muslims are under attack'" (Ramakrishna 2005). Imam Samudra justified the 2002 Bali bombing partly on the rationale that the USA and its allies had bombed innocent Muslims in Afghanistan in 2001 (Bin Hassan 2007). In addition, the bombing targets (Paddy's Bar and Sari Club) were "places of vice" that had "no value in Islam"(Bin Hassan 2007).

In some cases, the local–global nexus is facilitated by geographical cross-pollination of ideas or informal mutual cooperation agreements. For example, the arrest of Umar Patek in Pakistan (Patek was one of the top militants responsible for the 2002 Bali bombing in Indonesia) suggested some degree of convergence between Pakistan militants and their Indonesian counterparts, although the exact nature and extent are uncertain. One theory posits that JI possibly wanted to establish a new training facility in the Federal Administered Tribal Areas (FATA) in much the same way that it had previously established an overseas training facility in the southern Philippines, under the aegis of the Moro Islamic Liberation Front (MILF) (Abuza 2011). Pakistan's potential role in this regard would not be surprising; the North Waziristan region is viewed by Western intelligence and police officials as a key enabler for plots in Europe, North America, and other parts of the world (Keaten 2011).

In addition, many contemporary movements may have extensive histories: in Indonesia, Jemaah Islamiyah reinvigorated some of the same aims and themes of an earlier (1950s era) movement known as Darul Islam, except that JI's links to global organizations have helped the organization cultivate both a local and international agenda (in contrast with Darul Islam's more local orientation) (Barton 2009). In South Asia, the unresolved status of Jammu and Kashmir fosters a pretext for substate militancy, some of which is supported clandestinely by official agencies. Pakistan's security agencies, including the Inter Services Intelligence (ISI) directorate have provided funding for substate insurgent groups, including those with an active global agenda, since the late 1940s (Ganguly and Kapur 2010).

Non-Islamist insurgency organizations thrive on very different ideological narratives. In India, Maoists thrive on rural desperation and frustration with perceived government incompetence. In the Philippines, the New People's Army (NPA) has thrived on themes of unfair distribution of wealth, government failures to protect the rights of the poor and similar grievances linked to inequities (both real and perceived) (Ferrer 2007).

10.4 Asia's Functional Enabling Environment

Complementing the ideological enabling environment in Asia is the functional enabling environment. This refers to physical, institutional, or geographical enablers that allow terrorism to flourish (Ramakrishna 2005). For Asia, six functional enablers in particular deserve special focus.

First, Asia's vast, unique, and sometimes impenetrable geography provides an enabling factor for terrorism. Porous borders facilitate clandestine border-crossings for militants or their supporters. In addition, Asia's archipelagic geography creates almost inevitable maritime border porosity, which in turn aids violent nonstate actors. This same border environment also facilitates transnational crime, which can in turn support transnational terrorism.

In South Asia, porous borders between Bangladesh and India's northeastern region have been linked to a convergence of agendas and operations among Islamist groups based in Assam and Bangladesh. Ease of entry into the region has reportedly provided functional space for Pakistan's Inter-Services Intelligence (ISI) directorate, which has been accused of attempting to destabilize the region (Kumar 2011).

The second functional enabler for terrorism is the wide availability of arms and explosives. Just as the region's porous borders allow infiltration or exfiltration of militants, they also facilitate the smuggling of small arms and light weapons. India and Pakistan are estimated to have roughly 40 million and 20 million illegal firearms circulating within their populations, respectively (IHS Jane's 2010a). In Pakistan alone, an estimated 400,000 illegal firearms are linked to various types of criminal activities (IHS Jane's 2010a). In Cambodia, a surfeit of small arms—a portion of which is held by demobilized soldiers—is viewed as a major contributor to rampant gun crimes in the country (IHS Jane's 2011c). In the Philippines, authorities recently discovered a "bomb factory" in a cave in Davao, which was being used and maintained by Communist rebels. In addition, police discovered military-style arms, including two anti-armor mines, four anti-personnel mines, 700 containers of liquid explosives, among other items (Romero 2011).

In some cases, arms will seep from the state-realm to the non-state realm as a result of corruption, criminality, or negligence. In 2003, for example, a senior Armed Forces of the Philippines (AFP) officer admitted that over 8,000 army weapons had "gone missing" in Sulu Province over a 14-year period; many of these weapons ended up in the hands of MILF or ASG operatives (Capie 2005). In August 2010, Defense Secretary Voltaire Gazmin admitted that the AFP had provided weapons to the Ampatuan clan of Maguindanao Province, which was reportedly assisting the government in fighting the Moro Islamic Liberation Front (MILF), in addition to various other groups that were supported as part of the government's fight against the New People's Army. Many of the weapons—typically small arms—are unaccounted for, while at least one of the groups supplied with arms by the government (the Kuratong Baleleng group) has recently "evolved" into a criminal syndicate group engaged in bank robbery, kidnapping, drug smuggling, and other similar activities (Depasupil 2010).

A third functional enabler is weak, corrupt, or ineffective governance. Effective governance can include a government's ability or willingness to address legitimate grievances or injustices that are uniquely "local" and often historically rooted. Effective governance also implies minimal corruption, a factor that can influence terrorism trends in unexpected ways. First, widespread corruption typically accompanies a dismissive attitude toward rule of law, which reduces the institutional capacity of particular governments. Second, corruption under-

mines or delegitimizes confidence in government policies because of perceptions that impartiality or justice can be "bought" by opposing interest groups (Transparency International 2008).

A corollary to good governance is healthy and robust state capacity. Weak states are often presumed to be more vulnerable to terrorist activities and groups, particularly as the latter may seek to take advantage of state weakness (including a particular government's inability to enforce laws, to institute border controls, to have effective control over parts of its territory, to monitor financial transactions, and so on). A US Congressional Research Service study assessed that "terrorists can benefit from lax or non-existent law enforcement in these [weak and failing] states to participate in illicit economic activities to finance their operations and ease their access to weapons and other equipment" (Wyler 2008). Moreover, the issue can be even more complicated. For example, a 2003 study conducted for the US Central Intelligence Agency differentiated between "caves" (failed states where governance is ineffective or nonexistent) and "condos" (states that enjoy modern infrastructure, which allows for easy transit, communication and access to funding) (Wyler 2008). Another conception posits that the "quasi" state—the state which is reasonably functional, but weaker than a developed country—is more dangerous because it provides such enabling infrastructures (Menkhaus 2003). Pakistan and Indonesia might qualify as "condos" or quasi states, because of their reasonably modern infrastructure and connectivity to the global economic system.

A fourth functional enabler is the pervasive role of the Internet. The Internet has emerged as a major functional enabler for terrorism during the past decade. A recent British Government report found that the Internet is one of the few "unregulated spaces where radicalization is able to take place," which also serves as a platform where individuals can find "like-minded individuals and groups" (House of Commons 2012). In Southeast Asia, jihadist websites are an increasingly common phenomenon. The number of extremist websites (including individual blogs) in the region is estimated to range between 150 and 200 (China Daily Online 2009). According to one assessment, Southeast Asian jihadist websites are "equally, if not more, focused on global jihadist issues than they are on local or regional issues" (Brachman 2009). These websites act as an electronic foundation that allows the "promulgation and translation of global jihadist media and writings" throughout the region (Brachman 2009). Moreover, the American newspaper columnist Thomas Friedman has characterized the ability of small groups to gather and train via the Internet as a "virtual Afghanistan"—a loose network of Internet websites, prayer associations and mosques (both electronic and real) that "recruit, inspire and train young Muslims to kill without any formal orders from Al Qaeda" (Friedman 2009).

A fifth functional enabler is the growth and spread of suicide techniques throughout Asia. Inspired by the success of Hezbollah in deploying suicide bombing tactics in Beirut in the early 1980s, the leader of the Liberation Tigers of Tamil Eelam (LTTE) decided to deploy such tactics in Sri Lanka. "If we conduct Black Tiger [suicide] operations," Velupillai Prabhakaran reportedly stated, "We can shorten the suffering of the people and achieve Tamil Eelam [Tamil Homeland] in a shorter period of time." (Smith 2008). From the mid-1980s until the group's demise in Sri Lanka in 2009, the LTTE conducted more than 160 suicide bombings, including the May 1991 assassination of former Indian Prime Minister Rajiv Gandhi and the 1993 assassination of Sri Lankan President Ranasinghe Premadasa.

Today, however, Pakistan is ground zero for suicide terrorism in South Asia; in 2010 alone, over 135 suicide bombing attacks were recorded (resulting in 2219 deaths and 6034 wounded) (National Counterterrorism Center 2011). Terhrik-e-Taliban (TTP) is particularly notorious for its use of suicide bombing tactics in Pakistan. In January 2011, the US State Department designated TTP leader Qari Hussain under Executive Order 13224 (US designation and financial blocking of terrorists and terrorist organizations). Hussain was described as one of the TTP's "top lieutenants" who organized the group's camps that trained the TTP's cadre of suicide bombers (US State Department 2011).

In Southeast Asia, Indonesia has emerged as the center for suicide terrorism; the country has witnessed at least four major suicide attacks since 2003, causing at least 48 deaths in total. Although such methods are not totally new to the region, their most recent appearance clearly derives from operational (or ideational) linkages between Southeast Asian groups and their South Asian or Middle Eastern counterparts (Dale 1988). In 2009, the youngest child of a prominent JI leader posted a justification of suicide bombings on a jihadist website. The statement reasoned that as long as these "acts of martyrdom" are conducted in a sincere manner and in accordance with the demands of Shariah, then these bombers will "be martyrs on the path of Allah" (Muslim Daily 2009). Some scholars predict that suicide bombing methods may spread and become more frequent in such countries as Thailand and the Philippines (Dolnik 2007).

A sixth functional enabler might be described as the collective effects and influences of poverty, unemployment, and disruptive globalization. In 2004, the US National Intelligence Council issued a future assessment of the global security environment in which it described globalization (defined as increasing flows of trade, people and ideas) as an "overarching 'mega-trend,' a force so ubiquitous that it will substantially shape all the other major trends in the world of 2020" (National Intelligence Council 2004). Such force can promote extreme insecurity, particularly as it is accompanied by "large-scale social, economic, and aesthetic disruption" (Newman 2006). Moreover, socially conservative societies are forced to contend with an "invasion of images that evoke outrage and disgust as much as envy in the hearts of those who are exposed to them"(Newman 2006).

The same National Intelligence Council report warned that globalization is likely to produce "winners" and "those left behind" (National Intelligence Council 2004). One indicator of being left behind is rampant unemployment in many parts of the developing world. For example, in Afghanistan and Pakistan, unemployment is rife. In Afghanistan, unemployment has been estimated to range between 30 and 50% (Rezaie 2011). In Pakistan, the official unemployment rate during 2009–2010 was 5.6% (Business Recorder 2011). Unofficial estimates place the rate as high as 25% (Right Vision News 2011). Many who have jobs are just marginally better off; 84.6% of the working population in Pakistan earns less than $2 a day (The Nation [Pakistan] 2011a, b). In Indonesia, an estimated 7.14% of the workforce (8.32 million Indonesians) is unemployed, according to government statistics (Antara 2011).

In India, poverty and unemployment are seen as enabling factors that sustain the Naxalite (Maoist) movement. A study commissioned by the Indian government recently found that "creation of employment opportunities, immediate land reforms, and good governance" could be an effective antidote to the continued appeal and spread of Naxalism (Sharma 2011). However, others have voiced skepticism about the presumed nexus between economic development and terrorism. Ajai Sahni, an Indian-based terrorism analyst, argues that historically "no country has ever 'out-developed' an ongoing insurgency or terrorist movement" (Sahni 2010).

10.5 The Terrorism–Crime Nexus

Another major functional enabler for terrorism is crime. Although terrorism itself is typically classified by most countries as a crime, it is often dependent on an array of "supportive crimes" that allows it to achieve certain logistical objectives, particularly funding. In some cases, terrorist groups will develop their own "in house" specialists—passport forgers, for instance—who provide key logistical services; in other cases, terrorists may forge alliances with criminal groups that specialize in certain operational specialties: "criminal and terrorist groups regularly engage in strategic alliances to provide goods or services"(Makarenko 2005).

In his recent testimony to the US Congress, James Clapper, Director of National Intelligence, stated: "terrorists and insurgents will turn to crime to generate funding and acquire logistical support from criminals in part because of US and Western success in attacking other sources of

their funding" (Clapper 2011). In 2010, a Congressional Research Service report warned that potential links between crime and terrorism could "increase US vulnerability to attack by terrorist groups with enhanced criminal capabilities and financial resources" (Rollins and Wyler 2010).

Perhaps the most important crime associated with terrorism is money laundering, which is involved not only with sourcing of funds, but also their distribution. In the months following the 9/11 attacks in the United States, US officials began to focus on the financial dimensions of Al Qaeda. A number of investigations concluded that, notwithstanding Osama Bin Laden's personal wealth, Al Qaeda and similar groups had access to a steady stream of funding, which emanated from the Middle East flowing under the imprimatur of charitable contributions. Indeed, numerous charities in the United States were prosecuted under federal money laundering statutes due to their diversion of funds to terrorist organizations.

One country in particular, Saudi Arabia, was highlighted as a key provider of charitable funds that were being accessed by terrorist groups. Internal US Government assessments revealed, as late as 2010, that "donors in Saudi Arabia constitute the most significant source of funding to Sunni terrorists groups worldwide" (Lichtblau and Schmitt 2010). In an addition to supporting LeT in South Asia, Saudi Arabian donors have also been known to provide financial support to other groups, particularly those in Southeast Asia. Having received funds, the organization must transfer or hold such assets, through formal banking instruments (such as using a fictitious name associated with a bank account) or informal means, such as relying on the hawala system, to transfer money.

If an Asian terrorist organization cannot access funds from gifts and charitable organizations, it may have to take matters into its own hands by, among other things, robbing banks. This is neither surprising nor historically unique. Groups as diverse as the Irish Republican Army, the Italian Red Brigades and the German Red Army Faction regularly, or at certain times, engaged in bank robbery as a means of acquiring badly needed cash (Smith 2008). In Southeast Asia, JI members robbed a gold and jewelry store in West Java in August 2002, in order to raise money for its imminent attack in Bali that year (Jablonski and Dutton 2004). JI has justified such activities by invoking the concept of *fa'i*, which permits robbing non-believers as a means of raising cash for jihad (Croissant and Barlow 2007). Imam Samudra encouraged his followers to learn new and sophisticated forms of robbery, such as computer hacking and carding (carding, a form of hacking, involves breaking a credit card code which allows the user access to the credit facility) (Bin Hassan 2007). Moreover, he urged that his followers, armed with their newly acquired hacking and carding skills, direct their efforts solely against Americans "as part of Muslims' fight against America's imperialism, arrogance, and oppression" (Bin Hassan 2007).

In addition to JI, other groups in Asia have turned to classic robbery to raise funds. In late 2009 and 2010, Jamaah Ansharut Tauhid (JAT) conducted four robberies that netted the organization more than $80,000 (Abuza 2010). In Malaysia, the group Kumpulun Mujahideen Malaysia (later renamed Kumpulan Militan Malaysia or KMM) robbed a Hong Leong Bank branch in Petaling Jaya, Selangor in December 2000; its success emboldened the group's members to attempt another robbery at the Southern Bank branch in Jalan Gasing, Petaling Jaya in May 2001, although this act was unsuccessful after one of the robbers was shot dead and the others were arrested (Noor 2007).

In 2009, the Reserve Bank of India circulated a notice to all banks in Kerala to increase security following intelligence reports that the now-inactive LTTE was planning to conduct a series of bank robberies in order to raise funds (Press Trust of India 2009). In June 2010, Pakistani police killed one and captured three activists of the Lashkar-e-Jhangvi (LJ) group after they conducted a bank robbery in Organi Town. The four men, armed with pistols and hand grenades, held 20 employees of the bank hostage for 90 min. They were able to take out Rs. 2.7 million prior to being captured by Pakistan's Rangers and its Special Investigation Unit (SIU) (BBC Monitoring Asia Pacific-Political 2010).

Kidnapping is another way that some Asia-based terrorist groups have raised money. Perhaps most notorious for this activity is the Abu Sayyaf Group (ASG) in the Philippines, which has been linked to a kidnapping spree in that country since the late 1990s. Some of its more prominent attacks have included the kidnapping (in June 2008) of news anchor Ces Drilon and two crew members who had been working on a story about the Abu Sayyaf. In May 2001, ASG rebels kidnapped 20 people from the Dos Palmas beach resort on Palawan island (including three Americans, Martin Burnham, Gracia Burnham, and Guillermo Sobero). Sobero was beheaded the following month; Martin and Gracia Burnham were held hostage for about a year. Martin Burnham was later killed during a Philippine hostage rescue operation, while Gracia Burnham survived.

The Dos Palmas kidnapping occurred approximately 1 year after another notorious case in which Abu Sayyaf militants launched a cross-border (maritime) raid into Malaysia, kidnapping 21 European and Asian hostages from a luxury resort in Sipadan. The year-long hostage crisis attracted international media attention, including an intervention by the Libyan Government, which reportedly paid a ransom to the ASG operatives.

Another crime linked to terrorist groups is human trafficking. Prior to its defeat by Sri Lankan Government forces, the Liberation Tigers of Tamil Eelam (LTTE) regularly conducted both human trafficking and migrant smuggling activities as a means, primarily, of raising cash. The LTTE also demonstrated its ability to conduct related criminal activities, including extortion and money laundering. Canadian officials have publicly voiced concerns that recent episodes of mass migration (including the arrival of ships in 2010, such as the MV Sun Sea, which carried 490 Tamils to Canada) are being organized by the LTTE or its overseas remnant organization, including the European-based Transnational Government of Tamil Eelam (TGTE) (Kamloops Daily News 2011; Asian Tribune 2011). Canada's Public Safety Minister, Vic Toews, announced shortly after the arrival of the MV Sun Sea (August 2010) that "we are very concerned that there are elements of the LTTE and the Tamil Tigers on board this vessel" (Coyne 2010). In 2009, Sri Lankan Defence Ministry officials identified Ravi Shankar Kanagarajah (alias "Shangili") as a key LTTE arms and human smuggler, who owned three ships that have been extensively used for the smuggling of people and weapons (Colombo Times 2009).

Closely related to human trafficking is the crime of passport fraud, particularly as terrorists require forged identity documents as a means to clandestinely transit borders. Thailand is reputed to be one of the top passport forging centers in the world (Thailand Press Reports 2006). Hambali, the former JI leader, was captured because Thai and American officials were able to track down his passport forger in Chiang Mai. Thailand has had a persistent reputation as a center for passport forgery. In December 2010, police in Thailand, working with their Spanish counterparts, arrested two Pakistani men and a Thai woman in a Bangkok apartment; the three were part of an international passport forgery ring. In Spain, police arrested another eight members of the ring (comprised of seven Pakistanis and one Nigerian). The group would steal passports from tourists and others around the Barcelona area, then send them to Thailand to be altered. The group allegedly supplied forged passports to terrorists responsible for the 2004 bombing of the Madrid commuter rail station (which killed 191 people) and the 2008 Mumbai attacks (which killed 195 people) (Thailand Press Reports 2010). Other customers included Lashkar-e-Taiba and the LTTE (Associated Press 2011).

Globally, a strong association exists between terrorism and the global illicit narcotics trade. According to Anthony P. Pacido of the US Drug Enforcement Administration (DEA), 18 of 44 designated international terrorist groups (designated by the US Government as a Foreign Terrorist Organization) "have been linked to some aspect" of narcotics trafficking (Pacido 2010). In Afghanistan, the Taliban has earned hundreds of millions of dollars from the proceeds of narcotics trafficking in Afghanistan; some of these funds are used to purchase arms that are used against USA and coalition forces in Afghanistan (Pacido 2010).

More significantly, as Afghanistan's drug culture has spread throughout the region, it has provided opportunities for terrorist organizations in neighboring states. The IMU, for instance, was able to control the drug trade from Afghanistan to Central Asia in the late 1990s via its linkages with the Taliban, Al Qaeda and corrupt officials in the region (Cornell 2006). More recently, Russian and Kyrgyz officials have expressed concerns about a growing narcotics–militancy nexus. Drug seizures in Kyrgyzstan have increased dramatically; in 2008, officials there seized 8.2 tons of narcotics, compared to 5.0 tons in 2007 (IHS Jane's 2009).

In some cases, terrorist groups will funnel ill-gotten cash into legitimate businesses. In the early 2000s, Lashkar-e-Taiba began to invest its assets (both derived from gifts as well as criminal activities) in an array of legitimate businesses, including "commodity trading, real estate, and production of consumer goods" (Jablonski and Dutton 2004). Similarly, JI has plowed some of its cash into businesses that could earn even greater wealth. Indonesian intelligence officials acknowledged the fact that JI had businesses selling an array of goods: magazines, VCDs, fertilizer, bread, and coffee (Lopez 2007).

Although terrorists tend to engage in crime for instrumental reasons—as a way of gaining access to funds or other logistics—in some cases the association may be much thicker. Such is the case with the South Asian-based Dawood Ibrahim, whose organization represents a "fusion model" in which terrorism and crime manifest within a single entity. Ibrahim's "D-Company" is known to be involved in an array of activities linked to both crime, terrorism and insurgency, including extortion, smuggling, narcotics, and contract killing (Rollins and Wyler 2010).

10.6 Conclusion

As the global center of economic power has undergone a shift to Asia, it is not surprising that the center of gravity for global terrorism has shifted with it. In addition, a number of longstanding local conflicts (e.g., Afghanistan, Kashmir, Mindanao) provide their own enabling energy, stimulating a variety of groups and justifying—at least in their own minds—a variety of plots and violent actions.

As terrorism is a constantly evolving phenomenon, it cannot be addressed through simplistic, all-purpose solutions. Ethnic-based terrorist ideologies and activities must be distinguished from religious or anarchist-based terrorism. Also critical is the importance of understanding terrorism in the context of insurgencies and avoiding confusion by treating the two activities as a single phenomenon.

As this chapter has demonstrated, terrorism thrives in Asia due to a variety of ideological, functional, and criminal enabling factors. As a result, effective counterterrorism strategies in the region must address all of these factors if they are to be successful. While terrorism in this region may never be totally eradicated, it can be managed with multilateral approaches and enlightened government actions, some of which are already in place. However, the first step is to understand the challenge, viewing it from all of its dimensions.

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Part II

Crime and Criminal Justice in Selected Asian Countries

Crime and Justice in Cambodia

11

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11.1 History and Politics

Cambodia is a small South East Asian nation bordered by Laos in the north, Vietnam in the east, Thailand in the west, and the Gulf of Thailand in the south. During the last 30 years of the twentieth century Cambodians have suffered civil war, foreign aggression, and genocide. At peace since 1998, its growing and youthful population (60% are under 25 and 40% are <15 years old) of 13.4 million face problems of development and is one of the poorest countries in the world, ranking 137th out of 182 countries in 2009 (UNDP 2009, p. 145). Most Cambodians (84.3%) reside in rural areas, many subsisting with less than $1USD a day. Close to 60% of the remaining 15.7% urban dwellers reside in the capital Phnom Penh (National Institute of Statistics 2008). The population is 95% Buddhists and Ethnic Khmers. For centuries the Khmers were ruled by revered God Kings and most famously during the cultural brilliance of the Angkorian period between the 9th and 13th centuries. Cambodia suffered recurring territorial and political conflicts with its Vietnamese and Thai neighbours, until the modern period when Cambodia was incorporated by French imperial expansion in Indo-China. In 1863 Cambodia was established as a French Protectorate, which lasted until independence in November 1953.

In 1954 Cambodia became a constitutional monarchy led alternatively as King or Prime Minister by Prince Norodom Sihanouk. In the 1960s Cambodia was gradually enmeshed in the complex politics of the cold war and one of its "hot" manifestations, the civil war in neighbouring Vietnam. In 1970 Sihanouk was ousted by a coup led by General Lon Nol. Cambodia was declared a republic and entered a period of civil war, which was rendered even more destructive by the heavy and illegal US bombing targeting Vietcong supply routes inside the country. This conflict boosted the popularity and power base of groups opposed to the Lon Nol regime, among whom the dominant groups were royalists and a revolutionary movement known as the Khmer Rouges led by Pol Pot. In 1975 the Khmer Rouges (KR) defeated the republican army and entered Phnom Penh. Once in power, the KR emptied the cities, and established a Chinese-backed utopian regime of agrarian revolutionary terror, which killed (through starvation and murder) 1.7 million people and ended in 1979 with a military occupation by the Vietnamese. The Vietnamese army of occupation installed a socialist regime called the People's Republic of Kampuchea (PRK) led successively and briefly by a number of former KR defectors, and six years later by Hun Sen the current long-serving Prime Minister, himself a former KR defector. In 1989, when

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Vietnam withdrew its troops from Cambodia, the regime was renamed the State of Cambodia (SOC). Thus in 1979 a second civil war (with strong nationalist anti-Vietnamese overtones) commenced. The combatants comprised PRK/SOC forces supported by Vietnam and the Soviet Union on one side and on the other side KR and royalists forces militarily supported by China and politically by the USA, most western capitalist countries, and ASEAN nations. In 1991 a United Nations intervention resulted in a peace settlement known as the Paris Accords and the establishment of the United Nations Transitional Authority in Cambodia (UNTAC).

In 1993 UNTAC oversaw the adoption of the present constitution and implementation of the first free elections. The royalist party (FUNCIPEC) won a majority but, in the hope of preserving a fragile peace between former warring factions, was forced into an inherently unstable governmental alliance (a joint Prime Ministership) with the Cambodian People Party (CPP) led by Hun Sen. This precarious peace was indeed seriously threatened by armed clashes between the CPP and royalist forces in 1997 which led to a significant number of casualties and the end of the co-prime ministership with the defeat of the royalists military capability. After the second elections of 1998, the CPP–FUCINPEC governmental alliance was eventually reinstated, but with a greatly weakened FUNCIPEC. However, this arrangement was accompanied by continued periods of political uncertainty and violence. Remaining pockets of KR resistance ended in 1998, which also coincided with the death of Pol Pot. Efforts to bring to justice the leaders of the KR responsible for the genocide and atrocities of the revolutionary period have been long delayed by a government reluctant to disturb pragmatic arrangements that encouraged defections from the KR. At the time of writing a tribunal (jointly established by the United Nations and the Kingdom of Cambodia and known as Extraordinary Chambers in the Courts of Cambodia) of Cambodian and international jurists has sentenced the former chief of the KR security police for crimes against humanity and is preparing charges against the few remaining ageing leaders of the KR. After four rounds of national elections in 1993, 1998, 2003, and 2008, the CPP has consolidated its dominance over government and its leader and Prime Minister Hun Sen has steadily increased his control over the country.

11.2 Crime Categories and Patterns

Police crime statistics provided by the Ministry of Interior (MoI) distinguish between a "Serious Crime Situation" also referred to as a "Felony" with four categories: Robbery (threat/non-fatal and robbery-murder), Murder (successful and attempted), Terrorism (kidnapping, confinement, grenade attack, organised crimes), and Sexual Offences (rape, rape-murder, human trafficking); and a "Minor Crime Situation" also referred to as a "Misdemeanor" with five categories: Theft (stealing and pickpocketing), Fraud/Breach of Trust, Battery With Injury, Use Of Illegal Weapon, and Others. Human Trafficking, including children, for illegal labour and prostitution in neighbouring countries (e.g. Vietnam and Thailand), is often cited as a serious criminal activity. However, there is a scarcity of empirical research on the extent and dynamics of this illegal trade. In a survey of 18 out of 26 Cambodian prisons, LICADHO (2009) found that the number of people incarcerated for human trafficking was 215 in 2007 and 255 in 2008 and that around 80% were women. A recent study (Keo 2011) confirmed this pattern and revealed that most of these prisoners, particularly women, were poor and uneducated individuals, many of whom had been victims of miscarriages of justice at the hands of a corrupt criminal justice system.

The production, use, and sale of illegal drugs are a criminal offence in Cambodia, although drug use appears to be classified as a misdemeanour and trafficking as a felony. The same types of drugs (e.g. heroin, cocaine, cannabis, methamphetamines, ecstasy, etc.) as in most Western countries have been declared illegal. A recent report by the National Police Commissioner indicates that drug trafficking (heroin and particularly

methamphetamines) is rising and that "… the demand for illegal drugs among youth, students, and other citizens has remarkably increased". The report mentions that in 2006 the quantity of heroin and methamphetamines (ice) trafficked to Cambodia was three times higher than that in 2005. In his January 2007 report, the National Police Commissioner commented that Cambodia had been used as a safe haven for the transit and distribution of illegal drugs from the Golden Triangle to other countries in the regions (NPC 2008).

11.3 Crime Statistics

Trends in violent crimes have followed the typical post-conflict pattern theorised and empirically tested by Archer and Gartner (1976) where homicide rates temporarily increase at the end of armed conflicts and subsequently decline. Table 11.1 presents an overview of the number of crimes recorded by the police between 1998 and 2009. For 2009 the rates per 100,000 per crime categories were the following:

Table 11.1 Crime trends recorded by judicial police 1998–2009

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of recorded crime events												
Murder	793	581	571	407	425	509	511	448	400	393	333	331
Armed robbery	1,822	1,396	1,252	1296[a]	1419[a]	1,175	1,320	868	657	572	466	428
Grenade attack	68	42	39	21	10	23	33	20	17	14	13	11
Rape	130	165	209	218[a]	279[a]	331	281	254	250	238	198	241
Kidnap[b]	130	91	63	51	38	25	7	10	1	10	0	1
Poisons[b]	0	20	31	n/a	n/a	6	n/a	n/a	n/a	n/a	n/a	n/a
Patrimony[c]	n/a	2	4	n/a	n/a	n/a	n/a	3	n/a	n/a	n/a	n/a
Theft	1,871	1,789	1,827	1,854	1,846	1,741	1,503	1,458	1,451	1,183	787	1,097
Assault/ disputes[d]	1,114	1,058	1,130	1,131	1,141	1,301	1,024	1,010	1,218	1,017	830	978
Fraud/ pickpocket[e]	244	246	218	116[f]	202[f]	160[f]	113[f]	104[f]	115[f]	77[f]	60[f]	84[f]
Illegal weapon	n/a	n/a	96	67	76	64	43	43	55	50	40	46
Other offences	905	639	387[g]	381[g]	309[g]	358[g]	161	256[g]	292[g]	187[g]	154[g]	239[g]
All crime	7,077	6,029	5,827	5,542	5,745	5,693	4,996	4,474	4,456	3,732	2,881	3,456
Rate per 100,000	61.9	51.7	49.0	45.7	46.5	45.2	39.0	34.5	34.0	28.2	21.5	25.4
Population (mil.)[h]	11.4	11.7	11.9	12.1	12.4	12.6	12.8	13.0	13.1	13.2	13.4	13.6

Sources: 1998–2007 annual returns MoI Judicial Police Centre
Notes: n/a = not available
[a]Also counts robbery and rape murder
[b]Poisoning and kidnapping are presumed non-fatal
[c]Theft of cultural heritage
[d]Records only injurious assaults
[e]Offences combined in original source
[f]Pickpocketing counted in theft from 2001
[g]Attempt killing is included: 2000 = 51, 2001 = 153, 2002 = 102, 2003 = 87, 2005 = 69, 2006 = 126, 2007 = 100, 2008 = 75, 2009 = 105
[h]Population estimates; 1998: General Census; 2004: Cambodia Inter-Censal Population Survey; 2008: General Census; all other years are derived estimates

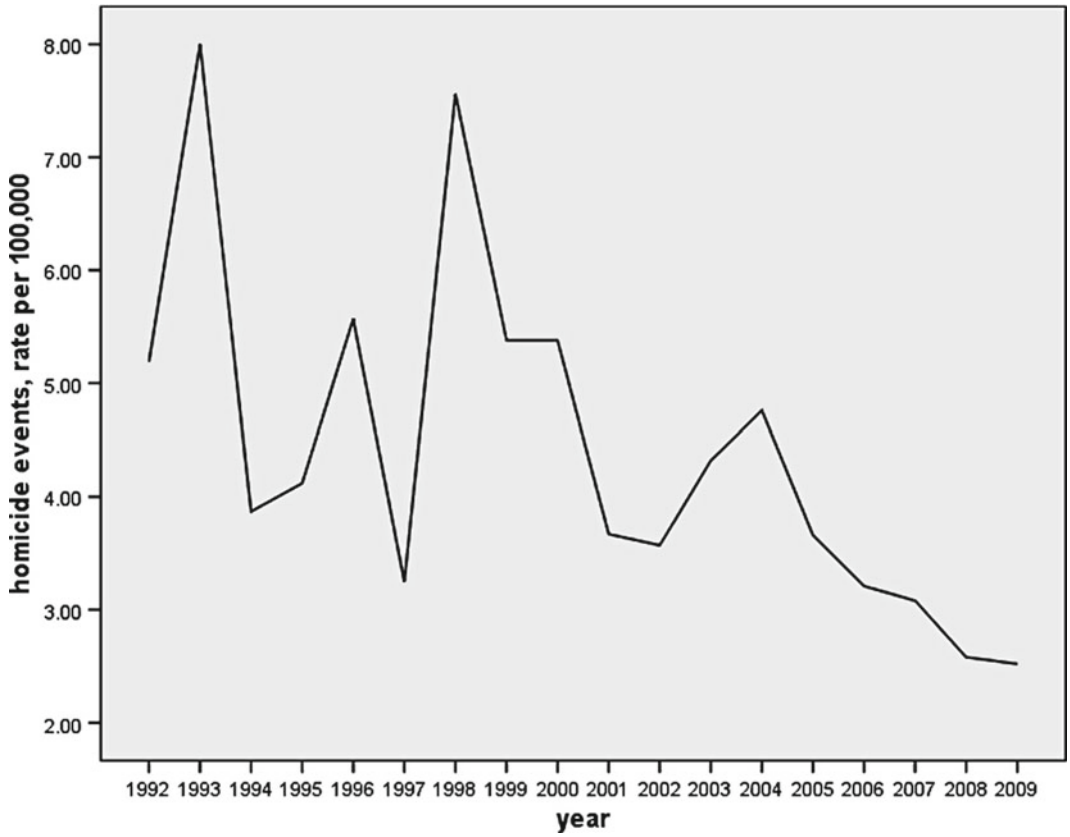

Fig. 11.1 Homicide events 1992–2009 (rates per 100,000 population)

Robbery: 3.15
Robbery-murder: 0.36
Murder: 2.03
Attempted murder: 0.77
Rape: 1.77
Rape-murder: 0.04
Grenade attack (considered lethal): 0.08
Homicide (murder, grenade attacks, robbery-murder, and rape-murder): 2.52
Assault with injury: 7.19
Theft (ordinary theft from the person, of vehicles, and of livestock, and burglary): 8.07
Fraud: 0.62
Other offences: 1.34

While the rates of robbery, including robbery-murder, have declined since 1992, the number of robbery-murders is still relatively high. In rural Cambodia livestock theft is the most prevalent crime and can have dramatic consequences for both the victim(s) (i.e. serious impoverishment) and the offender(s) (i.e. high risk of being killed by villagers if caught in the act). Given that more than 80% of the Cambodian population make a meagre living through farming activities, this crime affects a large number of citizens.

Figure 11.1 presents the trends of homicide rates based on police records from 1992 to 2009. It should be noted that these rates are based on homicide events, not homicide victims, and are therefore lower than the rates that would be calculated on the number of victims, which was not reliably provided by the police until 2008 (in 2008, 333 and in 2009, 331 homicide events resulted, respectively, in 347 and 353 deaths). We also regard the rates of homicide events before 1998, particularly for 1997, which coincided with a *coup d'etat*, as unreliable police records.

At this stage we need to emphasise that in Cambodia there is an enormous dark figure of crime. The two sweeps of United Nations International Crime Victim Survey (UNICVS) revealed that most victims of crime do not report their victimisation to the police, who in addition only record a fraction of the reported offences (Broadhurst 2002, 2006; Broadhurst and Bouhours 2009). For instance, if we compare the rates based on police records in 2005 with the estimated rates based on the UNICVS in Phnom Penh very large differences are observed. Instead of a rate of 29 for non-fatal robbery based on police records a rate of 1,831 per 100,000 is estimated by the UNICVS; for non-fatal rape instead of 0.7 based on police records a rate of 92 per 100,000 is estimated. Again for assault with injury instead of 6.5 per 100,000 based on police records, 1,465 per 100,000 is estimated by the UNICVS; for all theft (including vehicles, livestock, burglary, and pickpocketing) instead of 18.4 per 100,000 based on police records the UNICVS estimated a rate of 33,700 per 100,000, and for fraud instead of 0.62 per 100,000, 25,366 per 100,000. The same order of magnitude in the difference between rates based on police records and the UNICVS was found in Kandal and Kampong Cham in 2000 and 2005–2006.

Although actual crime rates are far higher than the official crime rates, they have dramatically reduced since 1998. Analyses of press reports (Broadhurst and Bouhours 2009), interviews with judicial police (Broadhurst 2002), and hospital data (Wille 2006) confirm the declining trends of the rates of homicide, and the UNICVS sweeps show a significant decrease in both property and violent crime.

11.4 Corruption

Corruption is endemic in Cambodia and affects many government institutions, non-government institutions, and businesses. There have been substantial allegations that corruption within the Judiciary System is rampant (Linton 2006, p. 335). However, street-level corruption by officials has abated since 2000. For instance, two sweeps of the UNICVS conducted in three provinces in 2000/2001 and 2006/2007 showed that the estimated rates of rent-seeking by officials had reduced from 27.8 to 18.2% in Phnom Penh, and from 15.6 to 12.9% in Kampong Cham. In the third province, Kandal, the rates (18.3%) had not changed. The actual experience of corruption had also decreased in respect to police (except in Kandal). In Phnom Penh, the proportion of victims of police corruption reduced from 10.1% in 2000 to 5.7% in 2005 and represented 31.2% of all victims of corruption compared to 36.5% in 2000. In Kampong Cham the proportion reduced from 4.5% in 2000 to 2.5% in 2006 and represented 20.2% of all victims of corruption compared to 29.1% in 2000. In Kandal, however, the experience of corruption by police officers had increased from 3.5% in 2000 to 4.4% in 2005 and represented 24.1% of all victims of corruption compared to 18.9% in 2000. In the three provinces the most frequently cited offenders by victims of corruption both in the first and second sweeps were elected commune officials (Broadhurst and Bouhours 2009). It is more difficult to estimate the extent of corruption by the elites, but it is clear that many high-ranking government officials have amassed fortunes unrelated to their legitimate salaries.

Commercial fraud affecting ordinary consumers is still widespread, although the rates have significantly declined between 2000 and 2006, from 39.6 to 25.4% in Phnom Penh, 31.8 to 18.7% in Kandal, and 29.8 to 22.0% in Kampong Cham (Broadhurst and Bouhours 2009).

11.5 Regional Crime Patterns

As mentioned earlier, the UNICVS shows that livestock theft is the most prevalent crime in rural areas. In 2001, in two of the surveyed rural provinces, Kampong Chhnang and Kampong Speu, the 1-year prevalence rates of livestock theft were close to 35% and reached 25% in Kampong Cham. In 2006, the rate had declined to 11% in Kampong Cham, but was still one of the highest rates apart from fraud and corruption (Kampong Chhnang and Kampong Speu were not surveyed

in 2006). On the other hand, police statistics show that rates of homicide tend to be higher in many rural areas compared to the capital Phnom Penh.

Until 2005, the rate of robbery was significantly higher in the capital Phnom Penh than in other provinces. For instance, of all the robberies recorded nationally by the police over 7 years (1996–1999 and 2001, 2003, 2005) a third occurred in Phnom Penh whose population during the same period was only about 9.5% of the national population (hence an average rate of 33.16 per 100,000). However, in 2006 the number of robberies (including robbery-murders) recorded in Phnom Penh by the police had significantly declined to reach a rate of only 14.79 per 100,000, which was lower than the rates in a few semi-rural and rural provinces (Sihanoukville, Kong Kep, and Pailin). The UNICVS also revealed that, although reduced, the prevalence of robberies as well as "street-level" fraud and corruption was higher in Phnom Penh than in Kandal and Kampong Cham. UNICVS (but not police statistics) showed higher rates of burglary in Phnom Penh, and both police statistics and UNICVS showed higher rates of pickpocketing in Phnom Penh than in rural areas.

11.6 The Legal System

Before the French Protectorate the Cambodian legal system was essentially a customary law system with widespread use of mediation and reparation to settle local disputes and crime (Forest 1979). During the Protectorate an official legal system patterned after the laws and courts of France was imposed (hence inquisitorial in relation to the criminal law), but many cases continued to be dealt by informal customary practices (Forest 1979). After the protectorate until 1975, the official legal system and informal practices in use during the Protectorate were maintained. The Khmer Rouge regime of terror (1975–1979) destroyed the legal system, judicial officials were murdered, and traditional informal mediation practices were undermined. During the PRK/SOC regime (1979–1991) a soviet-style legal system was imported from Vietnam and staffed according to political allegiance rather than expertise in the field of law and criminal justice. Many police were trained in Vietnam and Russia, and focused mostly on internal security and intelligence rather than on law and order and crime control (Gottesman 2003). Regarded as a security agency of the government with minimal commitment to civilian peacekeeping, the police and the whole Criminal Justice System (CJS) had a very low standing in the community. Recourse to the formal justice system was rare as people continued to use traditional mediation and resolution to deal with crimes and conflicts at the commune and village level. While a court system, styled as People Revolutionary Courts, had been re-established in May 1980, and formalised by the enactment of the constitution of June 1981, judges and prosecutors were generally unqualified, poorly educated, and subject to military control (AusAID 2001). There was no independent appellate body. Any review of verdicts and sentences pronounced by the courts was thus in the hands of the executive branch. Further developments, such as the enactment of the Law Concerning the Organisation of the Courts and Prosecutors and the establishment of the Institute of Public Administration and Law (IPAL) in 1982, the People's Supreme Court in 1985, or even the new SOC constitution in 1989, did not bring any significant changes to the system and its standing in the community.

Since the Paris Accords in 1991, the official system has remained inquisitorial and is primarily based on a civil law mixture of French-influenced codes from the period of UNTAC, royal decrees, and acts of the legislature, with influences of customary law and remnants of communist legal theory. However, most cases continue to be dealt with informally at the village or commune level.

11.7 The Criminal Justice System

In addition to a new constitution, 2007 saw the passage of the Law on Criminal Procedure, which defines the roles and functions of the police, courts, and prisons. Agencies in the Cambodian CJS include the MoI, the National Police

Department, the Gendarmerie Militaire, and the Department of Prisons. The Ministry of Justice (MoJ) is responsible for the court system, and the Supreme Council of Magistracy for the management of judges and prosecutors.

Some international donors such as the Australian Government (AusAID) have focused their aid on rebuilding a legitimate Cambodian CJS with long-term programs such as the Cambodian Criminal Justice Assistance Project (CCJAP). However, in spite of ongoing assistance many Cambodian people continue to regard the current CJS as having little legitimacy, because in the three branches of the system (police, judiciary, and corrections) regime capture (lack of independence) and corruption are endemic.

11.8 Role of Police

The Cambodian Police comprises the Gendarmerie and the Cambodian National Police (CNP). The Gendarmerie is primarily a military police force and does not have the rural policing function that it generally plays in France and francophone countries. However, in their 2007 report, CCJAP (AusAID 2007a, b) noted the overlapping of functions between the CNP and the Gendarmerie: the latter has become increasingly visible deploying to district level in rural areas as well as in towns and cities, performing "national security" roles. The new Criminal Procedure Law provides the Gendarmerie with the same powers of arrest held by the Judicial Police (AusAID 2007a, b) although such powers have long been exercised by them under the general provision for arrest in the UNTAC penal code.

The structure of the CNP includes a number of central departments such as Traffic, Means, Training, Scientific and Technical, Human Trafficking and Child Protection, Public Order Police, Border Police, Security Police, and Judicial Police. In all Provinces the CNP structure is replicated at the various administrative strata down to the commune level (Police Post). However, Provincial Commissioners must comply with the national policies and procedures laid down by the MoI, which is responsible for salaries and operating expenses, but take direction from the Deputy Governor (who, in theory but rarely in practice, is responsible for infrastructure and other resources) about provincial policing priorities.

The role of the Judicial Police and its Central Department of Criminal Police is similar to the role performed by policing agencies in many other countries (i.e. mediation, complaint handling, investigation, and arrests). One of the functions of the Scientific and Technical Office, under the control of the Judicial Police, is to record and classify reported crimes, as well as offenders and fingerprints. According to the law, Judicial Police can also act as prosecutors and are often appointed to conduct investigations, but in this role they have limited powers of arrest and must seek authority from a prosecutor. As in most inquisitorial systems, the investigating judge appointed to the case can conduct further inquiries.

However, CCJAP (AusAID 2007a, b) points out that poor training of the police force and the judiciary often prevents the proper application of and compliance with the laws of Cambodia. For instance, many police interrogations end up in confessions with little supporting evidence. As part of its regular monitoring of prison conditions in Cambodia, the Cambodian League for The Promotion and Defense of Human Rights [LICADHO] (2007) conducted interviews with prisoners in 18 prisons, and found that from 1999 to 2006 between 450 and 163 inmates had been tortured in police custody. However, it is worth noting that in 1999 reports of torture in police custody represented 13.7% of the population of the surveyed prisons but that they have steadily fallen to represent only 2.1% in 2006, 1.3% in 2007, and 0.7% in 2008.

Other problems, affecting the CNP in general and the Judicial Police in particular, reported by CCJAP (AusAID 2007a, b) are poor management and supervision, and lack of strategic planning and equipment. According to CCJAP (AusAID 2007a, b), the creation of the Offices of Human Trafficking and Child Protection under the responsibility of the Judicial Police is a positive response, but its effectiveness is impaired by a "lack of proper definition of function, staffing

requirements, training requirements, and a plan for how these Offices will actually function".

Decades of conflicts have resulted in an overstaffed National Police Department, which was used to absorb demobilised military personnel with little sense of their civilian mission and the provision of services to the community. This contributes to a widespread feeling of mistrust, reflected for instance in the very low reporting rates of criminal victimisation to the police (Broadhurst and Bouhours 2009). Given the level of corruption in the police (Calavan et al. 2004) and in most other institutions, there is also cynicism about impartiality and fair treatment by such agencies. For instance, it is not rare for the judicial police to seek between 20 and 50% of the cost of a stolen motorbike up front before they begin an investigation (AusAID 2007a, b). While "street-level" police corruption of this kind has generally decreased between 2000 and 2007, in many locations public cynicism about police corruption has grown despite reductions in its incidence (Broadhurst and Bouhours 2009).

It is difficult to obtain reliable information about the number of CNP in Cambodia. CCJAP (AusAID 2001) estimated more than 65,000 police in 1996 and 64,000 in 2001. There was a national plan to reduce the 1996 staffing by 24,000 in five years, but by 2000 the number appears to have reduced by only 11,630. In 2001, the Judicial Police had between 8,000 and 9,000 officers, but only 800 were female. More recent estimations (2007) put the CNP number at 70,000. Yet, a report by the National Police Commissioner (January 2009) indicated that the total number of the national law enforcement officers as of December 2008 was 55,277 (2,325 females), of which 41,015 (1,428 females) were based in 24 municipal/provincial police commissariats (NPC 2009).

11.9 Courts and Procedure

There are 22 courts in Cambodia, one in each province and one in each of the two municipalities (Phnom Penh and Sihanoukville). There is also one Appeal Court and one Supreme Court both located in Phnom Penh. CCJAP (AusAID 2001) reported that in January 1999, a total of 89 judges, 47 prosecutors, 368 court clerks, and 233 other officials were attached to these courts. The most recent statistics from the Council of Justice Ministry (CJM) shows that as of May 2006, there were 167 judges (22 females) and 72 prosecutors (one female) (CJM 2006).

Before 2001, little training was available for the magistracy and court clerks; apart from the legacy of "socialist justice" uncoordinated and inadequate programs were provided by some NGOs. Training courses for judges and prosecutors before or after appointment were virtually non-existent. While some judges had received university education very few were legally qualified, including the majority of provincial courts presidents and prosecutors. Even the President of the Appeal Court was not a qualified lawyer; the only exception was the President of the Supreme Court, the highest court in Cambodia. There have also been changes in a number of Supreme Court judges, increases in the pay of judges, improved training, and further oversight of judges by the Council of Magistrates.

11.9.1 Juvenile Justice

There are no separate courts for juveniles in the Cambodian CJS and juvenile cases are processed and eventually heard in provincial courts in the same way as adults. The law, however, requires that penalties for juveniles be half of those for adults and prohibits the detention of minors less than 13 years old, two rules which according to LICADHO (2007) the judges normally apply. Despite the absence of juvenile courts and separate prisons, no specialist training in relation to the treatment of juveniles as victims, witnesses, or offenders is provided to officials in the court system. As there are no alternatives to imprisonment for minors, in 2008 the latter represented 6.3% of the prison population, a rate that has steadily increased since 1999 (3.3%). The same prison rules (e.g. recreation time) apply for adults and juveniles and no schooling is provided.

11.9.2 Rights of the Accused

Although the principle of presumption of innocence is enshrined in the Cambodian constitution, the way the inquisitorial system is practiced in Cambodia mostly insures that a person is presumed guilty by the time he/she appears before the court. Guilt or innocence tends to be determined during a pre-trial stage, which takes place before prosecutors whose enquiries are not open to the public. The Law on Criminal Procedure does specify a number of basic rights for the accused, such as the right to be informed of the imputed criminal act, the right to answer or not to answer the investigating judge without the assistance of a lawyer or a defender chosen by the accused, the right to communicate privately with defenders, and the right to appeal a court decision. However, there is no provision for the right to remain silent and to have an attorney present during police interrogations. There is no trial by jury in Cambodia, or a right to plead guilty to a lesser offence. As for a speedy trial, it is not a right provided to the accused but a provision of the Law on Criminal Procedure allowing the prosecutor to send an accused direct to trial (i.e. without relying on the work of the investigating judge) when the offence is a misdemeanour incurring a penalty of no more than a year imprisonment, or a misdemeanour incurring more than a year imprisonment in the case of "flagrante delicto" (i.e. when the accused was caught red-handed in the act). Whilst article 21 (1) of the UNTAC code stipulates that children under the age of 13 must not be placed in detention, there is no age of criminal responsibility in Cambodia.

Because the CJS and the legal profession were decimated during the Khmer Rouges dictatorship there is a scarcity of trained and competent lawyers in Cambodia. In theory, and according to the Law on Criminal Procedure, from the moment s/he is charged with an offence, an accused person has the right to be assisted by a lawyer or a "defender" at every stage of the legal procedure. Article 76 of the Law on Criminal Procedure stipulates that the automatic appointment of a lawyer shall be made by the presiding judge (other provisions mention the investigating judge rather than the presiding judge) in the following cases:

- The victim is a minor without defence.
- The accused person is a minor without defence.
- The accused person is mute, deaf, blind, or has a mental disorder.
- The accused person is not able to afford a defender.

Funded by the US donors, the Cambodian Defenders Project (CDP) was set up in the mid 1990s to train a group of defenders whose role was to represent those accused of crimes in the court. They formed themselves into an organisation that now provides legal aid from offices in Phnom Penh and a number of provincial towns. In 2001 it comprised 30 lawyers, 30 supporting staff, and 17 law interns. According to CCJAP (AusAID 2001), defenders were sometimes regarded with suspicion by judges, prosecutors, and court clerks and even forbidden to appear; however, as trained lawyers they raised the standard of court procedures. Yet, CCJAP (AusAID 2001) reported that despite being paid decent salaries, "some of them have succumbed to the pervading corruption found in the court system". Legal Aid of Cambodia (LAC) was set up shortly after the establishment of the CDP as the latter split into two distinct groups. Funded by several European assistance projects, in 2001 LAC had offices in Phnom Penh and nine provinces and was staffed by 18 lawyers and 18 legal assistants.

In addition to the CDP and LAC, in 1995 a statute established the Cambodian Bar Association and stipulated that only members of the association could practice law in Cambodia. The association, which in 2000 had 216 members, includes lawyers in private practice and those in the legal aid/defender bodies. Although generally not offering legal services, a number of NGOs specialised in justice issues (e.g. Cambodian League for The Promotion and Defense of Human Rights [aka LICADHO], Cambodian Human Rights And Development Association [aka ADHOC], Cambodian Law and Democracy Project, Cambodian Legal Resources Development Center, Cambodian

Women's Crisis Center) provide training and advice to CJS personnel and advocate on behalf of the rights of victims and accused persons.

11.9.3 Prosecution and Case Investigation

Because of the legacy of the French protectorate, particularly in relation to the inquisitorial nature of the criminal justice procedure, there are a number of similarities between the prosecution of criminal cases in France and Cambodia. A notable similarity is the extensive role of the *"juge d'instruction"* (investigating judge). Two distinct, yet closely collaborating, groups therefore conduct the prosecution and investigation of a criminal case: prosecutors and investigating judges. Each province has a public prosecutor department whose role is to supervise the case brought by the judicial police. In principle, the usual route for the prosecution, investigation, and adjudication of a criminal case starts with the judiciary police. The latter receive denunciations or complaints relating to crimes, misdemeanours, and minor offences, gather evidence, may decide on the detention of suspects for a maximum of 48 h, and then make reports to the prosecutor of the competent jurisdiction. Then the duty of the prosecutor is to immediately open a judicial inquiry, that is, to make a charge called "introductory requisition", which indicates the offence in accordance with the law, and, unless it is a flagrante delicto offence (in that case prosecutors can proceed with the investigation by themselves), send it to the investigating judge. According to Article 38 of the Law on Criminal Procedure, there is at least one judge responsible for investigating criminal cases in each provincial court. Investigating judges are given extensive powers in order to conduct their inquiry. They may reach different conclusions as to the charge laid by the prosecutor and must therefore maintain a close communication with the latter. When both the investigating judge and the prosecutor are satisfied that there is a case to answer, the prosecutor refers the case to the competent provincial or municipal "criminal tribunal". In principle there is an absolute incompatibility of office between a trial judge and a representative of the prosecution department or the investigating judge.

11.9.4 Alternatives and Outcomes of Prosecution

Due to customary traditions and a profound distrust of the corrupt and costly official judicial system, most victims do not report crimes to the police but to village and communes chiefs. However, village and commune chiefs only play an informal role in conflict mediation geared towards reparation and compensation rather than a formal prosecuting or investigating function.

Apart from this informal system, which appears to process and "solve" many cases, there are no formal alternatives to going to trial, and the official system does not include provisions such as plea-bargaining or any kind of medical or other types of supervised or unsupervised treatment.

The majority of criminal cases, apart from the most serious ones, are therefore "resolved" through the informal system. Serious cases go to trial, in principle following the procedure mentioned above (in practice, due to lack of proper training and corruption, many aspects of this procedure are not observed). There is no trial by jury; after hearing the prosecution and the defence, the presiding judge (or trial judge) decides on guilt or innocence and, if the accused is judged guilty, decides the penalty to be imposed.

Incarceration before or awaiting trial is allowed and regulated by the UNTAC Criminal Code. Article 14 (4) stipulates that time held in detention without trial should be no more than four months, which can be extended to 6 months by a judge with appropriate reasons given. Article 21 (1) specifies that accused persons must be tried no later than 6 months after arrest and that children under the age of 13 must not be placed in detention, and for children between the ages of 13 and 18 no more than one month, which can be doubled if the child is charged with felony. However, CCJAP (AusAID 2001) reported that very often the courts do not comply with these rules and that many accused persons were kept in detention before trial for longer periods than required by law.

Although improvements in judicial training have occurred, examples of poor procedure and oversight of police continue. Despite prohibitions under the constitution and procedural law, a widespread problem is the acceptance of dubiously obtained confessions extracted from suspects under duress by police. The Constitution prohibits the extraction of involuntary confession in Article 38 (1993) and Article 321. A study that monitored criminal cases between April and June 2007 showed that 124 of 426 defendants complained that they had been coerced into a confession: 100 of the 124 were convicted. Police officers also misused the permitted 48-h detention period in police custody to extort confessions. In most cases, defendants alleged that they were beaten or threatened or promised release in exchange for a confession. During the hearing, judges seldom fully considered defendants' allegations of coercion or the legality of the confession (The Center for Social Development 2007, p. 7).

11.10 Punishment

Officially, degrading treatments such as corporal and public punishment are not allowed in Cambodia. Fines and prison are the most common types of punishments imposed by the courts. According to CCJAP (AusAID 2007a, b), there is a lack of alternatives to imprisonment. Non-custodial sentences are limited to fines, suspended sentences, and conditional release. There are no legal provisions for community work orders, supervised probation, and parole systems (APCCA 2007). The courts can also impose reparations and compensation, but their greatest use probably occurs in the informal system.

11.10.1 Punishment for Serious Crime

11.10.1.1 Murder

Capital punishment has been abolished in Cambodia since 1989 and no legal executions have taken place since then. Nevertheless, the law imposes heavy penalties of imprisonment for serious crime. Limited details about the length of prison sentences are provided by the MoI. Article 31 of the Criminal Code stipulates imprisonment for a term of 10–20 years for murder.

11.10.1.2 Rape

Article 33 specifies a prison sentence of 5–10 years, which cannot be suspended (but can, under article 68, be reduced by half for offenders under 18). However, according to LICADHO (O'Connell 2001, p.49) judges often apply the law "incorrectly and inconsistently, giving convicted rapists suspended sentences when the law prohibits it".

11.10.1.3 Theft, Burglary, and Robbery

The Criminal Code classifies burglary as robbery. Article 34 stipulates a prison term of 6 months to 5 years for theft depending on the circumstances: for robbery a prison term of 3–10 years that varies according to the amount of force or weapon used.

11.10.1.4 Drug Trafficking

According to Article 98, personal consumption, and production for the unique purpose of personal consumption, of any of the prohibited drugs is punished by a fine ranging from US$25 to US$250. Article 36 stipulates that the offence of selling or providing any of these drugs to a person for his/her personal consumption "shall be punished to imprisonment from 1 month to 1 year and with a fine from 1,000,000 (about US$ 250) to 5,000,000 Riels (about US$ 1,250) or one of the two penalties". Article 86 provides a more severe penalty of one year to five years in prison and with a fine of about US$2,470 if the drugs are made available to minors. Any other drug offences for the eventual intentional purpose of trafficking incur a penalty from five to twenty years imprisonment with fines up to 50,000,000 Riels (about US$12,500). Long prison terms and heavy fines are therefore prescribed by the criminal code and it seems that these long prison sentences are indeed often inflicted. Travel advisories of various foreign governments warn travellers of the severe prison sentences for drug trafficking.

11.11 Prisons

Table 11.2 presents the trends in prison population between 1995 and 2008. During the last 14 years the estimated rates of imprisonment have escalated significantly from 24.2 to 83.6 per 100,000. The estimated proportions of female prisoners have ranged between 4.7% in 1995 and 6.4% in 2006 of the prison population (about 5.6% in 2008). As reported earlier, between 1999 and 2008, the proportions of incarcerated juveniles have risen from 3.3% to 6.3% of the prison population. The number of institutional staff which was 1,122 in 1995 has only increased to 1,661 in 2008. The ratio staff/inmate has therefore declined from 1/2.2 to 1/6.7.

In 2008, 26 prisons (3 national and 23 provincial/municipal prisons) operated in Cambodia, with a capacity ranging from 100 to over 1,200 detainees (LICADHO 2009). The Department of Prisons' headquarters is located in the MoI in Phnom Penh. Two of the national prisons, CCI and CCII, are situated 12 km (7.5 miles) from Phnom Penh, and CCIII near the Vietnamese border. Most Cambodian prisons are overcrowded. In its survey of 18 prisons, LICADHO (2007) reported a housing capacity for 6,410 prisoners, but in 2004 these prisons in average operated at 123% and in 2006 at 138% of their capacity. In CCI, which is considered to be one of the better prisons compared to provincial facilities, between 22 and 25 men may share a cell that is about 64 square metres (688.90 square feet). Since 1999, CCII houses only female and juvenile prisoners. In 2006, 256 females and 285 juveniles as well as 14 babies and infants living with their mothers in prison were incarcerated at CCII (operating at 155% of its capacity). CCII is the only facility of this sort in Cambodia. All the other prisons, apart from the all-adult male CCI, house both male and female prisoners in more or less well-separated quarters.

Table 11.2 Prison population and institutional staff, 1995–2008

Year	Total adult population[a]	Female[a]		Male[a]		Adult in remand[a]		Juveniles, *N*[b]	Total institutional staff, *N*[a]
		N	%	*N*	%	*N*	%		
1995	2,490	117	4.7	2,373	95.3	969	38.9	n/a	1,122
1996	2,826	141	5.0	2,685	95.0	971	34.4	n/a	1,122
1997	2,909	160	5.5	2,749	94.5	975	33.5	n/a	1,051
1998	3,233	203	6.3	3,030	93.7	1,170	36.2	n/a	n/a
1999	3,832	219	5.7	3,613	94.3	1,380	36.0	128	1,105
2000	5,502	288	5.2	5,214	94.8	1,967	35.8	205	1,124
2001	6,179	293	4.7	5,886	95.3	1,910	30.9	223	1,431
2002	6,128	322	5.3	5,806	94.7	2,124	34.7	273	1,700
2003	6,346	320	5.0	6,026	95.0	1,933	30.5	292	1,350
2004	6,778	348	5.1	6,430	94.9	2,124	31.3	328	n/a
2005	8,160	500	6.1	7,660	93.9	2,434	29.8	447	1,689
2006	8,383[c]	536[c]	6.4[c]	7,847[c]	93.6[c]	2,561[d]	30.5	452	n/a
2007	10,337	577	5.6	9,760	94.4	3,741	36.2	622	1,561
2008	11,207	633	5.6	10,574	94.4	3,043	27.2	703	1,661

[a]Adult prison populations and institutional staff obtained from the annual reports of the Asian and Pacific Conference of Correctional Administrators (APCCA) available at www.apcca.org/publications.html. These data are the closest to official statistics because the Cambodian Director of Prisons Department, MOI, usually attends the conference and provides prison statistics

[b]Includes detainees under 18 years in 18 prisons monitored by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) (LICADHO 2007, 2009)

[c]Cambodia did not attend the APCCA in 2006. These figures are from 18 prisons monitored by LICADHO (2007)

[d]This figure is for 18 prisons monitored by LICADHO (2010)

In addition to overcrowding, health problems are frequent in Cambodian prisons. The Prisons Department is allocated only 1,500 riels (USD 0.38) per prisoner per day to cover the cost of not only feeding the prisoners but also transportation, sanitation, cooking fuel, water, electricity, and administration. According to LICADHO (2007), the daily nutritional requirements stipulated in article 4.1 of Prison Procedure would cost, even using the lowest quality ingredients, at least 1,700 Riels in the Phnom Penh Market. Because of widespread corruption in the prison system, inmates with enough money can purchase nutritious meals while many others are malnourished and suffer from poor health. The number of deaths in the prisons monitored by LICADHO (2007) varied from 43 in 2002 to 100 in 2005, that is, between 0.7 and 1.2% of the prison population. Since 2005, deaths in custody have declined from 69 in 2006, 57 in 2007, to 39 in 2008 (from 0.76 to 0.37% of the prison population). The highest rates of death in custody occurred in provincial facilities. Prison escapes are common. In its survey, LICADHO (2007) reported 72 escapees in 2005 and 53 in 2006 (respectively, 0.87 and 0.60% of the population of the 18 surveyed prisons). Most of them involved group escapes. In 2005 and 2006, respectively, 25 and 23% of these escapees were killed during their attempts, and only 31 and 45% were recaptured (i.e. 44% in 2005 and 32% in 2006 were successful escapes).

Correction Center I (CCI) is a new prison, one of the only three prisons under the direct management of the General Department of Prisons, and the largest correctional facility in Cambodia with a capacity for 1,500 prisoners. Built on 10 ha CC1 houses only adult male prisoners. Like most Cambodian prisons, CCI is overcrowded and in 2006, with 2,132 inmates, it operated at 142% of its maximum capacity and employed more than 150 staff (LICADHO 2007). Although security in CCI is exceptionally tight, in June 2006 a group of 12 prisoners managed to escape and only one of them was recaptured. The number of deaths in custody was 17 in 2002, 13 in 2003, 22 in 2004 (1.4% of CCI population), 18 in 2005, 11 in 2007, and 6 in 2008 (in 2006, CCI did not provide information on prison deaths to LICADHO).

The prison employs an administrative system that centralises all decisions in the hand of the wardens. Officially, family visits are on every Saturday and public holidays from 7:30 am to 10:30 am and 2:00 pm to 4:00 pm. While Prison Procedure (No 8, Article 4.1 [n]) "… expressly forbids the collection of goods or money from visitors by any prison official for the privilege of visiting a prisoner" and stipulates that "all prisoners have the right to receive visits from families or friends for at least one hour each week at times designated in the prison rules by the prison chief", in CCI the no-fee rule seems to be respected only during official family visit days. Thanks to corruption it is possible to visit prisoners any day but visitors have to pay a fee of at least 5,000R ($USD1.25). The places where the visits occur and the privileges accorded during the visits also depend on the amount of bribes visitors are willing or can afford to pay. No payment is required if the visit happens via a phone in a room where visitors and prisoners are separated by glass and iron bars. In another room, where they are only separated by iron bars and can touch each other, a payment of between 10,000R ($USD2.5) and 40,000R ($USD10) is necessary.[1] A "gold-class" visit area, away from the inner core of the prison where cells are located, allows visitors and prisoners to sit together on a concrete lounge, but for this privilege visitors have to pay a minimum of $USD10. Unlike many other Cambodian prisons, and despite a level of overcrowding that often results in more than 20 inmates having to share a 64 square meters cell, CCI only allows prisoners to go out of their cells for a short period of time once a week or fortnight. However, prisoners who can bribe officials are allowed to leave their cells everyday for a long period of time to do work around the interior compound.

In 2001, CCJAP (AusAID 2001) mentioned plans to assist in the development of vocational

[1] Many Cambodian workers such as constructions workers, school teachers, and police officers earn less than USD2 a day.

training, literacy, and numeracy programs for detainees. Some of these programs may have been implemented in the prison located in the site where CCJAP has focused its attention, but in the main, as reported in 2003 by the 23rd Asian and Pacific Conference of Correctional Administrators "[n]o formalised programs exist within prisons for the rehabilitation of prisoners to return to society at the end of their sentence". Between November and December 2007, one of the co-authors visited seven major Cambodian prisons and found that most of them did not have workshops, and when they did, these workshops were small and did not provide any significant skills, mainly sewing for females, and carpentry and gardening for males. While generally inmates are not officially required to work, an informal trade system exists where there are many jobs that can be done by prisoners for prison staff or other prisoners in exchange of money, food, or privileges.

Two other privileges include prison transfer and reduction of prison terms. An official reason for prisoners requesting a prison transfer is to be close to their homeland and make family visits more convenient. Because prison conditions, such as building environment and rules, vary greatly in Cambodia, unofficial reasons would include moving to a better facility. The transfer process requires approval from the heads of the relevant prisons and the General Director of the Prison Directorate. The payment of bribes would expedite this process.

Normally, each prison has a committee chaired by the warden, which monitors and reviews prisoners' behaviour and performance and can propose a sentence reduction or abolition. By law, the committee must submit such request to the king. For prisoners sentenced up to a year maximum the request can be made after half the sentence has been served, and for those sentenced to more than a year, after at least two-thirds has been served. This privilege provides ample opportunities for corrupt conduct, as members of prison committees, especially wardens, can make significant income from relatively wealthy prisoners who in exchange would be proposed for a sentence reduction. Many more "unofficial" privileges in relation to cell allocation, treatment by prison guards, food rations, relative freedom within the prison, recreation, opportunity to make money, and sex are available for those who can pay their way in the corrupt prison system. A prisoner transfer agreement was signed with Australia in October 2006. At the same date no such agreement existed with the UK. The Cambodian Government also signed an extradition agreement with Thailand in 1999, China in 2000, and Laos in 2005.

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Crime and Criminal Justice in Hong Kong

12

Yuet Wah Cheung and Nicole W.T. Cheung

12.1 Introduction

This chapter is a brief introduction of crime and criminal justice in Hong Kong. Since the 1960s, Hong Kong has experienced fast economic growth and modernization, earning the international acclaim of "the Pearl of the East." The availability of both cheap labour and industrial entrepreneurs, who mostly migrated from mainland China to Hong Kong before the Communist takeover in 1949, had brought about the success of Hong Kong as an export processing zone in the 1960s and 1970s. As China began its economic reform in the 1980s, many of the manufacturing industries in Hong Kong were attracted to move to the mainland, where labour cost and the infrastructure of production were a lot cheaper. There was the need for Hong Kong's economy to transform itself by developing its finance and service sectors. Since the 1980s, Hong Kong has established itself to be one of the most important financial centres in the world.

The world has been watching not only Hong Kong's economic success. How its political landscape might change after the handover on July 1, 1997, had started to become an international focus back in the 1980s. After over a century of colonial rule by the British, Hong Kong's social and political institutions are very different from those in mainland China. Whether China would keep its promise that Hong Kong would remain unchanged in all aspects for 50 years was anyone's guess. Now that 15 years have passed since the return of sovereignty, many people are still debating whether Hong Kong has been able to enjoy a truly free hand in managing its own affairs, or has been subject to China's covert or overt control.

Against this background, an interesting social issue to examine is crime and criminal justice in Hong Kong. Developed on the basis of the common law of the British, the criminal justice system in Hong Kong is perhaps one of the best indicators of the degree of autonomy that Hong Kong can exercise in the post-1997 period. In this paper, we give an overview of the criminal justice system in Hong Kong established since colonial administration, and briefly discuss the challenges in the post-1997 period.

Equally important in the discussion of crime and criminal justice in a society is the issue of measurement of crime. Since crimes feed themselves to the criminal justice system, the amount and characteristics of crime affect the work of the system. Thus, in this paper, we first discuss how crime information is collected by the major components of the criminal justice system in Hong Kong. Crime statistics of criminal justice departments are official crime data. We also describe some of the unofficial sources of crime data, as unofficial statistics are complementary to official

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statistics in portraying the crime situation in society. After this section, we describe the major features of the criminal justice system in Hong Kong, and discuss its changes since 1997 and the new challenges ahead.

12.2 Counting Crime Officially and Unofficially

Crime is perhaps the most elusive phenomenon in society. It is very much an integral part of the society that we live in. At varying degrees, crime and victimization are part of the daily lives of most citizens. The very presence of law enforcement, judiciary, and correctional departments is a commitment of our society to combating and preventing crime. In most media, crime appears as the most persistent content of daily reports and commentaries. Although crime and its societal reactions are everywhere, we do not actually have clear and simple answers to these questions: How much crime is there in society? What are the major types of crime? How serious is the crime problem? How has the pattern of crime changed over time? There seems to be no shortage of information about crime in society, since it is abundant in personal accounts, criminal justice departments, and media reports. However, how accurate are the various sources of information about crime in representing the actual amount of crime in society? Moreover, despite the plurality of information about crime, how the public perceive the crime problem is shaped mainly by the selective reporting of crime in the media. The "fear of crime," as criminologists have demonstrated, is a dominant trait of the public perception of crime, and it persists regardless of the actual extent of crime and its vicissitudes in society (Garofalo 1979).

If the public perception of crime is not an accurate barometer of the actual extent of crime in society, the crime situation must be understood by making reference to sources of systematically collected data on crime. Broadly speaking, crime data can be divided into two types, with regard to the nature of the organization that collects the data. Official crime data are data collected by criminal justice and related departments of the government, which include the Hong Kong Police Force, the Independent Commission Against Corruption (ICAC), Customs and Excise Department, the judiciary, and the Correctional Services Department. Law enforcement departments, especially the police, are at the forefront of handling crime, and hence their records contain rich records of different kinds of offences in society. One of the major drawbacks of official statistics is that they would miss offenders, and the crimes they commit, that are not brought to the attention of law enforcement agencies. Many crimes are not reported to the police, and this "dark figure" (Coleman and Moynihan 1996) has a lot to do with factors such as the willingness of citizens to report crime to the police, and the size of the police manpower (O'Brien 1996).

Unofficial crime data are data collected by non-government organizations, such as private security firms, social service agencies, and academic/research institutions. Compared with police statistics, which are comprehensive data covering many different kinds of offence, unofficial crime data are usually collected for special purposes. For example, private security firms collect information on incidents of break-in and damage to property. Voluntary drug treatment agencies have information on drug abusers and their patterns of drug use.

Academic or professional researchers study crimes and criminals according to their research interests or those of respective institutions. Many of the studies conducted by these researchers are in the form of surveys, involving either households or a specific sector of the population (e.g. secondary school students). Due to the sensitive nature of topics on crime and deviance, the self-report method using a standardized and anonymous questionnaire is commonly used in the data collection of surveys. The anonymity of this method can facilitate more reliable answers of respondents filling out the questionnaire. However, this method can only collect data pertaining to milder and more trivial forms of deviance rather than serious crimes (Livingston 1992, pp. 102–103).

As there are both strengths and weaknesses with official and unofficial crime data, the two types of data should be considered as complementary to each other rather than mutually exclusive. Since each of them uses a different approach to counting crime, no single source of data can give us a comprehensive picture of the crime situation in society. The more sources of data we use, the fuller will be the picture we can get. We now examine major examples of official and unofficial crime data.

12.2.1 Official Crime Data

Sources of official data described in this chapter include criminal justice units of the government, namely, the Hong Kong Police Force, ICAC, Customs and Excise Department, Judiciary, and Correctional Services Department. Over the years, the government has also conducted several victimization surveys. In addition, due to the growing public concern over increasing incidence of family violence since the late 1990s, the Social Welfare Department has established the Child Protection Registry and Central Information System on Battered Spouse Cases and Sexual Violence Cases for keeping a better record of reported domestic violence.

12.2.1.1 Hong Kong Police

As in other cities, statistics of the Hong Kong Police Force are the most widely used official crime data in Hong Kong. Despite the fact that a lot of crimes are not reported to the police, "crime known to the police" still represents the richest source of official data on crime. Crimes in police statistics are grouped into different categories, and once in a while categories may be revised or new categories created in response to current situations. The present classification scheme is shown in Table 12.1.

How are crimes counted in Hong Kong? The rules for counting crimes may differ across countries and time. The latest rules adopted by the Hong Kong police are based on four principles as follows (Hong Kong Police 2007, pp. 2–3; see also Cheung and Cheung 2009):

1. For violent crime against person (e.g. murder, wounding, rape, indecent assault), one crime will be counted for each victim.
   Example: A gang attacks four men with weapons. One man is killed and the other three are injured. One offence of murder and three offences of wounding will be counted. The number of offenders is not relevant.
2. For crime against property or public order (e.g. robbery, burglary, snatching, shop theft, theft from vehicle, and taking conveyance without authority), one crime will be counted for each distinct incident.
   Example: Two men rob a bank, and during the operation, ten customers inside the bank are also robbed. One offence of robbery will be counted, regardless of the number of victims.
3. For crime which is considered as a continuous offence if repeated (e.g. blackmail, claiming to be member of an unlawful society, deception, and theft by employees from their employers), one crime will be counted for each offence or a series of similar offences committed by the same offender(s) involving the same victim(s).
   Example: Three men blackmailed a person for money ten times during the past 3 months. One offence of blackmail will be counted, regardless of the number of times repeated.
4. For crime associated with other naturally connected offences, those offences which are naturally connected with the more serious crime will not be counted statistically.
   Example: A man is arrested for attempting to steal something valuable from a vehicle. He has broken the window of the vehicle and is also found in possession of a spanner, a chisel, and a screwdriver. One offence of theft from vehicle will be counted. No offence will be counted for criminal damage of window and possession of instruments for unlawful purposes.

Statistics on crime reported to the police can be found in *Hong Kong Police Review*, published annually by the Hong Kong Police Force. Crime data reported in the annual review include not only the number of reported offences in each of the various categories of crime as shown in Table 12.1 but also the distribution of offences in

Table 12.1 Classification of crimes in police statistics

Category	Items
Violent crime against person	Rape
	Indecent assault
	Murder and manslaughter
	Attempted murder
	Wounding
	Serious assault
	Assault on police
	Kidnapping and child stealing
	Cruelty to child
	Criminal intimidation
Violent crime against property	Robbery with firearms/arms
	Robbery with pistol-like object
	Other robberies
	Aggravated burglary
Burglary and theft	Burglary with breaking
	Burglary without breaking
	Theft (snatching)
	Theft (pickpocketing)
	Theft (shoplifting)
	Theft from vehicle
	Taking conveyance without authority
	Abstracting of electricity
	Other miscellaneous thefts
	Handling stolen goods
Fraud and forgery	Deception
	Business fraud
	Forgery and coinage
Sexual offences	Unlawful sexual intercourse
	Keeping vice establishments
	Procuration, abduction of female
	Unnatural offences
	Other offences against public morality
Serious narcotics offences	Manufacturing of dangerous drugs
	Trafficking in dangerous drugs
	Possession of dangerous drugs
	Other serious narcotics offences
Offences against lawful authority	Misleading/giving false information to police
	Perjury
	Resisting arrest
	Escape and rescue
	Other offences against lawful authority
Serious immigration offences	Aiding and abetting of illegal immigrants
	Using identity card relating to another
	Other serious immigration offences
Miscellaneous crimes	Criminal damage
	Other offences against person
	Disorder/fighting in public place
	Offences against public order
	Unlawful society offences
	Money lending
	Serious gambling offences
	Conspiracy
	Object dropped from height
	Other crime
Preventive crime	Possession of arms and ammunition
	Possession of offensive weapon
	Going equipped for stealing
	Possession of unlawful instrument
	Tampering with vehicle
	Unlawful pawning offences
	Loitering

sex, age, district, and other socio-demographic groups. The corresponding detection rates of the crimes are also indicated.

One of the benefits of annual statistics is the availability of trend data for overall and specific crimes over a period of time. Table 12.2 gives an example of the changes in the number of violent offences as compared to the total number of crimes in the past 25 years (1986–2010). When the total population is taken into account, the crime rate (number of offences per 100,000 population) for violent crime and that for total number of crimes can be calculated.

Table 12.2 Numbers and rates of reported violent crimes

Year	Violent crime against person	Violent crime against property	Total violent crime	Violent crime rate (no. of violent offences per 100,000 population)	Total no. of crime	Total crime rate (total no. of offences per 100,000 population)
1986	7,879	6,424	14,303	243	81,411	1,384
1987	8,903	6,566	15,469	276	81,928	1,477
1988	8,893	6,831	15,724	274	79,184	1,380
1989	9,629	7,721	17,350	303	81,808	1,428
1990	9,405	9,415	18,820	321	88,300	1,507
1991	9,144	10,414	19,558	336	88,659	1,523
1992	8,741	9,826	18,567	318	84,056	1,446
1993	8,929	8,525	17,454	294	82,564	1,395
1994	9,462	7,770	17,232	284	87,804	1,449
1995	10,177	6,910	17,087	276	91,886	1,484
1996	9,950	5,241	15,191	241	79,050	1,253
1997	9,656	4,093	13,749	211	67,367	1,036
1998	10,183	4,499	14,682	220	71,962	1,076
1999	10,743	4,962	15,705	230	76,771	1,122
2000	10,045	4,767	14,812	218	77,245	1,137
2001	9,149	4,402	13,551	202	73,008	1,088
2002	9,461	4,679	14,140	210	75,877	1,125
2003	9,998	4,544	14,542	216	88,377	1,313
2004	10,383	3,507	13,890	201	81,315	1,199
2005	11,047	2,843	13,890	204	77,437	1,137
2006	11,996	2,851	14,847	212	81,125	1,160
2007	12,513	2,421	14,934	216	80,796	1,167
2008	12,234	2,195	14,429	207	78,469	1,123
2009	12,293	1,900	14,193	202	77,630	1,108
2010	11,843	1,703	13,546	192	75,965	1,076

Sources: Royal Hong Kong Police Reviews 1988–1996
Hong Kong Police Reviews 1997–2010
Hong Kong Yearbooks 1986–2010

In Table 12.2, a similarity between the violent crime rate and the total crime rate can be noticed. The violent crime rate was 243 per 100,000 population in 1986, steadily rising to over 300 in 1989, and peaked at 336 in 1991. It began to drop to 294 in 1993, and has been steadily decreasing to 218 in 2000, and remained just slightly more than 200 in the late 2000s. It even dropped to 192 in 2010. The total crime rate also increased since the mid-1990s (1,384 per 100,000 population in 1986), reaching its peak in 1991 (1,523). Since then, it has been declining, and in the 2000s, it has remained only slightly over 1,000.

Violent crimes are divided into violent crime against person and violent crime against property. The trend of number of offences of these two types of crime has varied over the years. The number of violent crime against person has increased from 7,879 in 1986 to 9,629 in 1989, and risen to 10,177 in 1995. Since then, it has fluctuated between 9,000 and 11,000 until 2005, but has firmly remained over 11,000 until today. The opposite trend is found in violent crime against property. Although it has also started to increase from 6,424 in 1986 to its peak of 10,414 in 1991, it has continuously decreased afterwards. It has dropped by half by 1996 (5,241), and further reached the ever smallest number of 1,703 in 2010.

Like police statistics everywhere, crime data collected by the Hong Kong police should be

interpreted with caution. They are, genuinely, "crimes known to the police," which necessarily cannot include those crimes that are not known to them. A host of factors may contribute to this "dark figure of crime." First, some crimes are not reported to the police because of a range of reasons, including the offence being too trivial to the victim, the low detection rate of the police for the particular type of crime, the victim's intension to conceal delinquent behaviours such as rape and drug abuse, the victim's unawareness of the occurrence of the crime, and the lack of public visibility such as white-collar crimes (Hagan 1985, p. 95). Second, some crimes reported to the police are not recorded (Hood and Sparks 1970, p. 35). Sometimes citizens are not able to give an accurate account of the particular offence, making it difficult for the police to take follow-up action. The police sometimes encounter citizens who claim that they have been victimized by a crime, but the circumstances do not lead to the conclusion that a crime has occurred. Third, as there is discretion in police work, police officers might choose not to record a reported crime because they thought that the crime was too minor, or even because they were too busy (Cheung and Cheung 2009, p. 41).

12.2.1.2 The ICAC

The mission of the ICAC, which was founded in 1974, is to address the corruption problem in Hong Kong. It is a government unit functionally independent of other law enforcement departments and accountable directly to the governor (Lo 1994). The work of the Operations Department of ICAC is to investigate and prosecute alleged corruption cases in both public and private sectors under the Prevention of Bribery Ordinance, the Independent Commission Against Corruption Ordinance, and the Elections (Corrupt and Illegal Conduct) Ordinance. The total number of corruption cases reported to ICAC in selected years is presented in Table 12.3.

Since the beginning of ICAC's operation, the total number of reported cases (excluding election-related reports) had drastically decreased from 3,189 in 1974 to 1,234 in 1978, showing that ICAC had made an impact on the society. The number began to rise to more than 2,000 in the 1980s. By the 1990s, it had increased to over 3,000, reaching its peak of 4,371 in 2002. It then dropped back to 3,339 in 2006, and remained about the same until 2010.

The increase of the total number of reported cases since the early 2000s has been due to the increase in the number of reported cases related with private sector and public bodies. The number of reported cases related to the private sector was well below 2,000 before the 2000s, but it reached 2,403 in 2002 and has remained over 2,000 since then. A similar pattern is found in the number of reports related to public bodies, which reached 330 in 2002 and has remained over 200 until 2010. On the contrary, the number of reports related to government departments has been fairly stable. It dropped from 1,638 in 2002 to 1,068 in 2006, and remained at about 1,000 thereafter.

Not all corruption offences are reported, as the public's willingness to report fluctuates over time, and some corruption behaviours are successfully concealed. Some reported offences are not pursuable. For example, in 2010, the total number of corruption reports was 3,427. However, the number of pursuable reports was 2,663, which is 77.7% of the total number of reports (ICAC 2010, p. 35). Also, some offenders are not prosecuted, as a caution may be issued for minor offences, particularly when it is not in the public interest to prosecute. For example, in 2010, 393 persons were prosecuted and 30 formally cautioned (ICAC 2010, p. 38).

12.2.1.3 Customs and Excise Department

The Customs and Excise Department has a diversity of responsibilities ranging from anti-smuggling, protection and collection of revenue on dutiable commodities, detection and deterrence of narcotics trafficking and drug abuse, safeguarding of intellectual property rights and consumer interests, protection and facilitation of legitimate trade and industry to uphold Hong Kong's trading integrity, and fulfilment of international obligations. Crime statistics recorded by this department pertain to violations of ordinances relevant to these responsibilities. In 2011, the department prosecuted 3,595 cases (a case involving a number of ordinances

Table 12.3 Total no. of corruption cases reported (excluding election-related cases) in selected years

Year	Total corruption reports	Corruption reports related to government departments	Corruption reports related to the private sector	Corruption reports related to public bodies
1974	3,189	2,745	416	28
1978	1,234	887	305	42
1982	2,349	1,421	840	88
1986	2,574	1,364	1,060	150
1990	2,390	1,185	1,196	69
1994	3,312	1,381	1,830	101
1998	3,555	1,456	1,860	239
2002	4,371	1,638	2,403	330
2006	3,339	1,068	2,037	234
2008	3,377	960	2,188	229
2010	3,427	1,024	2,181	222

Source: ICAC Web site: http://www.icac.org.hk/en/about_icac/p/icacar/index.html

is counted in each ordinance concerned), of which 2,130 (59%) were related to the Dutiable Commodities Ordinance, 272 (8%) related to the Copyright Ordinance, 365 (10%) related to the Trade Descriptions Ordinance, and 373 (10%) concerned the Dangerous Drugs Ordinance in 2011. A total of 3,836 persons and 397 companies were prosecuted, which resulted in total fines upon offenders of HK$15.9 million and the imposition of immediate imprisonment in 947 cases (Customs and Excise Department 2011, p. 67).

Like the Police, the Customs and Excise Department's priorities of enforcement work are sometimes affected by public concern over certain crimes. For example, infringement of copyright and psychoactive drug abuse in young people have become two of the biggest public concerns in recent years. The department has stepped up actions to monitor and crack down the sale of counterfeit goods and the trafficking of psychoactive drugs such as ketamine and ecstasy. This boosts the number of arrests, although it does not necessarily mean that the actual number of such crimes has also increased.

12.2.1.4 Judiciary

The Judiciary is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes. It is completely independent of the executive and legislative branches of the Government (Judiciary 2011).

The Judiciary publishes the *Hong Kong Judiciary Annual Report* each year. The annual report covers the work of the Court of Final Appeal, High Court (Court of Appeal and Court of First Instance), District Court, Magistrates' Courts, Tribunals (Lands, Labour, Small Claims, and Obscene Articles), and Specialized Court (Coroner's Court). Statistical information reported is mainly about caseloads, case disposals, and waiting time for the cases of various courts. There is no mention of offence, conviction, or sentencing.

Data on offence and sentencing had been included in some of the previous reports. Starting in 1989, comprehensive offence and sentencing of all courts were recorded in annual reports. However, information on offence and punishment delivered began to be limited to magistrates' courts in 1994. Annual reports of 1996–1999 did not give information on offence and punishment for magistrates' courts any more, but recorded the number of persons prosecuted and convicted instead. Beginning in 2000, data on offence, sentencing, and number of people prosecuted and convicted were not included in annual reports.

Now, access to such data must be sought through special requests.

12.2.1.5 Correctional Services Department

As the final part of the criminal justice system, the Correctional Services Department (CSD) receives individuals into its varied institutions (prisons, detention centres, training centres, rehabilitation centres, and Drug Addiction Treatment Centre), while some basic data regarding admission numbers, socio-demographic characteristics of prisoners/inmates, types of offence, etc. can be found in the Department's *Annual Reviews*.

Since CSD is an integral part of the criminal justice system, admission figures are highly correlated with police crime data. The greater the number of offences known to the police, the greater will be the number of prosecutions, which, in turn, results in more admissions to CSD's institutions. In Table 12.4, police statistics on the total number of reported crime and admission numbers of CSD institutions are compared for selected years in the period from 1991 to 2010.

Although the comparison between police statistics and CSD admission data is only a crude one, as the processing of crime from arrest to sentencing may take more than a year, Table 12.4 clearly suggests a positive relationship between the total number of crimes reported to the police and the number of admissions to CSD facilities. In the selected years between 1991 and 2010, there were only two years when CSD admissions did not increase or decrease correspondingly to police data. Despite this high correlation, CSD admission statistics are also affected by many factors, including police priorities in laying charges for certain type of offence, the tendency of the courts to deliver heavier or lighter sentences, and the capacity and manpower of CSD institutions.

12.2.1.6 Victimization Surveys

Victimization surveys have become a popular method of collecting crime data worldwide. In Hong Kong, seven crime victimization surveys (CVSs) have been conducted since the late 1970s (1979, 1982, 1987, 1990, 1995, 1999, and 2006). These surveys were conducted by the Census and Statistics Department under the auspices of the Fight Crime Committee, a government advisory body that provides recommendations on measures to prevent and reduce crime. The objective of CVS is not only to provide information on crime victimization but also to examine the extent to which the public was willing to report crime to the police. The extent of under-reporting to the police can roughly be used to estimate the size of the "dark figure" of crime.

As in previous CVSs, the 2006 survey adopted a household survey design that involved the interview of all household members aged 12 and over in sampled households. A total of 24,272 households were selected, and 20,075 households were interviewed (Census and Statistics Department 2007, p. 147). Information on the victimization of both the person interviewed and the household was collected. Comparisons of victimization data

Table 12.4 Total no. of crimes reported to the police and total no. of admissions to correctional services institutions (CSD), selected years between 1991 and 2010

	1991	1993	1995	1997	1999	2001	2003	2005	2007	2009	2010
Total no. of crimes reported to the police	88,659	82,465	91,886	67,367	76,771	73,008	88,377	77,437	80,896	77,630	75,965
Total no. of CSD admissions	13,648	13,327	17,631	16,149	17,076	20,859	26,659	25,523	18,874	17,174	16,231

Sources: Hong Kong Police Review; Appendix 5 of CSD Annual Reviews 2000 and 2010, in the Web site of CSD: http://www.csd.gov.hk/english/pub/pub_ar/pub_ar.html

and police statistics on specific crimes reveal the discrepancies between these two sources of crime information. Some discrepancies are bigger, and others are smaller. For example, the number of indecent assault for 2005 as indicated in the 2006 CVS was 13,800, whereas the number of indecent assault reported to the police for the same year was 1,136, which was only 8.2% of the CVS figure. Deception is another example of low reporting rate. The CVS showed 17,100, but the number of reported cases was 1,400, only 8.1%. For offences that are more likely to involve the police, the discrepancy between the two sets of data is understandably smaller. In CVS, the number of wounding and assault for 2005 was 17,500, whereas the reported number was 6,800, which is 38.8%. Vehicles are under strict registration, and so theft of vehicle is more likely to be reported. CVS showed that for 2005, there were 1,700 victimizations of theft of vehicles. The number of reported cases of theft of vehicle was 1,500, which is 88%. Among all the victimizations shown in the CVS, the overall reporting rate was only 19.1% (Census and Statistics Department 2007, p. 100).

There are limits as to how much the CVS and police data can be directly compared. Data collected in CVS are limited to crimes against the person and crimes against property. The sample of CVS would exclude people who are not living in residential households at the time of the survey. Despite these and other limitations, CVS can fill many of the gaps in police statistics by its ability to indicate people's willingness to report crime and offer rich information about the crime and crime scene, and the possible social relationship between the offender and the victim.

12.2.1.7 Other Official Statistics

Besides the above-mentioned law enforcement departments, other government units also keep records of incidents of crime and deviance that occur in connection with the operation of these units. For example, the Narcotics Division of the Security Bureau is active in gathering information pertaining to drug abuse and its associated factors for the facilitation of anti-drug strategies and drug treatment programmes. Drug abuse data are collected from two mechanisms, namely, the Central Registry of Drug Abuse database and student surveys. The central registry is a database that provides relevant drug statistics on drug abuse patterns and trends. It is based on a network of more than 60 reporting agencies, which include law enforcement departments, drug treatment agencies, social welfare agencies, tertiary institutions, hospitals, and clinics (Cheung and Ch'ien 1996). The Narcotics Division also commissions research organizations to conduct student surveys to find out the prevalence and associated factors of drug use of secondary students. Altogether seven surveys have thus far been conducted, in 1987, 1990, 1992, 1996, 2000, 2004, and 2008/2009 (Narcotics Division 2010).

The Labour Department has the most detailed records of incidents of labour disputes, violations of safety regulations in workplace, and other work-related offences. The Education Bureau (formerly, Education and Manpower Bureau) would have information about the occurrence of student bullying, thefts, and other delinquent behaviours in schools. The Social Welfare Department has, since the mid-1990s, set up a *Child Protection Registry* to systematically record information on newly reported and at-risk cases of child abuse, and the *Central Information System on Battered Spouse Cases and Sexual Violence Cases* to record spousal aggression cases (Social Welfare Department 2007). Crimes committed by corporations, which are not readily available in police or ICAC statistics, can be obtained from a variety of sources, including the Securities and Futures Commission, the Environmental Protection Department, the Urban and Regional Council, the Consumer Council, etc. (Cheung and Cheung 2009, p. 48).

12.2.2 Unofficial Crime Data

Unofficial crime data are collected by non-government organizations, such as private security firms, social service agencies, and academic or research institutions. Crime-related cases are part of the records in non-government organizations whose operations are directly or indirectly

related to crime and deviance. For example, managements of shopping malls have records of shoplifting incidents reported by shops in the malls. Outreaching social work agencies have information on the delinquent behaviour of marginal youths who are their clients. Non-government organizations vary a great deal in how detailed and systematic their record keeping practices are.

Since the past two decades, a special feature of unofficial crime and deviance data has been the use of the self-report method in survey data collection (Hindelang et al. 1982; Shapland 1978). This method involves the administration of an anonymous questionnaire to respondents who fill out the questionnaires themselves, providing answers to questions that ask about their commitment of delinquent behaviours in a specified period of time in the past (e.g. in the past 30 days). This method is most popular in surveys of students that aim to understand the prevalence, patterns, and social and psychological correlates of deviance, delinquency, or other risk-taking behaviours among them. The major drawback of the method is that it only collects information on less serious and sensitive delinquent behaviours, as respondents are unlikely to answer questions on serious delinquent acts. The earliest self-report surveys of students in Hong Kong were mostly conducted by academics. One of the earliest studies of deviant behaviour of secondary students using the self-report method was the "Behaviour and Attitude of Hong Kong Adolescents Survey," conducted in 1986 with a sample of 1,139 students from randomly selected secondary schools (Cheung and Ng 1988; Cheung 1997).

The use of the self-report method has become very popular since the 1990s, as social science research on crime and deviance began to flourish in Hong Kong. While students continued to be popular participants in self-report studies, such as the study of school bullying in primary schools (Wong et al. 2002; Wong 2004), the self-report method was also adopted in interview surveys of risk behaviours of other sectors of the population, such as Hong Kong marginal youths' drug use in Hong Kong and Shenzhen, a city in the Mainland most adjacent to Hong Kong (Cheung and Cheung 2006), and child abuse of parents (Tang 1998). Furthermore, government departments also commissioned university researchers to conduct community surveys relating to crime and deviance topics that have generated heated public concern. For example, the Home Affairs Bureau has commissioned a research team of the Hong Kong Polytechnic University in 2005 to study the involvement of the general population in gambling activities. Four years later, the Bureau commissioned a team of the University of Hong Kong to do a follow-up study in 2005 (Home Affairs Bureau 2002, 2005). The Social Welfare Department has commissioned a group of social scientists in the University of Hong Kong to carry out a territory-wide household survey in 2003–2004 to determine the incidence and prevalence rates of child abuse and spouse battering (Department of Social Work and Social Administration 2005). Some NGOs have also become active in research since the 1990s. The Hong Kong Federation of Youth Groups (HKFYG) is probably the most active NGO in the research on youths. Its research has generated a huge data bank on various aspects of youths and their lives in Hong Kong, of which youth deviance and delinquency are among the popular topics of the surveys (HKFYG 2007).

12.3 The Criminal Justice System

The various government departments involved in handling crime together form the criminal justice system in society. In the above description of official statistics collected by these departments, we have already briefly introduced each of them. Here, we will take a look at the whole criminal justice system in Hong Kong.

In a sense, the Hong Kong criminal justice system, patterned after the common law system of the UK, is not very different from that of many Western societies. The emphasis on the rule of law and due process has long been rooted in Hong Kong. Due to the special historical development of Hong Kong, its criminal justice system has also evolved through different stages since the Hong Kong Island first fell into the

hands of the British in the mid-nineteenth century. Since the area of Hong Kong was very small, it would seem that any elaborate law enforcement system was not necessary. Even when the Kowloon Peninsula and New Territory regions were secured by the British to become a part of Hong Kong at the end of the nineteenth century, the territory was still small, a mere 400 sq. miles. A remote fishing village at that time, Hong Kong was inhabited by just a few thousand people.

But there were serious reasons for establishing a strong law enforcement apparatus right from the beginning. The colony was ruled by a foreign government, which did not have legitimacy in the Chinese population. Therefore, the first and foremost aim of the criminal justice system was to control the Chinese (Gaylord and Traver 1994, pp. 2–6). In addition to the need for registration of ordinary inhabitants, triads and organized crimes also must be controlled and monitored. The population began to increase in the first half of the twentieth century, when people fled in large numbers from the war-torn and disaster-struck China mainland to Hong Kong. As the Communist Party took over mainland China in 1949, free entry from the mainland to Hong Kong was stopped about 2 years later. The population of Hong Kong reached two million in 1950, a manyfold increase since the beginning of the colony. In place to control crime in such a large population was the coercive law enforcement system developed since the early years.

12.3.1 Hong Kong Police

Refugees who fled from the mainland to settle in Hong Kong around 1949 in order to escape Communist rule had quickly increased the population of Hong Kong. They were a source of cheap labour; some of them were entrepreneurs with capital and expertise in manufacturing. Hong Kong was then beginning to leave behind its image of a small fishing community to chart its course in industrialization and modernization. An economically dynamic and socially heterogeneous society was a new challenge to the colonial government, who was faced with housing, employment, poverty, health care, and other social problems characteristic of a new industrial society.

The occurrence of riots and unrests in 1950s and 1960s had supported the Hong Kong government's belief that a strong police force and a punitive approach in law enforcement was essential in maintaining law and order and defending a foreign regime. The series of anti-colonial riots in 1966/1967, staged by Communists in Hong Kong in response to the proliferation of the Cultural Revolution in mainland China, had threatened the stability of the society and ruined its economy. This devastating event sent a message to the Hong Kong Government that a stable society needed more than a tough police force. An important way to dilute social unrest and to understand the mood of the mass was to improve public relations. Since the 1970s, when the government reformulated its policy to build relations with grassroot communities, the police also played an important role. Service became a new mandate, a new image of the force. Professionalism also began to be emphasized for the modernization of the force (Lau 2008), and more and more university graduates were recruited. By the 1990s, the Hong Kong Police Force has gained a high reputation among police organizations in the world.

12.3.2 The ICAC

The modern, service-oriented, and professional image of the Hong Kong police we see today was in stark contrast with the police image before the 1970s. For many decades, the police force, which had been legally mandated to investigate and punish corruption offenders, had been a very corrupt government department. Corruption might have a link with traditional Chinese culture, which sometimes places more emphasis on particularistic relationships and favouritism than established rules in getting things done (Lee 1981), but giving the anti-corruption mandate to the police force could have been the greatest obstacle to the eradication of corruption.

The first anti-bribery law in Hong Kong was the Misdemeanours Punishment Ordinance (No. 3 of 1898), which gave the police responsibility for investigating corruption among public servants. After five decades, the Prevention of Corruption Ordinance (No. 34 of 1948) was enacted, and the police established an Anti-Corruption Squad to tackle corruption. Four years later, this was transformed in 1952 into the Anti-Corruption Branch of the police force, with greater power in its work and headed by an assistant commissioner. Ironically, the police force had become the most corrupt department in the public sector, with officers protecting gambling, drug, and other vice syndicates. Public confidence in the police had sunk to a very low level, despite some further re-structuring of the anti-corruption unit in the police force in response to the Prevention of Bribery Ordinance (Cap 201) in 1971. It was not until the public outcry in 1973 due to the successful slipping out of Hong Kong of the Chief Superintendent Peter Godber while under investigation for suspected corruption charges that the British Hong Kong Government decided to take drastic measures to remedy police and public sector corruption.

Against this background, anti-corruption work was separated from the police force, and in 1974, the ICAC was founded (Lo 1994). The ICAC was a government unit, but was independent of the police and other law enforcement departments, and accountable directly to the Governor. It was given the same power as other law enforcement units such as the police and customs and excise. Yet, the ICAC focuses not just on law enforcement, which is a unilateral approach confining to the legal control of the corruption problem. The ICAC certainly was the first to adopt a strategy that embraced not only operations (law enforcement) but also systematic prevention (to identify and minimize corruption opportunities in the working methods of government/public sectors) and community-wide education (Lo 2001). This tripartite strategy and its remarkably high level of efficacy are conducive to Hong Kong's notable and persistent success in anti-corruption reform over the last five decades (Lo 2001, Quah 2010). Despite the concern over surging opportunities for corruption in Hong Kong after 1997 due to the return of sovereignty to and incessant integration with China (Chan 2001), the ICAC still has preserved anti-corruption, turning Hong Kong to a city recognized internationally as one of the least corrupt regions across the globe (Manion 2004). With reference to the 2010 Corruption Perceptions Index complied by Transparency International (a global civil society organization headquartered in Berlin), Hong Kong was ranked 13th among the 178 countries or places assessed, scoring 8.4 on a 0–10 scale with 10 representing the least corrupt and 0 the most corrupt (Transparency International 2011).

12.3.3 Customs and Excise Department

As mentioned above, the responsibilities of the Customs and Excise Department (C&ED) fall into a diversity of areas, including anti-smuggling, protection and collection of revenue on dutiable commodities, detection and deterrence of narcotics trafficking and drug abuse, safeguarding of intellectual property rights and consumer interests, protection and facilitation of legitimate trade to uphold Hong Kong's trading integrity, and fulfilment of international obligations (Customs and Excise Department 2011). Law enforcement in these aspects of work is based on relevant ordinances, including the Dutiable Commodities Ordinance, Dangerous Drugs Ordinance, Copyright Ordinance, Copyright (Amendment) Bill (2009), Import and Export Ordinance, Trade Descriptions Ordinance, Toys and Children's Products Safety Ordinance, and Consumer Goods Safety Ordinance.

The Department, headed by the Commissioner of Customs and Excise, has an establishment of 5,562 posts in 2010 (Information Services Department 2010). It is organized into five branches: the Boundary and Ports Branch (airport, land boundary, and rail and ferry command), the Excise and Strategic Support Branch (customs affairs, dutiable commodities administration, IT, project planning, and strategic research), the Trade Controls Branch (CEPA, customer protection, trade declaration, and investigation), the

Administration and Human Resource Development Branch (central administration and management), and the Intelligence and Investigation Branch (narcotics drugs, anti-smuggling enforcement and intellectual property).

The history of the C&ED is as long as that of Hong Kong itself, since the attraction of Hong Kong to the British in the middle of nineteenth century was its strategic location for trade with China. As soon as the British secured Hong Kong after the first Opium War in 1841, a Harbour Department was set up to monitor incoming and departing commercial vessels. In 1887, the Imports and Exports Office was set up to monitor imports and exports of opium in Hong Kong. Since then, the past 100 years have witnessed rapid developments of the Department as Hong Kong evolved into a bustling entrepot and export processing zone in the first half of the twentieth century, and then as a financial centre since the 1980s. Hong Kong is one of the busiest airports and container ports in the world. The huge volume of cross-boundary traffic of people and goods between Hong Kong and the mainland requires a strong and effective C&ED force to deal with smuggling of consumer goods, drug trafficking, and other problems. Since the handover in 1997, C&ED and its counterparts in the Shenzhen and Guangdong Province have greatly increased their cooperation in combating cross-boundary smuggling and illicit drug trafficking, and sharing of experience and intelligence. This kind of cooperation will continue and deepen in the next decade (Gaylord 2009, p. 89).

12.3.4 Judiciary

The police, ICAC, and C&ED are law enforcement departments that bring alleged offenders into the criminal justice process. When a prosecution is made, the alleged offender will enter the second stage of the criminal justice process, where criminal proceedings will commence. Not all criminal cases actually proceed to trial, as some defendants will plead guilty before trial begins.

A judiciary independent of the government legislature and administration is an important feature of Hong Kong's criminal justice process. After 1997, the independence of the judiciary has been constitutionally guaranteed under Article 85 of the Basic Law of Hong Kong. The mission of the judiciary is "to maintain an independent and effective judicial system which upholds the rule of law, safeguards the rights and freedoms of the individual, and commands confidence within and outside Hong Kong" (Judiciary 2011). Any erosion of judicial independence due to pressure from Beijing would seriously undermine mainland's "One country, two systems" promise to Hong Kong.

Magistrates' courts are where all criminal cases commence. They hear a wide range of both summary and indictable offences. These are the busiest courts in Hong Kong, with caseload of over 310,000 in 2010 (Judiciary 2011). More serious indictable offences are referred to either the District Courts or the Courts of First Instance (formerly called High Court). Also part of high Court is the Court of Appeal, which hears appeals against decisions of the District Court and the Court of First Instance in both criminal and civil offences. Appeals against decisions of the Court of Appeal are heard in the Court of Final Appeal. "Final" as it may be, when it comes to Hong Kong's Basic Law, the Standing Committee of the National People's Congress has the final authority of interpretation. This could create tension between the judiciary and the government, as the latter might seek the interpretation of the Standing Committee of NPC to override a different decision, or prevent the occurrence of a different decision, of the Court of Final Appeal. In 1999, the government did just that to prevent the wives of Hong Kong residents who were mainlanders to have right of abode in Hong Kong without having to go through the process of applying and waiting in line in their hometowns in the mainland (Gittings 2009, pp. 163–164).

12.3.5 Correctional Services Department

The CSD is at the other end of the criminal justice system. If in the early days a strong police

force was necessary for the British Hong Kong Government to control the Chinese and protect the colonial regime in Hong Kong, a tough prison system was an essential supporting apparatus. It is not surprising, therefore, that for many years, Hong Kong has had high incarceration rates compared with many Western societies (Broadhurst et al. 2008, p. 59). As Table 12.4 shows, during the early to mid-2000s, the number of admissions to CSD per year was over 25,000.

Like the case of the Police Force, CSD has gone through new developments in the last several decades. Its current mission is "to protect the public and reduce crime, by providing a secure, safe, humane, decent and healthy environment for people in custody, opportunities for rehabilitation of offenders, and working in collaboration with the community and other agencies" (Correctional Services Department 2011). Indeed, incarceration for detention and deterrence purposes is only one of the functions of CSD today. Since the 1980s, reforms have been started, moving away from paternalistic, coercive custody as the only modality to incorporate rehabilitation as an integral part of its services. The landmark event was perhaps the change of the name of the department from "Prison Department" to "CSD" in 1982. As more and more efforts were made to introduce rehabilitative elements in the 1980s and 1990s, a new Rehabilitation Division was set up in 1998 to coordinate and promote such efforts. A campaign in the community was launched in 1999 to encourage employers in the community to give rehabilitated offenders a chance to receive an employment and start a new life. In 2000, the term "discharged prisoners" was changed to "rehabilitated persons" in order to reduce the social stigma associated with the former.

Since the 1990s, CSD has been facing at least two operational problems. The first issue is the rapid increase of the percentage of females in the total prison population, which has great implications for more facilities to be made available to ease the crowding problem in prison and more personnel to cope with the growing inmate population (Joe Laider 2009, pp. 192–194). The other one is the change of the pattern of drug use of inmates admitted to the Drug Addiction Treatment Centre (DATC) of CSD. Since the mid-1990s, the drug of choice among young drug users in Hong Kong has shifted from heroin to psychoactive drugs such as ecstasy and ketamine (Joe Laider 2005; Cheung and Cheung 2006). Inmates of DATC aged under 21 have become predominantly psychoactive drug abusers, whereas the percentage of psychoactive drug abusers among inmates aged 21 or over is also increasing. A great challenge for DATC is how to modify its existing heroin-based treatment modality in order to cater to the treatment needs of the rapidly increasing percentage of psychoactive drug abusers (Joe Laider 2009, pp. 195–196).

12.4 Looking Ahead

One of the most important assets left behind in Hong Kong by the British is the upholding of the rule of law and a mature criminal justice system with a judiciary that is independent of the government. When the British colonizers first occupied Hong Kong in 1842, they would not have imagined such a far-reaching consequence of their presence. At the beginning of the British regime, the legal system was designed primarily for crime control and deterrence. The criminal justice system has evolved and matured over the decades, concomitantly with social, economic, and political developments in society. Since Hong Kong was always referred to before the 1997 handover as "borrowed time, borrowed place," the basis for the governance of the British Hong Kong administration was more of compliance than legitimacy. Knowing that a colonial administration could never achieve complete legitimacy, the British Hong Kong Government had, in the later part of last century, made efforts to "maintain a level playing field," as put by Jones and Vagg (2007, p. 628) in their phenomenal socio-historical analysis of the criminal justice in Hong Kong. A fair and modern legal system could increase the legitimacy of the colonial government. We may describe this as a kind of "instrumental legitimacy," established on the basis of the instrumental values of institutions.

The reversion of Hong Kong's sovereignty to China in 1997 did not automatically fill the long-time gap in legitimacy due to the British colonial administration. Although most people in Hong Kong supported the handover, mainland China was an even more alien administration for people in Hong Kong to be subject to. The "One Country, Two Systems" promise was a very practical way to ease the tension, for at least fifty years, between return of sovereignty and the exercise of it through direct governance. Hong Kong's existing institutions and way of life before 1997 were to continue after 1997, and this became a yardstick for assessing the success or failure of the "One country, Two systems" policy.

In crime and justice, the continuation of the pre-1997 model of criminal justice is an important indicator of the extent to which Hong Kong is allowed to administer justice without the interference of the Central Government. The more Hong Kong people perceive that they have full autonomy in running their legal system, the more "instrumental legitimacy" would be reaped by the Central Government. On the contrary, if people perceive that the Central Government is interfering with Hong Kong affairs, then it would be difficult to construct their trust on the Central Government. In recent years, some people have expressed great frustrations on the Hong Kong Government's seemingly yielding to Beijing's influence. The growing discontent seems to breed antagonistic and even violent confrontations with the police or government officials in parades and demonstrations against the government. There is also a trend that more and more judicial reviews over government policies are launched by frustrated citizens in order to block government policies. On the one hand, this shows that freedom of expressions and freedom of speech are still very much alive in Hong Kong. But on the other hand, the deliberate use of increasingly radical and violent means against the Hong Kong SAR government in parades and demonstrations is undermining the effectiveness of law enforcement in maintaining law and order. One of the greatest challenges facing the criminal justice system is to be caught in the political struggle between anti-government groups and the government and its supporters, thereby eroding the basis for its independence from the government and political parties, an ideal that has been a cornerstone of the Hong Kong society.

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Criminal Justice System in India

13

R. Thilagaraj

Rule of Law, democracy, development, and human rights are dependent on the degree of success that the governments are able to achieve on the criminal justice front. The objectives of the criminal justice are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with law, punishment and rehabilitation of those adjudged guilty of committing of crimes, and generally protection of life and property against crime and criminality. It is considered the primary obligation of the state under the constitution of India.

The principal formal agencies of criminal justice are police, judiciary, and corrections. Under the Constitution of India, Police and Prison Administration are the State subjects. But, the Supreme Court at Federal level and High Courts at state level administer the judiciary in the entire country. Though police and prisons are state subjects, the organizational structure, administration, and functioning of all the agencies of criminal justice are as per the federal laws such as Indian penal code, Criminal Procedure Code, Indian Evidence Act, Police Act, and Prison Act. This paper explains the structure and functioning of various agencies of Criminal Justice System.

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13.1 Role of the Federal Government and Its Police Force

There is no independent department of police at the federal level. But the Federal government performs numerous police functions. The Federal Parliament has paramount jurisdiction over the Central and the Concurrent subjects. There can be no doubt that police and law and order are state subjects. In spite of it, many quasi-police subjects are from the federal government. For example, the administration of the subjects or items like the Central Bureau of intelligence and investigation, Preventive Detention, Arms, Ammunitions, Explosives, Extradition, Passports, and a host of similar or corresponding subjects is the sole responsibility of the Central Government. The Federal Government has also the power to amend the basic Police Acts, like the Indian Police Act, 1861; the Indian Penal Code, 1860; the Code of Criminal Procedure, 1861; the Code of Civil Procedure, 1859; and the Indian Evidence Act. These are all binding on the State Governments. Thus, the constitutionally created flexible situation and the organization and administration of police (Sethi 1983) in the states are brought under the purview of the Central Government under special circumstances (Gautam 1993).

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13.2 Central Bureau of Investigation

The Central Bureau of Investigation (CBI) was created in 1963 at the federal level. It was established to undertake thorough investigation of important cases having interstate jurisdiction and international ramifications. The bureau initiates its own investigation but the State Government can also borrow its services in the field of prevention and detection of crime, if and when required (Raghavan 1989). CBI is headed by Director General of Police (DGP) assisted by Regional Directors. Recently many sensational cases have been investigated by CBI.

13.3 Central Intelligence Bureau

The collection and assessment of political and other useful intelligence relevant to the security of the entire country are the primary function of Central Intelligence Bureau (CIB). The bureau primarily coordinates the activities of special branches of criminal investigation departments of the states (Nehad 1992). The CIB has its headquarters in all the capital cities and important towns of the country and its officials have a sophisticated network of information feedbacks about individual and organization. The intelligence collected by the headquarters is screened, filtered, and verified independently as well as through state departments of criminal investigation.

13.4 Central Reserve Police Force

The Central Reserve Police was established at Neemuch, M.P., in the year 1939. As a strong arm of the federal government, it was constituted under the Central Reserve Police Bill 1949 as one of the armed forces for the purpose of maintaining internal security and it is used during the period of crises with its establishments all over the country. The force also was conferred with certain powers under Cr. P.C. in matters related with suppression of internal disturbances and restoration of order. At present the force comprises 1.20 lakhs men distributed over 93 battalions and many more ancillary institutions. The role of the force is varied and facing multiplicity of problems. Sometimes it deals with insurgents and extremists and also handles sensitive law-and-order situations (Krishna 1980).

13.5 Structure of the State Police

The State Police under the head of DGP consists of Commissionerate, Zones, Ranges, and Districts headed by Commissioner of Police, Inspector General of Police (IGP), Deputy Inspector General of Police (Dy. IGP), and Superintendent of Police, respectively.

13.6 The Field Establishment of the Police Force

DGP (*In-charge of the State Police Force*)
↓
Additional Director General of Police (Addl. DGP)
↓
IGP (*In-charge of a zone, which comprises few ranges*)
↓
Deputy Inspector General of Police (Dy. IGP) (*In-charge of a range, which comprises a group of districts*)
↓
Superintendent of Police (SP) (*In-charge of the District*)—Additional Superintendent of Police (Addl. SP)
↓
Assistant/Deputy Superintendent of Police (ASP/Dy. SP) (*In-charge of a Subdivision in the district*)
↓
Inspector of Police (In-charge of a Police Station)—Sub-Inspector of Police (SI) (In-charge of a smaller Police Station)
↓
Police Head Constable (HC) (Staff of the Police Station)
↓
Police Constable (Staff of Police Station)

It shall be lawful for any Police Officer to lay any information before a Magistrate and to apply for a summons, warrant, search warrant, or such

other legal proves, as may be by Law issued against any person committing an offence. The police station is the basic structure and primary administrative unit of the police administration (Diaz 1976). The responsibility of maintenance of law and order, patrolling, and prevention of crime in a particular given jurisdiction rests on the police station. Normally the personnel of a rural police station consists of one Sub-Inspector of Police as Station House Officer and under him one Head Constable and ten Constables. The cities and other urban areas have special problems like slums, traffic, industrial disputes, and organized crimes, threats of terrorists and VIP visits to handle these issues specific police wings are also there (Sen 1986).

13.7 Functions of Police

The Federal criminal law, namely, Indian Penal Code, defines various types of crimes and prescribes punishment for each crime. Similarly the Criminal Procedure Code contains elaborate details about the procedure to be followed by the Police Officer in every investigation, inquiry, and trial, for every offence under the Indian Penal Code or under any other law (Kelkar 1998). The main responsibility of the Police is maintenance of law and order, patrolling, prevention of crime, and investigation in a particular given jurisdiction (Saha 1990).

Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence: proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filling the charge-sheet. Investigation ends in a police report to the magistrate (Krishna 1994).

Two major issues in Indian Police system frequently raised are violence in the custody and undue political intervention in the police administration. In a number of judgments by high courts and also by the Supreme Court it has been spelt out clearly that every policeman must know that it is not permissible for police personnel to inflict even the slightest physical harm to anyone except in his own self-defense (Sunil Batra vs. Delhi Administration, 1980). Law places him on par with other citizens in that regard and he is entitled to use only that much physical force which is reasonably necessary to thwart any assault on him in the exercise of his right of self-defense. The National Human Rights has also many times intervened against this custodial violence. Despite all these interventions still there are reports on custodial violence and deaths in police custody.

13.8 Police Abuse of Power and Corruption

The subordinate echelons of the police are often known to extort money at every step which is a common feature all over India with only a few good exceptions. At the same time the tasks which are the liability of the police are quite often neglected outright and performance occurs only at a price which affects the public image of the organization; the gross result is rampant corruption and abuse of human rights. They are desperately depended on and pampered by the politicians in all states and the central government and have carved out good prospects for themselves in the shape of a bloated cadre with copious sinecures for their advancement in quick steps thanks to politicians (Ganguly, 2009). The *Transparency International*, the Berlin-based NGO, has rated India as the 95th most corrupt country among 183 countries in the world in its year 2011 corruption perception index.

The most important elements of police corruption are misuse of authority and misuse of personal attainment. One of the main causes for this is that the police officials have ceased to act

as professionals and are politicized to a great extent. They are manipulated by political leaders, who have misused the power of appointments and transfers to patronize weak or corrupt officers for their own selfish purposes at the cost of public interest. The main areas for their interference are appointments, transfers, rewards, and punishments. General police corruption includes bribery or exchange of money or something of value between the police and the wrongdoer. Other police crimes may range from brutality, fake encounters, sexual harassment, and custodial crimes to illicit use of weapons.

Open instances of corruption by the lower ranks of the police, who are in direct contact with the public, have wider implications on the image of the police and the police–public relations. The police personnel, especially the Constables, harass and extort money from the people many times a day. In most of the places there is a deal of understanding between the street vendors and the police about the "Mamool amount" (bribe) to be paid to the police. According to the grapevine in the police circles, money extracted from these people also reaches the higher levels. The increasing nexus between police personnel at various levels and mafia operators is another disturbing trend in most of the cities like Mumbai, Delhi, Kolkata, Lucknow, Ghaziabad, Hyderabad, etc. These mafia syndicates bribe the police and the organized crimes such as periodic extortion and kidnapping for ransom committed by them go undetected. Delay is attributed to be one of the main causes of corruption. The Santhanam Committee report (1964) noted that administrative delays are one of the major causes of corruption and quite often, delay is deliberately contrived so as to obtain some kind of illegal gratification. "Speed money" is reported to have become a fairly common type of corrupt practice particularly in matters relating to grant of licenses, permits, etc.

13.9 Crime in India

The incidence of cognizable crimes in the country during the decade 2000–2010 reveals that as many as 6,750,748 cognizable crimes were reported in the country during 2010 comprising 22.25 lakh cases under the IPC and 45.26 lakh cases under the SLL. The ratio of IPC to SLL crimes varied from 1:1.72 in 2006 to 1:2.03 in 2010. In terms of percentage, 67% of total cases (IPC + SLL) during 2010 were accounted for by Special Acts and Local Laws and the rest of the cases (33%) by the Indian Penal Code. The rate of total crimes (IPC + SLL) was 569.3 in 2010 showing an increase of 24.9% over 2006 and a decrease by 0.3% over 2009. The table below gives the latest statistics of the IPC and SLL crimes occurred during 2010.

13.10 Crime Statistics

S. no.	Crime heads	Cases reported	% To total IPC crimes	Rate of crime	Charge-sheeting rate	Conviction rate
(A) Violent crimes						
1	Murder	33,335	1.5	2.8	84.2	36.7
2	Attempt to commit murder	29,421	1.3	2.5	89.9	29.9
3	C.H. not amounting murder	3,782	0.2	0.3	84.9	38.9
4	Rape	22,172	1.0	1.9	94.5	26.6
5	Kidnapping and abduction	38,440	1.7	3.2	72.4	27.7
6	Dacoity	4,358	0.2	0.4	76.4	21.9
7	Preparation and assembly for dacoity	2,615	0.1	0.2	95.5	25.9

(continued)

(continued)

S. no.	Crime heads	Cases reported	% To total IPC crimes	Rate of crime	Charge-sheeting rate	Conviction rate
8	Robbery	23,393	1.1	2.0	70.6	28.3
9	Riots	67,571	3.0	5.7	90.9	21.7
10	Arson	8,508	0.4	0.7	68.1	19.3
	Total violent crimes	241,986	10.9	20.4	84.6	27.7
(B) Crime against women (IPC + SLL)						
1	Kidnapping and abduction of women and girls	29,795	1.3	2.5	74.2	28.1
2	Molestation	40,613	1.8	3.4	96.7	29.7
3	Sexual harassment	9,961	0.4	0.8	86.7	52.0
4	Cruelty by husband and relatives	94,041	4.2	7.9	94.2	19.1
5	Importation of girls	36	0.0	0.0	90.6	20.0
	Total crime against women (IPC + SLL)	213,585	9.6	18.0	92.0	27.8
(C) Economic crimes						
1	Criminal breach of trust	16,678	0.7	1.4	70.2	32.7
2	Cheating	78,999	3.6	6.7	72.1	29.2
3	Counterfeiting	2,589	0.1	0.2	42.7	37.9
	Total economic crimes	98,266	4.4	8.3	70.6	30.3
(D) Property crimes						
1	Burglary	90,179	4.1	7.6	43.4	34.5
2	Theft	330,312	14.8	27.9	37.7	37.5
	Total property crimes	420,491	18.9	35.5	38.9	36.7
(E) Crime against SCs						
	Total crime against SCs	32,712	1.5	2.8	90.7	35.0
(F) Crime against STs						
	Total crime against STs	5,885	0.3	0.5	96.0	25.0
(G) Crime against children						
	Total crime against children	26,694	1.2	2.3	83.9	34.6
(H) Cognizable crimes under IPC						
	Total cognizable crimes under IPC	2,224,831		187.6	79.1	40.7
(I) Cognizable crimes under SLL						
	Total cognizable crimes under SLL	4,525,917		381.7	94.7	91.7
(J) Cognizable crimes under IPC + SLL						
	Total cognizable crimes under IPC + SLL	6,750,748		569.3	89.8	81.3

Source: Crime in India, 2010, National Crime Records Bureau.

A total of 2,224,831 IPC crimes were reported in the country during the year 2010 against 2,121,345 in 2009 recording an increase of 4.9% in 2010. The share of IPC crimes to total cognizable crimes in percentage terms increased from 36.3% in 2005 to 36.8% in 2006.The IPC Crime rate has increased by 6.2% during the decade 2000–2010 from 176.7 in 2000 to 187.6 in 2010. A total number of 241,986 violent crimes were reported in the country accounting for 10.4% of the total IPC crimes during the year 2010. Puducherry (352.3), Kerala (424.1), Chandigarh (299.8), Madhya Pradesh (297.2) and Delhi (279.8) and 13 more States/UTs have reported much higher crime rates as compared to the National average of 187.6 which is higher than National average of 181.4 in 2009.

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The property crimes have the highest share of 36.7% among the IPC crimes followed by crimes against scheduled castes (SC) with a share of 35% and crimes against children with a share of 34.6% among the IPC crimes.

13.11 The Role of Judiciary

The Indian Judicial System has the Supreme Court of India at its helm, which at present is located in the capital city of Delhi, without any benches in any part of the nation, and is presided by the Chief Justice of India.

The Supreme Court of India has many Benches for the litigation, and this apex court is not only the final court of permissible appeal but also deals with interstate matters, and matters comprising more than one state, and the matters between the Union Government and any one or more states, as the matters on its original side. The largest bench of the Supreme Court of India is called the Constitution Bench and comprises 5 or 7 judges, depending on the importance attached of the matters before it, as well as the work load of the court. The apex court comprises only various benches comprising the Divisional benches of 2 and 3 judges, and the Full benches of 3 or 5 judges. The Appeals to this court are allowed from the High Court, only after the matter is deemed to be important enough on the point of law or on the subject of the constitution of the nation, and is certified as such by the relevant High Court.

Every State has a High Court, which works under the direct guidance and supervision of the Supreme Court of India, and is the uppermost court in that state. The High Courts are also termed as the courts of equity, and can be approached in writs not only for violation of fundamental rights under the provisions of the Indian constitution but also for any other rights of the Constitution, and it has powers to supervise over all its subordinate courts in the state. In fact, when apparently there is no effective remedy available to a person in equity, in justice, he or she can always move to the High Court in an appropriate writ.

Below the High court, there are subordinate criminal courts under its supervision in each district. They are court of sessions and court of judicial magistrates. These courts conduct trials in all matters related to all types of offenders. However, only the session's court has the power to pass the sentence of death. Every district is headed by the Chief Judicial Magistrate who heads over the other Judicial Magistrates, these courts being primary criminal courts, where every offender is first produced after arrest by the police.

Administration of criminal justice is carried through these Magistrate-Courts and Session's Courts. The Court at the lowest level is called Judicial Magistrate of the second class. This court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding 3 years or with fine up to 10,000 rupees. The assistant session's judge is competent to impose punishments up to 10 years imprisonment and any fine. The session's judge can impose any punishment authorized by law: but the sentence of death passed by him should be subject to the confirmation by the high court.

13.12 Function of Court

The high court may empower magistrates of first class to try certain offences in a summary way. Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars

of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Trial is the judicial adjudication of a person's guilt or innocence. Under the Criminal Procedure Code (Cr.P.C.), criminal trials have been categorized into three divisions having different procedures, called warrant, summons, and summary trials. A warrant case relates to offences punishable with death, imprisonment for life, or imprisonment for a term exceeding two years.

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding 2 years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice," to the accused when the person appears in pursuance to the summons.

13.13 Public Prosecution

In India there is a public prosecution system to prosecute the offenders. The Cr.P.C. provides for the appointment of public prosecutors in the High courts and District Courts. They are officials assisting the criminal courts by placing before the courts all the relevant aspects of the case. The public prosecutor acts in accordance with the directions of the judge (Thilagaraj and Varadharajan 2000). The control of the trial is in the hands of the trial judge of the criminal court. Investigation is the prerogative of the Police and the Public Prosecutor is believed to represent the public interest (Chandrasekharan 2008). He is supposed to lead evidence favorable to the accused for the benefit of the court.

13.14 Death Penalty

In India, over a 100 years, the mode of death penalty has remained the same. Section 368 (1) of the Code of Criminal Procedure, 1898, provides as follows: "When any person is sentenced to death, the death sentence shall direct that he be hanged by the neck till he is dead." This provision has been retained in Section 354 (5) of Cr.P.C. of 1973. The Supreme Court of India ruled in 1983 that the death penalty should be imposed only in "the rarest of rare cases." Capital crimes are murder, gang robbery with murder, abetting the suicide of a child or an insane person, waging war against the nation, and abetting mutiny by a member of the armed forces. According to *Amnesty International 2012*, for the seventh consecutive year India did not carry out any executions, but at least 110 new death sentences were imposed in 2011, bringing the total number of people believed to be under sentence of death at the end of 2011 to between 400 and 500.

Several mercy petitions were rejected by the President in 2011. However, executions in those cases were suspended by courts to allow for the consideration of separate legal challenges on the delay in the decision of the mercy petitions, and the constitutionality of the prolonged stay on death row. On 16 June 2011, the Mumbai High Court found that the mandatory imposition of the death penalty under Section 31-A of the *Narcotic Drugs and Psychotropic Substances Act, 1985*, violated Article 21 of the Constitution of India, and ruled that it be changed to give judges a discretionary choice of punishment. Following the judgment, engaging in the production, manufacture, possession, transportation, import into India, export from India, or transshipment of narcotic drugs as well as financing, directly or indirectly, any of these activities are offences that are punishable by death at the discretion of the judge. In December 2011, the Indian Parliament approved legislation making acts of terrorism aimed at sabotaging oil and gas pipelines punishable by death, in cases where the act of sabotage is likely to cause death of any other person.

13.15 Lok Adalats

Lok Adalats which are voluntary agencies are monitored by the State Legal Aid and Advice Boards. They have proved to be a successful

alternative forum for resolving of disputes through the conciliatory method.

The Legal Services Authorities Act, 1987, provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State, and District levels. These authorities will have their own funds. Further, Lok Adalats which are at present informal agencies will acquire statutory status. Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute. It also provides that in respect of cases decided at a Lok Adalat, the court fee paid by the parties will be refunded.

13.16 Alternate Dispute Resolution

ADR has emerged in India in the middle nineties due to the inordinate delay in disposal of cases resulting in docket explosion. In the place of Restorative Justice in other countries, India has Alternate Dispute Resolution. The privatization and structural adjustment policies in Post India legal system resulted in our thinking to find out ways and means to explore the quick and inexpensive ways to resolve the disputes without each and every case subjecting to the full Court processes. The Arbitration and Conciliation Act of 1996 explains various forms of Alternate Dispute Resolution.

The most commonly known methods are mediation, conciliation, and arbitration. These methods have been widely used not only to resolve disputes in commercial cases but also in a number of other noncommercial cases as well. Various disputes arise every day. ADR methods are the non-litigative dispute resolution strategies for resolving the disputes outside the court premises. Lok Adalat is one of the ADRs. It is one of the strategies for early settlement of disputes, particularly in personal injury compensation. Legal aid programme was provided in the year 1980 by the committee for implementation of Legal Aid Schemes (CLIAS) in holding Lok Adalatas for settlement of disputes through conciliation. It has become popular for pre-litigation settlement and the decision of Lok Adalat became enforceable after the endorsement of the concerned court.

13.17 Correctional Administration in India

In India over one million criminal cases are reported every year. Each annual incidence of crime in the country necessitates the existence of a huge network of prisons and other institutions of correctional administration. In India the number of prison inmates per million of population is one of the lowest in the world. There are a total of 1,393 prisons of different categories and sizes, with an authorized inmate capacity of 320,450.

13.18 Prison Statistics in India

Total number of jails in the country: 1,393

Types of jails	Strength
Central jails	123
District jails	322
Sub jails	836
Women jails	18
Open jails	44
Borstal schools	21
Special jails	26
Other jails	3

Source: Crime in India, 2010, National Crime Records Bureau.

Total capacity of jails in the country: 320,450

Types of jails	Capacity
Central jails	138,737 (43.3%)
District jails	118,388 (36.9%)
Sub-jails	47,499 (14.8%)
Women jails	3,600 (1.1%)
Open jails	3,451 (1.1%)
Borstal schools	2,240 (0.7%)
Special jails	6,037 (1.9%)
Other jails	323 (0.1%)

Source: Crime in India, 2010, National Crime Records Bureau.

Total number of jail inmates as on 31.12.2010: 368,998

Male: 353,961 (95.9%)	Female: 15,037 (4.1%)

13.19 Occupancy Rate

Year	Occupancy rate
2008	129.2%
2009	122.8%
2010	115.1%
Convicts	Occupancy rate
Male	125,789 (34.1% of total inmates)
Female	4,632 (3.7% of total convicts)
Under trials	
Male	229,846 (95.7% of total under trials)
Female	10,252 (4.3% of total under trials)

Source: Crime in India, 2010, National Crime Records Bureau.

One notable feature of the prison population in India is the large number of under-trial prisoners (240,098). This large number of under-trial prisoners has led to overcrowding in most of the prisons (Shankardass 2000). This is a cause of great concern, of which the Federal Government too has taken note of and has decided to provide financial assistance to the States to modernize their existing prisons and build new prisons to overcome the problem. This overcrowding of prisons has taken place despite the fact that bail is comparatively easy to obtain in the country.

13.20 Types of Prisons

The reception and classification of prisoners in India is a long drawn process. At the time of admission, the prisoners are examined by Prison Officers to verify their personal identify as written in the Prison warrants issued by the Courts. Thereafter, arrangements are made for safekeeping of their personal belongings. This is followed by a thorough personal search, which is conducted in a decent manner with due care of privacy and human dignity. Thereafter, the prisoners are sent to the Reception Ward where they are examined by a Medical Officer, within 24 h of admission. The Medical Officer is required to record a detailed report in writing on a medical sheet and weightment chart of the prisoner. The prisoners are kept in the Reception Ward for 3–6 months before being moved to the main Prison Wards. During this period, prisoners are keenly observed by the correctional staff and their hobbies, areas of interest, likes and dislikes, personal characteristics, and family background are studied and compiled. This compilation is called case-work.

On the basis of their personal, socio-economic, socio-cultural antecedents of prisoners, as ascertained in the Reception Ward, the prisoners are classified and the nature of segregation are on the basis of the physical and mental health, age group, sex etc. to different wards. Juvenile delinquents are kept in Juvenile Homes exclusively meant for them (Nitai 2002).

All the Central and District Prisons have wholetime or part-time physicians in Prison Hospitals which have both outdoor and indoor facilities. The medical staffs thoroughly undertake medical examination of all prisoners periodically. They also carry out inspection of food, sanitation, and hygiene and other amenities being provided to the prisoners. Apart from regular vocational training in various trades and occupations, and the educational training schedules, correctional institutions in India have also started a large number of programmes to improve the personality and mindset of the prisoners. These are programmes on anger management, social skills training, counseling against drug and substance abuse, Yoga, Transcendental Meditation, and Vipasana. Many prisons in India have tried these new approaches and have found the same to be extremely effective in changing attitudes of prisoners.

It is encouraging to note that the rate of relapse in crime is very low in India as compared to other developed countries like the UK. The extent of recidivism in India is not more than 10% while in the UK, it is more than 72% (Walmsley 2008). In 2010, the share of recidivists among all offenders has decreased to 8.2% as compared to 9% in 2009 (Crime in India 2010). Absence of recidivism shows the nature of impact of treatment programmes running in prisons for the reformation and rehabilitation of prisoners. A number of alter care programmes for released prisoners are being run by the government with the help of non-governmental organisations (NGOs) which

are acting as a bridge between the prisoners and the community (Trivedi 1987). These services are offered to the prisoners on their release to reintegrate in the main stem of social life. The Prison Departments are also providing tool kits of trades to released prisoners to achieve self-employment.

13.21 Modernization of Prisons

It has been mentioned earlier that, though prisons are primarily the concern of the respective State Governments, the federal Government has come up with the offer of substantial help to improve the conditions in prisons. The federal government proposes to spend 18,000 million rupees on improving the conditions in prisons which include construction of new prisons, expansion and renovation of existing prisons, construction of houses for prison personnel, and construction of new prisons and improving the sanitation and water supply in prisons (Chauhan and Srivastava 2011). Out of this total outlay, the States are expected to contribute 25% from their own fiscal resources.

13.22 Women in Detention

The National Committee on Women Prisoners (1987) has thoroughly examined the conditions of women in prisons. It has pointed out that there should be respect for gender dignity and concern for women in all correctional institutions and personnel in the Criminal Justice System. The police, prison, correctional, and judicial personnel involved in the handling of women are especially trained to ensure this and their knowledge is updated in laws and procedures applicable to women. Taking into account the special role of women in family life and social development and the vulnerability of girls, the current policy of the Criminal Justice System is to avoid the arrest and detention of women to the extent possible. In cases where women are taken into custody, all provisions regarding protection of their person and rights are scrupulously adhered to. At no stage, a woman arrestee is left unguarded by a police woman or other women authorized by the Government. Whenever, women are detained or kept in custody, in addition to basic amenity and privacy, the prison administration makes every effort to provide the essentials for meeting the women special needs. Welfare of children is a relevant consideration in the sentencing and disposition of women and every effort is made to ensure that the children enjoy protection from the detrimental effect of their mothers' arrest and incarceration. Earlier, women prisoners were mostly given vocational training in sewing and knitting. Now, efforts are being made to give them options of other vocations and activities. They are paid minimum standard wages laid down in the Prison Manuals for their work.

While, it has not been possible to set up separate prison for women in every State of the country, there are 12 exclusive prisons for women with an inmate capacity of 2010. Wherever separate prisons for women do not exist, the prisons have separate wards for them which are guarded by female correctional personnel.

13.23 Open Air Prisons

To counter the problem of overcrowding in the prison, open air prison has been established in a majority of states in India and it has been successful in most of the states. An initiative launched in the country in 1960, open prisons are assigned to convicts who have served part of their sentence and displayed good conduct. There are 22 open prisons in India (Report on Jail Reforms 1983). It is an initiative to reform the prisoners; open prisons give them freedom to move around freely during the day and earn a living in accordance with their skill set. In some of the states, the convicts are allotted a house where he or she can keep his family with him or her.

13.24 Probation

Probation is an alternative to imprisonment. Community-based treatment of offenders is widely used in India under the Probation of

Offenders Act 1958. Young offenders and offenders who have not committed serious offences are released on probation based on their presentence investigation report of the probation officer. The probation officer plays a major role in reforming the offender in the community with the support of family members of the offender, his or her employer, NGOs, and other stakeholders. However the judiciary has an inimical attitude towards probation and hence the number of probationers has been declining in the past years (Chakrabarthi 1999).

13.25 Parole

Parole is release of an offender from prison before the termination of his or her sentence based on the good behavior he or she maintained in the prison. It is aimed at reduction of the period of incarceration. In India, parole is a conditional supervision of sentence for a short duration to enable the prisoners to attend to certain problems. However, in par with parole in other developed countries, there is a provision for premature release of offenders in the Criminal Procedure Code.

13.26 Juvenile Justice in India

The Juvenile Justice (Care and Protection of Children) Act, 2000, takes into consideration (1) provisions of the Indian Constitution; (2) UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); (3) UN Convention on the Right of the Child, 1989; and (4) United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990.

Juvenile Justice (Care and Protection of Children) Act, 2000, is a major step forward in terms of being a progressive and proactive legislation for the care, protection, treatment, and rehabilitation of "children in need of care and protection" and "juveniles in conflict with law." It is a comprehensive legislation for justice to the children in the situation of abuse, exploitation, and social maladjustment.

The framework of the reenacted law provides for "Juvenile Justice Boards" in place of earlier Juvenile Courts and "Child Welfare Committees" in place of Juvenile Welfare Boards. These are the legal bodies, called Competent Authorities, for trial or proceedings of "Juveniles in Conflict with Law" and "Children in Need of Care and Protection," respectively. The Act provides for the multiple roles of social workers and voluntary organizations at various levels. Besides, the Act has highly innovative provisions for the social reintegration of these children through the integrated institutional and noninstitutional care systems of adoption, foster care, and sponsorship programmes (Thilagaraj 1988).

13.27 Lacunas of Juvenile Justice System

Study of juvenile justice systems shows that children committing crimes, as well as others taken charge of in order to prevent the commission of crimes, are not being given the promised care. Special police units for juveniles or special training to police for dealing with neglected and delinquent juveniles are an exception. Juvenile courts and juvenile welfare boards have not been constituted in each district and their powers are exercised by specified magistrates without any special training in child psychology or child welfare. A majority of children are unhappy in the institutions and the casework services are inadequate in terms of diagnosis, counseling, and planning of rehabilitation. The main socialization agents, the caretakers, are the lowest paid, least qualified and at times even ill-informed about the needs of the institutionalized children (Weiner 1991). Very few aftercare service are available. Despite a statutory provision to the contrary, children are not always released on bail, even in case of bailable offences, by some juvenile courts. The various organs of the JJS are malfunctioning primarily because the system is an ill-coordinated one. Each of its three main components—law enforcement, adjudication, and correction—frequently operates haphazardly with little knowledge of what other segments are doing. The piecemeal

and fragmented measures taken for the care and the welfare of delinquent and neglected juveniles are bound to malfunction in the absence of a holistic approach to the problem of juvenile social maladjustment.

13.28 Judicial Review and Criminal Justice Administration

Never before in its history was criminal justice administration in India subjected to such a critical review by the Highest Court in the country as in the last few decades. Discarding its erstwhile "hands off doctrine towards prisons," the Supreme Court of India came strongly in favor of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In Sunil Batra vs. Delhi Administration and Others (1980), Mr Justice V.R. Krishna Iyer pronounced: "prisoners have enforceable liberties, devalued may be but not demonetized; and under our basic scheme. Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy." Again in Sunil Batra vs. Delhi Administration (1979), the Court asked and affirmed: "Are prisoner's persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent." These and several other judicial pronouncements have set into motion a series of prison reforms all over the country.

For the undue arrest and harassment by the police there had been a number of cases in the Supreme Court. The Supreme Court had laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of Police on one hand and protection of Human Rights of citizens from oppression and injustice at the hands of the Law Enforcement Agencies on the other hand.

The Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of monetary but also in terms of other appropriate relief and remedies to victims of crime. Bhopal Union Carbide Gas tragedy victims are examples of relief and remedies forged by the Apex Court. In the case of Abuse of Power by police, the Supreme Court ordered for victim compensation by state and restitution by the alleged police officer. In another case, the High Court has held that the Criminal Justice System is not penal code alone, and that it is restitutive justice too.

13.29 Conclusion

The criminal Justice system is, at present, a complex of different agencies working at cross purposes. The delivery of justice is delayed and, at times, leads to miscarriage of the legal process. The current status of the Criminal Justice system throws many challenges to the government. But the Indian criminal justice system suffers from serious underfunding and understaffing, and continues to be extremely slow. As in every democratic civilized society, this system is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly, and legally. More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding of appropriate punishments to the convicted to meet the ends of justice, and prevention of recidivism.

Some of the recent developments that have taken place during the last few years in the judicial delivery system to seek redress and accord justice to the poor are worth mentioning. The importance of these developments to the delivery system of justice cannot be ignored. They have revolutionized our judicial jurisprudence and will go a long way in giving relief to the large masses and the common man. Efforts of the superior courts of the country to provide new contents to criminal justice have also resulted in paradigm shifts in prison reforms, treatment of under-trials, and rehabilitation of victims.

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Diversity Within an Asian Country: Japanese Criminal Justice and Criminology

14

Tokikazu Konishi

14.1 Introduction

Japanese anthropologist Tamotsu Aoki (1999) has pointed out that the whole Asian region shares one common trait: its time. Indeed, in his book *Asia dilemma*, he argues that the ideal generalization of "Asia" is only an illusion. The definition and concept of any specific region is fluid and historically constructed, especially by those in power. This argument is related to the prevalent characterization of the "Orient" proffered by Edward Said (1979), after which the word "Orient" has become commonly regarded as prejudiced, having been generated by dominant power and reverie in early-modern Europe.

However, from an anthropological standpoint, Aoki (1999) has noted that we can, in fact, observe "four types of time" flowing simultaneously throughout the Asian region: "indigenous," "Asian," "historical," and "contemporary." First, we find each native culture includes classically observed languages and religions (such as variants of animism) in every part of the Asian region, cultures which Aoki has described as reflecting an "indigenous" time. Second, the ancient Chinese and Indian civilizations strongly influenced the entire Asian region, and through this we can identify the inheritance of an "Asian" time. Although the extent of influence from each civilization differs in different areas of this region, the existence of this influence is common to all areas. Third, in early-modern times, Western European countries took over and colonized almost all parts of the Asian region. Through that period of time, the impact of Western European civilization extended throughout this region. Moreover, this shared historical experience contributed to the emergence of the generalization of the ideal of "Asia." Aoki has mentioned that a consequent "historical" time is common to this region. This type of time includes the pre-modern times specific to each part of the Asian region, as well as modern times, and thus it also generates the differences in social institutions and ethos between different regional areas. Fourth, we live in a contemporary time as well. In this time, all of us are faced with progress from urbanization, industrialization, informatization, technologization, and consumer society. American cultures, among others, have held great significance in the Asian region.

These "four types of time" pass simultaneously in the Asian region in general, and they can be found in Japanese society as well. But they do not flow homogeneously in all of Asia, but rather the particular way they flow varies according to the societies that experience them. According to Aoki (1999, p. 85), in Japan the fourth time, which is mixing curiously with the third time, is beginning to cover the entire society. Nonetheless,

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the first and second times are also still flowing there.

We can examine general trends in criminal justice and criminology in Asia following this anthropological notion. Of course, this viewpoint is also applicable to the nature of criminal justice and the ways of understanding crime phenomena, including criminological perspectives, in the particular case of Japan. In discussing the significance of Asian criminology, a key feature of Asian culture is described as diversity (Liu 2009). Language, religion, family structure, and other cultural elements vary greatly in Asian societies. We will see that this diversity also exists in the nature of criminal justice and the ways of understanding crime phenomena in Japan, based on the viewpoint presented above.

In this chapter, according to the above-mentioned "four types of time," we will examine Japanese criminal justice and criminology from a historical perspective from four angles. First, in Japan, the legal consciousness connected to native laws underlies the present criminal justice system and the legal notions in these laws leave their mark on the understanding of crime phenomena. Second, in ancient Japan, after the period of native laws, penal codes and other legal systems were imported mainly from China and incorporated into Japanese society. The traits that emerged in those years also remain in current criminal justice in Japan. Third, after the penal codes modeled after those of China developed independently and strayed from the original style over time, in the process of modernization that had started at about 150 ago, the government transplanted the Western European criminal laws and social sciences into Japan. This formed a foundation for present-day criminal justice and criminology. Fourth, in contemporary Japan, since the end of World War II, criminal justice and criminology have become highly Americanized.

Considering this four-part division of time, in Sect. 14.2, the legal consciousness connected with native laws and the legal notion of these laws will be examined. Moreover, we will analyze the history of the import of Chinese penal codes and their original development, and show its influence on the current criminal justice in Japan. Next, in Sect. 14.3, we will probe into the process and effects of the transplantation of the modern Western European criminal laws and social sciences into Japan. After that, in Sect. 14.4, we will examine criminal justice system and criminological thoughts in the post-World War II Japan, characteristics of crime phenomena in its society, and then the contemporary alteration of criminal justice policy since the dawn of a new millennium. Finally, in the conclusion in Sect. 14.5, it will be argued that both the criminal justice system and criminological ideologies in an Asian country such as Japan are diverse enough to achieve dynamic internal development.

14.2 Chinese Penal Codes and Their Original Development in Japan

The Eastern area of the Eurasian continent and the surrounding islands, including Japan, has been called the "Far East" (of course, this is appropriate only if it is viewed from a European or American point of view). Geographically, Japan is located at the end of the Asian region, or even at the end of the world. Therefore, historically, the "waves" of civilizations around the world had finally reached that end—Japan. It has been said that, due to this geographical situation, the Japanese have a tendency to respect foreign cultures. In ancient times, the ancient Chinese and Indian civilizations were universal throughout the Asian region. They extended into every part of this region, which had also possessed many other native cultures. These civilizations finally found their way into Japan as well and took root in Japanese soil. At the beginning of this section, we will discuss the native cultures in Japan. According to the above-mentioned division of the "four types of time," this sort of culture represents the "indigenous" time. After this discussion, the influence of the Chinese and Indian civilizations on Japan will be examined. The legacies of these civilizations correspond to the "Asian" time. Finally, we will describe the unique developments of these

civilizations in Japan. The heritage of these developments can be categorized as a part of the "historical" time.

14.2.1 Japanese Indigenous Time

In Japan, native laws were rooted in a Japanese religion that evolved out of animism: Shintoism. Thus, criminal law and Shintoism were unified in archaic Japanese society. The Japanese term *tsumi* "crime" is derived from the expression *tsutsumu mi* "wrapping what you really are." In Shintoism, it is believed that the real nature of humans is good and innocent, such that any *tsumi* that has been perpetrated veils the good and innocent human nature of the perpetrator. Therefore, it is thought that, through some Shinto rituals, like *misogi* (a purification rite), the *tsumi* can be cleared. Interestingly, in Japan, white-collar criminals, especially corrupt politicians, often receive people's forgiveness through a variation of this *misogi* ritual. Apparently, this religious ethos can be seen in the traditional Japanese tendency to reincorporate ex-criminals into society, which contrasts considerably with the exclusionary stigmatization of and discrimination against ex-criminals in societies that have developed high common crime rates.

14.2.2 Japanese Asian Time

In ancient Japan, since around the fifth century, foreign religions were gradually imported from the continent through Korea. Among these, Buddhism and Confucianism were most influential. For instance, Buddhism provides the Japanese with the notion of the *inga-ouhou* "karmic backlash," and Confucianism furnishes the Japanese with the theoretical grounds for the view of human nature as being fundamentally good.

In the seventh century, the Chinese legal system was very much on the cutting-edge in the Asian region. Therefore, the Japanese government tried to import Chinese laws with the help of dynasties in China. Chinese penal codes were introduced into Japan, and in 702, Japanese penal codes modeled after the Chinese codes were put into effect. Interestingly, however, compared with the original penal codes in China, punishment in Japan's codes was relatively lenient.

14.2.3 Japanese Historical Time

After the importation of the Chinese penal codes, Japanese criminal laws developed almost independently. Nonetheless, we can observe the existence of influence from foreign countries, especially China, Korea, and some Western European countries. This influence was exerted on Japan in a wave-like fashion. According to Aoki (1999), this period of time can be classified as "historical" time.

In 1639, the government implemented a national isolation policy (except foreign commerce with China and the Netherlands, and political exchange with Korea). During the Edo era (1603–1867), unique criminal laws were further developed. Early in the Edo era, the government attached importance to general prevention (or deterrence) through punishment. However, the government's attitude toward punishment gradually changed. The government established the *Kujikata Osadamegaki* (the law code of the Edo era) in 1742. As a part of the *Kujikata Osadamegaki*, the *Osadamegaki-Hyakkajo* (the second volume of the law code of the Edo era) included provisions for lawsuits, trials, and punishment. The government codified judicial precedents of criminal cases and framed this code. After this period of codification, the government came to think more highly of the notion of special prevention (or rehabilitation) as the function of punishment. In 1790, for those who were homeless and had criminal tendencies, a vocational training facility was built in Ishikawa-jima (a waterfront area facing Tokyo Bay). This is regarded as the beginning of institutional treatment in Japan and this period might have shown the first emergence of spontaneous modernization in this country.

14.3 Modernization and Western Criminal Laws

In the middle of the nineteenth century, Japanese society encountered the billow of modern European civilization, after which the new government actively advanced modernization of the society. In this section, we will discuss this modern time, or the "Western European" time. We can classify this period into a part of the "historical" time, elements of which were already discussed in Sect. 14.2.3.

During this period, Japanese criminal justice was influenced by many countries. At the beginning of modern era, the government laid down the Rule of Prison of 1872, which was in line with traditional ideologies. Although government officials had inspected prisons in the British colonies in the Asian region, such as Hong Kong and Singapore, and established this rule, this rule's stipulations are also clearly influenced by Chinese law. This rule was grounded in the spirit of Confucianism, which encouraged practices such as benevolence, and began by declaring the importance of the humanitarian treatment of offenders in prison.

Next, the government introduced French laws, which were based upon the Napoleonic Code, into Japanese society. Following these laws, the Penal Code of 1880, the Codes of Criminal Procedure of 1880 and 1890, and other laws were established. Nonetheless, the individualism of the French laws was considered extreme for Japanese society, and the laws grounded on this principle were fiercely criticized by scholars and legislators. At this point, the government decided to adopt German laws, and the Penal Code of 1907, the Code of Criminal Procedure of 1922, the Prison Law of 1908, and other laws that followed German laws were established. After that, the government continued to prepare modern laws, including the Juvenile Act of 1922, making allowances for foreign legal systems.

At that time, "criminal policy," one discipline of law, was mainly adopted for understanding crime phenomena, in place of "criminology." This legal approach was closely connected to the disciplines of criminal substantive and procedural laws. Furthermore, in the early twentieth century, psychiatric approaches, such as forensic psychiatry, were also adopted in academic circles. For instance, the Japanese Association of Criminology, founded in 1913 and still in existence today, was grounded in this approach. Following such approaches, a sociological criminology literature emerged in Japan.

14.4 Crime, Criminal Justice, and Criminology in Contemporary Japan

14.4.1 Americanization of Criminal Justice and Criminology

In the history of Japanese criminology, the "Susuki versus Tokoro" academic controversy over methodology in 1970s has been regarded as momentous, radical, and significant for the disciplines of "criminal policy" and "criminology" (Ishizuka 1996). In articles published in academic journals, two legal professors, Shuichi Susuki (1970) and Kazuhiko Tokoro (1970), heatedly debated how we should comprehend the relationship between the two disciplines. This debate was related to the understanding of the relationship between jurisprudence (a sort of dogmatics) and the social sciences.

In his textbook, Susuki (1969) has claimed that each of these disciplines is perfectly independent. He emphasizes the strict division between the "norm" and the "fact," where the prescriptive statement is fully separated from the descriptive one. Therefore, value judgments on criminal policy cannot be directly derived from the facts as illuminated through criminological research. In the theory of criminal policy, our judgments of value cannot be chosen, but only be based upon our legal and social value system. Susuki was apparently conscious of the significance of the notion of *Wertfreiheit* "value-freedom" in the social sciences, which was advocated by Max Weber (1918/1988).

In contrast, Tokoro insisted that we should not separate these two disciplines and that we can

consider the two disciplines of "criminal policy" and "criminology" comprehensively. Thus, simply on the basis of the facts discovered through criminological inquiry, we can make a normative decision and present an ideal alternative in our discussion of criminal policy.

Indeed, this controversy reflects a greater conflict between the European-style "criminal policy (*Kriminalpolitik*)" discipline and the American-style discipline of "criminology," particularly "sociological criminology." After World War II, Japanese society faced the Americanization of cultures. We can see this period as a contemporary time, or an "American" time. Japanese society has accepted Americanization for more than half a century and is currently part of global and universal cultures.

This process can be seen in the legal system as well. Influenced by American laws, the government enacted the Code of Criminal Procedure of 1948 and the Juvenile Act of 1948, and partly revised the Penal Code of 1907. The enactment and revision were conducted under the new Japanese Constitution, which emphasizes due process of law and the individual instead of the nation.

However, due to the historical layering described above, these criminal laws and criminal procedure laws can, in fact, be at odds with each other. The current Penal Code has been utilized since its establishment in 1907. In this Japanese criminal law, derived from Germany's legal system, subjective elements (e.g., criminal intent) are emphasized. In contrast, objective elements (e.g., physical evidence) are intrinsically stressed in the Japanese criminal procedure law, which was derived from the legal system of the United States.

Legal professor Koya Matsuo has cited "minute justice" as a characteristic of Japanese criminal justice (Matsuo 1994). In the criminal procedure of Japan, every party involved strongly desires to elucidate the truth of the case in question. It is believed that the elucidation of the truth through scrupulous examination and the defendant's confession of his/her guilt is at the core of a criminal trial. In the process of criminal investigation in Japan, law enforcement agencies take on exhaustive criminal investigations, which depend chiefly upon interrogations. Moreover, the clearance rate for crimes seems to be relatively high: 51.7% for penal code offenses in 2009 (Research and Training Institute, Ministry of Justice 2010). In Japan, this rate refers to the percentage of cases referred to public prosecutors or disposed as trivial offenses by the police or other investigative authorities, given the number of reported cases.

In contrast, in the criminal trial process, it should be noted that the rate of judgment of not guilty is extremely low. In fact, that rate was only 0.01% in 2009 (Research and Training Institute, Ministry of Justice 2010). The reasons for this extremely low rate are often questioned and criticized by foreign researchers. The background behind this at first shocking number is the high rate of suspension of prosecutions by public prosecutors; 52.1% of persons finally disposed in public prosecutor's offices in 2009 (Research and Training Institute, Ministry of Justice 2010). Public prosecutors have enormous power in the Japanese criminal justice system, and they can exercise considerable discretion in choosing whether they prosecute a criminal or not. In fact, they prosecute only the accused who they are firmly convinced must be convicted and punished. Most of the accused can escape from prosecution, even if there is sufficient evidence to prove their guilt. Sociologist David T. Johnson (2002) noted that suspension of prosecution "does fit well with other features of Japanese culture, especially the propensity for wrongdoers to confess and the disposition to believe that people are 'perfectible' through social engineering" (p. 108). Thus, the Japanese criminal justice system has been characterized as "prosecutorial justice" (Mitsui 1980). Nonetheless, this considerable power triggered a shameful scandal in 2010 (The Asahi Shimbun 2010) in which organized evidence tampering by public prosecutors was detected. After this incident, reforms of the public prosecutor's office have begun in Japan.

On top of the high rate of prosecution suspension, we also find that the rate of suspension of sentence execution is also high. In 2009, suspended execution rates were 58.0% for imprisonment

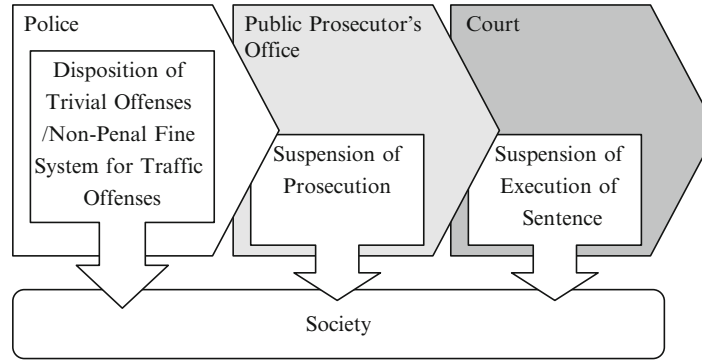

Fig. 14.1 Diversion in the Japanese criminal justice system

with labor for a limited term and 94.3% for imprisonment without labor for a limited term (Research and Training Institute, Ministry of Justice 2010). In this manner, there is a variety of diversion paths in the Japanese criminal justice system (Fig. 14.1). In light of these possibilities, Daniel H. Foote (1992) has characterized the Japanese criminal justice as a kind of "benevolent paternalism."

Alongside the development of this uniquely Japanese criminal justice system after World War II, Japan also developed its own literature in criminology. The national research institutes related to criminology, such as the National Research Institute of Police Science at the National Police Agency and the Research and Training Institute at the Ministry of Justice, established in post-war Japan, have played an important role in the criminological academe. These institutes' researchers have effectively learned American criminology and presented it to academic society in Japan.

After World War II, psychological and sociological approaches to understanding crime phenomena became prepotent in Japan, prompting the formation of the Japanese Association of Criminal Psychology in 1963 and the Japanese Association of Sociological Criminology in 1974. Japanese psychological and sociological researchers have tried to apply American theories to crimes and society in Japan with American methods. Interestingly, however, in contrast to American criminologists, most of whom hold degrees in behavioral sciences such as psychology and sociology, most Japanese "criminologists" have graduated from and belong to schools of law. This further reflects the dilemma between the European-style "criminal policy" discipline and American-style "criminology."

14.4.2 Crime in Post-war Japan

If we turn our attention to the characteristics of crime in Japan, we find that foreign researchers have generally been interested in the low common crime rate in post-war industrialized Japanese society. As Pontell and Geis (2007) noted, the "low crime rate in postwar World War II Japan has challenged the interpretative skills of a considerable cadre of western analysts and brought into question many conditions usually positively correlated with crime" (p. 103). In fact, compared to the number of reported cases, crime rates, and clearance rates for homicide and theft in five major industrialized countries—Japan, France, Germany, the UK, and the US—the rates in Japan are the lowest, as seen in Table 14.1. Of course, the definitions constituting these rates do not correspond exactly among these countries, so this comparison is not as accurate as one would hope.

It has been thought that people control themselves informally and thereby reduce the incidence of crime in Japanese society. Referring to the high level of interdependence and the highly

Table 14.1 Number of reported cases, crime rate, and clearance rate for homicide and theft in Japan, France, Germany, the UK, and the US in 2008 (Research and Training Institute, Ministry of Justice 2010)

Category	Japan	France	Germany	UK	US
Homicide					
Reported cases	1,341	1,899	2,266	1,238	16,272
Crime rate	1.1	3.1	2.8	2.3	5.4
Clearance rate (%)	95.4	87.5	97.0	83.6	63.6
Theft					
Reported cases	1,372,840	1,699,243	2,443,280	2,242,718	9,767,915
Crime rate	1,075	2,746	2,972	4,120	3,212
Clearance rate (%)	27.7	13.2	29.8	18.2	17.4

Note: 1. "Number of Reported Cases" refers to the number of cases whose occurrence came to be known to the police or other investigative authorities through incident reports, complaints, charges, or some other cause
2. "Crime Rate" refers to the number of reported cases per 100,000 persons
3. "Clearance Rate" refers to the percentage of cleared cases given the number of reported cases

developed communitarian ideal in Japan, John Braithwaite (1989) has proposed a model strategy for crime control. This strategy is called the reintegrative shaming theory, which proposes that people can reintegrate a criminal back into their society through shaming him/her. In the case of Japan, a spirit of Shintoism lies behind such an attitude. Thus, some components of restorative justice seem to have existed originally in Japanese society. For instance, in Japan, the role of volunteer probation officers is critical in the community-based treatment of offenders, as they are important in promoting reconciliation between ex-criminals and the communities to which they belong.

Nonetheless, some researchers have also pointed out that the white-collar crime rate in Japanese society has the potential to be quite high (Pontell and Geis 2007). Thus, it is said that there is "a ubiquitous climate of corruption" in Japan (Fisher 1980, p. 222). For example, in Japan it is common for failing companies to become involved in window-dressing accounting in order to avoid bankruptcy (Konishi 2010). The history of corporate accounting scandals in Japan after World War II can be divided into three periods: "the 'normalization' of window-dressing accounting up to the 1960s, their 'enlargement' in the 1970s and 1980s, and the 'diversification of purpose' of window-dressing accounting after the 1990s" (Konishi 2010, p. 101; Suda 2007).

Recently, the government and scholars alike have sought to lower the high re-imprisonment rate. The rate of re-imprisonment within 10 years of release from prison was 53.6% in 2009 (Research and Training Institute, Ministry of Justice 2010). Most inmates who are re-imprisoned have committed theft or violated controlled substances regulations; in Japan, the main drug offense is the illegal use and distribution of methamphetamine. Therefore, the most problematic illegal drug type in Japan is different from many other countries, and we must devise and develop more effective therapeutic methods for methamphetamine-dependent offenders.

Elderly and intellectually disabled people have turned out to make up a significant portion of the offenders who committed theft. Families and communities are said to be losing the traditional strong bonds in contemporary Japanese society. As a result, crimes by elderly people are sharply increasing. Some prisons in Japan look like nursing homes. Thus, building up closer connections between the criminal justice system and social welfare is indispensable. It may be necessary to establish a diversion program targeted at elderly and intellectually disabled criminals in the criminal justice system. Through this program, they could be diverted from the criminal justice system in its investigation, prosecution, or court processes and instead treated within the social welfare system.

14.4.3 Altering Legislative Policies on Crime and Punishment

Prominent Japanese law professor Koya Matsuo (1981) once imagined criminal justice policy in Japan as analogous to a mythical world in ancient Egypt: "while the legislator keeps silent as if it were a pyramid, the judiciary rouses up as if it were a sphinx." As suggested by this remark, criminal legislation in Japan has been sluggish for a number of years. Instead, courts have contributed to rule-making or even policymaking through the formation of precedents.

For example, the Supreme Court standardized the application of the death penalty through the formation of precedents. In Japanese criminal law, judges are given broad latitude in sentencing and there is no codified guiding principle, such as sentencing guidelines. The Supreme Court's decision on the Nagayama case in 1983, among others, is well known as a significant judicial precedent for the application standard for the death penalty. In this decision, indifferent to public opinion, the Supreme Court made the standard relatively restrained. Consequently, in accordance with this standard, the courts have thoroughly taken into account matters favorable to the accused in subsequent capital cases and thereby controlled the number of capital sentences.

In another example, the Juvenile Act of 1948 contains the concept of the "pre-delinquent juvenile" (Konishi 2007). However, this concept is highly ambiguous, and the courts have applied this concept to juvenile cases in a very limited way. On the other hand, for more than half a century, lawmakers have not attempted to redefine its meaning through any revision of the Juvenile Act.

Despite these setbacks, criminal legislation has been actively created in Japan since around the turn of the twenty-first century. Public opinion has brought powerful direct pressure on criminal justice policy in Japan since the late twentieth century. As a result, punishment and other sanctions against criminals have gotten harsher in criminal legislation and judgment. Recently, criminal legislation has advanced impressively. The Penal Code, the Code of Criminal Procedure, and the Juvenile Act were all revised to a large extent. In 2010, for instance, the limitation on prosecution of the crimes in which a person is killed in the Code of Criminal Procedure and the limitation on punishment in the Penal Code were both revised. Through these revisions, parts of the limitations on prosecution and punishment were abolished. New basic laws concerning the treatment of offenders in institutions and communities—the Act on Penal Detention Facilities and Treatment of Inmates and Detainees and the Offenders Rehabilitation Act—were enacted in 2006 and 2007.

Like in other countries, we can observe a "penal populism" (Pratt 2007), or a populist criminal policy, in Japan. Behind the scenes, there are a variety of factors, such as the development of information technologies and the decline of the status of professionals on crime. Salient criminal cases, in particular, have had a vast impact on speed-before-quality legislation. In the aftermath of these cases, the mass media have urged legislators toward rapid enactment. As Stolz (2002) has noted, in symbolic politics, criminal laws can function symbolically in all three branches of government. For example, recently, the number of capital sentences has increased in Japan. As a result of having come to care about the "public's confidence in the judiciary" (Judicial Reform Council, Cabinet 2001, p. 41; General Secretariat, Supreme Court of Japan 2008), the courts appear to have twisted the application standard of the death penalty, which had been established through the foregoing Supreme Court's decision. The courts seek to earn the "public's confidence in the judiciary" through responding to the public's request for more severe punishments and more death sentences.

As one of the background factors in this drastic change, there has been a mobilization of the victim's rights movement in Japanese society. In Japan, victimology attracted public attention throughout the 1990s. In 1990, the academic society of victimology, the Japanese Association of Victimology, was founded, and the National Association of Crime Victims and Surviving Families was created in 2000.

Moreover, the public has come to play a significant role in the Japanese criminal justice system, as public opinion has a continuous and potent influence on criminal justice. Currently, people can participate directly in criminal procedures. The lay judge system started in 2009. That same year, the Committees for the Inquest of Prosecution, which consists of ordinary citizens, obtained the power to prosecute criminals whose cases have been dropped by a public prosecutor. In addition, since 2008, victims or their family members can participate in trial proceedings. In these ways, public opinion and the citizens' movement of crime victims and their family members have wielded powerful direct influence over criminal justice policy in Japan.

14.5 Conclusion

We can describe the above-mentioned phenomena in Japanese criminal justice and criminology as a "multilayered history." Through this type of history, a variety of experiences and values have accumulated in Japanese society. Of course, such an accumulation of different experiences and values can include internal conflict. This is what makes a dynamic and engaged society.

Recently, criminologists have been paying keen attention to Asian criminology (Liu 2009). Japan is positioned as a part of Asia; this, Japanese criminology can be examined as a part of Asian criminology, which is rich in its diversity and contains all of the necessary dynamics for further development.

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Development of Criminology in Japan from a Sociological Perspective

15

Minoru Yokoyama

15.1 Development of Criminology Before the World War II

In Japan, psychiatrists took the initiative in the development of criminology and forensic medicine. The leading psychiatrist was Shufu Yoshimasu (1899–1974). He studied under the guidance of Shuzo Kure, a professor of Tokyo Imperial University (current Tokyo University), and worked as a psychiatric researcher at a prison. He carried out research on twin criminals from the viewpoint of eugenics after the example of the research by Johannes Lange (1891–1938). He invented a table to describe criminal career of each criminal by a curved line. As he became a professor of Tokyo University, many young able psychiatrists were interested in criminology, one of whom was Osamu Nakata.

Tanemoto Furuhata (1891–1975) graduated from the Faculty of Medicine at Tokyo Imperial University, and became a professor at Kanazawa Medical College in 1923. Three years later he founded the Kanazawa Association of Criminology. Under his leadership this association developed. As the association covered the country, in 1928 it was renamed the Japanese Association of Criminology.

In 1936 the Japanese Government concluded a treaty with the Nazi Government in Germany to prevent communism. In 1940 Japan enacted the National Eugenic Law to sterilize a person with bad inheritance compulsorily after the example of that proclaimed in 1933 in Germany, although Japan did not carry out the operation for compulsory sterilization frequently as in Germany (Yokoyama 1991, p. 7). Under this law, criminology from the viewpoint of eugenics was prevalent before the World War II. Even after the war many leading members of the Japanese Association of Criminology has been psychiatrists, although denying involvement in compulsory sterilization of a criminal with a bad inheritance.[1]

In the United States criminology was developed mainly by sociologists before World War II. In Japan sociology was often misunderstood as a kind of socialism and communism, which the Japanese Government suppressed severely under the Law to Maintain Public Order of 1925. Therefore, Japanese sociologists were not interested in the field research from the viewpoint of criminology like in the United States.[2] Their main interest was to introduce

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[1] In the place of the National Eugenic Law the Eugenic Protection Law was proclaimed in 1948, of which the main purpose was to suppress the birth of a baby with bad inheritance. To change the purpose to the protection of mother's body at her pregnancy and parturition, this law was renamed the Mother's Body Protection Law in 1996, under which the idea of compulsory sterilization from the viewpoint of eugenics was denied.

[2] Some sociologists carried out field research on the family system and farmers' society.

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the theories on sociology developed in European countries, especially Germany.

Around 1922 Shotaro Yoneda, a sociologist, introduced the theory on criminology advocated by Emile Durkheim, and analyzed female shoplifters and the intellectually handicapped criminals (Iwai et al. 1975, p. 203).

In Japan criminology from sociological perspectives has been called sociological criminology. The first book entitled "Sociological Criminology" was written by Jyunko Tatsumizu in 1922 (Iwai et al. 1975, p. 203). A book entitled Sociological Criminology written by Enrico Ferri, a criminologist in Italian Positivism School, was translated by Kichihiko Yamada and published in 1923. Since then the term sociological criminology has been used in Japan.

15.2 Introduction of Sociology from the United States Soon After World War II

After the finish of the war in August in 1945 Japan was democratized under the guidance of the Allied Powers, in which the United States took the initiative. With democratization the freedom to study and research was completely guaranteed, under which sociological study has developed. Many scholars began to learn sociology and criminology as it had developed in the western countries, especially the United Sates. Translations of books on sociology and criminology into Japanese were commonplace. These translated books were helpful for young scholars to study sociology and criminology.

15.3 Development of Sociological Criminology After World War II

Soon after the war Japanese lived in a chaotic society, where we suffered absolute poverty. There were many property crimes owing to the poverty especially in cities, where black markets appeared to supply many goods, even daily living necessaries. Many poor women became prostitutes soliciting on the street[3]. By the use of violence to maintain order in a chaotic area, Boryokudan, that is, Japanese mafia groups, developed (Yokoyama 1999, p.138).

To analyze social problems at that time, Tatsuo Takenaka carried out research on prostitution, the result of which was published in 1949. Hiroaki Iwai researched on activities of Tekiya, the street stalls, one kind of Boryokudan. His report was published in Shakaigaku Hyoron, a journal of the Japan Sociological Society, Vol. 1, No. 1 in 1950. His famous book entitled "Structure of Pathological Groups" was published in 1963.

In such a context sociologists became interested in research on crimes. Then, a session on "Issues of Sociological Criminology" was held for the first time at the annual meeting of the Japan Sociological Society in 1951.

15.4 Researches on Juvenile Delinquency Under the New Juvenile Justice System

Soon after the war we witnessed many poor juveniles, especially orphans, committing crimes (Yokoyama 2002, p. 329). Many sociologists began to be interested in phenomena of juvenile delinquency as the serious social problem.

In 1948 the new Juvenile Law was enacted, under which a family court and the Juvenile Classification and Detention Center were introduced. The next year the Law for Prevention and Rehabilitation of Criminals was proclaimed, by which the system of probation and parole was defined. Then, the current juvenile justice system was established.

After the establishment of this system many of those who learned sociology and behavioral sciences became probation officers at the family court, specialists in researching juvenile's disposition, and probation and parole officers affiliated with the Ministry of Justice. Together with such specialists, sociologists developed sociological criminology.

[3] The Prostitution Prevention Law was enacted in 1958 by the initiative of female Diet members (Yokoyama 1993). After the enforcement of this law prostitutes soliciting on the street ended, because the solicitation on the street was criminalized (Yokoyama 1995, p. 50).

Judges at the Supreme Court and family courts were earnest about realizing purposes defined by the new Juvenile Law of 1948. Under the aegis of the Supreme Court the Study Meeting on Protection of Youngsters was organized in 1951, in which such sociologists as Koji Kashikuma, Kizaemon Ariga, Tatsumi Makino, and Hiroaki Iwai participated (Iwai et al. 1975, p. 203). At the same time Tatsumi Makino, Koji Kashikuma, Hiroaki Iwai, Kosaku Matsuura, and Soichi Nasu founded the Group to Study Sociological Criminology, which I also joined in 1969. At that time many sociologists researched on juvenile delinquents mainly from the viewpoint of family background and community.

A typical research project from the viewpoint of the community was conducted by Kosaku Matsuura and Koji Kashikuma. Under their leadership members of the Group to Study Sociological Criminology in corporation with probation officers at Tokyo Family Court carried out the research twice to analyze the relation between juvenile delinquents and the community. They used a method of dot mapping after the example of the research on the delinquency area by Clifford Shaw and Henry McKay on the basis of the social disorganization theory. They researched 7,999 and 15,229 juveniles whom Tokyo Family Court disposed of in 1953 and in 1956, respectively (Kuroda 1975, p. 62). They found that there was no delinquency area in Tokyo from the viewpoint of juveniles' residence. On the other hand, juveniles went to amusement areas to commit delinquency. Their research was the first full-scale research from the ecological viewpoint.

At that time the prediction of delinquency studies drew our attention, because Sheldon Glueck and Eleanor Glueck published their social prediction scale for delinquency proneness in 1950. Some Japanese scholars also tried to evaluate their scale. For the first time in 1954 Tokuhiro Tatezawa began to use this scale in order to predict juvenile's delinquency proneness. The researches by the use of this scale contributed to the development of statistical methods on criminology in Japan, although Japanese criminologists and practitioners could not develop the complete scale.

In the late 1950s we enjoyed high economic growth with modern industrialization. During this period sociology influenced by the United States developed, while Marxist sociology became popular under the surge of leftists' movement, especially the movement of labor unions. As a kind of branch of sociology, criminological sociology progressed.

Around 1961 Tatsumi Makino organized the Study Group on Teaching Youngsters. Under his guidance some young scholars studying sociological pedagogy like Kanehiro Hoshino became interested in issues of juvenile delinquency. They have contributed to the development of the research on juvenile delinquency from the sociological viewpoint.

15.5 Development of Two Research Institutions

In 1948 the Research Institute for Scientific Investigation was established, which was renamed the National Research Institute of Police Science in 1959. At the same time the institute founded two departments, that is, a department for crime prevention and juveniles and that for traffic offenses, in which specialist researchers in behavioral sciences began to work. Researchers such as Kanehiro Hoshino and Yoshio Matsumoto contributed to the development of sociological criminology.

The Ministry of Justice had a training institute for legal affairs, which was renamed the Total Institute for Legal Affairs in 1959. Not only public prosecutors but also specialist officers in behavioral sciences working at the Correction Bureau and the Rehabilitation Bureau became researchers at the institute. These researchers carried out the field research at prisons, juvenile training schools, and so on. They began to publish a White Paper on Crime in 1960. They contributed to the development of the field research from the sociological criminology.

15.6 Establishment of the Japanese Association of Criminal Psychology in 1962

After World War II, psychologists began to work on testing criminals and juvenile delinquents. Those who worked at a family court and at the Juvenile Classification and Detention Center carried out the case studies. To exchange the results of their study they organized the Study Group on Correctional Psychology. Through the initiative by the main members of the Study Group on Correctional Psychology the Japanese Association of Criminal Psychology was founded in 1962. Some sociologists also joined JACP. JACP has contributed to the development of psychology in the field of screening, classifying criminals and juvenile delinquents, and developing the treatment programs for inmates in a prison and a juvenile training school.

15.7 Establishment of Japanese Association of Sociological Criminology in 1974

In Japan, scholars in criminal law have been interested in the legal theory in Germany. However, Riyuichi Hirano and Kazuhiko Tokoro advocated analyzing criminal law from the viewpoint of "function" after the example of criminology in the United States. To facilitate the analysis from the functional viewpoint, they translated a book on "Principle of Criminology (6th Edition)" written by Edwin Sutherland and Donald Cressey into Japanese, and published it in 1962.

Hiroaki Iwai wrote a book entitled "Sociological Criminology," and published it in 1964. Katsuhiko Nishimura translated George B. Vold's "Theoretical Criminology," and published it in 1970. These three books contributed to the understanding of theories on criminology from the sociological viewpoint.

Soichi Nasu and Jyuzaburo Hashimoto edited a book entitled "Sociological Criminology," and published it in 1968. In such a situation the term "Sociological Criminology" became gradually known among scholars in contrast to criminal psychology. Then, by the suggestion of Ryuichi Hirano members of the Group to Study Sociological Criminology decided to found the Japanese Association of Sociological Criminology. The first meeting of JASC was held in December in 1974.[4] Total number of members of JASC amounted to about 350, of which a half was specialists in behavioral sciences including sociology and another half was scholars in criminal law.

15.8 Activities of the Japanese Association of Sociological Criminology

Fifteen leading members of Japanese Association of Sociological Criminology wrote a compact textbook entitled "Sociological Criminology," and published it as the book edited by the association in 1975. The publication of this textbook contributed to the understanding of nature of sociological criminology.

JASC began to publish its formal journal entitled "Japanese Journal of Sociological Criminology" in 1976. The title of the first special feature in the Volume 1 of JJSC was "Problems and Method of Sociological Criminology," on which Hiroaki Iwai, Kanehiro Hoshino, and Kazuhiko Tokoro submitted their paper. The second feature was composed of a topic on "Social Change and Crime Control," for which two practitioners and one sociologist wrote paper.[5] The contents of papers in JJSC show the progress in sociological criminology[6]. The progress was analyzed by Masami Yajima (1984) and Hiroaki Iwai (1988). Masami Yajima pointed out that practitioners decreased among increased

[4] First president was Soichi Nasu, my teacher. Second was Hiroaki Iwai, followed by Koji Kashikuma.

[5] With rapid industrialization the social structure changed drastically. Therefore, at that time the topic on crime control in the changing society was very important.

[6] It is a pity that most of the articles in "Japanese Journal of Sociological Criminology" are written in Japanese language.

members of JASC for a decade, and that scholars in law presented paper more actively than in the earlier period.

15.9 Change in the Theoretical Focus

Around 1975 the anomie theory advocated by Robert Merton was popular among young scholars. In the Vol. 1 of JJSC there were two articles, in which the analysis from the framework of the anomie theory was used.

In the United States criminologists were interested in the labeling theory advocated in 1960s. Then Japanese scholars began to read articles on the labeling theory written by criminologists. Several members of JASC including Yoji Morita (1977) and Minoru Yokoyama (1978, 1980) submitted a manuscript to JJSC.

Naoyuki Murakami translated "Outsiders" written by Howard S. Becker in 1963 into Japanese language, and published it in 1978. Through this translation, Japanese learned the critical viewpoint in the sociology of deviance, which attracted the attention of youngsters, especially those involving in the movement for radical social change. However, the labeling perspective, especially that from the critical viewpoint was not accepted widely in Japan.

Following the wane of the students' movement around 1979 the critical viewpoint advocated in the labeling theory was no longer supported. In its place, since 1980s the framework of the social constructivism and social bond theory advocated by Travis Hirschi in 1969 became popular.

15.10 Establishment of Japanese Association of Social Problems in 1985

Scholars in criminal law who participated in the activities of JASC were inactive at the time of foundation of this association. They attended the annual meeting as a receiver of information on sociological criminology. However, they succeeded in understanding the fundamental knowledge of sociological criminology. Then, they became active members of JASC. On the other hand, many sociologists were not interested in discussing issues on criminal policy which scholars in criminal law wanted to research together with scholars and practitioners in behavioral sciences.

In such a situation Kaoru Ohash, one of the influential leaders of JASC, decided to found a new association to promote the study and research from the viewpoint of social pathology and social disorganization. Under his initiative the Japanese Association of Social Problems was established in 1985. Many sociologists of JASC moved to JASP, although leading ones in sociological criminology remained in JASC. Since then JASP has not contributed greatly to the development of criminology, as members of this association discuss the phenomenon of crimes only as a part of social problems.

15.11 Establishment of Japanese Association of Victimology in 1990

Hans von Hentig published a book entitled "The Criminal and his Victim" in 1947. In 1956 Benjamin Mendelsohn compiled the research papers on the relation between offenders and victims, and systemized them as one research area, which he called victimology. He sent his paper on victimology to leading criminologists all over the world, two of whom were Shufu Yoshimasu and Tanemoto Furuhata. On the advice from Shufu Yoshimasu, Osamu Nakata read the article written by Benjamin Mendelsohn, and published his article on victimology in 1958. In 1959 he held a symposium on victimology at his Tokyo Medical and Dental University with the support of Shufu Yoshimasu and Tenamoto Furuhata. Then, the term victimology became popular.

Such scholars in criminal law as Koichi Miyazawa and Minoru Oya were also interested in victimology. Koichi Miyazawa published an article on victimology in 1963 for the first time as a scholar in criminal law. At the beginning he was

criticized by scholars in criminal law, because he was regarded as an advocate for criminalization in response to the demand of crime victims.[7] It was not until 1990 that Japanese Association of Victimology was founded by his initiative. The inauguration meeting of the association was held at his Keio University in 1990.

Since the late 1990s the crime victims' movement surged up. In response to the movement members of JAV discussed the measures earnestly best to guarantee victims' rights. They contributed to establishing and reforming the legal system for the guarantee of victims' rights. On the other hand, they are less interested in research on the relation between offenders and victims.

15.12 Current Problems for Young Criminologists to Get a University Post

In the United States criminology is an important academic area. On the other hand, in Japan it is a minor subject taught at the sociological department or the faculty of law at a university.

Japanese have also become conservative since the breakdown of socialism in Soviet Union and East European countries. In such an atmosphere youngsters are more interested in psychology than sociology, especially from the viewpoint of critical analysis of social structure. Many universities begin to close or cut down the departments of sociology because of the decrease in the number of young people interested in the area. In addition, most sociology departments do not have a full-time professor in criminology. Therefore, there are fewer youngsters who study criminology at the university, especially at graduate school in Japan.

Some able youngsters go abroad to study criminology. If they get a doctoral degree in a foreign university, it is very difficult for them to find a full-time job as a criminologist in Japan.

At the large-sized university, a professor like me teaches both criminology and criminal policy at the faculty of law. Recently, members of the faulty of law are also curtailed owing to financial difficulties in a university. Therefore, the university refrains from employing a full-time professor to teach criminology.

I am afraid that able young criminologists, especially those researching from the viewpoint may decrease in the near future.

15.13 Researches at Two National Research Institutes

There are two important national research institutes, that is, the National Research Institute of Police Science and the Total Institute for Legal Affairs of the Ministry of Justice. The current situation of these institutes is as given below.

Previously, researchers at the National Research Institute of Police Science had freedom to carry out scientific research independent of the policy decided by the National Police Agency.[8] Therefore, such researchers as Kanehiro Hoshino and Yoshio Matsumoto produced excellent achievements by their researches. Nowadays, the freedom to research is narrowed at NRIPS. They are requested to conduct research, by which they contribute to improving the policy by the National Police Agency. Typical research is conducted by Yutaka Harada, a director of the Department on Behavioral Sciences, and some researchers of his team at NRIPS. They collected raw crime data from the police and geo-coded these data on a map using computers. The purpose of making this neighborhood crime maps is to prevent children from being victimized in the community. The research is highly regarded by National Police Agency.

[7] During the World War II many political criminals were tortured and treated inhumanly within the criminal justice. To prevent such inhuman abuse of criminal punishment, scholars in criminal law opposed criminalization.

[8] The National Police Agency has published the White Paper on Police since 1978. However, researchers of NRIPS are not responsible for this publication, although results of their research are sometimes cited in the white paper.

Able correction officers and probation and parole officers who have mastered such social sciences as sociology and psychology are assigned to a position as a researcher at the Total Institute for Legal Affairs in the Ministry of Justice. Previously, they conducted much good field researches especially in a prison, a juvenile training school, and a probation and parole office. By the use of the framework of criminology they analyzed results of their researches. Their analysis also has contributed to the development of criminology.[9]

In the Ministry of Justice public prosecutors have monopolized all important positions, one of which is a position of the director of TILAMJ. As elite public prosecutors in the Ministry of Justice do not regard researchers as true professional criminologists, they lose freedom to research. They are obliged to conduct policy-relevant research to contribute to policy effectiveness. Their most important job is the publication of the White Paper on Crime, a book for public consumption, in order to let people understand the criminal policy of the Ministry of Justice. In addition, they have gradually lost the freedom to present papers at the meetings in academic circles such as the annual meeting of Japanese Association of Sociological Criminology.[10]

15.14 Research Institutes at University Level

In Japan there are only a few research institutes on criminology and victimology. The main institutes are as given below.

Ryukoku University, a private university supported by temples for Jodoshinshu, a school of Buddhism, established the Corrections and Rehabilitation Research Center in 2001.[11] By receiving funds from the national government and foundations, such professors as Sinichi Ishizuka and Koichi Hamai have conducted good research. They tend to analyze data from a critical viewpoint. For example, Shinich Ishizuka researches on the death penalty, and criticizes the Japanese Government policy on the maintenance of the death penalty.

In 2003 Tokiwa International Victimology Institute was founded at Tokiwa University by the initiative of Hidemichi Morosawa.[12] At the institute they conduct international interdisciplinary research and teaching in victimology. The activities at the institute have contributed to the progress of victimology and the improvement of practice for crime victims.

15.15 Insufficient Funds and Chances for the Field Research

In Japan important science research funds are offered by the Ministry of Education, Culture, Sports, Science and Technology. The largest amount of such monies is assigned to the natural sciences as opposed to the social sciences like criminology. In such a situation criminologists do not have sufficient funding to carry out adequate field research.

Recently, younger sociologists give up conducting field research. Most of them carry out a case study by the use of a framework of social constructivism. Their achievement does not really contribute to the development of criminology, because their interpretation is arbitrary and they

[9] Researchers at TILAMJ started to publish the White Paper on Crime in 1960. At the early period they analyzed data on crimes and criminals as criminologists independent from the policy by the Ministry of Justice.

[10] Officers affiliating with national government and the court are usually obliged to get permission to present their paper at the academic circle in advance. Their paper is sometimes censored by their boss. At the place of interpretation about data, they have to express that the interpretation is not official but private one. Especially, the judges at the court who respect the crime control model impose the strictest pressure on the family court probation officers not to express their own opinion freely. Under such pressure many probation officers give up to work as a professional case worker for juvenile's best interests under the welfare model.

[11] The founder of Jodoshinshu was Shinran (1173–1262), who preached that even criminals are rescued by the mercy of Buddha. Then, many priests in Jodoshinshu have worked for rehabilitation of criminals especially as a chaplains.

[12] Hidemichi Morosawa, a chairman of directors' board of Tokiwa University, studied victimology under the guidance of Koichi Miyazawa at the graduate school of Keio University.

do not offer suggestions for improving the policy and practice of the criminal justice.

In Japan, public organizations are unwilling to provide a platform for research by professors and researches working at an external institute, because the former do not want to be criticized on the base of results of the research in order to maintain their good fame. In addition, it is very difficult for professors and researchers at an external institute to get permission for their research from an organization linked to government. If such difficulty continues, the field in criminology will wane.

15.16 Conclusion: Towards a New Trend

In the current conservative atmosphere and with sympathy for demands of crime victims the phenomenon of criminalization is growing. Some criminologists and scholars in criminal law such as Setsuo Miyazawa and I analyze this phenomenon from the critical viewpoint.[13] Some analyze it by the use of the idea of penal populism. In 2009, the Japanese Association of Sociological Criminology published a book on "Globalized Penal Populism and its Countermeasures" edited by Koichi Hamai. The analysis from the viewpoint of penal populism will hopefully contribute to the development of further democratic reform of the policy and practice within criminal justice in Japan.

With globalization the research and discussion in the international arena, for example, at the meetings of the Asian Criminological Society will be more necessary. However, younger Japanese criminologists are not active in collaborative research together with foreign criminologists and neither do they attend international conferences for exchange of ideas. If such a situation continues, criminology in Japan will not play its part in the development of any wider international criminology.

[13] Minoru Yokoyama (2007) analyzed criminalization in the relation to change in public opinion.

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Crime and Criminal Justice in Malaysia

16

Salim Ali Farrar

16.1 Introduction

On 8th July 2011, the Prime Minister of Malaysia, Dato' Seri Mohd Najib bin Tun Haji Abdul Razak, announced a review of the Malaysian Criminal Justice System as part of the Government's highly publicised "Government Transformation Programme" and "New Economic Model" (Office of the Prime Minister of Malaysia 2011). Together with the setting up of a Centre for Law and International Legal Studies, with an international faculty, and the prominence given to criminal justice reform (one of the two initial research projects), this indicates that crime and criminal justice have become a political priority in contemporary Malaysia.

The impetus for this review represents part of a continuing political, social and economic transformation begun in 2005 following the stepping down of former Prime Minister of Malaysia, Tun Mahathir Mohamed. The following chapter provides the backdrop to and details of this reform process in the context of the Malaysian Criminal Justice system, as well as an overview of crime, prosecution and imprisonment data. There is a dearth of published criminal justice research in Malaysia, so it is hoped that the following chapter will not only provide an insight for concerned foreign observers from within the Asia region and beyond but also act as a primer for local researchers with active interests in criminal justice.

16.2 Overview of the Malaysian Criminal Justice System

Malaysia is a federation comprising 13 individual states and the federal territories of Kuala Lumpur, Putrajaya and Labuan. Criminal laws are applied at both federal and state levels, though both have their particular subject matter and geographical jurisdictions, with conflicts between federal and state law resolved in favour of the former. The Malaysian Penal, Criminal Procedure and Evidence Codes are *federal law* and have general application, applying to all states and all ethnic communities. In addition to the Penal Code, there is also federal legislation related to drugs enforcement (e.g. Dangerous Drugs Act 1952), national security, immigration, food and health and transport. These general laws are enforced by the Royal Malaysian Police (PDRM) and prosecuted (generally) by Deputy Public Prosecutors and Assistant Public Prosecutors, working under the auspices of the Attorney General, in federal

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courts[1] (Magistrates, Sessions or High Court, depending on the seriousness of the offence) in each state.

While the majority of crimes (murder, serious personal injury, sexual offences, etc.) are regulated under federal law, there are specific Islamic crimes ("offences against the precepts of Islam") punished under *state law* though subject to a federal law cap.[2] So under the Shariah Courts (Criminal Jurisdiction) Act 1965,[3] federal law prevents state legislatures from passing *hudud laws,*[4] and limits sentences up to a maximum of 3 years imprisonment, RM 5,000 fine, whipping of six strokes of the rotan or any combination of all three. This aspect of the Malaysian criminal justice system is becoming more significant as state religious authorities (such as JAIS[5]) seek increasingly to enforce Islamic morals and ethics on local Muslims, whether for violating state rules on unlawful proximity ("khalwat") and frequenting discotheques or for drinking alcohol.[6] It has also become a matter of concern for opposition political parties, especially those dominated by non-Muslims, who fear "creeping" expansion of Shariah.[7]

Apart from in matters relating to Islamic Law,[8] policing in Malaysia is centralised. A Chief Police Officer is designated for every state and each is subject to the central authority of the Inspector General of Police (IGP), appointed by the King (Yang di-Pertuan Agong), who in turn reports to the Minister,[9] namely, the Attorney General or the Prime Minister of the day. Although formally independent of the federal government, the PDRM is not subject to local authority police committee oversight as in the UK (Mawby and Wright 2005, 4), and disciplines itself. [10] Indeed, demands for reform in criminal justice, as we shall see, have tended to focus on the role of the police and to criticise its apparent function as the "executive right arm" of the central government.[11]

[1] Police officers of at least the rank of Inspector are allowed to prosecute (Criminal Procedure Code, section 377(b)(2)). In Sabah and Sarawak, especially in the more remote areas, it is not unknown for senior police officers to conduct prosecutions for less serious offences. In addition to the police, prosecutors can also be from other enforcement agencies such as Customs and Excise, the Securities Commission, the Central Bank and the Anti-Corruption Agency; see Ariffin, Azmi (2001).

[2] Customary law has no practical operation in Peninsular Malaysia or East Malaysia (Sabah and Sarawak), other than in matrimonial disputes, administration of estates, property and land rights; see Hamzah and Bulan (2003). The Ninth Schedule, List II, to the Federal Constitution, in addition to matters touching on ritual worship, Islamic trusts and family laws, provides that States have powers to enact legislation for the "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regards to matters included in the Federal List". List II adds that the Shariah Courts only have jurisdiction over Muslims and are subject to federal law.

[3] Act 355 (section 2). Section 2 was last amended in 1984 by the Muslim Courts (Criminal Jurisdiction) (Amendment) Act 1984, Act A612.

[4] This refers to punishments that have been specified in either the Qur'an or Sunnah and which mandate flogging, amputation, stoning or death depending on the particular offence and whether the evidential threshold (which is high) has been reached. See further Basiouni (1982).

[5] Jabatan Agama Islam Selangor, or the Department of Religion of Islam for Selangor.

[6] The notorious case of Kartika Sari Dewi Shukarno in 2009 was one of a number of cases in which state Islamic authorities have sought to make an example of those transgressing Islamic norms. See *Wall Street Journal*, 23 August 2009, http://online.wsj.com/article/SB125097405997351597.html (viewed on 28 September 2011).

[7] The extent to which the Federal Government should allow the opposition state governments to implement the so-called hudud laws is also an ongoing debate; see *Today*, 25 September 2011, http://www.todayonline.com/Hotnews/EDC110925-0000240/PM-pledges-no-Islamic-law-in-Malaysia, viewed on 28 September 2011.

[8] Whether the Police should assist the religious authorities to enforce Islamic law at all because religion is fundamentally a "state" as opposed to a "federal" matter, remains a problem for the Police (I am grateful to Dr. Khairil Azmin Mokhtar for this point). Given that the religious authorities should be better trained in "religious" matters, one might have thought that enforcement should only be the job of religious officers.

[9] Police Act 1967, section 4.

[10] See Police Act 1967, Part XII. However, this now needs to be qualified in light of the coming into force of the Enforcement Agency Integrity Commission. See further, below.

[11] Former Prime Minister of Malaysia, Tun Mahathir Mohamed, has vigorously asserted in his recent autobiography, that the Police are independent and on the occasion of Operation Lalang in 1987, it was *he* who had to follow their advice; see Mahathir Mohamed (2011, 551–558). Also like the Armed Forces, they are technically independent by their being placed under the authority of the Malaysian King.

The proximity of the central government to the police is underscored by the fact that ultimately all prosecutions, with the exception of prosecutions in the Shariah Court, are carried out under the auspices of the Attorney General, who is appointed by the King, upon the advice of the Prime Minister. Technically, he is a public servant, holding office during the pleasure of the King (Federal Constitution, Article 145(5)). But he is also "part and parcel of the government of the day" (Bari 2008, 118). Unlike in Australia, England and Wales, Ireland and South Africa, the powers of prosecution are not delegated to an independent Director of Public Prosecutions but remain vested in the person of the Attorney General.[12] While this ensures that politically sensitive cases are handled in accordance with the government's view of the "public interest", it also casts political shadows over certain police operations, investigations and decisions to prosecute. It is also true to say, however, that certain prosecution agencies, such as the Malaysian Anti-Corruption Commission, retain a high degree of independence notwithstanding the buck ultimately resting with the Attorney General.[13]

16.3 Crime Data

The PDRM gathers the official crime data but does not publish these figures as a matter of course. Nor is there any Freedom of Information Act that guarantees a right of access to such information. Release of information is subject to the discretion of Bukit Aman, the Headquarters of the PDRM, and of the Inspector General of Police in particular. This does not mean that all matters pertaining to the crime rate in Malaysia are state secrets. Information is released by the PDRM periodically through its Public Relations Department and made available on the PDRM Web site. Individual researchers (including this author) are also occasionally given access to more detailed information. The figures provided do not represent a complete breakdown of all of the different types of crimes committed in Malaysia, nor of the total amount of crime committed, but only what is mentioned in the "Crime Index". This refers to a limited list of crimes compiled largely for the purposes of international comparison. Inspector General Standing Orders define the "Crime Index" as those crimes "reported with sufficient regularity and with sufficient significance to be meaningful as an index to the crime situation".[14]

The most obvious limitation, common to all countries, is that only "reported" crime is included within this official index. The actual extent of crime is unknown (and frequently higher) because not all crime is reported to the police or other law enforcement agencies, and of those crimes reported not all are recorded because of police discretion (Moshe et al. 2011, 45–47). But the "dark figures", as they are known, are not illuminated in Malaysia by additional surveys. There is no Malaysian equivalent of the government-sponsored British Crime Survey (BCS) which, for the first time in 1982, gathered data nationwide on the incidence of unrecorded crime, and which has been replicated at regular intervals ever since (Maguire 1997, 162–163). Nor are the figures supplemented by local neighbourhood victim surveys, such as the Islington Crime Survey (1986), which have been influential in the UK and thrown light on the uneven distribution of victimisation in local communities, and revealed data normally left untouched by the national surveys (Maguire, *ibid*, 170–171). There is even a relative absence of smaller surveys conducted by academics. Criminology is not a widely studied discipline in Malaysia and does not attract the funding it receives in many western countries. The studies that exist are very limited in nature and normally conducted as part of a diploma course in Police Science at the National University of Malaysia (UKM).

The only national survey on public perceptions and experiences of crime in Malaysia was

[12] Criminal Procedure Code, section 376(1).

[13] I am grateful to Dr. Khairil Azmin Mokhtar for this point.

[14] Inspector General of Police Standing Order, para D203.

an isolated study conducted by the Royal Commission as part of its enquiries into the practices of the PDRM (Royal Commission 2005). They carried out a survey of public opinion between 22 November 2004 and 1 December 2004 (Royal Commission 2005, 60) comprising a sample of 575 adult respondents from urban areas in all 13 states of Malaysia and the Federal Territories, and approximating the ethnic breakdown of the population (43.9% Malay; 32.7% Chinese; 13.9% Indian). A total of 101 out of the 575 respondents, or 17.6%, reported being victims of crime. Of those 101 victims, only 76 persons, or 75.3%, reported the incident to the police. The main reasons for not wanting to make a report included the trouble in making police reports and the feeling that the police would not do anything if they did (Royal Commission 2005, 60).

Whether this survey gave a more accurate or valid picture of the true crime situation is doubtful. First, it took place within just over a week and in the context of a highly controversial Royal Commission investigating the affairs of the Police in general, in the immediate aftermath of a general election and the freeing from custody of de facto opposition leader, Anwar Ibrahim. Second, its surveying sample was relatively small, especially in comparison with the national surveys conducted in the UK, and thus arguably unrepresentative. Third, although roughly approximate, the ethnic profiles of those interviewed underrepresented Malays and over-represented both Chinese and Indians in the population (especially the latter which is less than 8%). Given the PDRM is predominantly Malay and the existence of ethnic chauvinism within local communities, this had the potential to distort and exaggerate the findings.

The national survey conducted by the Royal Commission has not been repeated, nor have there been any other surveys to supplement the recorded crime figures. The principal reasons given for the absence of surveying in Malaysia have been the cost and empirical validity of the results (Sidhu 2005, 5). It is certainly true that national surveys are very expensive operations, and arguably impractical for a developing country like Malaysia. Yet if an elaborate Royal Commission can be set up to look into the affairs of the police as a whole (and of which the public surveys formed only a very small part), there is no reason why a properly structured and independent Crime Survey could not be established if the public policy arguments were convincing.

The second limitation of the Malaysian Crime Index is that it represents only a small selection of reported and recorded crime. Not only are religious crimes, such as "khalwat" (unlawful proximity) and "minum arak" (drinking alcohol), excluded (though their extent and prosecution are fast becoming issues in contemporary Malaysia) because they are handled by different enforcement agencies, but even the majority of the crimes under the Penal Code are not included. In research carried out by Sidhu (2005, 8), out of a total number of 1,797,105 criminal cases reported to the PDRM, only 156,455 of the cases investigated (8.7%) were of crimes caught by the Crime Index. Kidnapping, criminal breach of trust, drug offences, molestation and outraging modesty, for example, are all excluded from the list.

While the Malaysian Crime Index has its shortcomings in showing the total extent of crime, it nevertheless provides useful data and indicates trends for some of the most prevalent offences in Malaysia. The Index is sub-divided into "Violent Crime" and "Property Crime". "Violent Crime" incorporates murder, attempted murder, gang robbery with firearms, gang robbery without firearms, robbery with firearms, robbery without firearms, rape and voluntarily causing hurt. "Property Crime" comprises housebreaking and theft by day, housebreaking and theft by night, theft of lorries and vans, theft of motor cars, theft of motorcycles and scooters, theft of bicycles and "other forms of theft". Since 2006, the Crime Index has also grouped the offences of aggravated theft, gang robbery without firearms and robbery under the category of "street crime" because of concern expressed by members of the public in relation to these particular crimes.

The total figures for these offences between 2000 and 2010 are provided below. For ease of comparison and because of changes in methods of official presentation in the crime statistics,

attempted murder has been removed, and the different offences for robbery given above merged into one "robbery and violent theft" category. Although "robbery and violent theft" are technically "property crimes", the Crime Index categorises them as offences of violence. The various types of housebreaking have also been merged into the single category of "breaking and entering", as have the different types of theft into "theft of motor vehicles and m/cycles". The remaining thefts are further differentiated into "aggravated thefts" and "other thefts", Fig. 16.1.

In the last decade, the above table indicates that although there has been an overall increase in crime across the different categories, and big spikes between 2006 and 2009, by the end of 2010, the percentage increase in the Crime Index was a relatively small 3.27%. Taking into account increases in population of approximately 2% per annum, this suggests that the crime rate has stabilised over the decade. When we compare with data over a longer period, however, there has been a large increase in the reported crime rate, both violent crime and property crime. Between 1980 and 2004, violent crime increased by 120% and property crime by 112% (Sidhu 2005, 10). Between 2004 and 2010, the figures had risen by a further 51% and 3.1%, respectively. While much of this increase could be put down to the proportionate increase in Malaysia's population, which stood at 13.76 M in 1980 and had risen to 28.23 M by 2010 (Index Mundi), rates per 100,000 of the population between 1980 and 2004 indicate that violent crime still grew by 57.4% and property crime by 15.4% (Sidhu 2005, 11). An increase of 10.86% in the size of Malaysia's population between 2004 and 2010 also demonstrates that violent crime grew in excess of the growth in population while the rate of property crime actually fell.

The fact that this increase in the crime rate took place at the same time as Malaysia's push for industrialisation and modernisation (Jomo and Tan 2008, 30) does not substantiate the view that economic development has coincided with an increase in criminality. There is no necessary correlation between economic development and increases in crime, but between economic

Offences	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Violent Crime											
Murder	551	608	516	565	565	497	606	590	654	571	487
Rape	1210	1354	1418	1471	1718	1887	2454	3176	3494	3742	3382
Serious Assault	5104	4699	4440	4368	4196	4246	5843	6793	6648	8302	7685
Robbery and violent theft	14696	13661	14405	16309	15288	15409	22505	24600	27021	29400	21333
Totals of Violent Crime	21561	20,322	20,779	22,713	21,767	22,039	31,408	35,159	37,817	42,015	32,887
Property Crime											
Breaking and entering	32913	28452	25265	25789	24904	24465	28872	33590	35588	37641	32603
Theft of motor vehicles (including m/cycles)	56879	60109	60251	64300	65076	66927	82954	85081	88820	80438	72182
Aggravated thefts	1508	1436	1446	1579	1153	9617	1107	1110	8205	9665	5849
Other thefts	39799	33210	28043	27638	33080	34317	31408	33540	33010	30393	28150
Totals of Property Crime	144,673	136,139	128,019	133,525	134,596	135,326	154,308	163,317	165,623	158,137	138,784
Crime Index Totals	166,234	156,461	148,798	156,238	156,363	157,365	185,716	198,476	203,440	200,152	171,671
Street Crime Totals	28,967	27,398	28,367	31,681	26,446	24,669	33,264	35,434	34,968	38,030	24,837

Fig. 16.1 Criminal cases statistics 2000–2010

development and reporting rates (Soares 2004, 156). As mentioned above, official records routinely underreport crime and reporting error is more likely in less sophisticated institutional structures (Soares, *ibid*). So the more economically developed Malaysia has become, the more likely crime has been accurately recorded producing increases in the officially recorded figures. Whether crime has actually increased would require comparisons with victim surveys, but as mentioned earlier, there is only very limited victim survey data available.

If there has been a net increase in actual crime, the causes could be rooted in Malaysia's unequal economic development and patterns of urbanisation that, in a number of empirical studies for other jurisdictions, have been positively correlated with increases in crime (Soares, 167). Since the establishment of the National Economic Plan in 1971 which established affirmative action plans to enhance the social and economic status of the Malays (Government of Malaysia 1971, 1), successive Malaysian Governments have successfully eradicated the association of ethnicity with economic function and drastically reduced the numbers living in absolute poverty. However, the gaps between rich and poor have increased, as have the divides between rural and urban populations. Rates of urban poverty, in particular, have remained persistently high and shown little change since the Asian Currency Crisis in 1997 (New Economic Advisory Council NEAC 2010, 57–58). The strategic shift from agriculture to industry, rural–urban migration patterns, differential access to job opportunities, low incomes and loosening of traditional structures of social control[15] may account for the continual increases in violent crime. It may also explain, at least partially, the disproportionate representation of Indians in the overall figures for violent crime, where the problems of social marginalisation and "gangsterism" have been most acute (Sidhu 2005, 17–19).

[15] See further the evergreen theories of Emile Durkheim and Robert Merton on "anomie". For a modern review, see Bernard et al. (2009), *Vold's Theoretical Criminology*, Chaps. 6 and 8.

16.4 Prosecution and the Courts

Under Article 145(3) of the Federal Constitution, the Public Prosecutor (Attorney General) has overall responsibility of laying charges and, since 2009, the prosecution division of the Attorney General's Chambers has taken over the conduct of practically all prosecutions in the subordinate courts (referring to Magistrates and Sessions Courts) as well as in the High Court (Attorney General's Chambers 2010, 11). The reform was intended to further professionalise and systematise prosecution practices. This has increased the workload of state prosecutors and, as can be seen in Fig. 16.2 below, had some impact on the rates of conviction.

In 2008, the total conviction rate in the High Courts, Sessions Court and Magistrates Courts was 90.6%, with 9.4% of cases resulting in an acquittal or a discharge. In 2009, the total conviction rate fell to 85.8% and the acquittal rate rose to 14.2%. The conviction rate in relation to particular offences is not available.[16] Moreover, the figures are not available for the total conviction rates when other prosecuting agencies were handling some of the prosecutions in the subordinate courts in 2008 and the preceding years.[17] Despite the limitations of this data, of particular interest are the figures relating to prosecutions in the High Court which tries the most serious offences (punishable by death), and where the conviction rate in 2009 fell from 79.5% to 65.5%. The reasons given above by the AG's Chamber for this fall may provide a partial explanation, as a 274% increase in the number of cases dealt with in the High Court alone in the space of one year inevitably

[16] Given the outroar in the British press in 2011 on publication of statistics that seemed to indicate that the conviction rate for rape offences in England and Wales was 6% (when a more detailed analysis would have shown that the rate was in fact 58%), the reluctance of the Malaysian AG's Chambers to publish more detailed data is perhaps understandable.

[17] These figures are not mentioned in previous Annual Reports of the Prosecution Division of the AG's Chambers; see http://www.agc.gov.my.

Year	High Court			Sessions and Magistrates Court		
	Cases Disposed	**Conviction**	**DNA**	**Cases Disposed**	**Conviction**	**DNA**
2008	367	292	76	1628	1517	111
2009	1008	661	347	13,001	11,360	1,641

Fig. 16.2 (Source: Attorney General's Chambers (2010, 11))

would have increased pressure on prosecuting staff. Resources may have been spread too thinly and impacted deleteriously on prosecuting efforts.[18] The increase in the workload on state prosecutors might also have exacerbated the problem of delay in criminal courts. The extent of the problem can be gleaned from the figures of the number of cases pending (see Figs. 16.3–16.5 below).

With a total of 11,624 trial cases pending, together with 6,324 appellate cases (as of 2009), the courts appear jammed with case traffic. According to Malaysian judges themselves, the delay has much to do with the habits and professional shortcomings of criminal defence lawyers, with too many requests for adjournment adding to delay (Makinudin 2010, iii). However, it may also have been down to systemic failures and the lack of a case management system (*Ibid*, i).

16.5 Prison Population

As of mid-2010, Malaysia had a prison population of 38,387, ranking 43rd in the world for the total number of offenders it incarcerates (Walmsley 2011). Given a population of 27.91 million, this equates to an imprisonment rate of 138 per 100,000. As a member of the Organisation of the Islamic Conference (OIC), Malaysia incarcerates less than Iran (291), Morocco (189) and Saudi Arabia (178), but considerably more than Indonesia, Pakistan, Egypt (81), Sudan (45) and the poorer sub-Saharan countries (*Ibid*). Also as a Common Law country which, in most cases, gives judges discretion over sentence, its incarceration rates more closely mirror Australia (133), England and Wales (155) and New Zealand (199) than India (31), Pakistan (40) and Bangladesh (42) (*Ibid*).

The current figures for Malaysia represent a considerable reduction in its prison population from previous years which has had demonstrated a seemingly inexorable climb. Between 1992 and 2007, its prison population had grown from 21,612 (112) to 50,305 (189), more than doubling, and prisons were overcrowded, the official prison capacity being 32,000. While part of the growth could be attributed to a rise in overall population growth (from 18.762 m in 1992 to 27.186 m in 2007), the increase could also have indicated a preference for incarceration as a deterrent response to the increase in the official crime rates (see above), though, then as now, there has been no empirical or qualitative study on the specific approaches of the judges in Malaysian courts and whether there exist any trends.

In retrospect, one factor on the level of incarceration may have been a result of lack of sentencing options available to the judges. The framework within which they have operated, until recently (see below), had changed little since Independence, offering options of imprisonment,

[18] In August 2010, the Malaysian Bar Council reported that there were 508 state prosecutors across the country (see Bar Council of Malaysia (2010). If the figures were comparable in 2009, this would have equated to an average of 27 cases per prosecutor over the year.

	Balance from			Cases registered			Cases completed			Pending completion
	2006	2007	2008	2007	2008	2009	2007	2008	2009	2009
Perlis	8	9	16	1	12	10	-	5	6	20
Kedah	93	105	122	31	31	151	19	14	49	224
Penang	201	221	308	42	111	253	22	24	171	390
Perak	142	127	149	32	43	183	47	21	47	285
Selangor	529	654	733	205	205	922	80	126	404	1,251
Kuala Lumpur	258	258	203	32	5	336	32	60	117	422
Negeri Sembilan	30	36	38	14	11	16	8	9	15	39
Malacca	14	12	25	9	23	37	11	10	24	38
Johore	260	241	261	64	74	106	83	54	88	279
Pahang	70	85	97	21	17	30	6	5	21	106
Terengganu	6	7	10	4	5	31	3	2	17	24
Kelantan	13	25	46	15	24	56	3	3	4	98
Sabah	26	41	54	24	24	55	9	11	17	92
Sarawak	44	56	80	30	47	71	18	23	28	123
Total	1,694	1,877	2,142	524	632	2,257	341	367	1,008	3,391

Fig. 16.3 Total number of criminal trials in the High Court

whipping, fines, compensation orders, police supervision, good behaviour bonds and special orders for juveniles (Majid 1999, 493–494).[19] There were no community service or punishment orders, restorative justice schemes or any other innovative sentencing options that had been tried out in other common law countries (Sithambaran 2005, 4–5).

[19] In addition to these sentences, Malaysia also has a mandatory death penalty for murder (Penal Code, s 302), drug trafficking (Dangerous Drugs Act 1952, s 39B(1)), discharging a firearm in the commission of a scheduled offence (Firearms (Increased Penalties) Act 1971, s 3), offences against the person of the Yang di Pertuan Agong (Penal Code, s 121A) and offences relating to firearms, ammunitions and explosives (Internal Security Act 1957, s 57(1)). There is also a discretionary death sentence available for kidnapping (Kidnapping Act 1961, s 3) and a few other offences.

TOTAL NUMBER OF CRIMINAL TRIALS IN THE SESSIONS COURTS

	Balance from			Cases registered			Cases completed			Pending completion
	2006	2007	2008	2007	2008	2009	2007	2008	2009	2009
Perlis	8	19	42	20	23	29	9	0	13	58
Kedah	182	160	138	63	27	302	85	49	107	333
Penang	452	537	779	206	303	1,586	121	61	1,480	885
Perak	148	210	227	152	53	230	90	36	101	356
Selangor	381	466	551	134	100	2,088	49	15	1,740	899
Kuala Lumpur	612	646	662	152	97	466	118	81	332	796
Negeri Sembilan	156	166	186	59	36	139	49	16	57	268
Malacca	38	55	144	46	114	245	29	25	130	259
Johore	379	371	645	79	912	692	87	638	392	945
Pahang	50	82	114	45	41	767	13	9	737	144
Terengganu	55	67	112	34	64	117	22	19	83	146
Kelantan	96	132	190	80	147	259	44	89	228	221
Sabah	38	48	99	43	72	342	33	21	284	157
Sarawak	117	62	40	76	97	58	131	119	22	76
Total	2,712	3,021	3,929	1,189	2,086	7,320	880	1,085	5,706	5,543

Fig. 16.4 Total number of criminal trials in the Sessions Courts

TOTAL NUMBER OF CRIMINAL TRIALS IN THE MAGISTRATES' COURT

	Balance from			Cases registered			Cases completed			Pending completion
	2006	2007	2008	2007	2008	2009	2007	2008	2009	2009
Perlis	0	2	2	3	0	2	1	0	0	4
Kedah	13	17	20	5	5	10	1	2	2	28
Penang	13	12	11	0	1	1,770	1	2	1,651	130
Perak	20	15	15	9	1	28	14	1	11	32
Selangor	15	22	29	18	18	3,132	11	11	2,610	551
Kuala Lumpur	46	47	48	1	1	1,096	0	0	334	810
Negeri Sembilan	3	7	7	5	0	2	1	0	1	8
Malacca	1	6	5	6	1	23	1	2	19	9
Johore	30	31	249	13	626	1,880	12	408	1,386	743
Pahang	12	12	12	9	9	504	9	9	492	24
Terengganu	18	14	25	1	13	136	5	2	55	106
Kelantan	4	21	14	17	21	371	0	28	295	90
Sabah	25	21	28	6	12	513	10	5	428	113
Sarawak	16	27	14	36	60	39	25	73	11	42
Total	216	254	479	129	768	9,506	91	543	7,295	2,690

Fig. 16.5 Total number of criminal trials in the Magistrates Court

16.6 Criminal Justice Reforms

16.6.1 Criminal Law

Since its first introduction to the Federated Malay States[20] by the British in 1936, the content of the general criminal law (the Penal Code) has remained largely intact and reflected the morals of that era. In more recent times, however, key reforms have taken place in relation to sexual offences. In line with the developments in other common law jurisdictions, these have included increasing the punishment for convicted rapists, introducing different offence structures ("simple rape" and "aggravated rape") and legislating for the new offence of "marital rape". The latter was introduced following persistent lobbying from NGOs and women's groups but was given a particular Malaysian spin to account for local sensitivities, and the Shariah rights of a Muslim husband within a valid marriage in particular. Section 375A reads:

> Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.[21]

As noted by other commentators (Nazeri 2010, 386), the offence does not criminalise sexual intercourse without consent within marriage. Rather, it punishes the assault and physical violence which precedes it. According to the Shariah (and the particular legal school followed in Malaysia), the husband has an unqualified right to have sexual intercourse with his wife and she is obliged to have intercourse with him, unless she is physically incapable of having intercourse because of sickness, menstruation or postpartum bleeding. However, this right does not extend to the infliction of physical harm,[22] thereby giving some room to legislate against some of the more odious forms of domestic violence, if not marital rape per se.

In addition to "marital rape", a new section 377CA[23] expands the traditional definition of rape (penetration of the vagina by the penis) to include "sexual connection by object" without consent. This was a direct response to an unsolved case that caused public outrage when an eight-year-old girl was found dead with an eggplant and cucumber inserted into her genitals (Nazeri 2010, 386).

Perhaps the biggest, and most anticipated, change to Malaysia's criminal law in recent years has been the dismantling of the Internal Security Act (ISA) 1960 and the Emergency Ordinance. Under the ISA, a person could be arrested on reasonable suspicion of "subversion". This was defined as any action or behaviour that is "in any manner prejudicial to the security of Malaysia … or to the maintenance of essential services … or to the economic life therein" (section 8). This was a catch-all provision that, in effect, gave the police and political authorities a free discretion to arrest and detain for longer than 24 hours, those whom they deemed to be threatening public stability. Once a detention order had been given by the minister under section 8, the suspect could also be detained indefinitely without any accountability to the courts because of ouster clauses excluding

[20] Negeri Sembilan, Pahang, Perak and Selangor.

[21] The Penal Code (Amendment) Act 2006, Act A1273, which came into force on 7 September 2007.

[22] In the case of the wife who is "nushuz" (disobedient, i.e. she has not complied with her Islamic obligation), the husband does have the right and the power to reprimand and physically chastise her (without causing harm and not in anger) if this is not the first time she has refused (cf Abu Ishaq al-Shirazi 1983, 170). The purpose of exercising this power, however, is not so that he may have sexual intercourse but rather as part of his individual obligation to Allah of bidding the good and prohibiting evil and to uphold the responsibilities imposed upon the marriage partners under the Shariah (Abu Ishaq al-Shirazi, *ibid*, 169). Malaysian religious leaders also warned against having a technical "marital rape" offence as it would be contrary to Shariah; see Norbani Mohamed Nazeri, ibid.

[23] See note 17, above.

judicial review and a non-interventionist approach by the courts.[24] The Act had originally been passed to deal with the Communist insurgency, but became a useful weapon in counter-terrorism as well as a deeply unpopular method of managing ethnic conflicts and political opposition in Malaysia. In June 2012, the Internal Security Act 1960 was repealed and replaced by the Security Offences (Special Measures) Act 2012 which provides for judicial oversight and neither allows indefinite detention without trial nor detention incommunicado (see sections 4 and 5).

16.6.2 Sentencing

In 2006, following an outcry over the extent of prison overcrowding, amendments were made to the Criminal Procedure Code allowing offenders to perform up to 240 hours of community service in place of imprisonment.[25] Though it seems that the measures took a while to be put into place, by 2010 pressures on numbers were reduced through administrative changes allowing 17,000 offenders serving existing prison sentences for minor crimes to serve the rest of their sentence as community service.[26] In addition, since 2008,[27] a system of parole modelled along the lines of the Australian system has been introduced which, though initially affecting only a very limited range[28] and number of prisoners,[29] nevertheless has the potential to further reduce prison numbers substantially in addition to serving rehabilitative ends.[30]

16.6.3 Criminal Procedure and Evidence Law

The Criminal Procedure (Amendment) Act 2006 was the government's response to mounting internal and external political pressures for the introduction of new mechanisms of police governance and legal accountability. This legislation represented the most radical reform of Malaysian criminal justice and procedure for more than 30 years (Farrar 2009). In respect of pre-trial procedure, it included reform of the law of body searches, confirmed specific rights of suspects upon arrest (in particular the right to a lawyer and to be so informed), abolished the infamous "caution statement" under section 113 of the Criminal Procedure Code, further regulated the discretion of magistrates to detain suspects following an arrest, amended rules on pre-trial disclosure and enhanced prosecutorial oversight of police investigations.[31]

In June 2010, the Government also passed legislation allowing state prosecutors to offer plea bargains, offering accused persons up to a fifty per cent discount on the maximum sentence available for that offence in exchange for a guilty

[24] See *Abdul Razak bin Baharudin & Ors v Ketua Polis Negara & Ors & Another Appeal* 1 MLJ 320 [2006]; *Sejahratul Dursina@Chomel bte Abdullah v Kerajaan Malaysia & Ors* 1 MLJ 405 [2006].

[25] Criminal Procedure Code (Amendment) Act 2006, s 27.

[26] See *The Star*, "Foreign Prisoners to Join Parole Programme", 28 April 2010.

[27] See The Prison (Amendment) Act 2008, Act A1332, Part 1Va.

[28] Parole is not available for a number of sex offences, housebreaking causing death or grievous hurt, as well as those who plant or cultivate dangerous drugs; see Prison (Amendment) Act 2008, Fourth Schedule.

[29] In 2011, there were only 310 parolees; see Gunaratnam and Palansamy (2011).

[30] The system has strict vetting procedures overseen by a Parole Board and requires all potentially eligible applicants to have successfully completed an "in-house" rehabilitation programme; see Prison (Amendment) Act, 2008s 46E.

[31] The Public Prosecutor can now demand police reports at any stage of an investigation (s 120 of the CPC). See also sections 107 and 107A that oblige police officer to submit reports to the Public Prosecutor within specified time periods following requests by the person who first lodged the police report. This is following reforms from other jurisdictions. In England and Wales, for example, since the publication of the Glidewell Report in 1998 and then the Auld Report in 2001, the Crown Prosecution Service has been cooperating more closely with the Police, especially in the charging process; see Jehle and Wade 2006, 177.

plea.[32] Given the current workload of deputy public prosecutors and the number of cases pending before the courts, this amendment was an essential move in order to avoid further adding to delay in the court system.[33] Early in 2011, the Attorney General issued guidelines and conducted road shows throughout the country on how the system should operate. It is still in early days, however, and much will depend on the extent to which the rights of accused persons to a lawyer during investigation are implemented in practice and how closely judges are involved in and regulate the "negotiation".[34] Malaysian lawyers and police will need to draw from experiences overseas to ensure that due process requirements are observed and that suspects are not coerced into pleading guilty to offences they never in fact committed.[35]

In relation to trial procedure, video testimony and live television links are now permitted where "in the interests of justice".[36] This measure was introduced to protect vulnerable witnesses (again following trends in common law countries, but especially earlier reforms in England and Wales) and to encourage children and victims of sex offences to give testimony in an adversarial trial setting. In the case of children, these measures have been enhanced by the Evidence of Child Witness Act 2007. This confers a discretion on the court to allow a child to give testimony outside the court in a special room,[37] to set up a screen inside the court shielding him or her from the accused,[38] to give pre-recorded video testimony[39] and to testify via a live TV-link[40] and for questions to be put to a child through a court-appointed intermediary.[41] It also mandates restrictions on publication of the child witness personal details to the press and other media[42] and permits the court to minimise formality of proceedings by ordering court officers to "de-robe".[43]

The Witness Protection Act 2009[44] further facilitates giving testimony by introducing for the first time a witness protection programme in Malaysia.[45] This legislation was passed because of the perceived problem of prosecutions collapsing due to extra-curial intimidation of prosecution witness in gang crime and related offences. Subject to the discretion of the Director General, the Act allows for change of identity and relocation of witnesses and their families. The Director General may recommend particular witnesses for the programme and consider applications from witnesses based on the seriousness of the offence, importance of their evidence, availability of alternative methods for securing the witness testimony and any other factors the Director General thinks relevant.[46]

[32] See "The Malaysian Insider", 15 January 2011, online available at http://www.themalaysianinsider.com/malaysia/article/a-g-plea-bargaining-to-be-implemented-in-three-months/html, accessed 15 October 2011. See also Anbalagan (2011).

[33] See "Appellate Court give nod for judges in plea bargaining", *Bernama* 30 September 2011, accessed from http://www.theedgemalaysia.com/index.php?option=com_content&task=view&id=193803&Itemid=27, and viewed on 15 October 2011.

[34] The Malaysian courts have now overturned previous case authority that prohibited a judge from indicating in a pre-trial conference the sentence he or she would be minded to give in relation to this particular accused and on the facts of the case. However, the court retains a discretion to refuse any potential "deal" forged between prosecution and defence counsel; *ibid*.

[35] For the experience in England and Wales, see further Baldwin and McConville (1977), *Negotiated Justice*, London, Martin Robertson.

[36] Criminal Procedure Code, section 272B.

[37] Section 3.

[38] Section 4.

[39] Section 6.

[40] Section 5. While the judge is specifically empowered to issue such directions, he or she is contingent upon the availability of the technology within particular courts. Not all courts in Malaysia, especially outside Selangor and the Federal Territories, have been modernised, so judges' hands may be tied in practice. See further Mustaffa and Salleh (2010, viii).

[41] Section 8.

[42] Section 14.

[43] Section 10.

[44] Act 696.

[45] The Act allows relocation within peninsular Malaysia only, specifically excluding relocation in either Sabah or Sarawak; section 13(3).

[46] Section 9. For further discussion on the Witness Protection Act 2009, see Kaur (2011).

16.6.4 Criminal Justice Administration

Potentially, the most important reform in the administration of criminal justice has been the establishment of a new body, the Enforcement Agency Integrity Commission,[47] to oversee the activities of the PDRM, along with twenty-one other federal enforcement agencies. Since the release of former Deputy Prime Minister Anwar Ibrahim in 2005 and the concerns of a "culture of impunity" and police "untouchability" expressed by the Royal Commission in its 2005 Report, trying to find appropriate and acceptable legal mechanisms for police accountability has been a key political priority. The Royal Commission recommended setting up an Independent Police Complaints and Misconduct Commission that would focus solely on overseeing the activities of the PDRM. The original idea was to establish a completely independent commission that would investigate, prosecute and punish police officers for "misconduct". However, after successful political lobbying by the PDRM, which complained of unfair victimisation, the recommendations were watered down and replaced with an inter-agency "Ombudsman" (the EAIC), responsible for 21 enforcement agencies. This body receives complaints, conducts investigations, makes referrals and has the power to "go public" if its recommendations are ignored by the relevant disciplinary body. It does not have any powers to prosecute or impose punishments.

While such a commission can play a useful function in using public opinion to effect agency compliance, one wonders whether it will be perceived as legitimate in ordinary Malaysian eyes when the EAIC still comes under the purview of the Attorney General, a government minister. It is also doubtful whether the indirect sanctions will be strong enough to deter police or other enforcement agency misconduct when the EAIC relies on the disciplinary authorities of the enforcement agency itself and the determination of its officers to take appropriate action. The effectiveness of the EAIC will further depend on how well it is funded. The recent controversial policing of the demonstrations surrounding the campaign for clean and fair elections ("Bersih 2.0") might be just the fillip the EAIC needed to push its funding needs higher up the political agenda. However, resourcing a "mega commission" cutting across 21 different agencies is a huge undertaking, especially in the contexts of the already considerable spending commitments in the 10th Malaysia Plan and the uncertain state of the global economy.

Supplementing and complementing the work of the EAIC is the re-vamped Malaysian Anti-Corruption Commission (the MACC) which, as the name suggests, focuses on investigating and policing "corruption" rather than "misconduct". The new Act was also passed in 2009 and, in contrast with the EAIC, cannot be accused of having established a toothless tiger, though concerns were initially expressed over its lack of independence. Rather, the concern with the MACC is that it has too much power and that its investigations have insufficient due process protections, especially when examined in the light of the death of Teoh Beng Hock (who died while in MACC custody in 2010.) "Witnesses", that is persons who are questioned by MACC officers but not placed under formal arrest (though who may be in "custody"), have no rights to a lawyer (the CPC does not apply) and, as a result of a ruling of the Federal Court in 2010, can be questioned out of "office hours" in order to facilitate and expedite the obtaining of relevant evidence.[48] Further, the right of silence will not apply and all statements made to MACC officers will be admissible unless obtained by duress (section 53, MACC Act 2009). Given that there is no right to a lawyer, the lack of oversight and the opportunity to interrogate well past the twilight hours, one would be forgiven for

[47] Enforcement Agency Integrity Commission Act 2009. The Act came into force in April 2011.

[48] See *Tan Boon Wah v Datuk Seri Ahmad Said Hamdan & Ors* (2010) (Federal Court) cited in *The Star*, 21 May 2010. This decision upheld the Court of Appeal's literal interpretation of section 30(1)(a) of the MACC Act 2009 that "day-to-day" questioning did not prohibit questioning out of office hours and was not subject to rule 20 of the Lock-up Rules 1953. See further *Tan Boon Wah v Datuk Seri Ahmad Said Hamdan & Ors* [2010] 4 AMR 312 (CA), [2010] 6 CLJ 142.

thinking due process has been sacrificed for crime control.

16.7 Conclusion

Crime and criminal justice in Malaysia, like Malaysia itself, have been transformed by the processes of industrialisation and modernisation. In common with other countries that have undergone relatively rapid economic development and social restructuring, crime rates have increased (especially violent crime) and criminal justice agencies, the PDRM in particular, have found it difficult to cope with the changing expectations and demands placed on them in the new social and political environment. Inter-ethnic politics, rise of populism, Internet social networking, uneven economic development, migration patterns, political events, political personalities, corruption, scandals and foreign influences have all shaped developments in crime and criminal justice as they have other areas of government responsibility.

As a result, Malaysia has reformed and is reforming its system of criminal justice, from an antiquated and inadequate post-colonial model to a more modern, responsive and eclectic form reflecting its particular ethnic make-up and local concerns. But this process is not complete and more needs to be done to address systematically problems encountered on the ground. In the author's opinion, this demands accurate and independent data collection so that decisions to reform are informed more by empiricism than vested interests. Reforms are more likely to work and have legitimacy where they are de-politicised and based on multiple independent sources rather than the enforcement agencies themselves. To this end, academic institutions and independent institutes across Malaysia need funding to support and properly establish Criminology and Criminal Justice as a research discipline, and for new partnerships to be forged between enforcement agencies and academics. The new Centre for Law and International Legal Studies with a criminal justice focus is a start, but Malaysia needs its existing universities to play a greater role. It may be that a Malaysian Crime Survey would be just the right project to kick-start such a development (as it was in the UK), but the universities also require more staff with the expertise and resources to make the necessary contribution.

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Criminology and Criminal Justice System in Pakistan

17

Fasihuddin

17.1 Introduction

Criminology as an academic discipline and as a profession doesn't enjoy its deserved status in Pakistan. Amongst 133 universities in Pakistan, only three universities are offering a post graduate degree in the subject of criminology. On the other hand, the crime rate in Pakistan is on the rise despite the new police reforms in 2002. The crime rate represented by the official statistics of police is rarely reliable, as the data on crimes for drugs pushing, narcotics smuggling, cyber crimes and trafficking in person are a few categories for which police do not collect specific data. The Anti-Narcotics Force (ANF) and Federal Investigation Agency (FIA) are responsible for other serious and organized crimes which are discussed subsequently.

In the wake of terrorism, the usual street and organized crimes took a serious turn and presented an unimaginable pattern of crime-terror-continuum. Despite this grave situation and increasing crime rate, the scientific and academic approach towards research-based policies are yet to be seen and implemented. The components of the criminal justice system in Pakistan are still using the old traditional methods of prevention, interrogation, investigations, prosecution and imprisonment. The academic and training institutes of the criminal justice system are reluctant to accept the scientific knowledge of criminology in their respective curriculum. This paper consists of two parts. In part I, the situation of criminology in Pakistan, its development and current status and in part II the structure and functions of the major components of the criminal justice system in Pakistan—police, probation, prosecution, courts, and corrections are discussed. The paper further discusses the need for inclusion of criminological literature and the police studies in the curriculum and educational and training institutes of law-enforcement agencies. The paper emphasises the importance of bridging the gap between academics and practitioners of the criminal justice system in Pakistan.

17.2 Part-I

17.2.1 Socio-economic Indicators of Pakistan

Pakistan is a developing country, situated in South Asia and her border touches with India, Afghanistan, Iran, China and the Arabian Sea. Pakistan came into being on August 14, 1947. It has four provinces; Balochistan, Khyber Pakhtunkhwa, the Punjab and Sindh, and seven agencies of the Federally Administered Tribal Area (FATA) which is a buffer zone between

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Pakistan and Afghanistan. With a population of 177.1 million and a growth rate of 2.05% Pakistan has the 6th largest population in the world (Population Reference Bureau 2010) and is the home of one of the twenty (20) most populous cities in the world—Karachi. Though the majority of the population still lives in rural areas, urbanization is increasing at a constant pace. The urban population reached 36.8% by July 1st 2011 (Ibid). With one of the highest fertility rates (3.5) in the region and increasing urbanization, Pakistan is facing an increasing unemployed population. The current unemployment rate is 5.6% (Economic Survey of Pakistan 2010–2011). Pakistan has the Human Development Index (HDI) as 0.490 and was ranked 128th by the UNDP 2010 HDI ranking in 2010. The population below poverty line was 36.10% in 2008 (Economic Survey of Pakistan 2010–2011). However, the Ministry of Finance estimates that 75% of the population lives near both sides of the poverty line (Economic Survey of Pakistan 2010–2011). Pakistan was placed at number 143/178 in the 2010 Corruption Perception Index Ranking by Transparency International 2011. The US Department of State 2010 report, Trafficking in Persons 2011, has also placed Pakistan in Tier 2 category, a slight improvement since 2009 when it was in Tier 2 Watch List.[1]

These socio-economic indicators present a dismal picture of a typical 3rd world country. Pakistan is a source, transit and destination of many organized crimes like terrorism, human-trafficking, drugs, etc and has higher population growth rate, and ill-conceived urbanization, rising unemployment, low expenditure on education and health with a large portion of population extremely vulnerable to poverty, and high rate of corruption and crime.

17.2.2 Situation of Crimes in Pakistan

Figure 17.2 (Appendix 1) explains that the crime record is collected at the police station level from which it goes to the office of the District Police Officer (DPO). The Central Police Office (CPO) at each provincial headquarters collects crime statistics from all the DPO offices in the province. The national crime recording institution is the National Police Bureau (NPB). The NPB collects crime data from the respective Central Police Offices of each province. Though it collects crime data at national level, the NPB rarely publishes it. The crime rate in Pakistan is increasing steadily. In this paper, crime rates were calculated from the official crime figures provided by the National Police Bureau and the population figures as published in the Economic Survey of Pakistan 2008–2009.

Pakistan's crime situation has never been a pleasant one. Not only the ordinary crimes are very high but extra-ordinary situations are numerous and varied. Agitations and riots similar to those of 1958 and 1968, the influx of three million Afghan refugees in 1980s, the recent effects of the war on terror in terms of serious security threats, and another three millions of Internally Displaced Persons (IDPs) from tribal areas and Malakand Division down to the cities further aggravated the crime situation. However, proper research and analyses are rarely conducted to evaluate the impact and implications of such social dislocations. Crime figures were published with comments from 1947 to 1981, but no such efforts were made after 1981 by the NPB or any other agency. The total recorded crimes in 1947, the year of Pakistan's independence, were 74,104 and 152,782 in 1981 with a crime rate of 247 per 100,000 population in 1947 and 182.2 in 1981 (Ministry of Interior 2009). The higher crime rate in 1947 can be attributed to the volatile situation in the post-independence riots, violence, and internal and external migration across the borders of India and Pakistan in 1947.

If we analyze the recorded crime from 1991 onwards, it seems that the crime tide has followed an upward trend. During the last 18 years, the crime rate rose from 255.52 per 100,000 in 1991 to 354.8 in 2008. Police reforms were initiated in a time (2001) when the official crime figures were declining (1998–2001) but which steadily went up after the promulgation of the new police law in 2002 (Fasihuddin 2010). However, this is the situation of the officially recorded crime rate, which does not, in any way, represent the true picture of

[1] The report can be downloaded from the URL http://www.state.gov/g/tip/rls/tiprpt/2011/.

crimes in Pakistan. The real crime rate is yet to be estimated. Basically, the police reforms initiated by Gen. Musharraf in 2001–2002 were put to serious fundamental amendments by the successive political governments, which rendered the reforms redundant, ineffective, dysfunctional and poorly implemented. In addition to this lack of political will, never enough resources were provided for police new units and specialized skills and training. Recently, in Baluchistan and Sindh provinces the reforms are almost reverted.

It is still on the rise. This table is calculated only for this paper and is not available in any published documents of the NPB or any other government or non-government paper or their web sites. Such academic work is rarely seen in any government department in Pakistan, Fig. 17.1. (For details, see Table 17.8 in Appendix 2).

Usually, crime in Pakistan is classified under two main heads: (1) crimes against persons and, (2) crimes against property. *Crimes against Persons* include physical harm or force being applied to another person. Murder, assault, rape, kidnapping, child abuse and violence against women are a few categories of crimes against person for which data is collected by the police. The highest incidence of crime against persons are hurt and injury (36%), kidnapping/abduction (16%) and attempt to murder (16%) against the total of 86,101 crimes against person in Pakistan in 2008 (Percentages calculated from Tables 17.8 and 17.9, Appendix 3). The same categories of crimes against person dominate in all the provinces as well. The crimes of rape and kidnapping are more dominant in the provinces of Punjab and Sindh than in Balochistan and Khyber Pakhtunkhwa (KPK).

Among the *Crimes against Property* for which the statistics are collected include dacoity,[2] robbery, burglary, vehicle theft and cattle theft. The dominant crimes in this category in Pakistan are theft (31%), motor vehicle theft (25%), and robbery (17%). There seems no significant difference in provinces in this respect.

Overall, crime against person makes up only 15% of the total recorded crime while the crime against property makes up only 19%. The very low crime rates are of course not reflecting the real situation of crime, but an ineffective crime recording system and an ineffective justice and policing system (like in India and China).

Further, it is to be noted that in the provinces of Punjab and Balochistan, "Crimes against the person" is very large as compared to "crimes against property". In KPK even five times higher. Of course this is not reflecting real existing crime, but simply shows that crimes against property are not recorded. Nearly all over the world, "crimes against property" makes up 80% of all crime. Actually, in the Pakistan's traditional and semi-democratic society, people try to avoid reporting to the police for theft and burglary as it is an honour and prestige problem for many unless serious and sensational. Moreover, police leadership takes such crimes as serious inefficiency on part of the police station staff in the locality. So the lower/field staffs try to avoid such registration of cases and mitigate the seriousness by applying less serious sections of the law and also by persuading the aggrieved party to seek some informal justice practices for solving property matters.

Besides these crimes, the data on crimes for drugs pushing, narcotics smuggling, cyber crimes and trafficking in person are a few categories for which police do not collect specific data. The Anti-Narcotics Force (ANF) is responsible for data on drugs and the Federal Investigation Agency (FIA) for some major organized crimes like human trafficking and smuggling, cyber crimes, money laundering and corruption in government offices. These two agencies publish their annual reports and digests until recently, but have since discontinued documentation and analysis. The official crime rate, presented in this paper, does not include data from these other agencies as shown in Fig. 17.2. Therefore, the crime rate is only calculated from the police official statistics.

To preserve the history of crime in Pakistan, the writer collected and obtained certain crime data for his Country Report for the 129th International Senior Seminar at the UNFEI,

[2] Under Pakistan Penal Code 1898, Section 391, Dacoity is defined as "When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity".

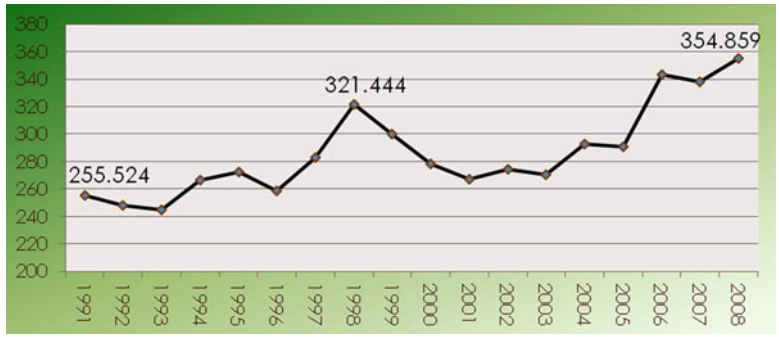

Fig. 17.1 Crime Rate in Pakistan-1981–2008. Source: [1] Economic Survey of Pakistan 2008–2009. Table No. 12.1. p. 194. [2] National Police Bureau, Islamabad, Pakistan

Tokyo, Japan in 2005. These crime figures which are not available elsewhere are shown in Tables 17.1 and 17.2.

17.2.3 Status of Criminology in Pakistan

17.2.3.1 Academic Status

Unfortunately, criminology as an academic discipline and as a profession doesn't enjoy its deserved status in Pakistan. Despite the serious law and order situation and low socio-economic indicators, there is a general apathy on part of the academics and practitioners to promote the scientific study of criminology and policing sciences (Fasihuddin 2008).

There are a total of 133 universities and degree awarding institutions in Pakistan, 74 public and 59 private. Criminology is offered as a separate subject in only three: Karachi University (KU), Sindh University, and Punjab University. The KU started a degree programme in criminology in 1995–1996 under the Psychology Department but it was abandoned after 1 year. It was again started in 2000. However, the criminology department at Karachi University is still controversial and some newspapers (*Daily Dawn*) alleged the KU of running a fake department (Faiza Ilyas, January 18, 2010). According to a faculty member, Prof Dr Burfat of KU, there is no criminology department at the campus (Ibid). The official web site of KU does not mention the existence of any department of criminology under its faculties head.[3] Punjab University started the degree programme in 2009. The Sindh University at Jamshoro started the Master of Criminology programme in 1998 and it continues successfully. The faculties hired to teach the courses of criminology at these universities have very little competence in the field.

Four other universities have included criminology as an optional subject in their various social sciences programmes; University of Peshawar offers as an optional subject in the Department of Social work, Department of Sociology and Department of Anthropology; University of Sargodha offers as an optional subject in the Department of Social Work; Islamia University, Bahawalpur offers in the Department of Social Work; and Kohat University of Science and Technology (KUST) offers criminology as an optional subject in the Department of Social Work and Sociology. Unfortunately, this is mostly under the sociology or social work departments, and criminology is not offered as an independent discipline.

17.2.3.2 Curriculum of Criminology

The HEC proposed a 2 year curriculum of M.Sc. Criminology to be implemented in all universities throughout the country but, it was never appreciated by any of the academic institution

[3] For reference please Visit http://www.uok.edu.pk/faculties/index.php.

due to resources and capacity constraints (See Box 1 for HEC proposed curriculum for MSc Criminology in Appendix 1). The universities which offer a criminology degree have devised their self-styled curriculum which are not modern, scientific and comprehensive. The proposed curriculum focuses on the very basics of criminology with no specialized subjects (See Boxes 2 and 3 for Criminology curricula of various universities in Pakistan in Appendix 4). Further, the books proposed for the study are often not available in the market. Furthermore, the local literature on the subject of criminology is very scarce, even there was no journal of criminology before April 2009 when the 1st issue of the *Pakistan Journal of Criminology* was launched (to be discussed later).

The author wrote a book on criminology titled *Expanding Criminology to Pakistan* in which the author proposed a curriculum for Master degree at university (See Box 5). The Governor of the Khyber Pakhtunkhwa (KPK, previously known as North West Frontier Province, NWFP) circulated the book to all the Vice-Chancellors of the universities of Khyber Pakhtunkhwa to assess the feasibility of introducing the subject of criminology in their respective universities (Letter No.PSG-1(2)/2009/43). Unfortunately, no university was able to implement the proposed curriculum because of limited resources. However, the young scholars in M.Phil., Ph.D., and Masters programmes in sociology, social work, psychology and most of the young police officers who get a chance on some scholarships to the western world, have shown tremendous interest in the study of criminology and criminological research. Most of them wish to initiate similar programmes but have yet to do so. The curriculum devised by the author is basically on the pattern of the usual 2 years course in any social science subject, mostly with one hundred score/points in each paper. The author not only has included modern topics and concepts in it but also has given the further sub-topics under each major subject (as shown in Box 5 in Appendix 4). The author, moreover, described and suggested the latest books, journals and web sites for the proposed curriculum which was unprecedented in the history of developmental criminology in Pakistan. At the moment, Pakistan has no national institute of criminology, research and policing and security studies. Even in the private sector no one has come forward to invest in such academic endeavours.

One of the recent achievements of criminology is to get a place in the optional subjects in the Central Superior Service (CSS) examination which is the most prestigious and the highest test for selection of the elite national bureaucracy in Pakistan, conducted by the Federal Public Service Commission (FPSC) of Pakistan every year. The FPSC has asked the Pakistan Society of Criminology to design a curriculum for this optional subject vide letter no.F.3-1/2012/CR-11(Criminology) dated April 16, 2012 to be implemented from 2013. It is hoped that this one move will revolutionize the promotion of criminology in academic institutions as about a ten thousand candidates apply for CSS every year and criminology will be likely one of their choice.

17.2.3.3 Criminology in the Trainings

Besides universities and degree awarding institutions, criminology has also been lacking in the curricula of the training schools and colleges of the criminal justice system, particularly the police. Criminology was long taught in the training of the Assistant Superintendent of Police (ASP) at the National Police Academy (NPA), Islamabad. The course was primarily taught by visiting police scholars who would have done some courses in criminology from local or foreign institutions. After the reforms in the ASP course in 1999, criminology was excluded from the curriculum for unknown reasons. Today, police officers in Pakistan complete basic police training with no criminological knowledge. The status of criminology in the training academies of other components of criminal justice system is unknown.

17.2.4 Criminological Literature in Pakistan

There is a severe scarcity of criminological literature in Pakistan. Some of the police officers and a few academics wrote books on criminology and

Table 17.1 A country recorded crime

Offence	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Cases against person	44,139	47,076	47,612	55,375	57,312	59,369	62,094	67,017	64,647	71,580
Cases against property	49,696	50,622	54,098	64,046	59,189	59,317	66,902	65,658	63,597	59,702
Accidents	11,159	11,351	12,611	11,568	11,324	10,986	10,041	11,767	11,530	15,472
Local and special laws	127,788	125,780	117,112	134,349	151,588	142,684	145,137	154,221	161,329	158,575
Miscellaneous	54,964	51,699	58,567	58,013	59,815	56,949	84,987	129,886	108,064	83,085
All reported crimes	287,746	286,528	290,000	323,351	339,228	329,305	369,161	428,549	409,167	388,414

Source: Fasihuddin (Jan–Feb 2005). Country Report on Crime Prevention, Community Policing and Juvenile Delinquency in Pakistan. 129th International Senior Seminar, UNAFEI, Japan

Table 17.2 Country rate of reported crime

Offence	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Cases against person	40.91	42.57	41.96	47.65	48.09	48.61	49.67	52.24	49.14	53.01
Cases against property	46.06	45.73	47.69	55.11	49.67	48.57	53.50	51.19	48.32	44.21
Accidents	10.35	10.26	11.11	9.95	9.50	8.99	8.03	9.17	8.77	11.46
Local and special laws	118.43	113.67	103.25	115.60	127.20	116.85	116.04	120.24	122.58	117.42
Miscellaneous	50.94	46.72	51.63	49.92	50.19	46.64	67.95	101.27	82.11	61.52
All reported crimes	266.69	258.95	255.64	278.23	284.65	269.66	295.19	334.11	310.92	287.62

Source: Fasihuddin (Jan–Feb 2005). Country Report on Crime Prevention, Community Policing and Juvenile Delinquency in Pakistan. 129th International Senior Seminar, UNAFEI, Japan

policing studies.[4] These books are often too old and/or not easily available in the market. The author's book, *Expanding Criminology to Pakistan,* is the only book freely available on the internet.[5] Some of the memoirs of the retired Inspectors General of Police may help some researchers in writing the history of police and policing in Pakistan. Many of such books are in Pakistan's national language, Urdu.

17.2.5 Contribution of Pakistan Society of Criminology

The establishment of Pakistan Society of Criminology (PSC) in September 2008 and the inauguration of Pakistan Journal of Criminology (PJC) in April 2009 was a major step in the development of criminology in Pakistan. By 2012, PSC published twelve (12) issues including general and special issues covering a wide range of criminological subjects in Pakistan and the world. The special issues of PJC addressed the juvenile justice system in Pakistan (Vol. 1. No. 3. Oct 2009), terrorism, organized crime and law-enforcement (Vol. 2. No. 1. Jan 2010), violence against women (Vol. 2. No. 2. April 2010), criminal justice system in Pakistan (Vol. 2. No. 3. July 2010), and policing and transnational crime (Vol. 2. No. 4. Oct 2010) and terrorism and radicalism (Vol. 3. No. 3. Jan 2012). The journal is freely available at the PSC official web site.[6] Contributions to the PJC come from all over the world, including USA, China, Australia, South Africa, UK, Iran, Canada, Turkey, India, Bangladesh, Japan, and others. A wide range of research papers has been published in PJC covering the areas of drugs, human trafficking, the criminal justice system, police, prosecution, prison, courts, child abuse, street crimes, kidnapping, cattle theft, violence against woman, corruption, cyber crimes, suicide bombing, police education and training, juvenile justice, problems and constraints in criminological research, and the limitations of criminological research in Pakistan. More than 75% of all the published research papers are produced by local scholars. It is an indicator of the improving situation of local literature on criminology in Pakistan. The remarkable achievement of PJC came on 29th March, 2012 when the Higher Education Commission of Pakistan formally recognized the PJC as an authentic research journal in "Y" category vide letter no.DD/JOUR/SS&H/2012/2/6.

Besides PJC, the Pakistan Society of Criminology also published a book titled "*Expanding Criminology to Pakistan*" which discusses practical issues in criminology in Pakistan along with an emphasis on the future prospects of criminology and with a proposed curriculum for the masters level programmes at universities in Pakistan as mentioned earlier. The book provides a wide range of links to the journals, web sites, archives, libraries and books on criminology around the world. It further discusses the issue of the practice and field application of criminology in Pakistan. Besides this, PSC also published a small booklet "*Child Rights, National and International Laws and the Role of the Police*" (2008) which is in Urdu. This small booklet is very useful for the policeman in Pakistan. The then Inspector General of Police, KPK sent the booklet to all the police stations of the province

[4] e.g. *Criminal Justice, Crime Punishment and Treatment in Pakistan* by Ch. Abdul Majeed A. Auolakh; *Fundamentals of Criminal Investigation: A Handbook for Law Enforcement Officers* by Rana Abdurrazaq Khan; *Crime and Criminology: A Comparative Study in Islamic Republic of Pakistan* by Rana Abdul Razzaq Khan & Ch. Abdul Majeed A. Aoulakh; *Law and Method of Medical Examination and Evidence with Medical Jurisprudence and Criminology* by Masuad ul Hassan Khan; *Principles of Criminology and Pakistan Penal Code (Questions and Answers)* by Jamal Abbasi; *Socio Psychological Aspects of Crime in Pakistan* by Perveaiz Naeem Tariq & Naeem Durrani; *Criminology: Problems & Perspectives* by Ahmed Siddique, *Criminology* by Justice® Munir A. Mughal; *Criminalities : Forensic Investigation for Law Enforcement Officers* by Aftab Ahmed Kahn; *Terrorism in Action* by Iqbal Hussain; *Criminal Justice & The Community* and *Guidelines for the New Entrants into Police Department* by M.Y. Orakzai and a few Urdu books on the subject.

[5] For the book Expanding Criminology to Pakistan, visit this link http://www.pakistansocietyofcriminology.com/Admin/uploads/ExpandingCriminology.pdf.

[6] www.pakistansocietyofcriminology.com.

through an official order. The same booklet has been used in numerous trainings on juvenile justice and the police in Pakistan. The PSC designed a new data-collection system for the local police in KPK, on Juvenile Justice Indicators, as required by the UNODC and UNICEF. For the first time since 1934, a new criminal record system was introduced. This practice was replicated in another province, Balochistan, by the National Police Bureau. Its report is now published and available online. Moreover, two training manuals on juvenile justice in Urdu language for police were published in 2011 and have been highly praised by local police chiefs.

One of the other contributions of PSC to the criminological literature is the translation of the book of Prof. Kam C. Wong, *Chinese Policing: History and Reform,* into Urdu. Wong's book provides a model analytical framework for those who are currently analyzing a democratic, professional and responsible policing (Fasihuddin 2011).

A future project of PSC is to launch a National Institute of Criminology (NIC). PSC has been working on NIC for the past few years. However, finding financial support for the project is the key constraint in the establishment of such an Institute.

17.2.6 Professional Organizations of Criminology in Pakistan

There have been a few professional organizations of criminological interest in Pakistan including Association of the Police Service of Pakistan (APSP), and National Council of Criminology Pakistan (NCCPAK)[7] and the Pakistani chapter of the International Police Association (IPA).[8] Unfortunately most of these organizations are defunct and have made no contribution to criminology. Only the Pakistan Society of Criminology has made significant contribution to the field. A few like-minded academics and police officers established the Pakistan Society of Criminology (PSC) in Sept 2008 and got it registered with the provincial government of Khyber Pakhunkhwa (Registration No. DSW/NWFP/2988). The aims and objectives of the Society are to create a multidisciplinary forum to serve the nation through earnest efforts of dissemination of criminological knowledge and field experiences, both from international scholarship and local best practices.

The PSC soon afterwards launched its web site, and ensured the publication of the Pakistan Journal of Criminology on quarterly basis. The Pakistani media is also giving a considerable recognition to the efforts of Pakistan Society of Criminology.[9] Gradually it is drawing a significant attention of the researchers and readers from all over the world especially towards its indigenous criminological literature.

17.3 Part-II

17.3.1 Criminal Justice System in Pakistan

Criminal justice system as a system generated very little attention in Pakistan. The interest in criminal justice system has been largely sporadic, and in the words of Dr. Paul Petzschmann (2010), limited to a few aspects deemed sufficiently "policy-relevant" to merit international interest. Criminal justice system in Pakistan is largely an implanted institution, and amalgamation of

[7] Access online at http://nucss.edu.pk/index.php.

[8] Website of IPA http://www.ipa-pk.com/.

[9] For example, in the most popular daily *Aaj*, Peshawar, many veteran coloumnists have written specific and special coloumns on criminology and the role of Pakistan Society of Criminology and its President (Dr. Zahoor Ahmad Awan, Daily *Aaj*, June 15, 2008., Prof. Dr. Inayatullah Faizi, Daily *Aaj*, Aug 15, 2008., and three consecutive coloumns written by Jamil Marghuz, Daily *Aaj*, September 19, 22, & 24, 2011. Another local daily *Jihad* published a one page English supplement report on 29th June 2010. The launching ceremonies of Pakistan Journal of Criminology have been given considerable coverage by most of the national dailies. The Radio Pakistan FM. 101 channel from Peshawar and Khyber News TV Channel had special interviews with Fasihuddin, Editor-in-Chief of Pakistan Journal of Criminology on June 16, 2011 and on September 20, 2011, respectively which were widely received and propagated. The Khyber News TV interview is available on PSC website; www.pakistansocietyofcriminology.com.

precolonial and colonial elements, combined with variety of Islamic legal interpretations (Petzschmann 2010).

As in most former British colonies, Pakistan's criminal justice system is rooted in British political traditions (Calafato and Knepper 2009). The procedure of criminal justice system in Pakistan, inherited from 90 years of British rule, is given in the Criminal Procedure Code (CrPC), 1898 which provides for case registration and investigation by the police and the trial in a criminal court. In a typical criminal case in the criminal justice system of Pakistan, first of all, a First Information Report (FIR) as per Section 154 of the CrPC is recorded. The FIR is known as the Register No. I in a police-station criminal record, which contains a total of 25 registers for various records in a locality (see Box 6 in Appendix 5). The police officer proceeds to the scene of the crime, where required, and investigates the facts of the case. After the completion of an investigation, the Station House Officer (also known as the Officer in Charge) of the police station sends a report to the concerned Magistrate or Session Judge, as the case may require. This is called Final Report (*Chalan*). On receiving the police report, the Magistrate or District and Session Judge takes cognizance and initiates the trial of the case. Once the charges are framed, the procedure requires the *prosecution* (emphasize added) to prove the charges against the accused beyond a reasonable doubt. The accused is to be given a full opportunity to defend himself/herself. If the trial ends in conviction of the accused, which is very low in Pakistan (15%), the court may award any of the punishments as prescribed in the Pakistan Penal Code, 1860 (or any other applicable special law).

In this section, we will describe the components of the criminal justice system in Pakistan; police, prosecution, courts, prisons and probation.

17.3.2 Police

Police are the first responders to any breach of law in all civil societies. The Constitution of Pakistan 1973 stipulates that in the provinces the responsibility for crime prevention and control and the administration of justice primarily rests with the respective provincial governments. That is why police are under the control of the provincial government for all practical purposes. The federal government, however, has jurisdiction over matters such as the enactment of criminal laws, the training of certain categories of criminal justice personnel, and research, apart from the direct law and order responsibility it has for the federally controlled territories (Shoaib Suddle 1995). Though in all federation systems such arrangements are inevitable, yet at times, it gives rise to conflict between jurisdictions. Pakistani police have suffered a lot in this respect, especially after the new Police Order 2002, promulgated by the military ruler Gen. Pervez Musharraf and after Pakistan joined the war on terror in the wake of 9/11 attacks. As we will see, both decisions have far reaching effects for the police.[10]

17.3.2.1 Police Structure, Organization and Functions

Pakistan inherited the colonial criminal justice system from the British in India. Since the partition of India in 1947, Pakistan has had a rigid police structure, mostly hierarchical and vertical in nature and based on the command and control system. As Pakistan is a federation of four provinces, law enforcement powers have been divided between the federal government and provinces.[11]

Provincial police agencies are led by an Inspector General of Police, supported by a Deputy Inspector General of Police in a region or range, who is assisted by a Superintendent of Police (SP) in a district. Below him is the Deputy or Assistant Superintendent of Police who commands the subdivision or *tehsil* (sub district level), and below him is the Station House Officer (SHO) who is in charge of a police station, mostly in the rank of Inspector or sub-inspector. After the Police Order 2002, most of this nomenclature

[10] A major part of this portion was taken from the author's previous essays on police in Pakistan.

[11] For details see Fasihuddin (2010). Police and Policing in Pakistan: *Pakistan*. In Ajit Doval and BR Lall (2010). *Police and Security Yearbook 2010-2011*. New Delhi; Manas Publications.

was changed. The IGP is now called the Provincial Police Officer (PPO), the SP is renamed as District Police Officer (DPO) and the DIG in the big cities is given a new role and authority under the new title of Capital City Police Officer (CCPO). The Investigation (or detection) is being separated from the prevention (or watch and ward) and has its own chain of command right from a police station level to the SP (Investigation) and Additional Inspector General of Police (Investigation) at the top, however, subject to the general command and control of the SHO in a police station, of a DPO in a district, of a DIG in a region and of the PPO in a province. Prosecution is altogether cut off from the police and is now established as an independent department under the new law, the Prosecution Ordinance 2005 (See Appendix 6 for the various levels of entries to the police and the organizational structure).

The police normally are not happy with the available strength and budget and a demand for more recruitment and funds is always on the top of the police agenda. In the wake of serious terrorist attacks, more resources were provided by the government. For example, only in the province of KPK the police strength increased from 48,655 (2008) to 74,000 (2011). The major portion of the total police budget goes to establishment and management cost (80%), i.e. salaries and allowances of the force and only a little (20%) is left for the qualitative improvement, capacity building and professional competence (See Appendix 7).

17.3.2.2 Functions of the Police in Pakistan

The universal function of the police is the prevention of crime, investigation of crime and maintaining peace and order in a society. The same applies in Pakistan. To achieve this goal the Police Order 2002, Chapter II, Clauses 3 and 4, provide a detailed list of activities for the police to carry out. The major functions of the police are to protect life, property and liberty of citizens, preserve and promote public peace, keep order, etc. (See Appendix 8 for a detail list of functions of the police).

However, the effectiveness of the police to perform their duties is questioned by all sections of the society, media, public, and civil society. Police are often labeled as "too late to arrive at the crime scene", "they are never there when you need them", "too violent or passive" etc. The deviation of the police from their duties is common in Pakistan (Fasihuddin 2009). Their functions have been reduced to the same old traditional duties than the new role envisioned for them in the new police order. The image of the police as providing security to the public and winning public confidence is often very tarnished.

17.3.2.3 Police Recruitment, Training and Education

A detailed description of the police recruitment, training and education has been given by Fasihuddin (2009) in his article, *Police Training and Education in Pakistan*. However, there are numerous problems in the recruitment, training and education of the police in Pakistan. The lower level recruitment (constable) is done by the District Police Officer. A huge level of corruption and other mal-practices are observed at various levels of recruitment in the police, particularly at the lower level. It is a generally accepted opinion that an unqualified person can be recruited if he/she pays for recruitment. However, there are no empirical findings in this regard.[12]

The major focus of the police trainings and education at various police training colleges (e.g. Police Training College, Hangu, KPK) is on teaching various criminal laws (e.g. Pakistan Penal Code, Criminal Procedure Code, Police Rules, Local and Special Laws, and Evidence Act etc) and physical training (e.g. combat fighting, drills, rifle musketry, mob dispersal, traffic control, and assault courses etc.). The author conducted a small survey of the lower level police in 2009 in which the police were asked about the major problems of the police. Majority (14.8%) of responded that "inadequate training facilities/training aides" is the biggest problem in the police training. Similarly, it was identified that the police perceive terrorism to be biggest

[12] For details see Fasihuddin (2009). Police Education and Training in Pakistan. *Pakistan Journal of Criminology*. Vol. 1. No. 2. Jul 2009.

problem concerning policing these days (22%). Criticizing the training curricula, Mr. Syed Akhtar Ali Shah, the Additional Inspector General of Police (Special Branch) of Khyber Pakhtunkhwa raised a question on the launching ceremony of Pakistan Journal of Criminology (April 24, 2012) "can we fight terrorist through teaching these laws and by such raw trainings to the police?" He doubted the affirmative answer as more than 500 policemen have been martyred (killed in action) since 2005 and over a thousand have been severely injured in terrorist attacks.[13]

Coming to the impact of the recruitment, training and education of the police, the indicators are not very positive. There are a huge number of cases in which the culprits are marked as untraced by the police.[14] Similarly, the police remained at the top of the list of the most corrupt public sector institutions in the National Corruption Perception Survey 2011 report of Transparency International 2011, Pakistan chapter. Although the validity and reliability of this survey is challenged on many grounds, it still shows the perception of the population. Why the public perceive police as the most corrupt institution? This merits a separate research.

Likewise, Khan and Sajid (2010) criticized the poor quality police training and the lack of modern equipments, and thus commented that the police are the easy targets for the terrorists due to these in-sufficiencies.

17.3.2.4 Police Reforms in Pakistan

Although the history of police reform begins prior to independence we focus here on the post-independence developments. There have been more than two dozens commissions and committees on revamping, modernizing and reforming the police through both qualitative and quantitative changes. Unfortunately the reports of all such bodies (Appendix 9, Box 7) are not available in the market, nor published by any government or displayed on their web sites. None of these reforms came true or implemented in letter and spirit due to a variety of reasons—political, economic, legal as well as administrative. The most important was the 1985 Commission and the subsequently Implementation Committee (1991) findings and Abbas Khan Report (1996) which demanded a modern police by replacing the police law with a new law, formulation of public safety commission and establishment of national police agency.

In view of these demands the new Police Order 2002 was promulgated which replaced the Police Act of 1861. It also resulted in the establishment of National Police Management Board, National Police Bureau and the Criminal Justice Coordination Committee at district level.

Concerns were raised soon after the new law was implemented and it was amended within the two months of its implementation. The police raised concerns whether the reforms are a positive step. It appeared to be a clumsy grafting of the Japanese police model into a semi-democratic, semi-tribal, semi-religious and transitional society of a country which was already suffering from extremely poor socioeconomic development (Fasihuddin 2008). The new Police Order, 2002 is highly comprehensive and detailed. It is a part of the Access to Justice Programme (http://www.ajp.gov.pk), mainly funded by the Asian Development Bank. In reality, the provision of the required human and material resources for its proper implementation is yet to occur. Due to the numerous amendments in the Police Order 2002, the former senior officers who supported the new system are now disappointed over the lack of true reforms. For example, Shigri (2005), a retired Inspector General of Police and a champion of the new police reforms, terms the amended reforms of 2002 as worse than the 1861 Police Act. He warned of the dreadful results due to the destruction of the police command structure. Due to political exigencies, the present Government of

[13] Official data provided by SP/Research Investigation, Central Police Office, Peshawar, KPK, Pakistan.

[14] For example, in the province of KPK, out of 14,921 investigated cases in 2012, 1578 were marked as untraced (source official data provided by the SP/Research, Central Police Office, Peshawar, KPK).

Pakistan has tolerated significant amendments to Police Order 2002 by provincial governments since 2008. Balochistan province has completely reversed it and the KPK has begun to do so. In Sindh, it is reversed one day and restored the other, depending on the political accommodation of the coalition partners. No new Police Rules have been framed in light of the new Police Order 2002. The 18th Constitutional Amendment for devolution of powers has also given rise to difficult legal questions on the new police law. Only time will resolve this current (2011) ambiguity in police reforms.

17.3.3 Prosecution

Prosecution plays a pivotal role in the administration of justice. A prosecutor or public prosecutor is an expert of the law to represent the state, in court proceedings, against the law breaker. Prosecution in Pakistan was a branch of police but it has recently been separated, with a view to achieving a more timely resolution of cases. It is now made into an independent department after the promulgation of the Prosecution Ordinance of 2005.[15]

Prosecutors are covered under section 492 of the CrPC which provides that the provincial government may appoint "generally or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors".[16] As mentioned, the prosecution services in all the provinces were under the Home Department and were administered by the police until 2005.[17] There was a separate prosecution branch of the police consisting of law graduates in the ranks of Deputy Superintendents of Police (DSP), Inspectors and Sub-Inspectors. This was considered, however, to be a major reason for poor prosecution and delay in the resolution of court cases. During the 1980s, a first attempt was made to transfer administrative control of prosecution powers from the police to law departments.[18] The ongoing vacillation between the Home Departments and the Law Departments on this question continued until prosecution services were permanently placed under the administrative control of the Law Departments with the promulgation of the Police Order, 2002. At present, all the provinces have laws for separate prosecution services and the respective provincial prosecution services are at nascent stages of development (Mirza 2010).[19]

17.3.3.1 Provincial Organization of Prosecution Services: A Case for Kyber Pakhtunkhwa

The prosecutorial services in KPK were introduced through the North-West Frontier Province

[15] A major part of this portion is taken with permission from the essay of Mashood Ahmad Mirza, Role and Responsibilities of Public Prosecutors in Pakistan, published in Pakistan Journal of Criminology. Vol. 2. No.3. July 2010.

[16] "Public Prosecutor", means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the State in any High Court in the exercise of its original criminal jurisdiction. He is bound to assist the Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function. AIR 1957S.C. 389.

[17] An Asian Development Bank soft loan to Pakistan is de facto primarily responsible for the Access to Justice Program, in which the state is engaged "in improving justice delivery, strengthening public oversight over the police, and establishing specialized and independent prosecution services". In this we see the Police Act 1861 being replaced by the Police Order 2002 and new laws to constitute and provide for the functions of independent prosecution services in Pakistan, thus divorcing prosecution from the investigative arm of the police. Arguably, more valid grounds can be cited for the creation of an independent prosecution service in Pakistan, being article 175(3) of the constitution, which mandates that "the judiciary shall be separated progressively from the executive within three years from the commencing day". Thereafter, there was the appeal decided in Govt. of Sindh v. Sharaf Faridi (PLD 1994 SC 105).

[18] In Sindh, for instance, it was done in 1986; see Zahid and Wasim 2010, *The province of Sindh as a case study on the prosecution service*: http://www.article2.org/mainfile.php/0704/333/ as on 12 July, 2010.

[19] The laws providing for independent prosecution services are The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, The North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005, The Balochistan Prosecution Service (Constitution, Functions And Powers) Act, 2003.

Prosecution Service (Constitution, Functions and Powers) Act 2005. After this Act came into operation, all prosecution services in KPK province, from the registration of the FIR up to the conclusion of the case by the Supreme Court of Pakistan, came under the KPK Directorate of Prosecution.

The 2005 Act has 12 sections. The powers of the prosecutor are immense and are given in Chapter III.[20] The public prosecutor under the said ordinance is appointed under section 492 of the CrPC.[21] Once the prosecutor receives a case file from the police, the prosecutor reviews it and has the option to continue with the prosecution, take no further action or divert it away from the criminal proceedings.[22]

17.3.3.2 Organizational Structure and Responsibilities

The Directorate is classified into three sections: prosecution, administration, and accounts. The establishment lies with the Home Department. It is headed by a Director General assisted by a Public Prosecutor, Director Legal and Director Administration/Accounts. The Director General in essence is the head of Prosecution in the Directorate. He looks after the Establishment and Accounts Branches and exercises overall control over officers of the Prosecution Directorate. The District Public Prosecutors oversee the prosecution functions in the respective districts and all the Assistant Public Prosecutors report and take guidance from the District Public Prosecutor. In cases where the sanctioned posts cannot be filled, the Prosecution Directorate can as a stop-gap measure appoint Special Public Prosecutors from the respective bars associations.

17.3.3.3 Major Functions of the Prosecution Directorate

Normally, the role of the public prosecutor commences after the investigation agency presents the case in court. The Investigation Officer and the Public Prosecutor work independently of each other in the new system. Prosecuting officers assist law courts in the disposal of cases. The Directorate aims to deliver a prompt, efficient and speedy service to the litigant for achieving the ends of justice, ensuring judiciousness and speedy legal remedies.[23] Cases registered and investigated by the police are referred to the prosecution for scrutinizing charge sheets, and after their institution in the courts, the Assistant Public Prosecutors conducts the prosecution. They evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts. The public prosecutor has the power to withdraw prosecution if reasonable grounds exist under section 494 of the CrPC. Consent will be given by the Public Prosecutor only if public justice in the larger sense is promoted rather than subverted by such withdrawal.

[20] See generally Chapter III of the North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005.

[21] "Public Prosecutor" means a person appointed as Public Prosecutor under this Act for the purpose of section 492 of Cr.PC and includes District Public Prosecutor, Additional Public Prosecutor, Deputy Public Prosecutor and Assistant Public Prosecutor as well as Special Public Prosecutor.

[22] A District Public Prosecutor in case of offences carrying seven years or less imprisonment and the Director General Prosecution for all other offences may withdraw prosecution subject to prior approval of Court. Provided that prosecution of an offence falling under the Anti Terrorism Act, 1997 (XXVII of 1997), shall not be withdrawn without prior permission in writing of the Secretary to Government, Home and Tribal Affairs Department. See also Section 494 of CrPC, "Effect of withdrawal from prosecution. Any Public Prosecutor may, with the ....] consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal: (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences".

[23] "Preamble of the North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005 states that "WHEREAS it is expedient to reorganize and establish a Prosecution Institution with a view to achieving a speedy justice process in the North-West Frontier Province and for matters ancillary or incidental thereto".

17.3.3.4 Performance of Prosecution in Khyber Pakhtunkhwa

Generally conviction rates by the prosecution have been abysmally low, but it must be emphasized here that the prosecutor places before the court all the evidence in his or her possession, whether in favour of or against the accused. However, most of the time, this motive is misinterpreted and prosecutors show no interest in winning cases in favour of their client.

Overall, the conviction rate in the province is very low. The data obtained from the Police Department of the KPK provides an insight into the conviction rate and the working of the Prosecution Directorate (See Appendix 10, Table 17.11). Analysis was restricted to 2009 due to the paucity of information and credible data for the past years. The average conviction rate of crimes against substantive law for the year 2009 remained 15.48%. The conviction rate is higher if convictions under special laws are included, but the rate of conviction drops when convictions are recorded under the substantive law.

The conviction rate however, is not indicative of the efficiency of the Prosecution Directorate. Nonetheless, in the wake of terrorism and the release of terrorists by the Pakistani Courts is often blamed on the poor prosecution of the case. Moreover, the police divide a single crime into many categories. This is a usual technique of the police throughout the world and sometimes is called the "purification of statistics". Moreover, the conviction in terrorism cases is extremely low i.e. 2% at the national level while 5% in KPK about which even the higher judiciary has taken serious notice and news in media are of no dearth to put blame on police or prosecution for such a low level of conviction (Amin 2011).[24]

For any prosecution department to be successful and submit cases with best evidence before the courts, good relationships with the police are crucial. The unfortunate in-coordination and disconnect between police and prosecution often result in the acquittal of dangerous terrorists who had been arrested with great difficulties. It remains to be seen whether police will accept the supervisory role of the prosecutor.

17.3.4 Judiciary/Courts

Courts are one of the basic components in all justice systems. It is the next step after prosecution in the criminal justice system. When the prosecutor presents all evidences against an alleged offender and the offender presents his own evidences in defence then the court concludes the trial and the presiding judge pronounces the judgment. The judgment could be of acquittal or punishment.[25]

17.3.4.1 Structure and Functions of Courts in Pakistan

The judiciary in Pakistan is composed of three levels of federal courts, three divisions of lower courts, and a Supreme Judicial Council. There are district courts in every district of each province, having both civil and criminal jurisdiction though they deal mainly with civil matters. The High Court of each province has jurisdiction over civil and criminal appeals from lower courts within the provinces. The Supreme Court sits in Islamabad and has exclusive jurisdiction over disputes between or among federal and provincial governments, and appellate jurisdiction over High Court decisions. There is also a Federal Shariat Court established by Presidential Order on 26th May 1980. This Court has exclusive jurisdiction to determine, upon petition by any citizen or the federal or provincial governments or on its own motion, whether or not a law conforms to the injunctions of Islam. An Islamic advisory council of *ulama* (religious scholars) assists the Federal Shariat Court in this capacity (Barakatullah 2010). Recently the Islamabad

[24] Amin, A. (April 19, 2011). Only 2% of terrorists are getting sentenced: In Daily *The News International*. Islamabad: Retrieved May 15, 2011 from http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=42426&Cat=7&dt=4/19/2011.

[25] A major part of this portion is taken with permission from the essay of Barakatullah, Advocate, Judicial System in Pakistan, published in Pakistan Journal of Criminology. Vol. 2.No. 3. July 2010.

High Court is re-established for the capital territory of Islamabad. The most important part in criminal justice system is played by the lower judiciary i.e. District Courts, Session Courts, and Courts of Magistrate (See Appendix 11 for the structure of judiciary in Pakistan).

17.3.4.2 District Courts

The district courts of Pakistan are the lowest of all the courts in the hierarchy, which deal with all the matters pertaining to civil and criminal nature. In every district, there is a Court of Sessions Judge, and the Courts of Magistrates have the jurisdiction to try the Criminal cases. The offences punishable with death and cases arising out of the enforcement of laws relating to *Hudood* (Islamic Laws) are tried by Sessions Judges. The Court of a Sessions Judge is competent to pass any sentence authorized by law. Offences not punishable with death are tried by Magistrates. Among the Magistrates there are Magistrates of 1st Class, 2nd Class and 3rd Class. An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is upto 4 years, otherwise to the High Court. During the year 2009 the disposal of cases in District Courts of KPK province was 79,963 while 19,723 were still under trial at the end of 2009 (See Table 17.3 for details). Although the disposal is higher than the institutions of cases, however, the pendency slows the justice process of the courts Table 17.4.

17.3.4.3 Session Courts

The jurisdiction of the Session Court extends to the whole district. It is presided by a session judge appointed[26] who may be assisted by one or more than one additional session judges. All magistrates in the district are subordinate to the session judge. A Session judge has numerous powers e.g. to conduct trials of all serious crimes such as robbery, murder and all kinds of homicide, serious thefts by habitual offenders etc. A death sentence pronounced by the Session judge can be carried out only after the confirmation by the High Court. Appeals from the courts of Magistrates go to Session Court. All session judges have the power of the justice of the peace and they can exercise the same powers as the police u/s 54 and 55 of the Code of Criminal Procedure. An ex-officio justice of the peace may issue appropriate direction to the police authorities concerned on a complaint regarding non-registration of criminal case; transfer of investigation from one police officer to another; and neglect, failure or excess committed by a police authority in relation to its function and duties.[27] (See Appendix 12 for details).

17.3.4.4 Judicial Magistrate Courts

In every town and city there are numerous civil and judicial magistrate courts. Magistrates with power of Section 30 of Cr.P.C can hear all matters and offences of criminal nature, where there is no death penalty (such as for attempted murder, dacoity, robbery, extortion) but he can pass sentence only up to 7 years or less. If the court thinks the accused deserves more punishment than 7 years then it has to refer the matter to some higher court with its recommendations. Every magistrate court is allocated a jurisdiction that is usually one or more Police Stations in the area. The trial of all non bailable offences including police remand notices, accused discharges, arrest and search warrants bail applications are heard and decided by Magistrate Courts.

Magistrate 1st class has the power to try offences punishable up to 3 years imprisonment and fifty thousand rupees fine. Magistrate 2nd class has the power to try offences punishable up to 1 year and five thousand rupees fine. Magistrate 3rd class has the power to try offences punishable up to 1 month and one thousand rupees fine.

17.3.4.5 Judicial Reforms in Pakistan

In early 2001 a huge programme of judicial reforms was initiated with the financial support from Asian Development Bank (ADB). The project was worth US $350 million (P&D 2006). There were four (4) main objectives of the programme,

[26] u/s 9 of the code of criminal procedure 1898.

[27] Amendment through ordinance no OXXXI of 2002 by inserting Sub section (6) in 22.A of the code of criminal procedure 1898.

Table 17.3 Judicial statistics for District Court of Khyber Pakhtunkhwa-2009

Pending as on 01.01.2009	Institutions from 01.01.2009 to 31.12.2009	Total for disposal	Disposal from 01.01.2009 to 31.12.2009	Balance as on 31.12.2009
23,681	76,005	99,686	79,963	19,723

Source: Judicial Statistics of Pakistan 2009. Published by the Secretariat of Law and Justice Commission of Pakistan, Supreme Court Building, Islamabad

1. Provide security and ensure equal protection under the law to citizens, in particular the poor;
2. Secure and sustain entitlements and thereby reduce the poor's vulnerability;
3. Strengthen the legitimacy of state institutions; and
4. Create conditions conducive to pro-poor growth, especially by fostering investor's confidence.

However, the programme did not achieve any of the set objectives.

Similarly, the National Judicial Policy (2009) was a good initiative by the National Judicial Policy Making Committee. The policy aims at providing speedy justice. The policy is revised recently by the committee, including the objective of "Justice at the Grass-root Level" in the new revised edition of the policy (2011).[28]

17.3.5 Prison

Like all other institutions of the criminal justice system, Pakistan inherited the prisons set-up from the British colonial period. This system was used as an instrument to suppress political opponents and to neutralize threats to Crown rule. After independence, the prisons and prison departments as a whole remained a low-priority for Government. However, prisons remained an exclusively provincial concern in the successive constitutions of the Republic of Pakistan. Provincial Governments did make efforts to maintain and improve the existing prisons. Quite a few numbers of new jails were constructed in the last 50 years on the recommendations of various prisons reform committees (Khan 2010).[29]

17.3.5.1 Structure and Functions of Prisons in Pakistan

At present there are ninety-nine (99) prisons in Pakistan including Azad Kashmir and Gilgit-Baltistan which includes four Women Jails (one jail in Punjab i.e. Women Jail, Multan and three jails in Sindh Province i.e. Women Jail, Larkana, Women Jail, Karachi and Special Women Jail, Hyderabad). However, women prisoners are also kept in separate portions of other jails.

It also includes two Borstal Institutions and Juvenile Jails i.e. B.I.&J.Jail, Bahawalpur and B.I.&J.Jail, Faisalabad. Juvenile prisoners are also kept in the Youthful Offenders Industrial School, Karachi and separate portions of other jails of the country. In his article, Prison System in Pakistan, Muhammad Masood Khan mentions the objectives of the prison are to provide custody, control, care, correction and cure of the inmates. As far as the functions of prison is concerned they include executing the sentence awarded by the Court; maintenance, care, custody and transfer of prisoners; maintenance of orders and discipline amongst the prisoners; control of expenditure relating to prison management; enforcement of Prison Act, 1894, all laws, rules/regulations and orders pertaining to the protection and maintenance of prison/prisoners; imparting useful education/training to the prisoners in various trades/skills and other vocational disciplines for their rehabilitation; and organizing of recreational programmes, welfare measures and psychological counseling of inmates for their correction and rehabilitation.

[28] For the online version of the revised edition of the National Judicial Policy 2009, please visit the following link; http://www.ljcp.gov.pk/Menu%20Items/National%20Judicial%20Policy/Judicial%20Policy%20June%202011.pdf.

[29] A major part of this portion is taken with permission from the essay of Muhammad Masood Khan, Prison System in Pakistan, published in Pakistan Journal of Criminology. Vol.2.No.3. July 2010.

Table 17.4 Disposal of cases by all courts in Pakistan

	1st Jan to 31st Dec 07	1st Jan to 31st Dec 08	1st June 09 to 31st May 2010	% Age increase in disposal of cases as compared to	
				2007	2008
Supreme Court of Pakistan	10,018	9,639	17,348	73	80
Federal Shariat Court	2,066	1,850	1,257	−39	−32
High Courts					
Lahore High Court	53,877	74,542	109,422	103	47
High Court of Sindh	12,493	16,524	18,124	45	10
Peshawar High Court	11,627	11,556	13,792	19	19
High Court of Balochistan	3,297	3,627	3,078	−7	−15
All High Courts	81,294	106,249	144,416	78	36
Subordinate Judiciary					
Punjab	1,246,665	1,503,904	2,281,062	83	52
Sindh	140,688	146,458	265,101	88	81
KPK	336,552	364,882	340,106	1	−7
Balochistan	23,330	25,429	44,368	90	74
All District Courts	1,747,235	2,040,673	2,930,637	68	44
All Courts Consolidate	1,840,613	5,158,411	3,093,658	68	43

Source: Dr. Faqir Hussain. (2011). The judicial system of Pakistan. Islamabad. Retrivied 28 Aug 2011 from http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf

17.3.5.2 Prison Statistics

As mentioned above, there are a total of 99 prisons in Pakistan. Out of the total, 32 prisons are in Punjab, 22 in Sindh, 23 in KPK, 11 in Balochistan, 5 in Gilgit-Baltistan and 6 in Azad Kashmir. Furthermore, 25 of the total prisons are the Central Jails situated in major cities of Pakistan, 50 are District Jails, 9 are Sub Jails, 5 are specified jails for women, 5 Juvenile Jails, 1 Special Prison and 4 Judicial Lock-ups.

The situation in Pakistani prisons is very unhealthy. Mostly the prisons are overcrowded. As it can be seen from Table 17.11 that the prisons in Pakistan have the capacity for only 42,670 prisoners while they are carrying out a population of 78,328 prisoners i.e. about 83% more than the authorized capacity (See Table 17.5 for details). Based on this information, it can be concluded that there were 44.2 prison inmates per 100,000 population. It is extremely low level of inmates when compared by international standards. For example, the per capita inmates in the US are 737 per 100,000 population, 615 in Russia, 148 in the UK, 118 in China, and 125 in Australia (International Center for Prison Studies 2012).[30]

Of course there is overcrowding, but that is because Pakistan has a very outdated colonial prison system, and the overall number of 44.2 per 100,000 has not come about because Pakistan is overly non-punitive, it is a resource problem. Similarly, there is 83% over capacity mentioned is very interesting with a prison population of 78,328. However, compared to Pakistan, the number of inmates in the United States is 2,193,798 i.e. 96% more than the prison population in Pakistan. Pakistan would have had a prison population between 1.3 and 1.4 million inmates if they had been on the level of the United States.

Besides overcrowding, Masood Khan (2010), who is the Principal of the National Institute of Prison Administration, now called National Academy for Prison Administration (NAPA), Lahore—the chief staff training institute of prisons and prison data collection agency in the country—identified a number of other issues and problems including shortage of manpower to run the prisons, inadequate security devices, unhygienic water and food and lack of recreational facilities for the inmates. Though the jail administration generally talks of these perennial issues and chronic problems being faced by them, no reports or research papers are available on any of the above. Like police, the prison officials complain of challenges but rarely have any solutions. A formal review of Pakistani prisons is required.

17.3.5.3 Prison Reforms

There have been voices regarding prison reforms, however, no concrete step has been taken by any administration for bringing any conclusive reforms in prison system. The most visible step taken by any government in the country is the release of prisoners, or remission of sentence of some prisoners on special occasions like the Independence day or *Eid* day. According to the Principal of NAPA, the jail rules of Pakistan are very old and are unfit for the present over-crowded and over-burdened jails with poor ventilation and other systems. No concrete steps have been taken for using the prisoners as a labour for producing industrial goods, thereby contributing to the local economy.

17.3.6 Probation

Imprisonment is not the only way to respond to the criminals. There are various alternative methods to imprisonment including probation which is arguably one of the most progressive contributions to modern criminal policy (Qureshi 1999). It is a very important agency in criminal justice system. Those offenders who, according to the court, are likely to be reformed, and who are not dangerous to society, are not sentenced to imprisonment and are kept on probation under the supervision of the state-probation officer. Probation is "a period of time when a criminal must behave well and not commit any more crimes in order to avoid being sent to prison"

[30] International Center for Prison Studies. (2012). *Entire world—Prison Population Rates per 100,000 of the national population*. Retrieved May 05, 2012 from http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate.

Table 17.5 Province-wise prison population and authorized capacity-2009

Sr. no.	Name of province	No. of prisons	Authorized capacity	Prison population
1.	Punjab	32	21,527	52,318
2.	Sindh	22	10,285	14,422
3.	KPK	23	7,982	7,549
4.	Balochistan	11	2,173	2,946
5.	Azad Kashmir	06	530	663
6.	Gilgit Baltistan	05	173	430
	Total	99	42,670	78,328

Position updated till 31 Dec 2009
Source: Khan, M. M. (2010). Prison System in Pakistan: Pakistan Journal of Criminology. Vol.2. No. 3. July 2010

(Probation 2009). As defined by Elrod and Ryder, it is the supervised release of an individual by a court (Elrod and Ryder 2005). In the words of McLaughlin and Muncie (2001) probation is the supervision of offenders in conditions of freedom by designated officers of the court (sometimes called probation officers or community corrections officers). Nowadays regarded as an "alternative to prison", though, historically, has been viewed as an "alternative to punishment".[31]

Islamic philosophy of crime does not profess hating the criminal rather it professes hating the crime and reforming the criminal. Quoting from Ibn-Timya on philosophy of punishment, one scholar, Qadir (1988), comments that "Islam is a blessing and benevolence to humanity, not punishment. Therefore, those who award punishment must take into consideration the principles of blessing and benevolence. Punishment by state is similar to the father punishing his child or the doctor treating the illness of a patient". He further comments that "the concept of punishment is for the reformation of the individual and the society". Similarly, the probation system is based on the philosophy of "eradicating the crime not the criminal". Many Islamic scholars quoted various sayings of the Prophet Muhammad (Peace Be Upon Him) and the Quranic verses for reformation and correction. To quote one example from the Quran, see the translation of the verse 6:54 by Dr. Abdul Majeed Aulak:

> "*and when those who believe in Our (Allah's) Verses come to you, please tell them, peace be upon you. Your Rub (Sustainer) has prescribed for Himself Mercy so that whoso of you commits some misdeed due to ignorance and repents thereafter and amends himself, then surely Allah is Forgiving Merciful*".

Probation department in Pakistan performs its functions under The Good Conduct Prisoner's Probational Release Act 1926, Probation of Offenders Ordinance 1960, and JJSO 2000, and the rules formulated under various laws (Sajid 2009). According to 3rd and 4th periodic report on Convention on the Rights of the Child submitted by Pakistan, "there is lack of awareness about the [probation] system and its significance. Police, prison officials and even in the ranks of lower judiciary there is lack of awareness concerning probation system". Similarly, Sajid (2009) reported that only 2% of the police have heard about the JJSO and less than 1% has read the JJSO.

17.3.6.1 Probation Procedures

The Probation of Offenders Ordinance (1960), Section 5 empowers the Judiciary/courts to place certain offenders on probation not more than 3 years who are eligible for release on probation. After release of offenders on probation, the Reclamation and Probation (R&P) department in the province is to supervise, monitor and rehabilitate them in the community. Probation and parole officer plays the key role in the whole process of probation system from release of offenders to successful rehabilitation (Bhutta 2010). Judicial Magistrate Court, Session Court, and other Courts are authorized to release any offender on probation in Pakistan.

In some circumstances the courts allow conditional discharge of an offender depending upon

[31] A major part of this portion is taken with permission from the essay of Mazhar A. Bhutta Community Based Rehabilitation of Offenders; an Overview of Probation and Parole System in Pakistan, published in Pakistan Journal of Criminology. Vol. 2. No. 3. July 2010.

the age, character, antecedents or physical or mental condition of the offender, and nature of the offence. In case of woman offender, any woman can be conditionally discharged having any sentence except death sentence.[32]

17.3.6.2 Social Investigation Report

After hearing the arguments of the prosecution and the defence, if the Court feels the case fit for probation, then it orders the Probation Officer to submit SIR that includes information regarding the character, antecedents, commission and nature of offence, and home surroundings and other circumstances about the offender who is likely to be released on probation.

17.3.6.3 Functions of the Probation Officer

The probation officer performs numerous functions. One of the major functions of the probation officer is to endeavour to find suitable employment for the probationer and assist, befriend, advise and strive to improve his conduct and general conditions of living (see Appendix 13 for details of all the functions of Probation Officer). However, the probation officers can rarely perform most of the functions prescribed by the law. When asked in an informal interview, the Director of the Probation Directorate, KPK, said that "the job scale of the probation officer is very low, and that there is extreme lack of facilities for the probation officers in districts, e.g. no vehicle for travelling etc".

17.3.6.4 Probation Statistics

Table 17.6 presents some vital statistics about probation in Pakistan. As on March, 2010 there were a total of 65 probation officers including 7 female officers in Pakistan observing 23,197 probationers in the whole country. It means there were 356 probationers under the supervision of each officer—a huge burden indeed. As far as juveniles are concerned, there were a total of 295 juveniles under probation in Pakistan.

The majority of the probationers in all categories (91% of all probationers) were in Punjab province. The province of KPK has 6 female probation officers while other provinces, except Punjab, have no female probation officer even though they have female probationers in supervision as evident from the above-mentioned table. It means the male probation officers are supervising the female probationers in these provinces.

17.3.6.5 Parole System

Parole contains different meanings depending on the context. However, in criminal justice, it refers to the early release of a prisoner who has been noted as bearing good conduct during a certain period of his imprisonment. The law of Pakistan (The Good Conduct Prisoners' Probational Release Act 1926) states that a person who is confined in prison under a sentence of imprisonment, and it appears from his antecedents or his conduct in the prison that he is likely to abstain from crime and lead useful and industrious life, if he is released from prison, he may be permitted to be released by license on condition that he be placed under the supervision or authority of a suitable person named in the license and willing to take charge of the prisoner.[33] Under the law, it

[32] Section 4 of THE PROBATION OF OFFENDERS ORDINANCE, 1960, Ordinance No. XLV of 1960

4. Conditional discharges, etc. —(1) Where a court by which a person, not proved to have been previously convicted, is convicted of an offence punishable with imprisonment for not more than two years is of opinion, having regard to:—(a) the age, character, antecedents or physical or mental condition of the offender, and (b) the nature of the offence or any extenuating circumstances attending the commission of the offence,that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may, after recording its reasons in writing, make an order discharging him after if admonition,, or, if the court thinks fit, it may likewise make an order discharging him subject to the condition that he enters into a bond, with or without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein. (2) An order discharging a person subject to such condition as aforesaid is hereafter in this Ordinance referred to as "an order for conditional discharge", and the period specified in any such order as "the period of conditional discharge". (3) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.(4) Where a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

[33] Section 2 of the Good Conduct Prisoners' Probational Release Act, 1926 of Pakistan.

Table 17.6 Province-wise situation of probation officers and probationers in Pakistan

	Probation office			Probationers				
Province	Male	Female	Total	Male	Female	Juveniles		Total
						Male	Female	
Punjab	35	1	36	20,774	225	217	0	21,216
Khyber Pakhtunkhwa	16	6	22	1,607	17	43	2	1,669
Sindh	1	0	1	277	0	33	0	310
Balochistan	6	0	6	2	0	0	0	2
Pakistan	58	7	65	22,660	242	293	2	23,197

Source: National Academy for Prison Administration,(NAPA) Lahore Pakistan (former CJSTI) Dated 30 March, 2011

is called conditional release or Parole release. However, this is the least developed branch of CJS in Pakistan after Probation and Prosecution.

17.3.6.6 Parole Procedures

When the provincial government identifies a prisoner with good conduct and it is decided that the identified prisoner may be released on parole, than the provincial government through Reclamation and Probation department issues a license to the said prisoner. The prisoner released on parole is called a parolee. The parolee is to be engaged in suitable environments under the supervision of Parole officer of the Reclamation & Probation (R&P) department in his/her respective province. The parolees are employed with approved employers of R&P department on fixed wages and under specific terms and conditions (Bhutta 2010). The license is in force until the date on which the person released would, in the execution of the order or warrant authorizing his imprisonment, have been discharged from prison had he not been released on license, or until the license is revoked, whichever is sooner (Section 3 of the Good Conduct Prisoners' Probational Release Act 1926).

17.3.6.7 Selection of Prisoners Eligible for Parole Release

The cases of prisoners who are likely to be released on parole may be taken up by the Assistant Director R&P department on application of the prisoner, on application of the relative or friend of the prisoner, on recommendation of the Superintendent of jail, or the Assistant Director and Parole Officer visit jail for selection of prisoner suitability to be released on parole.

17.3.6.8 Functions of the Parole Officer

Bhutta (2010) provided a long list of all the functions of a parole officer in Pakistan. The major functions, among them, were supervision and rehabilitation of the offenders placed on parole, assist prison administration in preparation of rolls of selected prisoners for parole release, and assist parolees in finding suitable employment.

It is to be noted that the duties of Parole officers are assigned to Probation officers in many districts of Pakistan as there is shortage of Parole staff in R&P department of each province.

17.3.6.9 Parole Statistics

Table 17.7 provides some useful statistics regarding parole in Pakistan. Out of the 17 parole officers, 56% are male officers. The highest number of parole officers is found in the Punjab province, i.e. almost 59%. However, it is not astonishing by the fact that the highest number of prisoner is also found in the Punjab province (66%).

As far as the parolees are concerned, there were a total of 191 parolees at March 30, 2010 in all the provinces. All the parolees were male. More than 50% of the prisoners were on parole in the Punjab province, while 42% parolees were found to be from the Balochistan province, a province with a total of 2,946 prisoners as compared to 52,318 prisoners in the Punjab (See Table 17.11). It appears that the parole rate is highest in Balochistan province, i.e. 27.16 per 1000 prison population as compared to 1.89 in the Punjab and less than 1 in other two provinces. The reasons are yet to be researched.

Table 17.7 Province-wise situation of parole officers and parolees in Pakistan

Province	Parole officers			Parolee				
	Male	Female	Total	Male	Female	Juveniles		Total
						Male	Female	
Punjab	8	2	10	99	0	0	0	99
Khyber Pakhtunkhwa	2	0	2	5	0	0	0	5
Sindh	1	0	1	7	0	0	0	7
Balochistan	2	2	4	80	0	0	0	80
Total	13	4	17	191	0	0	0	191

Source: National Academy for Prison Administration,(NAPA) Lahore Pakistan (former CJSTI, Dated 30 March, 2010)

17.4 Conclusion

The development of criminology in Pakistan is still in its infancy. There are a very few Universities offering courses in criminology. The criminal justice system in Pakistan has not been very successful in delivering justice. The Access to Justice Programme, a huge programme of US $350 million, launched in (2001), to reform the criminal justice system does not seem to have achieved its targets in terms of police, legal and judicial reforms.

The police are facing the new challenges of the twenty-first century. The biggest among those is terrorism. Under the new police reforms, National Public Safety Commission, National Police Bureau and Criminal Justice Coordination Committee have been established on various levels. However, neither the performance nor image of the police is improved, despite the new police law in 2002. The Police Rules of 1934 are still not revised and amended.

Prosecution has been developed into a separate department since 2005. Since then, the prosecution system has not gone positively, rather the rate of conviction has remained at very lower levels. Despite its separation in 2005 it still has to formulate proper rules and procedures for its operation. Proper trainings and developing professional attitude in the prosecution officials will help improve its image.

The courts are overburdened. The National Judicial Policy (2009) was a good initiative by the National Judicial Policy Making Committee. The policy aims at providing speedy justice. The policy is revised recently by the committee. However, it is yet to be seen whether the policy is properly implemented or otherwise.

The prisons are overcrowded and there seems no modernization of the colonial prison administration. However, inmate population per capita is far lower than the international standards in Pakistan. The department of probation is also poorly developed and the system of parole and probation has yet to gain strong grounds in Pakistan.

In the final analysis, the criminal justice system is a colonial relic which is not compatible to the socio-cultural environment of Pakistan. To make this system a success, assistance of the international criminal justice community is needed. Promotion of criminology, policing sciences and security studies will be one of the major steps towards a better understanding and reforms in the criminal justice system of Pakistan. Indigenous research and learning from international scholarship and best practices should be the aim of all those who are committed to see criminology as a developed discipline in Pakistan. For this purpose, the Pakistan Society of Criminology is committed to establish an Institute of Criminology, Research, Security Studies and Justice Education.

17.5 Appendix 1

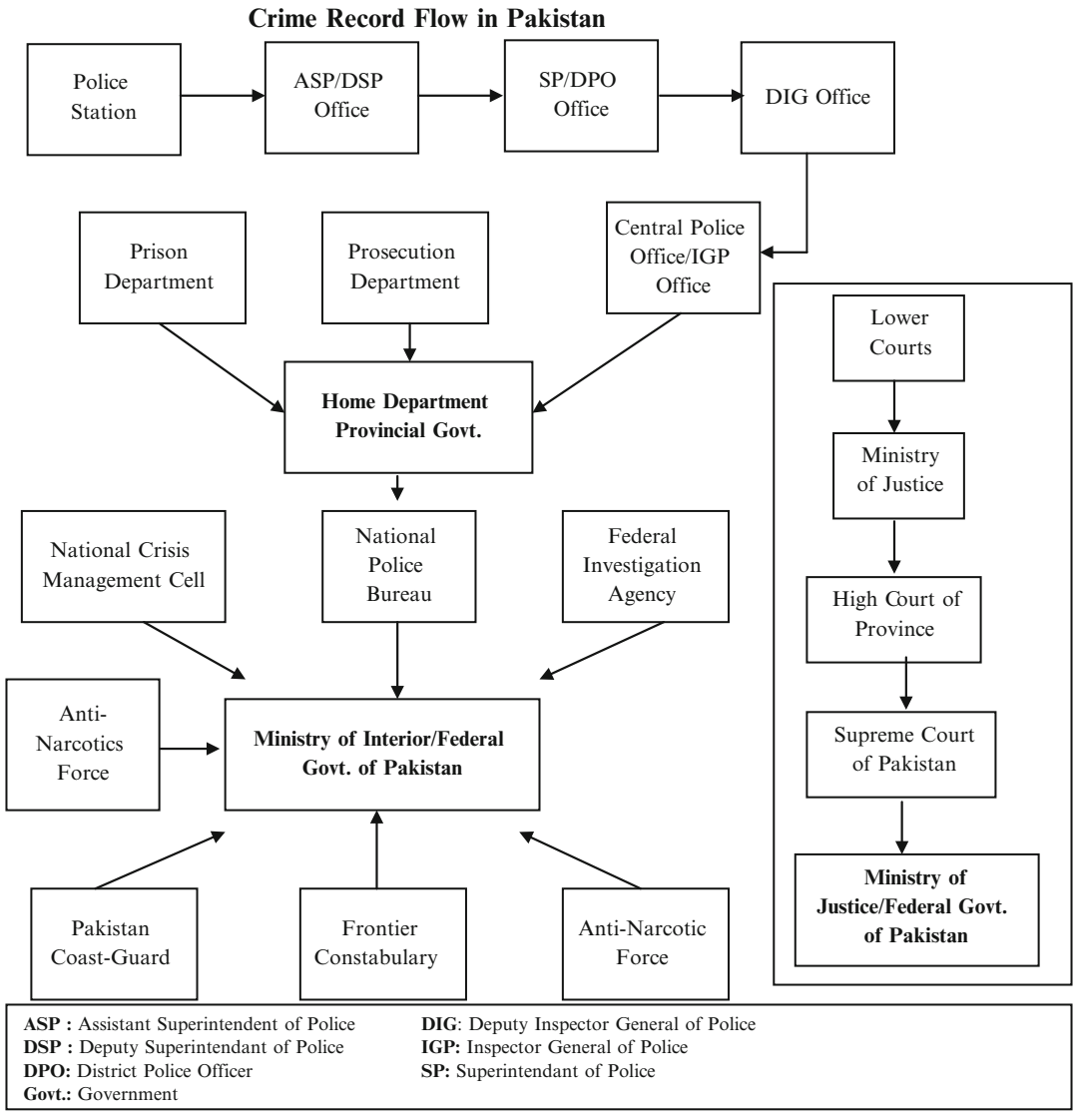

Fig. 17.2 Crime record flow in Pakistan

17.6 Appendix 2

Table 17.8 Situation of Crime in Pakistan- 1991–2008

Year	Population in millions[a]	Recorded crimes[b]	Crime rate
1991	112.61	287,746	255.52
1992	115.54	286,528	247.99
1993	118.5	290,000	244.73
1994	121.48	323,351	266.18
1995	124.49	339,228	272.49
1996	127.51	329,305	258.26
1997	130.56	369,161	282.75
1998	133.32	428,549	321.44
1999	136.41	409,167	299.95
2000	139.41	388,414	278.61
2001	142.35	380,659	267.41
2002	145.28	399,006	274.65
2003	148.21	400,680	270.35
2004	151.09	441,907	292.48
2005	153.96	447,756	290.83
2006	156.77	537,866	343.09
2007	159.06	538,048	338.27
2008	162.37	576,185	354.86

[a]Economic Survey of Pakistan 2008–2009. Table No. 12.1. p. 194

[b]National Police Bureau, Islamabad, Pakistan

17.7 Appendix 3

Table 17.9 Province-wise Crimes in Pakistan for 2008

Offence	Punjab	Sindh	KPK	Balochistan	Total
Crime against person	52,219	19,820	10,419	3,643	86,101
Murder	5,544	2,734	2,896	605	11,779
Attempt to murder	7,201	3,655	2,951	625	14,432
Hurt	23,744	2,839	3,003	1,612	31,198
Rioting	270	5,208	22	313	5,813
Assault on public servant	1,419	2,551	474	205	4,649
Zina (rape)	2,000	206	153	19	2,378
Gang rape	202	49	3	0	254
Kidnapping/abduction	11,279	2,168	628	207	14,282
Kidnapping for ransom	213	217	129	40	599
Suicide	3	138	11	0	152
Attempt to suicide	344	55	149	17	565
Traffic accidents	5,306	1,482	2,676	470	9,934

(continued)

Table 17.9 (continued)

Fatal accidents	2,604	852	707	230	4,393
Non-Fatal accidents	2,702	630	1,969	240	5,541
Miscellaneous	100,051	15,564	23,719	1,918	141,252
Crime against property	81,546	24,560	2,208	2,158	110,472
Highway dacoity	73	73	4	42	192
Bank dacoity	8	20	3	1	32
Petrol pump dacoity	13	22	0	5	40
Other dacoity	2,007	2,051	53	107	4,218
Highway robbery	230	56	11	5	302
Bank robbery	17	13	1	1	32
Petrol pump robbery	47	77	1	0	125
Other robbery	13,651	5,167	171	184	19,173
Burglary	11,235	2,458	518	244	14,455
Cattle theft	7,961	684	89	92	8,826
Motor vehicle theft	16,343	10,525	718	1,049	28,635
Other theft	29,961	3,414	639	428	34,442
Total PPC[a] crime	239,122	61,426	39,022	8,189	347,759
Local and special laws	135,314	16,230	75,061	1,821	228,426
Arms act	64,113	10,084	31,603	883	106,683
Prohibition order	48,048	4,816	27,222	556	80,642
Other local and special laws	23,153	1,330	16,236	382	41,101
Total recorded crime	374,436	77,656	114,083	10,010	576,185

Source: National Police Bureau, Islamabad, Pakistan
[a]Pakistan Penal Code, 1861

17.8 Appendix 4

Box 1: HEC proposed curriculum for master of criminological sciences

Scheme of studies
The Master in Criminological Sciences is a 2 years programme consisting of four semesters

1st Semester	2nd Semester
1. Paper-I (Core) Fundamentals of Criminology 2. Paper-II (Core) Theoretical Perspectives on Crime And Criminal Behaviour 3. Paper-III (Core) Methods of Research in Criminology 4.Paper-IV (Core) Criminal Justice System 5. Paper-V (Core) Correctional Institutions	1. Paper-1 (Opt.)[a] Islamic Perspective on Crime and Punishment 2. Paper-II (Opt.) Policing 3. Paper-III (Opt.) Forensic Sciences in Criminology 4. Paper-IV (Opt. Terrorism and Violence 5. Paper-V (Opt.) Criminal Investigation
3rd Semester	4th Semester
1. Paper-I (Core) Penology 2. Paper-II (Core) Community Justice and Crime Prevention 3. Paper-III (Core) Research Thesis In addition to the above cited courses, another two courses carrying 100 marks (score) each from among the courses below shall be opted in the first semester of MCS (Final)	1. Paper-I (Core) Human Rights 2. Paper-II (Core) Criminal Psychology 3. Paper-III (Core) Research Thesis In addition to the above cited courses, another two courses carrying 100 marks (score) each from among the courses below shall be opted in the fourth semester.

(continued)

Box 1: (continued)

Box 1: HEC proposed curriculum for master of criminological sciences	
1. Paper-I (Opt.) Drug Abuse and Related Crimes 2. Paper-II (Opt.) Organized Crime and Money Laundering 3. Paper-III (Opt.) Child Abuse and Juvenile Delinquency 4. Paper-IV (Opt.) Crime and Criminology in Pakistan 5. Paper-V (Opt.) Organizational Behaviour and Human Resource Development	1. Paper-I (Opt.) Gender and Crime 2. Paper-II (Opt.) Cyber Crime 3. Paper-III (Opt.) Crime and Security 4. Paper-IV (Opt.) Crime and Mental Health Issues 5. Paper-V (Opt.) Procedures of Evidence in Criminal Law 6. Paper-VI (Opt.) Sentencing-As a Post Conviction Strategy 7. Paper-VII (Opt.) Advance Methods of Research in Criminology 8. Paper-VIII (Opt.) Crime Typology

Source: Revised Curriculum of Criminology (2003) Higher Education Commission, Curriculum Development Division. Islamabad: Ministry of Education, Pakistan. available at HEC web site, http://www.hec.gov.pk
[a]Optional

Box 2: Sindh University, Jamshoro
Two years Postgraduate Programme
1. CRM 501[a] Fundamentals of Criminology 2. CRM 502 Criminal Justice System 3. CRM 503 Research Methods 4. CRM 504 Islamic Perspectives of Crimes 5. CRM 505 Juvenile Delinquency and Female Criminality 6. CRM 506 Terrorism and Violence 7. CRM 507 Penology 8. CRM 508 Criminal Psychology 9. CRM 601 Policing 10. CRM 602 Constitution Rights and Civil Liberties 11. CRM 603 Criminal Investigation Methods 12. CRM 604 Comprehensive Viva-Voce 13. CRM 605 Dissertation/ Research Project

Source: Official web site of Department of Criminology, University of Sindh, Jamshoro. Available at http://www.unis-indh.edu.pk
[a]A subject code

Box 3: University of the Punjab	
One year diploma in criminology and security studies	
1st Semester	2nd Semester
1. Crime and Criminality: Theory and Policy 2. Criminal Justice System of Pakistan 3. Corruption Studies 4. Introduction to Behavioural Sciences	1. Research Methods in Criminology 2. Criminal Law and Penal Code of Pakistan 3. Criminal Investigation 4. Forensic Science in Criminology
Master in Criminology and Security Studies is a 2-year program consisting of 4 semesters. To qualify for the degree, a student should complete 18 courses, Internship and Thesis	
1st Semester	2nd Semester
1. Introduction to Criminology 2. Introduction to Security Studies 3. Computer Applications 4. National and International Perspective on Crime and Security 5. Crime and Criminality: Theory and Policy	1. Crime and Security 2. Geographical Information System (GIS) 3. Criminal Justice System of Pakistan 4. Research Methods in Criminology 5. Social Statistics in Criminology

Box 3: University of the Punjab	
3rd Semester	4th Semester
1. Organizational Behaviour and Human Resource Development	1. Gender and Crime
2. Crime and Criminology in Pakistan	2. Terrorism and Violence Drug Abuse and Related Crimes
3. Islamic Perspective on Crime and Punishment	3. Procedures of Evidence in Criminal Law
4. Criminal Investigation	4. Forensic Science in Criminology
5. Community Justice and Crime Prevention	5. Policing
6. Child Abuse and Juvenile Delinquency	6. Organized Crime and Money
7. Penology	7. Laundering
8. Criminal Psychology	8. Internship
9. Crime and Mental Health Issues	9. Thesis

Source: Official web site of Department of Criminology, University of Punjab. Available at http://www.pu.edu.pk

Box 4: Karachi University	
Two years Masters in Applied Criminology	
1st Semester	2nd Semester
1. Introduction to Criminal Behaviour	1. Organizational Problem and Management
2. Theoretical Perspective of Crime and Criminal Behaviour	2. Islamic Perspective on Crime & Punishment
3. Research Methodology in Criminology	3. Policing and security
4. Principal of Criminal Law and Justice System	4. Forensic Genetics and Psychology
5. Correctional Institution as Social System	5. Statistical Methods in Criminology
3rd Semester	4th Semester
Core Course	Core Course
1. Terrorism, Violence and Control	1. Penology
2. Introduction to Criminal Investigation	2. Procedure of Evidence in Criminal Law
3. Research Thesis	3. Research Thesis
Optional Courses (students are required to select at least 2 subjects)	Optional Courses (students are required to select at least 2 subjects)
1. Drug Abuse and Related Crimes	1. Mental Health and Issues
2. Gender and Crimes	2. Child Abuse and Juvenile Justice System
3. Organized Crime and Money Laundering	3. Sentencing as Post Conviction Strategy
4. Advance Research Methodology	4. Human Rights Law Enforcement Agencies

Source: Provided by a Master Student of the Criminology, Karachi University

Box 5: Author's proposed curriculum of M.Sc. criminology	
Previous year (1st year)	Final year (2nd year)
Previous year (1st year)	Final year (2nd year)
1. Basic Criminology	1. Criminal Justice System
2. Criminal Law and Procedure	2. Investigation, Intelligence and Security Studies
3. International Crimes	3. Contemporary Criminology and Policing
4. Police & Policing	4. Human Rights
5. Criminological Research	5. Individual Research Thesis (Tutorial)
	6. Viva Voce

Source: Fasihuddin (2008). Expanding Criminology to Pakistan. Peshawar: Pakistan Society of Criminology

17.9 Appendix 5

Box 6: Police existing system of criminal record	
Register I: First Information Report (FIR)	Register XIV: File Book of Inspection Reports
Register II: Station Diary	Register XV: The Register of Births and Deaths. (Vital Statistics)
Register III: Standing Order Book (2 parts)	Register XVI: Register of Government Officials and Property (4 Parts)
Register IV: Register of Absconders and Deserters. (4 parts)	Register XVII: Register of Licenses. (6 Parts)
Register V: Register of Correspondence (2 parts)	Register XVIII: Receipt Books for Arms, Ammunition and Military stores
Register VI: Miscellaneous Register (4 parts)	Register XIX: The Store Room Register
Register VII: Cattle Pound Register (2 parts)	Register XX: Cash Accounts
Register VIII: Criminal Tribes Register (2 parts)	Register XXI: File Book of Road Certificates
Register IX: The Village Crime Register (5 parts) part-v as Conviction Register	Register XXII: Printed Receipts Books
Register X: The Surveillance Register (2 parts)	Register XXII: (a) Police Gazette
Register XI: Index to History Sheets and Personal Files (2 parts)	Register XXII: (b) Criminal Intelligence Gazette
Register XII: Register of information Sheet dispatched	Register XXIII: Police Rules
Register XII: (a) Copies of Information Sheets Received	Register XXIV: Charge notes of officers in-Charge of Police Stations
Register XII: (b) Copies of Look-out Notices received	Register XXV: Blank Register (Confidential Information) Register No. XXVI (A)[a] Register No. XXVII (A)[a]
Register XIII: Minute Book for Gazetted Officers	

Source: Police Rules, 1934. Chapter XXII Police Station, PR 22.45

[a]These two registers were designed and added by the PSC in joint collaboration with Ministry of Human Rights and Save the Children, Sweden and UNIFEM for KPK Police which are now also added to Balochistan Police. These two new registers are now fully introduced in two of the four provinces in Pakistan

17.10 Appendix 6

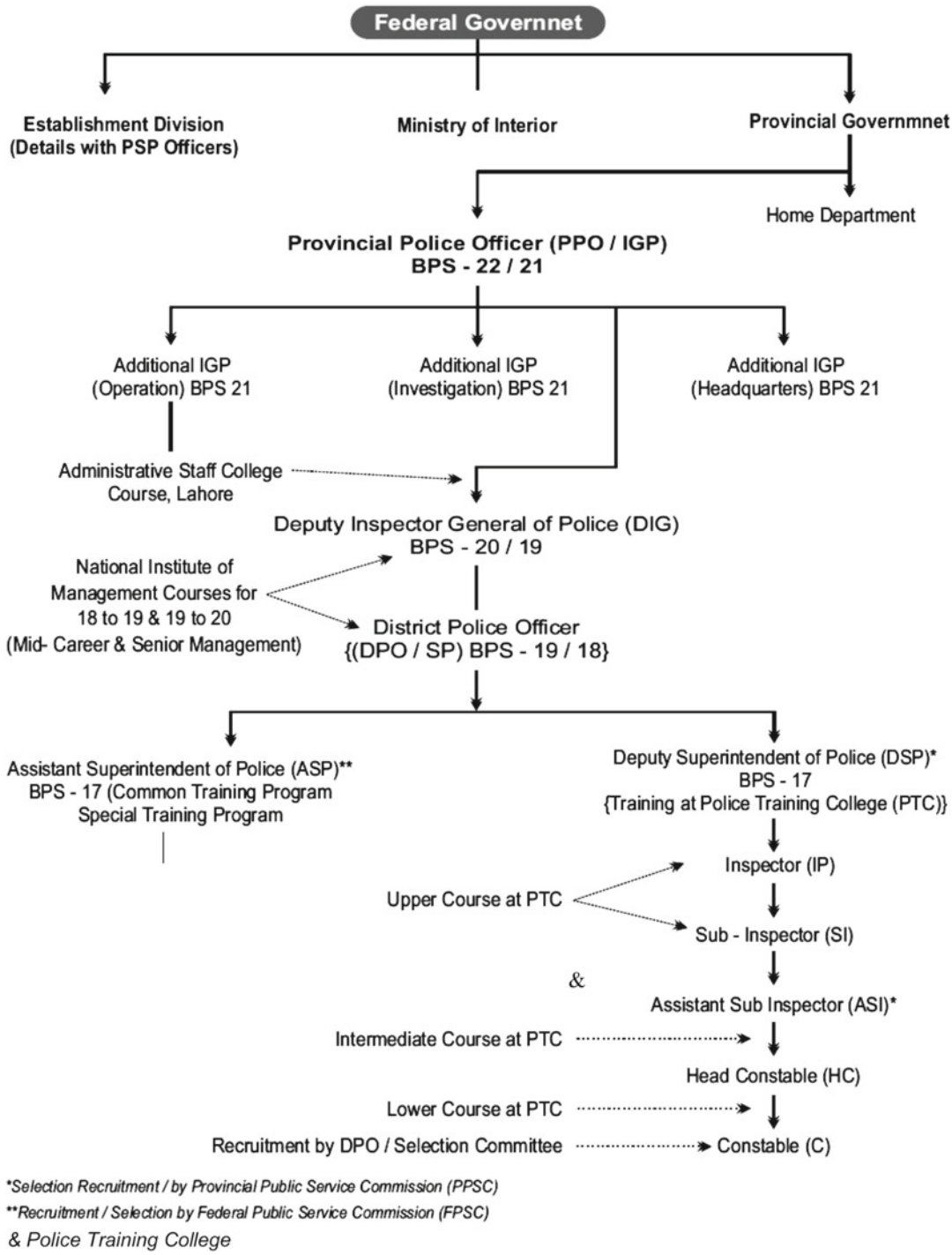

Fig. 17.3 Police Organization and Administration with special Reference to Recruitment and Training. & Police Training College & Source: Fasihuddin (2009). Police Education and Training in Pakistan: Pakistan Journal of Criminology. Vol.1. No.2. July 2009. p. 53

17.11 Appendix 7

Table 17.10 Total Police Budget in Pakistan 2008 (Figures in Millions Rupees)

Area	Establishment	Other expenditure	Development	Total
Punjab	24,500.75	4,740.84	1,375.24	30,616.83
Sindh	21,521.46	4,773.86	500	26,795.32
KPK	5,585.622	972.8	636.82	7,195.242
Balochistan	3,761.38	303.36	0	4,064.74
Grand total	55,369.212	10,790.86	2,512.06	68,672.132

Source: Office of the Director General, National Police Bureau, Islamabad, Pakistan

17.12 Appendix 8

Functions of the Police

It includes, but is not limited to,

(a) Protect life, property and liberty of citizens;
(b) Preserve and promote public peace;
(c) Ensure that the rights and privileges, under the law, of a person taken in custody, are protected;
(d) Prevent the commission of offences and public nuisance;
(e) Collect and communicate intelligence affecting public peace and crime in general;
(f) Keep order and prevent obstruction on public roads and in the public streets and thoroughfares at fairs and all other places of public resort and in the neighbourhood of and at the places of public worship;
(g) Regulate and control traffic on public roads and streets;
(h) Take charge of all unclaimed property and to prepare its inventory;
(i) Detect and bring offenders to justice;
(j) Apprehend all persons whom police are legally authorized to apprehend and for whose apprehension, sufficient grounds exist;
(k) Ensure that the information about the arrest of a person is promptly communicated to a person of his choice;
(l) Enter and inspect without a warrant on reliable information any public place, shop or gaming-house where alcoholic drinks or narcotics are sold or weapons are illegally stored and other public places of resort of loose and disorderly characters;
(m) Obey and promptly execute all lawful orders;
(n) Aid and co-operate with other agencies for the prevention of destruction of public property by violence, fire, or natural calamities;
(o) Assist in preventing members of public from exploitation by any person or organized groups;
(p) Take charge of lunatics at large to prevent them from causing harm to themselves or other members of the public and their property; and
(q) Prevent harassment of women and children in public places.
(r) Affording relief to people in distress situations, particularly in respect of women and children;
(s) Providing assistance to victims of road accidents; and
(t) Assisting accident victims or their heirs or their dependants, where applicable, with such information and documents as would facilitate their compensation claims.

17.13 Appendix 9

Box 7: Police reforms in Pakistan

1. 1948 Passage of Bill to introduce a Metropolitan System of Policing in Karachi
2. 1951 Recommendations of Sir Oliver Gilbert Grace, IG Police, NWFP
3. 1961 Police Commission headed by Mr Justice J.B. Constantine
4. 1962 Pay & Services Reorganisation Committee (Justice Cornelius)
5. 1970 Police Commission headed by Major General A.O. Mitha
6. 1976 Police Station Enquiry Committee headed by M.A.K. Chaudhry, IG Police
7. 1976 Law and Order Sub-Committee headed by Ch. Fazal Haque
8. 1976 Police Reforms Committee headed by Rafi Raza
9. 1981 Orakzai Committee on Police Welfare, Promotion and Seniority Rules
10. 1982 Cabinet Committee on the Emoluments of SHOs
11. 1983 Cabinet Committee on Determining the Status of SHOs
12. 1983 Sahibzada Rauf Ali Committee
13. 1985 The Police Committee headed by Mr Aslam Hayat
14. 1987 Report of the two-member delegation's visit to Bangladesh and India
15. 1989 Report of the seven-member delegation's visit to Bangladesh and India
16. 1990 Police Reforms Implementation Committee—M.A.K. Chaudhary
17. 1995 Report of the UN Mission on Organized Crime in Pakistan
18. 1996 Report of the Japanese Police Delegation on the Police System in Pakistan
19. 1997 Committee on Police Reforms under the Chairmanship of Interior Minister
20. 1998 Report of the Good Governance Group on Police Reforms: Committee Vision
21. 2000 Report of the Focal Group on Police Reforms: NRB Draft 2000

Source: HRCP/CHRI 2010. (2010). Police Organization in Pakistan. Lahore: Human Rights Commission of Pakistan

17.14 Appendix 10

Table 17.11 Conviction Rate in Khyber Pakhtunhwa —2009

S. no.	Offences	% Age
1	Murder	9%
2	Attempts to murder	4%
3	Hurts	7%
4	Zina (rape)	15%
5	Kidnapping other	11%
6	Kidnapping for ransom	7%
7	Child lifting	22%
8	Abduction	2%
9	Assault on police	29%
10	Assault other	19%
11	Ordinary dacoity	15%
12	Highway dacoity	0%
13	Bank dacoity	0%
14	Ordinary robbery	26%
15	Highway robbery	0%
16	Bank robbery	0%
17	Burglary	26%
18	Theft	31%
19	Car theft	58%
20	Other motor vehicle theft	26%
21	Car snatching	44%
22	Other motor vehicle snatching	24%
23	Motor cycle theft	42%
24	Motor cycle snatching	60%
25	Fatal accident	5%

Source: Office of the Additional Inspector General Police (Investigation), Khyber Pakhtunkhwa, Pakistan

17.15 Appendix 11

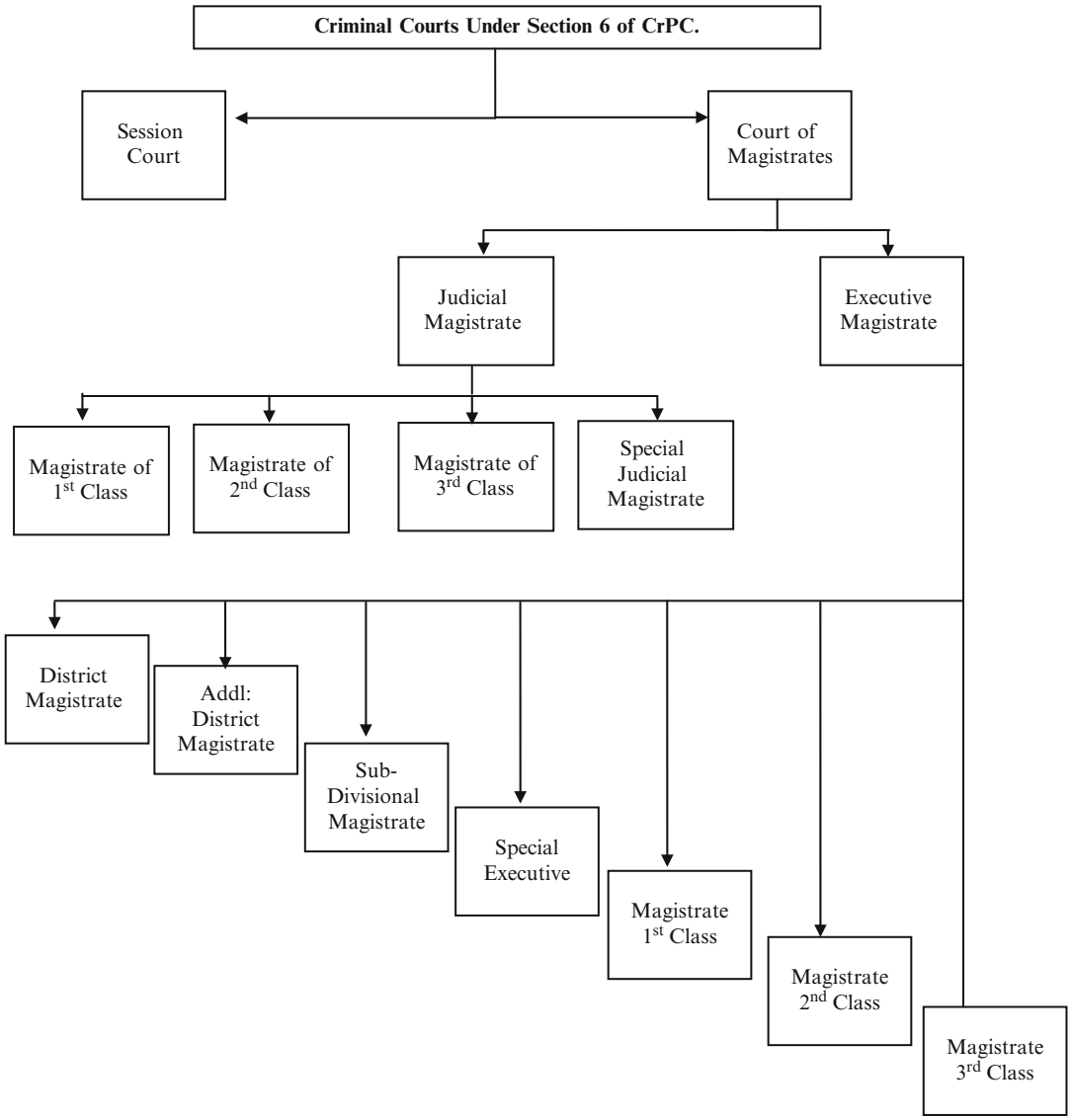

Fig. 17.4 Classification of Criminal Courts Under Section 6 of CrPC. Source: Barakatullah (2010). Judicial System of Pakistan: Pakistan Journal of Criminology Vol. 2. No. 3. July 2010. p. 23

17.16 Appendix 12

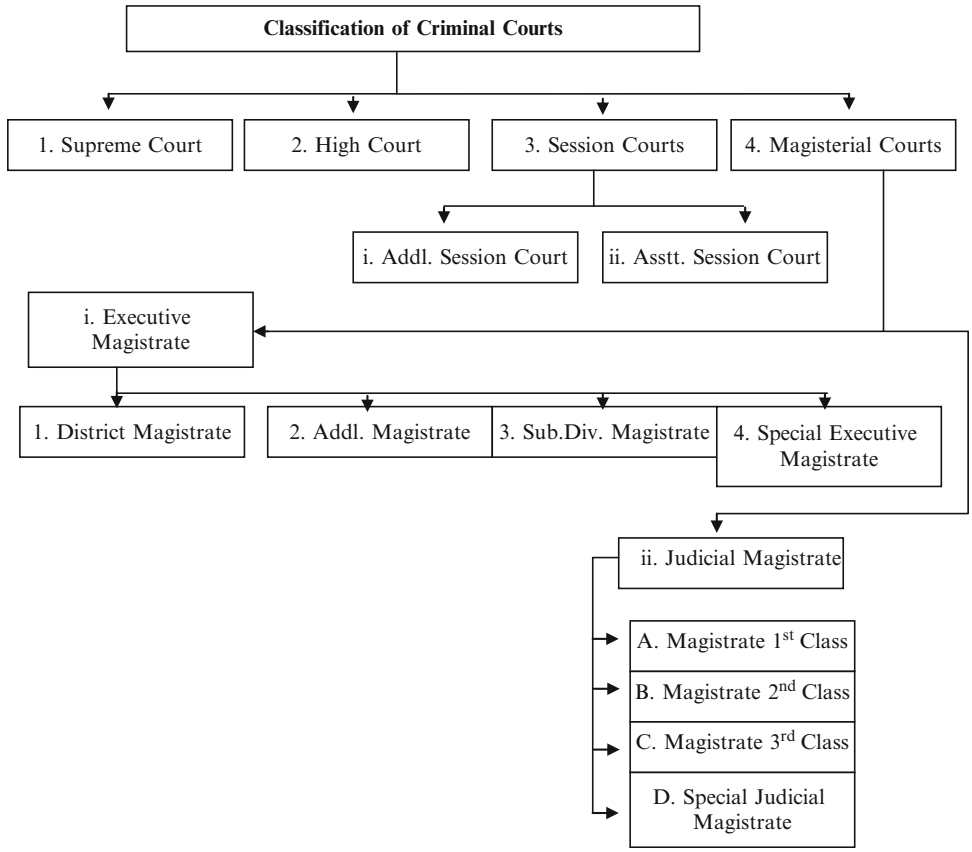

Fig. 17.5 Classification of Courts. Source: Barakatullah (2010). Judicial System of Pakistan: Pakistan Journal of Criminology Vol. 2. No. 3. July 2010. p. 17. Addl: Additional. Sub. Div: Sub Divisional. Asstt: Assistant

17.17 Appendix 13

A detailed list of all the functions by a Probation Officers has been given in the Probation of Offenders Ordinance (1960), Section 10 which are

- Explain to every probationer placed under his charge, the terms and conditions of the Probation order made in respect of such probationer, and if so deemed necessary, by warnings, endeavour to ensure their observance by the probationer;
- In the first 2 months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter, subject to the provisions of the Officer in Charge, keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environments, and wherever practicable, visit his home from time to time;
- If any probationer under his charge be out of employment, endeavour to find suitable employment for him and assist, befriend, advise and strive to improve his conduct and general conditions of living;
- Encourage every probationer placed under his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide;

- Where a probationer under his supervision, who has executed a bond, with sureties under section 5, is found to have committed any breach of the terms of his bond, or to have otherwise misconducted himself, to bring such breach or misconduct to the notice of his sureties;
- Maintain the books and registers and submit reports prescribed under these rules; and

Subject to the provisions of these rules shall carry out the instructions of the Court in regard to any probationer placed by the Court under his supervision.

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Thinking for New Horizon in Criminal Justice: Moving from Retributive to Restorative Justice in the Treatment of the Offender in Sri Lanka

18

M.A.D.S.J.S. Niriella

18.1 Introduction

The Criminal Justice system in Sri Lanka has undergone transformations in the last five decades. The early traditional method of the administration of criminal justice is no longer limited to punishing the perpetrator with a punitive approach to satisfy the victim. The (recent) history of the criminal justice system in Sri Lanka shows us that the philosophy of the primeval administration of criminal justice based primarily on the retributive/punitive concept is being replaced by the restorative concept, a process which involves the reintegration of both the offender and the victim within the community. Today, the wrongdoer of a criminal offence is not considered (only) as an enemy of the society who should be treated harshly by imposing severe punishment but as a person who needs treatment to overcome his/her status of criminality in order to be reintegrated into the society as a law-abiding citizen. Further, the victim of crime is also being looked upon as a person who needs support to recover from physical, mental, economical and other losses that have occurred due to the crime committed by the offender, in addition to rehabilitation and reintegration into society in order to be free from the victimized mentality. New methods have been introduced to the criminal justice system to deter crime, sanction the perpetrators, rehabilitate the offenders, support the victims of crime, develop the victim offender mediation and finally control the human behaviour and protect the society from crimes and criminals.

This paper focuses on such new methods and the transformation from retributive to restorative justice in the criminal justice system in Sri Lanka with a special focus on the treatment of offenders. Further, the study examines whether these means and methods have affected the crime rate in Sri Lanka. The full paper contains three main parts including the response to crime and retributive theory of justice, the history of the criminal justice system and retributive justice and the

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concept of restorative justice, its practices and new methods of treating the offender. The study also explains the crime problem in Sri Lanka, mentioning the statistical data relating to crimes, especially the grave crimes.

18.2 Statistics of Crime in Sri Lanka

Commission of crime is an inherent habit of human beings which is being changed due to various reasons including socio-economic, cultural and political reasons. The nature and the magnitude of the criminal offences have undergone a remarkable change over the years. Sri Lanka is not an exception to this phenomenon. Among the other factors, rapid economic and social development, 30 years of civil war and changes of lifestyle have provided a considerable influence to the commission of crime. Though it is disputed by some groups, the increasing brutality of crimes and the crime rate including reconviction and recidivism reveal the necessity of new way of thinking of crime problem, especially in dealing with the offenders (See Table 18.1). The frequency with which crimes are committed is much higher than that in the past. This situation directs the policy makers to pay their high attention towards the issue. An effective role of the agencies of criminal justice system in the country is also essential to curb the crime problem (See Table 18.2). The following statistics may impart a rough idea of the crime problem in Sri Lanka.

The crime rate of Sri Lanka has gradually increased in the past years. The following statistics revealed the gradual increase of grave crime in Sri Lanka during the last 5 years.

18.3 Response to Crime and Retributive Justice

Reaction or response to crime has been diverse at different periods of human civilization. Even at a particular time it has been different in various societies. Certainly, there is a necessity of reaction to crime in order to control certain unlawful human behaviour and to protect law-abiding people from crimes and criminals. According to the general meaning of crime, it is an act that subjects the wrongdoer to punishment; it is the commission or omission of an act specifically forbidden by public law or criminal law (Marckwardt 1995, p. 360; Della 1995, p. 318).

People show their denunciation towards crime by reacting against it either in a formal or an informal manner. Institutions such as family, schools, peer groups, organized religions and other organized bodies like factories and companies have their own sets of rules based on social norms to react against the member of those institutions for violating those norms in an informal manner. Some informal responses are labelling, ignoring, warning, inflicting mild corporal punishments and terminating of jobs which are based only on retributive concept. Similarly, if a person violates criminal law which is a threat to the guilty and a separate branch of public law where crimes and punishment are prescribed, the society may file an action against the perpetrator (in the name of the State) where the court has the power to impose formal punishment on the offender according to the law. Thus, societies justify the reaction to crime for moral reasons which reflect the attitude towards crime, criminal and basic values of a particular society at a particular time.

The formal reaction to crime is carried out by the criminal justice system which has the main goals of upholding social control, deterring crimes, sanctioning those who violate criminal laws with punishment and rehabilitating and reintegrating them into the society as law-abiding citizens. There are three types of application of laws in relation to the criminal behaviour of a person (criminal justice): retributive justice based on punishment, distributive justice based on therapeutic treatment of offenders and restorative justice based on restitution (Eglash Albert 1977, pp. 91, 92; Daniel and Strong 1997, p. 24).

Retributive justice is a theory of justice which considers that punishment is a morally acceptable response to crime, with an eye to the satisfaction and physiological benefit bestowed to the aggrieved party and society (Retributive Justice).

Table 18.1 A brief statistical figure of grave crimes from 2005 to 2010

Category of the criminal offence	Offence and the section	2005	2006	2007	2008	2009	2010
Offences against body other than sexual offences (Penal Code)	Abduction (Sections 350–352) and Kidnapping (S. 353) Grievous hurt (Section 311 amended by Act No. 22 of 1995) Simple hurt (Section 312) Homicide (Section 293 and 294) and Abetment of commit suicide (Section 299)	953 1,749 4,666 1,221	1,190 1,856 4,163 2,045	1,229 1,675 3,642 1,663	1,239 1,367 3,250 1,488	947 1,368 2,920 958	897 1,410 2,939 745
	Attempted homicide (Sections 300 and 301)	466	576	468	397	298	308
Sexual offences (Penal Code)	Rape (Section 364 amended by the Amendment Act No. 22 of 1995) and Incest (Section 364 (A) amended by the Amendment Act No. 22 of 1995) Unnatural offences (Section 365): Grave sexual abuse Sexual exploitation of children (Section 365 B) amended by the Amendment Act No. 22 of 1995	1,540 429 451	1,462 418 362	1,397 475 366	1,582 457 340	1,624 441 346	1,854 519 334
Offences against the State (Penal Code)	Sections 114–127	None	9	8	21	9	15
Offences relating to coins (Penal Code) Offences against public tranquillity (Penal Code)	Sections 225–248 Sections 138–157	35 27	28 19	37 17	34 10	52 14	38 14
Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act No. 30 of 2005	Trafficking of Human Being and Procuration	15	35	30	33	31	47
Offensive Weapons Act No. 18 of 1966	Offences under Offensive Weapons Act	482	723	668	511	636	277
Firearms Ordinance No. 33 of 1916	Possession of Automatic or Repeater Shot Gun	78	73	39	91	51	80
Poisons, Opium and Dangerous Drugs Amendment Act No. 13 of 1984	Trafficking of drugs, import or possession	508	362	572	511	636	862

Source: Administration Reports Published by the Inspector General of Police (the year 2011 statistics are not available)

Table 18.2 Grave crime summary from the year 2005 to 2010

	2005	2006	2007	2008	2009	2010
Cases recorded	59,391	61,196	56,454	57,340	60,870	57,560
Total true cases	59,075	60,932	56,215	57,182	60,693	57,381
Cases ending with convictions	2,269	2,251	2,192	3,341	2,885	3,437
Cases ending with discharge or acquittal	350	288	196	140	216	749
Total disposed	23,366	22,410	19,705	19,040	21,195	21,661
Total pending	35,709	38,522	36,510	38,142	29,800	34,809

Source: Administration Reports Published by the Inspector General of Police (the year 2011 statistics are not available)

It is probably the most ancient justification of reaction to crime (Gobert and Dine 1993, p. 22). Under retributive justice, crime is an individual act where the liability for the commission of the act is defined as punishment. The criminal responsibility/punishment is imposed only on the particular perpetrator according to the magnitude of the offence committed by the perpetrator. This idea was expressed by the biblical dictum: eye for an eye and tooth for a tooth. In primitive societies/tribal societies where the concept of retributive justice was well established, the offender was regarded as an enemy of the tribe and he/she was punished with the same severity of the offence in order to get the revenge from him/her. This notion was present in the Hebrew Doctrine of Divine Sanction which was subjected to the will of Jehovah and Mosaic Law. Further, the Code of Hammurabi, the oldest written ancient penal practice, accepted that the punishment imposed on the offender should be equal to the weight of the crime as literally as possible (Dyneley 2010, pp. 601–609; Packer 1968, pp. 37–38; Munshi 2003). However, even today, retributive justice is appreciated in "just deserts" (proportionally) principle in many parts of the world.

As one of its main characteristics, retributive justice focuses on establishing guilt on the past behaviour of the wrongdoers and the offenders are perhaps considered as an unwanted group of people who deserve to suffer due to wrongful behaviour. In other words retributive justice is a process of backward-looking and punishment that is warranted as a response to a past event of injustice or wrongdoing. It acts to reinforce rules that have been broken by the offender and balance the scales of justice. Therefore, the main purpose of the retributive justice is that the offender is to be punished simply due to the commission of crime. It is clear in the philosophy established by the retributive advocates such as Mabbott (1969, pp. 39–64), Murphy (1994, pp. 44–77), and Moberly (1996, p. 145). According to these retributive advocates the rationale behind retributive justice is that a good deed deserves to be crowned with a reward whereas a bad deed should be meted out with a bad reaction, namely, suffering without considering the consequences. Their suffering should be of the same magnitude as that of their victims. The inherent threats/sufferings of punishment may deter crime and sometimes change the behaviour of the offender as to a better person.

Under the retributive justice, crime is understood as an offence against the State and defined as a violation of the law. Another feature of the retributive justice emphasizes the adversarial relationship between the accused and the State, and the victims of crime are peripheral to the justice process and represented abstractly by the State. According to the general feature of the adversary system, in the traditional and conventional model of judicial system of trial, the State has all the rights to conduct the prosecution and impose punishment on the offender. (Adversarial system is a judicial system of trial in English legal system (practiced in Great Britain, most commonwealth countries, and the USA except the US State of Louisiana and Canada's Quebec province). In this system, a case is argued by two opposing sides who have the primary responsibility for finding and presenting facts. The prosecutor tries to prove the defendant is guilty, and the defendant's attorney argues for the

defendant's acquittal. The case is then decided by a judge and punishments are prescribed.) Therefore, when a crime is reported, the State starts to discharge its responsibility assuming the State as a party of the criminal case while placing the victim in the category of a mere witness. The main agencies in the criminal justice system pay whole attention only to the offender to punish or otherwise rehabilitate him/her and the victim is regarded as a mere witness in the battle between the State and the accused (Barrett 2001, pp. 1–2; Hogg 1992, p. 836).

18.3.1 History of Criminal Justice System and Retributive Justice in Sri Lanka

In examining the history of criminal justice system in Sri Lanka, five main distinct periods could be identified according to chronological order, namely: period before the European powers occupied the island (before 1505 A.D.), period during the Portuguese occupation (1505 A.D.–1656 A.D.), period during the Dutch occupation (1656 A.D.–1796 A.D.), period during the British occupation (1796 A.D.–1947 A.D.) and post-independence period (1947 A.D.–to date).

During the reign of Kings in ancient Ceylon, the King was the top of the hierarchy of Courts and the source of all justice. With regard to the criminal justice system during this period, the hierarchy of Courts made it possible to appeal from a judgment of the lowest Court, i.e. *Gansabhawa,* the lowest Court (council) which had both civil and criminal jurisdiction in cases of petty offences and in boundary disputes (Hayley 1972, pp. 59–62), to the King (Hayley 1972, pp. 58–73). History shows us that the retributive justice was the dominant theory adopted by the criminal justice system in ancient Ceylon as well. Literature of the legal history of the country reveals some important information of punishment (*danda*). There were four main types of *danda* based on the retributive concept: They were *kayadanda* (corporal punishments), *vachidanda* (verbal punishments), *dhanadanda* (financial punishment) and *manodanda* (mental punishment).

Death, mutilation, flogging, whipping by cane, banishment, downgrading to the *Rhodiyas* (the people who belonged to the lowest cast in ancient Ceylon), putting into jail (*dangage/maha hirage*) and cutting off hair were the modes of corporal punishment. Death, mutilation and flogging were imposed on offenders for serious offences such as murder, conspiracy against King, etc. Reprimand was a verbal punishment imposed for minor offences to show anger and disapproval of crime in the Sinhalese law which comprised Buddhist law, Hindu law, *Tesawalamai* law, Islamic law and Mukkuwar law but today is more commonly referred to as Kandyan Law (Cooray 1971, p. 3). Being cursed was represented in *manodanda* inflicted for minor offences. Confiscation of properties was the common mode represented in *dhanadanda.*

The Portuguese arrived in Ceylon in 1505 A.D. (Cooray 1971, p. 4). By the *Malwana* Convention,[1] an Ordinary and a Supreme Tribunal (General's Court) were established to hear minor criminal matters and serious offences, respectively. By the same convention the Portuguese agreed to administer the laws of the Sinhalese in the coastal areas where they were settled and in power (Cooray 1971, pp. 26 and 194; Nadaraja 1972, p. 5; Tambiah 1977, pp. 3, 4 and 27). Therefore, they did not introduce their own system of law to Ceylon (Tambiah 1977, p. 4). Thus, the laws relating to punishment during the period of the Portuguese occupation appear to have been the Sinhalese laws (Cooray 1971, p. 5).

The Dutch occupied Ceylon in 1656 A.D. They ruled the Maritime Provinces (Coastal Areas) from 1656 to 1796 and introduced their law, the Roman Dutch Law, to Ceylon (Cooray 1971, p. 194; Nadaraja 1972, p. 5; Tambiah 1977, pp. 3, 4). Criminal justice was administered in *Radd van Justitie* (the High Court of Justice) in the case of serious criminal offences. Further, judicial power was exercised by certain European officials such as the fiscal, the chief

[1] This Convention came into operation in 1957.

residents and some military officers, and the local chiefs such as *disavanis* and *korala* (local officials who had the power to hear minor criminal matters over local persons). Dutch also continued to impose the same modes of punishments used by the Portuguese.

The British occupation of Ceylon is reported as of 1796 A.D. They captured all parts of the Maritime Provinces which were under Dutch power. By introducing a number of reforms to the law operating in the Maritime Provinces, the British developed the administration of justice. British rulers issued several important Proclamations to reform the existing penal system at that time. By the Proclamation of 23rd of September 1799, torture and all kinds of inhuman and barbarous forms of punishment (specially the public execution) were abolished. A uniform system of Court procedure and a uniform system for execution (hanging) were introduced by the Proclamation of March 23rd 1826. All degrading and inhuman modes of punishment were prohibited by the Proclamation of 04th October 1799. By regulation No. 04 of 1820, all kinds of mutilation were prohibited. The classification of crimes and establishment of a new Supreme Court of criminal justice consisting of the Chief Justice were introduced by the Charter of 18th April 1801. The formation of a uniform system of justice throughout the Island was introduced by the Charter of 1833 on the recommendation of the Colebrook Cameron report. The whole Kandyan criminal law (criminal law which applied to locals) was abolished and the "Law of the Maritime Provinces" was substituted by Ordinance No. 5 of 1852. The Penal Code Ordinance No. 2 of 1883, a model of the Indian Penal Code of 1860 which was based on English Law Principles, was introduced in 1883. Section 3 of the Penal Code expressly abolished the Roman Dutch criminal law in order to settle the uncertainties in the general law. The Criminal Procedure Code of Ceylon was introduced in 1882 to govern the procedure relating to criminal matters in the country. It was replaced by the Criminal Procedure Code No. 15 of 1898 which remained until 1973.

Sri Lanka gained independence in 1948, and for the purpose of this study the intervening period up to the present time will be discussed. Sri Lanka has been governed by various political parties elected by Sri Lankan citizens. Although these governments introduced numerous laws under their legislative powers, there was no significant alteration in either the substantive criminal law or the law of criminal procedure, except for a few amendments. With regard to the Penal Code, some significant amendments have been introduced where punishment is concerned, e.g. the Penal Code (Amendment) Act, No. 22 of 1995, and the Penal Code (Amendment) Act, No. 29 of 1998. Two very important changes were made to the criminal procedure, namely, the Administration of Justice Law No. 44 of 1973 and the Code of Criminal Procedure (CPC) Act No. 15 of 1979. Furthermore, recently a few amendments were introduced to the CPC Act. Among them the CPC (Amendment) Act, No. 17 of 1997, the CPC (Amendment) Act, No. 47 of 1999, and the Community Based Correction Act, No. 46 of 1999, are most important for the purpose of the present study.

18.3.2 Present Criminal Justice System and Retributive Theory of Justice

Similar to the other countries, until recently, the criminal justice in Sri Lanka has been dominated by retributive justice based on punishment. The State maintains law and order, ensures conformity with its rules and prosecutes and punishes those who violate it. The Police, the Court and the Prison and other Correctional Centres function as main State Institutions in this process. The Penal Code Ordinance No. 2 of 1883 and the CPC Act No. 15 of 1979 are the main Acts which set out the legal provisions for dealing with criminal matters in Sri Lanka.

The existing procedural law relating to criminal cases is set out in the CPC Act enacted in 1979. The rules relating to police investigation, arresting the suspect, searching the premises, releasing suspect/accused on bail, instituting the proceedings and conducting trials and appeal are laid down in this legal code. Further, the provisions (sections 13 and 14) in the CPC permit the Magistrate's Court and the High Court in First Instance to hear crimi-

nal cases, and to impose punishments on the convicted offender under the provisions of the Penal Code or any other written law which prescribes any act as a criminal offence.

The substantive criminal law of Sri Lanka is embodied primarily in the Penal Code and other Statutes which prescribe some human behaviour as criminal offences corresponding with punishment. The legal system in Sri Lanka provides penal provisions (section 52 of the Penal Code) for some modes of punishment such as the death penalty, rigorous and simple imprisonment, forfeiture of property, fine and whipping. This structure of the modes of punishment in the Penal Code confirms the retributive approach in responding crimes. The dominated view of "just deserts" compelled the criminal justice system to prosecute in the name of the State and punish the wrongdoers more commonly with imprisonment or fine according to the magnitude of the criminal offence. Death and forfeiture of property are the other two modes of punishment inflicted on perpetrators in Sri Lanka under this compelling notion of just deserts. However, until 2005 whipping was a permissible mode of punishment and was repealed by the Corporal Punishment (Amendment) Act enacted in 2005.

The death penalty is a classic example for the application of retributive theory of punishment. In Sri Lanka, the death penalty has been imposed for few crimes such as murder, treason and drug offences under the criminal law of the country. Like the other countries, imposing the death penalty as a punishment has been a subject of controversy over many years in Sri Lanka. Though there is a public outcry to re-implement the death penalty in Sri Lanka, it is an abolitionist in practice that has not executed any offender during the past 34 years and established a practice of not carrying out executions. The State has also paid attention to the implementation of the death penalty by appointing law reform commissions such as "Morris Commission" (the four-member commission appointed by the Governor General, after the assassination case of Prime Minister S.W.R.D. Bandaranayake, to report the practical utility of the death penalty) to examine the practical utility of capital punishment, especially as a better mode of punishment in reducing the crime rate. The conclusion of the report has revealed no observable relationship between the homicide death rate and the practice of executing offenders for murder. Since Buddhism is declared as the official religion in the country, offenders cannot be executed without violating the First Precept which prohibits killing of any live object.

As far as the history of prisons in Sri Lanka is concerned, the new prison system that evolved in Britain was introduced to the British colonies during 1844. The Department of Prisons came into existence first affiliated to the Police Department under the Act No. 18 of 1844. During that period the supervisions and control of all prisons in the Island were vested in Inspector General of Prisons. The office of Inspector General of Prisons was held by the Inspector General of Police until 1905. The prison and police departments were separated under two departments thereafter. At present the Department of Prisons is functioning under the Ministry of Prison and Rehabilitation of Sri Lanka. The Department of Prisons constitutes the Prison Headquarters, Centre for Research and Training in Corrections, Closed Prisons,[2] Remand Prisons,[3] Work Camps,[4] Open Prison Camps,[5]

[2] There are three closed prisons in Sri Lanka, namely, Welikada, Bogambara and Mahara. Welikada Closed Prison is for the first offenders, who had been admitted to prison for the first time. Bogambara Closed Prison is for the reconvicted prisoners, those who had been admitted to the prison for the second time. Mahara Closed Prison is for the recidivists, who had been convicted and admitted to prison more than twice.

[3] There are Twenty Remand Prisons in Sri Lanka. Those prisons are situated in Cololmbo, Kandy, Tangalle, Jaffna, Anuradhapura, Batticaloa, Badulla, Galle, Matara, Negombo, New Magazine, Kegalle, Tricomalee, Kalutara, Boossa, Kurunegala, Polonnarwwa, Retnapura and Vavunia.

[4] Work camps are prisons without a perimeter wall where prisoners are sentenced with short term (less than 2 years) or medium term (2 years to 5 years) of imprisonment and the offenders are detained under minimum security conditions. The eight work camps are in Watareka, Meethirigala, Navodawa, Weeravila, Anuradhapura Kuruwita, Wariyapola and Kandewatta.

[5] There are two Open Prison Camps in Sri Lanka at Pallekelle and in Anuradhapura.

Training Schools,[6] Correctional Centres for Youthful Offenders,[7] Work Release Centres[8] and Lock-ups.[9] The prison system of Sri Lanka consists of 4,325 prison officials of Uniformed Staff and 180 of Non-uniformed Staff. In the year 2010 the percentage of the un-convicted prisoners was 66% (approximately) and the convicted prisoners' percentage was 33% (Prison Statistics 2010). Ratio of convicted to un-convicted prisoners in the year 2010 was 1:3. In such a situation the present prison system in Sri Lanka is far behind in achieving its main goal concerning the rehabilitation of prisoners.

The Department of Prisons has to play an important role in carring out custodial sentences (imprisonment) and non-custodial sentences and orders (home detention, supervision, community work and release on conditions) imposed by Sri Lankan Courts. The prison statistics reveal that the number of direct admissions of both convicted and remand prisoners has considerably increased during the last decade.[10] In the year 2010, the number of direct admissions of both convicted and remand prisons was 1,32,619 and the number who were discharged from prison was 31,442.[11] This shows that 1,01,177 prisoners were kept in our prisons in 2010. From the year 2000 the reconvicted and recidivism rate has gradually increased[12] and in the year 2007 the number of the direct admission of reconvicted prisoners and recidivists was higher than the first offenders (prison statistics 2010).[13] Thus the above-said figures reveal that the crime wave continues to be high in Sri Lanka and the statistics further disclose the failure of retributive justice in the country.

An effective policing system is necessarily important in controlling the crime statistic (crime rate). As mentioned earlier, the Portuguese who controlled certain areas of the Maritime Provinces of the country did not effect any serious changes to the existing criminal justice system of the country. The concept of policing in Sri Lanka started with the Dutch who saddled the Military with the responsibility of policing the city of Colombo. It was the Dutch who established the earliest police stations which were initially established at the northern entrance to the Fort, the cause-way connecting Fort and Pettah and Kayman's Gate in Pettah. In addition to these the "Maduwa" or the office of Disawa of Colombo, who was a Dutch official, also served as a Police Station for these suburbs.

In 1805 under the British rule, the police functions were defined clearly. Apart from matters connected with the safety, comfort and convenience of the people, police functions also came to be connected with prevention and detection of

[6] Two Training Schools attached to our prison system for the youthful offenders and situated in Pallansena and Ambepussa.

[7] There are two Correctional Centres for Youthful Offenders in Pallansena and Taldena. Offenders between the ages of 16 and 22 are sent to these correctional/rehabilitation centres. Taldena correctional centre is an open camp and Pallansena Correctional centre has both a closed prison and an open camp.

[8] Sri Lanka has only one Work Release Centre.

[9] There are 28 Lock-ups in Sri Lanka in Ampara, Avissawella, Balangoda, Balapitiya, Chilaw, Elpitiya, Embilipitiya, Gampaha, Gampola, Hambantota, Hatton, Kalmunai, Kalutara, Kilinochchi, Kuliyapitiya, Kurunegala, Maho, Mannar, Matale, Mullaitivu, Nuwara Elliya, Panadura, Point Pedro, Puttalam and Vavuniya.

[10] The number of the direct admissions of both convicted and un-convicted prisons from year 2000 to 20007 is as follows: 2000—89,325, 2001—95,725, 2002—107,210, 2003—116,216, 2004—114,354, 2005—129,014, 2006—117,922, 2007—130,819, 2008—135,820, 2009—146,760, 2010—132,619. See Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka 2010 p. 24.

[11] Release on bail 294, on punishment 18,644, on payment of fines 9,326, on special occasions 2,978.

[12] Reconvicted and recidivism number together: 2000—8,160, 2001—10,300, 2002—11,303, 2003—12,833, 2004—12,925, 2005—16,408, 2006—13,618, 2007—16,430, 2008—16,401, 2009—18,596, 2010—12,597. These statistics were obtained from the Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka.

[13] Reconvicted and recidivism number together: 2000—8,160, 2001—10,300, 2002—11,303, 2003—12,833, 2004—12,925, 2005—16,408, 2006—13,618, 2007—16,430, 2008—16,401, 2009—18,596, 2010—12,597. These statistics were obtained from the Prison Statistics of Sri Lanka Published by the Statistics Division, Prison Headquarters Sri Lanka.

crime and maintenance of law and order. The Police Ordinance No. 16 of 1865 was enacted in 1865. 1866 could be considered as the beginning of the country's present Police Service in Sri Lanka (www.police.lk/index.php/crime-division). Since then the police force is primarily responsible for assuring the security of the people and their properties in the country. They are to act as the effective law-enforcing agency to maintain law and order in the country. After the emergence of Sri Lanka as an independent and sovereign State, it has become more essential for the police to achieve the above-said goal in marinating law and order in the country. With the change of the social structure and other social phenomenon great responsibility has been entrusted with police to curb the crime. However, in the present scenario in Sri Lanka, the police are required to engage in many nonpolice works which are not within the parameters of the main objectives of police, i.e. prevention and detection of crimes.

The above discussion shows us that retribution is not a proper answer to the crime problem in the country. It further reveals that retributive theory fails to control the crime rate, keep society safe, rehabilitate prisoners and reintegrate them to the society as law-abiding citizens.

18.4 Restorative Justice and New Means of Treating the Offender

Restorative justice (reparative justice) is an approach to justice whereby all the parities with a stake in a particular offence come together to resolve the problem collectively and how to deal with the consequences of the offence and its implications for the future (Wright 1991; Marshall 2000, p. 2). This approach of justice focuses on the needs of both parties of the case, i.e. needs of victim and offender as well as the needs of the community instead of satisfying the hard legal principles and punishing the offender. Unlike retributive justice, restorative justice observes crime as a violation of human relationship (Zehr 1990, p. 35) and crime is an offence against the individual and community rather than the State (Rotman 1990; Marty 2001, p. 1). Under this theory, justice means an exploration of solutions which encourage and support restoration, mediation/reconciliation agreeing by victim, offender and the community where victims of crime take an active role in process (Braithwaite 2002, 249). Restorative justice requires an offender to take responsibility for his/her offence to take steps for restitution of the victim (Daniel and Strong 2001, p. 106), promoting the maximum involvement of the two parties in the process at the highest level of victim satisfaction and offender accountability (Sharman and Strang 2007, p. 36). Since restorative justice maintains that increased crime is an overall failure of society, it provides an opportunity for the offender to meet his/her personal needs, rehabilitate offenders, help rebuild their life and reintegrate them into better persons. Restorative justice principle mainly aims at four key values. They are giving opportunity for the encounter of parties (where the victim, offender and the others in the community involved in the crime meet), compelling the offender to take necessary steps to repair the harm caused from the crime, helping the restoration of both parties (this includes third person who involved in the crime initially) and opening the opportunity for both parties to participate in finding a resolution/decision. Restorative justice could be found in victim offender mediation, restorative or family conferencing, healing/sentencing/peacemaking circles, victim/ex-offender assistance, restitution, police cautions and non-custodial measures such as probation, conditional discharge, suspended sentencing and community-based corrections.

Among those methods, the justice system of Sri Lanka adopts only a few, i.e. victim offender mediation, restitution (compensation to the victim), probation, conditional discharge, suspended sentencing and community-based correction. Although the programmes relating to ex-offender assistance (aftercare service) are not institutionalized or implemented in a proper manner, some religious and social service groups help the ex-prisoners to overcome the economical and social problems which they come across after being released from prison.

18.4.1 Victim Offender Mediation

In Sri Lanka the police are involved in the amicable settlement of minor (criminal and civil) disputes. There efforts towards settlement of minor disputes have begun to arise from statutory duty stipulated on them to prevent crime and maintain law and order in the country. In the 1950s the process of settling minor criminal disputes was officially entrusted by way of administrative direction 1998; the Mediation Boards Act No. 72 of 1998 was passed by Parliament, having the objective of providing the people in the country an opportunity to follow a less cost-effective mechanism to settle their minor disputes with the agreement of both parties. Therefore, the Act provides for the legal framework for institutionalizing Mediation Boards, which are empowered to resolve by the process of mediation all disputes referred to it by disputing parties, as well as by Courts in certain instances. At present the Mediation Board has the criminal jurisdiction over affray, causing hurt, grievous hurt, wrongful restraint, wrongful confinement, force, criminal force, assault criminal misappropriation, criminal trespass, house trespass, insult and criminal intimidation. A large number of the disputes handled by the Boards relate to these criminal offences. In the Mediation process the mediator encourages the parties towards negotiation by coordinating the large number of people involved in the matter, improving communication, helping them to generate options, assessing alternatives to agreement and bringing such agreements to closure.

18.4.2 Compensation to the Victim

Section 17 of the CPC Act No. 15 of 1979 provides necessary legal provisions for the court in order to compensate the victims of a crime or their dependants. Through compensation order Courts may direct the offender to repair the loss or damages caused to the victim. Usually, compensation is recovered from the fine (as an ancillary order), which is imposed for an offence [14] as decided by the Court in the decision of *Rabo v James* (32 NAL 91). But the Penal Code (Amendment) Ordinance, No. 22 of 1995,[15] enables Courts to impose a compensation order as a mandatory punishment[16] with imprisonment for sexual offences[17] and offences dealing with cruelty to children.[18] However, except the offences stated above, under that particular amendment, the Sri Lankan legislature does not provide for legal provisions, which empowers the Court to order compensation as an integral part of punishment. Thus far, the Sri Lankan Courts have not tendered a compensation order on the State or otherwise Sri Lanka does not have any other alternative mechanism such as "State Compensation Board" where the offender is unable to pay the compensation. This situation shows us that the offender is disregarded under the present law relating to compensation to the victim.

18.4.3 Community-Based Corrections

Community-based correction is a permissible mode of punishment in Sri Lanka. As an alternative to prison sentence, the Magistrate Court may order community task on an offender, for a number of hours stipulated by the Court within a certain period of time. If the offender fails to carry out the work assigned on him/her, he/she will be dealt with by the Court by imposing any other appropriate punishment. The present law relating to Community Service Orders was first introduced in Sri Lanka by the Administration of Justice Law No. 44 of 1973. Section 18(1) of the

[14] Section 17(6) of the CPC Act, No. 15 of 1979.

[15] Section 364 of the Penal Code (Amendment) Ordinance, No. 22 of 1995, says that whoever commits rape shall, except in the cases provided for in subsection (2) (3), be punished with rigorous imprisonment for a term not exceeding twenty years and, with a fine, shall in addition be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to such person. For more see section 364(2) (g) of Penal Code (Amendment) Ordinance, section 365, as amended by the Penal Code (Amendment) Ordinance, No. 22 of 1995.

[16] *Inoka Gallage v Addaraarachchige Gulendra Kamal Alias Addaraarachchi* 2002 1 SLR 307.

[17] Sections 364 (1) and (2), 365 A of the Penal Code (Amendment) Ordinance, No. 22 of 1995.

[18] Section 303 (A) (2)of the Penal Code (Amendment) Ordinance, No. 22 of 1995.

CPC Act 15 of 1979 as amended by the CPC (Amendment) Act No. 49 of 1985 has stipulated the relevant provisions relating to Community Service today. These provisions were repealed and enacted in the Community Based Corrections Orders Act No. 46 of 1999 which presently lays down legal provision for unpaid community service orders in Sri Lanka. According to the law prescribed by the said Act, unpaid community service order may be issued *in lieu* of fine which is less than three thousand rupees or *in lieu* of imprisonment which is less than 2 years,[19] taking into consideration various factors including the nature of offence and the character of the offender.[20] Community-based correction orders are a step away from a prison sentence, and are a more successful form of punishment for minor offences from the corrective aspect, and a cheaper alternative to short-term imprisonment.

There are three ways (types) of serving under the unpaid community-based corrections, namely, community work corrections; special rehabilitation (programme) for drug offenders and work under trained supervisors. Since these programmes are not residential, offenders may participate in the activities while staying in the community.

Factors or criterion such as age, social history and background, medical and psychiatric history, educational background, employment history, previous convictions, financial circumstances, special needs, family background and other income of the offender, courses, programmes, treatment or other assistance that could be made available to the offender and benefit that he may gain from the assigned work are considered under this programme. Lack of counselling and excluding women and children from the process could be marked as demerits of the Sri Lankan system.

[19] Section 5 (1) of Community Based Corrections Act No. 46 of 1999.

[20] Section 5 (2) of Community Based Corrections Act No. 46 of 1999. The facts that the court should consider are the nature and the gravity of the offence, age of the offender, other relevant circumstances relating to the offence and the offender, pre-sentence report and facilities available for implementing such order.

18.4.4 Probation

Correctional programme and treatment of offenders in Sri Lanka started functioning in the form of Probation in 1956 through the promulgation of Probation of Offenders Ordinance No. 42 of 1956 for both adults and the children. In 1960 the probation system has been extended by appointing Probation Officers to all judicial districts in the country. However, today probation is ordered only against the juvenile delinquents.

18.4.5 Conditional Discharge

Conditional discharge is one of the non-custodial measures implemented on the offenders in Sri Lanka. Section 306 (1) of the CPC Act, No. 15 of 1979, lays down the legal provisions for conditional discharge. The Court may order conditional discharge after taking into account various factors, including the good character of the offender (*Peter* (1945) 47 NLR 23; *Fernando* v *Excise Inspector, Wennappuwa* (1949) 4 CLW 41), the age of the offender (*Jayasena* (1950) 52 NLR 183) and the nature of the offence (whether the offence is a trivial offence) *(Gunasekara v Solomon* (1923) 25 NLR 474*;* Appuhamy v Wijesinghe (1945) 46 NLR 189; *Krishnan* v *Sittampalam* (1952) 54 NLR 19; *Gomas* v *Leelaratne* (1964) 66 NLR 233; *Podiappuhamy* v *Food and Price Control Inspector, Kandy* 1968 71 NLR 93). However, the Sri Lankan judiciary imposes a conditional discharge on adult offenders only for trivial offences (*Gunasekara* v *Soloman* (1923) 25 NLR 474; *Appuhamy v Wijesinghe* (1945) 46 NLR 189[21]; R. v Peter (1945) 47 NLR 23).

18.4.6 Suspended Sentencing

As a result of the important proposals of the Law Commission in 1970, suspended sentence of

[21] The court did not justify a conditional discharge where the offence was accompanied by the use of violence.

imprisonment was introduced into our penal law in 1973, and section 239 of the Administration of Justice Law laid down the provisions relating to suspended sentencing for the first time. Section 303(1) of the CPC Act, No. 15 of 1979, which provided for suspended sentences has been amended twice in 1995 and 1998. Section 303 of the CPC Act, No. 15 of 1979, as amended by the CPC (Amendment) Act, No. 47 of 1999, lays down the existing provision for suspended sentences of imprisonment in Sri Lanka. Before the amendment of the CPC Act, No. 20 of 1995, came into operation, suspended sentencing of imprisonment had been restricted to cases where the sentence of imprisonment was more than 2 years[22] or where persons were convicted for grave crimes. Under section 2 of the CPC Act, No. 20 of 1995, although it was applicable to cases where imprisonment is for less than 2 years, if the statute provided that a particular sentence of imprisonment is mandatory, the offender was not entitled to a suspended sentence. This provision was amended by section 2 of the CPC (Amendment) Act, No. 19 of 1999.[23] At present, a suspended sentence is imposed under this Act for cases where the sentence of imprisonment is for not more than 2 years,[24] where the law does not provide a mandatory minimum imprisonment,[25] where the offender committed the offence while he or she was not on a probation order, conditional release or discharge;[26] the offender is serving a term of imprisonment or the offender is yet to serve the term of imprisonment which has not been suspended.[27]

According to the statutory provisions, Courts may suspend the sentence of imprisonment wholly or partly. Frequently, Sri Lankan Courts (both Magistrate's Courts and High Courts) prefer to suspend the whole term of imprisonment, especially where there is a plea of guilty. But there is considerable doubt whether the Sri Lankan courts in practice utilize the partly suspended sentence as a form of punishment where the accused has pleaded guilty. Even in severe crimes such as culpable homicide not amounting to murder, rape, etc., the Sri Lankan Courts suspend the sentence of imprisonment wholly. For example, in the following High Court orders[28] the Court suspended the whole term of imprisonment after it had taken into account the plea of guilt. At this point one may argue that in such cases the court should not impose a suspended sentence by considering the plea of guilt as the only sentencing factor. Moreover, according to sec. 303 (1) (b) of the CPC (Amendment) Act, No. 47 of 1999, the Court should consider the nature and gravity of the offence. In considering the cases of murder, rape and robbery they are crimes severe in nature, and for these crimes suspended sentence may not be the appropriate type of punishment. Therefore, especially when a person convicted for a heinous crime such as rape, robbery and culpable homicide not amounting to murder the Court should carefully exercise its discretion in the imposition of a suspended sentence on plea-bargaining. This may be a reason that the legislature introduced the mandatory minimum sentencing rule in 1995.

[22] Section 303 (1) of the CPC Act No. 15 of 1979 says that "A Court which imposes a sentence of imprisonment on an offender for a term not exceeding two years for an offence may order that the sentence shall not take effect unless, during a period specified in order, being not less than five years from the date of the order (hereinafter referred to as the 'operational period') such offender commits another offence punishable with imprisonment (hereinafter referred to as 'subsequent offence')".

[23] According to section 2 of the CPC (Amendment) Act, No. 19 of 1999 "a mandatory sentence of imprisonment was changed to a mandatory minimum sentence of imprisonment".

[24] Section 303 (2) (d) of the CPC (Amendment) Act, No. 47 of 1999.

[25] Section 303(2) (a) of the CPC (Amendment) Act, No. 47 of 1999.

[26] Section 303 (2) (c) of the CPC (Amendment) Act, No. 47 of 1999.

[27] Section 303 (2) (b) of the CPC (Amendment) Act, No. 47 of 1999.

[28] In some murder cases where an accused pleaded guilty to the offence culpable homicide not amounting to murder, the term of imprisonment was suspended by High Court: Kurunegala H.C.85/95; H.C 89/95; Negombo H.C. 675/87. In some rape cases where an accused pleaded guilty, two years rigorous imprisonment was suspended for five years by High Court: Kurunegala H.C. 99/95(rape); Kandy H.C. Jury 1226/92 (rape).

18.4.7 Aftercare Service

In considering the aftercare service in Sri Lanka, it is hard to find any public agency which undertakes this as an organized group. But with the assistance of Sri Lanka Prison Department some individuals including Buddhist Monks, Catholic Priests and Nuns help the ex-prisoners who need assistance according to their capacity. They provide counselling service, food and clothing, help them to find job opportunities, etc. According to prison representatives, lack of a proper aftercare service system is one of the reasons for the increase in the reconvicted/recidivist rate.[29] Therefore, Sri Lanka should introduce these aftercare service programmes to assist ex-prisoners who really need society's help, to restart their lives after they return to society. Therefore, Sri Lanka should pay attention to enacting necessary statutory provisions to institutionalize this service. However, what is most needed is the provision of increased opportunities for public participation in practical correctional work through community volunteering efforts. Industry, labour organizations and other civil organizations such as religious centres may formally organize and actively play a significant role in such social defence programmes.

18.5 Conclusion

The criminal justice system and criminal law in Sri Lanka have been transformed from retributive justice to restorative justice due to the decisions taken by the Parliament and the Court. However, the attitude of the public towards punishment is still influenced by traditional retributive thoughts where the offender should be treated harshly with severe punishments through punitive approach. The recidivism rate of country reflects upon this public thought and it further tells us the failure of the treatment (reform) of the offender and retributive concept. Since the phenomenon of treatment of the offender is a complex exercise, it is a strenuous procedure particularly in a developing country like Sri Lanka with limited resources and lacking the update and new technologies. Though Sri Lanka has introduced some restorative justice practices to the criminal justice system, those practices are not sufficient to meet the treatment of the offenders and crime problem. Therefore, the criminal justice system of Sri Lanka pays her attention to introducing new methods of restorative justice such as circles and conferencing. Further, existing mechanism such as probation, community-based correction and mediation should be strengthened for treatment of the offender in a productive manner.

[29] Annual Prison Reports, Sri Lanka.

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An Overview of the Criminal Justice System in Taiwan

19

Charles Hou

19.1 Introduction

This paper intends to explore the content and characteristics of the criminal justice system in Taiwan. We understand that there are four phases in the criminal justice system. It is firstly the role of the police. The police play a major role as gatekeepers to the criminal justice system, which is to refer an arrested suspect to the office of the prosecutors. The second stage is investigation and prosecution. This is a pretrial stage where the prosecutors would investigate the crime incident and decide if it involves any violation of the law. The prosecutors often cooperate with the judges if further detention is needed. The third stage is the sentencing stage where the judge would make a decision on a defendant. And the final stage is imprisonment and treatment. The criminal justice system exercises a formal social control mechanism on those who violate the laws.

The criminal justice system involves different components and mechanisms so that the system can function and operate well. Moreover, the system varies in different social and cultural settings. In Taiwan, the criminal justice system is constituted by the following agencies: the National Police Agency (NPA) of the Ministry of Interior, the Investigation Bureau of the Ministry of Justice, and the Coast Guard Administration. In addition, the system includes the Prosecutor's office, the Courts, and the Correctional Institutions. On July 20, 2011, the Taiwanese Government created a new office, under the Taiwanese criminal system called the Agency Against Corruption, and its function is to fight against the white-collar crime committed by the high-ranking government officials.

This paper focuses its discussion only on the traditional components of the justice system: the police, prosecutors, and judges. Other agencies will not be covered here. The roles and functions of the three agencies will be addressed along with their interactions. This paper also discusses the due process rights in Taiwan, which are less discussed in Asian societies.

19.2 Police: Gatekeepers of the Criminal Justice System

The NPA is the headquarters for all the police agencies, and it takes the responsibility of all the operations of Taiwan police forces.[1] According to the law in Taiwan, the functions of the police are to maintain public order, to prevent crime and disorder, to preserve social safety, and to enhance

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[1] The director in general of NPA is Wang Cho-chiun (王卓鈞), a graduate of the Graduate School of Criminology at National Taipei University. He assumed his office in 2008.

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the welfare of all the citizens. And there are about 75,000 police officers to fulfill these functions.[2]

In Taiwan, there is a police bureau in each city and county. And, there are several police districts in each police bureau. The Police booth, pai-chu-suo (派出所), similar to Kuban in Japan, is the smallest police unit in Taiwan and a couple of booths are installed in each police district. Police officers are required to take shifts and take care of the daily operations within their own booths.

There are many other special police forces other than the regular police bureaus in cities and counties. These special police forces are designed to oversee the social order and social security in special locales and settings. For example, we have Criminal Investigation Bureau to investigate and examine certain violations and serious crimes. We also have Aviation Police, Highway Police, Harbor Police, and Railway Police, along with some other special types of police forces to meet the needs and security in various settings.

There are about 30,000 offenses identified by the police each month in Taiwan. In the year 2010, there are about 360,000 offenses recorded.[3] However, the statistics were much higher in past years. For example, the number of offenses known to police was around 430,000 in 2000 and 550,000 in 2005. There was a significant reduction in crime statistics in past years, which is similar to the United States and many other areas of the world (Federal Bureau of Investigation 2010). The official crime statistics in Taiwan derive from police administrative statistics. These are the data processed by the police agencies, either proactively or passively. The other crime control agencies such as the Investigation Bureau, the Prosecutor's Office, or the Coast Guard Administration have their own crime statistics and they report their recorded data annually. Therefore, the crime statistics known to police do not reflect the whole picture of the crimes in Taiwan. One still has to look into the crime statistics data in other agencies, then, to obtain a clear picture of crime in Taiwan.

However, the police agencies still handle the majority of crime in Taiwan. The statistics from other crime control agencies are much smaller in scope than those from the police bureaus. Therefore, police crime statistics are helpful for us to understand the general crime scenario and trends in Taiwan.

The following analyses are about crime characteristics in Taiwan. Analysis is based on the police crime statistics (National Police Agency 2011). Firstly, in the year 2010 there were about 6,700 violent crimes, including murder and non-negligent manslaughter, kidnapping, robbery, forceful taking, serious injury, intimidation, and forcible rape, which occupied about 1.8% of all the offenses in Taiwan.[4] The violent crime number was 10,000 in 2000 and 14,000 in 2005; to compare from 2010 data this shows a sizable reduction for the past years. Secondly, property crimes, such as auto and motorcycle theft, burglary, petty theft, and grand theft, ranked at the top of all offenses. For example, in 2007 they were about 240,000 theft-related crimes, occupying 49% of all offenses known to police on that particular year. Like violent crime, the numbers of theft-related offenses was reduced substantially during past years. In 2000, there were about 300,000 cases and about 142,000 cases known to the police in 2010, showing a 50% reduction in 10 years. I suggest three factors which might contribute to the reduction of theft offenses in Taiwan. Firstly, it is the increasing levels of education in the population in Taiwan. We understand that the theft offenders are often from the less educated population. And, it requires one to learn skills and motives to become a member in the profession. A formal education would frustrate one to learn such skills and motives. Secondly, the rapid aging population in Taiwan also makes it difficult for the thieves to recruit new members. Finally, the prevalence of CCTV and security devices all over the island of Taiwan also contributes to the

[2] The number of police officers per 100,000 residents are 326 in Taiwan, which is larger than 223 in Japan, 250 in the United States, and 275 in the United Kingdom.

[3] Here, the crime rate is about 1,565 per 100,000 population.

[4] Here, the violent crime rate was about 29.13, much smaller than 403.6 in the United States in 2010.

reduction of the incidence of theft. Many criminals were apprehended through the photos taken on the CCTV cameras and in turn it produced an effective deterrent for motivated offenders.

Thirdly, fraud is an emerging problem in Taiwan. For the past 10 years, there were about 40,000 cases of fraud every year. The property losses are estimated to be NT$100 billion a year. However, the good news is that the number of victims decreased to 30,000 in 2010. Unfortunately, property losses were still enormous. Telephones were used to play confidence games and players now move to the cyber world to find victims. The fraud games involve sales or purchases of goods, having romantic relationships, a good return of investment, promises of a huge heritage to be given, or winning a lottery. However, it always ends with a fiction, not a reality.

Police do have many responsibilities in Taiwan. They take calls for assistance, such as lost and found services and victim services of the crime. They stay on the street to direct traffic, especially during rush hours, and they provide services of protection for women and children. Moreover, police are required to implement community police measures, advocating the concepts of goodwill and charity, and having a good relationship with the community. And, naturally, they have to take responsibilities concerning the combat of crimes, such as drug trafficking, possessions of illegal firearms, frauds, and so on. At the top of the above duties, police are also required to take a close look at potential criminals, such as the listed gang members and ex-convicts to ensure good social order in the community. Previously, they were required to make a home visit to every house in the community. The police home visits were required by law, as one of the police duties. The police officers showed up at the house to check the members of a designated residence. However, in 2007, the Taiwan Legislative Yuan passed a law to cancel this police practice due to strong opposition from the public. Legislators also criticized the fact that practices of home visits had created additional workloads for the police (Wu 2007).

In 2011, a survey on Taiwanese perceptions of police was conducted (Jou et al. 2011). The survey found 70% of the respondents showing their favorable ratings of national police, including police politeness, fairness, and integrity. However, only 46% of the respondents thought favorably about police crime fighting performance. This indicates that a high proportion of the people expect police to do a better job. The survey was also able to locate some of the factors shaping public perceptions of police, including gender, age, and individual level of fear of crime. The study suggests that efforts are needed to narrow the social distance between the police officers and the general public.

Science and technology are dominating the world now, and because of this many potential criminals turn their attentions to computers and the Internet to commit crimes. According to the Taiwanese police annual report in 2007, there were about 30,000 computer-related offenses (National Police Agency 2008) and 38% of them were Internet-related fraud and 30% of them were sexual trade-related offenses. There were other computer crimes, such as cyber bullying, cyber stalking, spreading viruses, and cyber intimidations in Taiwan. Specialized enforcement agencies are being created to fight against cyber crimes. These agencies are on duty to apprehend any possible violations in the cyber world.

After 38 years of lack of communication during the military conflict and cold war, Taiwan and the People's Republic of China started a dialogue in November 1987. At the beginning, people were allowed to visit their relatives. As a consequence, it brought about tremendous increases in trade, cultural, social, and personal exchanges across the Taiwan Strait. However, justice agencies were not allowed to make contacts and it resulted in a vacuum of law enforcement. Many Taiwanese fugitives fled to China to escape the legal sanctions. Later, in the year 1990, an agreement, the Kim-men Agreement (金門協議), was signed by representatives of the Red Cross Foundations of Taiwan and Mainland China, to combat illegal immigrants and criminals and a procedure of the exchanges for those deported was established. The trades were conducted on the sea by people from the two sides of the Red Cross Foundations. According to the statistics, a

total of 49,817 people were exchanged between 1987 and 2006.

In 2007, President Ma Ying-jeou (馬英九) assumed political power in Taiwan, and started to boost the cross strait relations in a pragmatic way. Mr. Chiang Pin-kung (江丙坤), the chairman of the Straits Exchange Foundation, and Mr. Chen Yun-lin (陳雲林), the chairman of the Association for Relations Across the Taiwan Straits, were able to meet seven times and signed sixteen agreements. Among them, the "Agreement on Joint Cross-Strait Crime-Fighting and Mutual Judicial Assistance" was signed in April of 2009 in Nan-jing (南京), China, and in <6 months, the first criminal, a con man, was deported from China to Taiwan through direct flight. This began a new and historical era that enabled police officers in Mainland China (called public security officials (公安)) and the Taiwanese police to work together to fight against crime. After the agreement, they have cooperated on nine occasions in 2009 and ten occasions in 2010. The majority were fraud-related offenses, emerging rapidly these days.

In the following, the author examines the due process rights concerning the handling of suspects by the police.

Many people understand that American police officials would read the Miranda warning when they make the arrests: "You have the right to remain silent; anything you say can be used against you in a court of law; you have the right to the presence of an attorney; if you cannot afford an attorney, one will be appointed for you prior to any questioning if you so desire." The Taiwanese police officers do not have to read these warnings to the suspects to ensure their legal rights. However, the suspects do enjoy some of the due process rights, including legal assistance, self-incrimination, and exclusionary rule. However, the nature of due process rights is not exactly the same as that of the United States.

In Taiwan, a criminal suspect is not required to answer police inquiry questions if the suspect is not accompanied by a lawyer. They can also refuse to answer any question after sunset and before sunrise. They can also check the wordings of inquiry and make sure that the contents are correct. Recording is permitted during the police interrogation. Moreover, if unlawful or excessive uses of force are used by the police officials, the suspects can report this to the prosecutors for investigation. The evidence of crime through the excessive use of force would be treated as illegal and cannot be used against the suspects.

Finally, the author would like to address an issue relating to police law enforcement on hooligans/gangsters. In 2008, the law was discussed by the grand judges, similar to the constitution court in many countries, and was declared to be unconstitutional, effectively making the police power of combating gang members illegal. Previously, Taiwanese police officers were allowed to arrest gang members and refer them to the court for up to a 1-year sentence. However, the grand judges issued an opinion saying that the law concerning the definition of gang members is unconstitutional due to the ambiguity in acts defining gang members. According to this law, gang member behavior could involve occupying turf, dining without pay, loafing on the streets, and committing indecent behaviors.

The grand judges also issued another opinion saying that police arrest without the appearance of the arrestees is illegal. Often the police invited scholars, prosecutors, and senior police officers to decide if a violation of hooligans' law has occurred. The suspects then were not invited to the meeting, which the grand judges make it against the spirit of the criminal justice procedure. The grand judges argued that any person, if detained, should go through a public hearing to ensure a proper law enforcement procedure.

Now, the hooligans are handled according to the common criminal code as well as other special statutes passed by the congress, the Legislation Yuan in Taiwan. Police are required to follow the general procedure of criminal arrest. Although the police officers do not have the legal ground to arrest gang members easily, they still work hard to fight against crime. Arrests are often made in the name of crimes against the code of organized crime, and a violation of the criminal code, such as intimidation, battery, or fraud.

19.3 Prosecutors: Criminal Investigations

Prosecutors in Taiwan are public administrators, integrated with the broader execution branches, the Execution Yuan. Because of this administrative nature, prosecutors are subjected to the supervision and management of their supervisors. The Taiwanese prosecutors' office has three levels, the district public prosecutors office, the Taiwan High Prosecutors Office, and the Supreme Prosecutors Office. There is a head for each of the district public prosecutors office and there is one head in both the Taiwan High Prosecutors Office, and the Supreme Prosecutors Office. The heads take responsibilities for daily operations for their individual offices. However, the head of the low-level prosecutor's office has to respond to the calls from the head of the high-level prosecutor's office. With this, the head of the Supreme Prosecutors Office, the Prosecutor General, enjoys the largest power of prosecutions. Among all his powers, he has the direct power of criminal investigations on crimes committed by the president, vice president, and other high-ranking officials in Taiwan. There is another power that no one else in the country has, which is the right of special appeal on criminal cases when criminal cases are already finalized in the courts. This power is often used by the Prosecutor General for death penalty cases. He could request a retrial to ensure that the death penalty made by the previous courts is justifiable.

There are about 1,200 district prosecutors, 170 high prosecutors, and 20 supreme prosecutors in Taiwan. Like prosecutors in many other countries, the prosecutors in Taiwan bring the accused criminals to the court in the name of a country so that the justice can be achieved. Prosecutors play the key roles for criminal investigations. They investigate criminal cases that are referred from the police office. And they can also proactively investigate criminal cases. Furthermore, they have the authority to lead the police officers and the agents of the criminal investigation bureau in the conduct of criminal investigations.

Legal cases are divided into three categories in Taiwan, which include civil, criminal, and administrative cases. The prosecutors can handle criminal cases only. They do not have the right to involve in civil or administrative cases. Theoretically, prosecutors take charge of criminal investigations. However, often they do not apprehend criminal cases proactively. The police and the investigation bureau along with other crime control agencies refer the arrested suspects to the prosecutor's office. Only serious crimes, white-collar crimes, or crimes committed by high-ranking governmental officials would receive prosecutors' interest and action to investigate.

However, regardless of whether the criminal cases are actively or passively in the hands of the prosecutors, they would examine and weigh the evidence of the criminal offenses. If the offenses constitute a violation of the criminal codes, the prosecutor would formally place a charge against the suspect. In this case the prosecutor would become the plaintiff, representing the state, and ask judges to indict the suspect.

According to the laws, the intake of criminal cases to the courts could be the prosecutors or it could be the general public. If prosecutors find a violation of the criminal code from the defendant, he or she would bring the case to the court, which we call a public accusation. However, the laws allow the general public who are the criminal victims to bring the offenders to the prosecutors. We call this a self-prosecution. If it is a self-prosecution, the prosecutor is not required to appear in the court to act as a plaintiff.

The Prosecutor General has the legal right to exercise a special appeal and bring the case to the highest court for a retrial. In 2010, there were 351 special cases appealed by the Prosecutor General and 278 of them changed the verdicts, signifying that the Prosecutor General is very careful and also very functional about the use of his or her appeal right. However, it also justifies that justice is not handled fairly in many of the cases in the courts. Incorrect verdicts could be found in the court system.

Prosecutors are very busy in Taiwan, especially those at the first level, the district prosecutors.

The following statistics would give you the general picture. In 2010, the number of new cases to be handled by the 1,200 district prosecutors was 412,553. This translates that there are about 1 or 2 cases a day added to the list of daily criminal investigation numbers. Usually it takes an average of 50 working days to deal with a case. Prosecutors take new cases every day and they have to exam every case brought to their offices. At the top of the above-mentioned workload, Taiwanese prosecutors are required to check into suicide cases, and there are about 4,000 suicides a year. Expectedly prosecutors are facing a tremendous workload. "Prosecutors are too busy" is a complaint often heard from the lawyers, and it has become a subculture in the prosecutor's office.

We have just mentioned that prosecutors handle the majority of their cases referred by the other agencies. In 2010, the police referred 292,742 cases which account for about 71% of the cases that the prosecutors handled. There were also 1,683 cases referred by the Investigation Bureau, and meanwhile 13,470 cases were brought in through litigations from the general public. Obviously, the majority of cases handled by the prosecutors are from the police. According to the statistics, 95% of the cases from the police ended with a verdict in the courts, meaning that the quality of crime investigation by the prosecutors is good. In Taiwan, 3% of the prosecutors' cases at the local level are self-litigations, brought in by the general public. However, the number of statistics has been increasing for the past years due to the increasing awareness of the legal rights in Taiwan. Now, in Taiwan prosecutors would not handle personal litigations without the assistance of a lawyer.

In the following the author addresses the due process rights relating to the discretionary power of a prosecutor.

Speedy trial is a constitutional right for all Americans. There is a due process rule, the 48-h rule, in the United States that the accused should be brought to the judges within 48 h. In 1991, in the case of California vs. McLaughlin, the United State Federal Supreme Court argued that the criminal justice system needs flexibility to ensure its functions, and the 48 h would meet the needs for this flexibility. In Taiwan, a criminal suspect if arrested is required to be sent to the court within 24 h, only half of the detained hours used in the United States. This also means that the Taiwanese police officers and the prosecutors have to share the 24 h together. Most of the time, police officers could have 16 h and the remaining 8 h belong to the prosecutors. Although, the Taiwanese police officers and prosecutors cannot detain an arrested suspect as long as they want, they still need to ask permission from the court for a continuous detention provided that the suspect has committed a serious offense and a detention for further investigations is needed.

In the United States, for a serious offense, it requires a grand jury to investigate and decide if prosecution is needed. A grand jury is organized by the prosecutors and members from the community. The purpose of the grand jury is to investigate if the criminal act constitutes a probable cause for the criminal offense. The grand jury will call the defendant for a public hearing so that an adversary procedure is assured. However, there is no grand jury arrangement in Taiwan. The accused can show up before the prosecutor and make statements. On the other hand, no one except the lawyer can be allowed at the hearing due to the confidentiality of criminal investigation.

19.4 Plea Bargaining

Plea bargaining is practiced in many countries. It is an agreement in a criminal case where the prosecutor allows a less serious charge provided the defendant agrees to his or her wrongdoings. In Taiwan, the prosecutors have the power of exercising the plea bargain procedure in the justice system. The prosecutor meets with the defendant and his or her lawyer to negotiate a possible punishment for the wrongdoings before the accused is brought to the court. In 2004, the legal system in Taiwan formally adopted the practice of plea bargaining for the purpose of reducing the burdens on the courts while ensuring that justice in the society is maintained. A prosecutor can

call for a negotiation with the defendant and the defendant's lawyer after a formal charge is forwarded to the court. They meet in order to reach a possible conviction. Plea bargaining in Taiwan can only be used when the defendant admits his or her wrongdoing. It is also applicable when it involves with minor offenses. Crimes punishable by capital punishment, life sentence, or a confinement of more than 3 years are not permitted for plea bargaining.

It has been several years since Taiwan started to exercise the plea bargaining policy and there is now a total of about 10,000 cases ending with plea bargaining. Drug offenses are most likely to be called for a plea bargain by a prosecutor. Fraud, falsification of documents, and petty theft are also offenses where a prosecutor often calls for a plea bargaining.

There is another practice which is close to the concept of plea bargaining commonly practiced in the United States. In 1991, a Petty Crime Court system was installed in Taiwan. For minor offenses, provided that the accused admits his or her offense, a prosecutor would refer it to the Petty Crime Court. In this court, the defendant is not allowed to appear and the judge exercises the judicial discretion according to the documents and statements from the prosecutor's office. However, the discretionary power of the judge is limited to a confinement of less than six months. The due process rights of public hearings and confrontation of witnesses do not apply in the Petty Crime Court.

From the above, it is obvious that prosecutors serve two major functions; criminal investigations and prosecutions. We mentioned how the Taiwanese prosecutors exercise their powers in the system so that crime can be brought to justice. Subsequently, we will discuss the role of the judges in Taiwan. They enjoy the largest power in the criminal justice system. However, the system can be very problematic if they overly abuse their powers.

19.5 Judges: The Sentencing Decisions

The purpose of the courts is the handling of civil law suits. They also handle criminal cases as well as juvenile delinquent cases. In Taiwan, petty crime courts are installed to handle civil law suits as well as criminal cases, minor in nature. Petty crime court also takes case in violation of social security codes.

The court is crucial in the criminal justice system since this is where the justice is finalized. If a verdict is reached in the court, punishment will follow. It could be a fine of some amount of money, a work service in the community, probation for a period of time, or a confinement in jail. If no verdict is reached, one simply leaves the criminal justice system. One cannot pursue his or her justice from within the prison system. That is, one cannot exercise the right of appeal to reverse his or her course in the system from the prison to the court. In Taiwan, there is one exception. For the death penalty case, the Prosecutor General has the right of appeal to ask the court for another trial. In this case, one might be able to change the course after the court has already made the final verdict for the defendant.

In Taiwan, there are three levels of court. The local court, or the district court named in Taiwan, is the lowest level which serves the function of intake of cases in the court system. The high court is the second level, above the local court, and the highest court is the court of last resort of justice. Theoretically, the three levels of the court act independently. They exercise their own discretionary authority. However, all the cases are processed from the lower level of the court and then move up to the next level. The use of the right of appeal can only be utilized in the two lower levels of the court. However, it is not guaranteed that all the cases are legally allowed to enjoy the right of appeal. The court limits the use of appeal, unless there is a need of special appeal for the Prosecutor General or there is an adequate reason for retrial. However, in most of the criminal cases, the verdicts can bring their cases to the higher level of the court to look for the opportunity of changing their fate in the system. These practices of appeals at different levels of court are very common in most of the countries in the world.

There are about 1,800 judges in Taiwan. Among them, the local courts have a majority of the judges, about 1,200. There are about 400 judges in the high courts and about 80 in the

highest court. The remaining are at the administration court and the public functionary disciplinary sanction commission and other administrative branches of the court.

The administration court is very special in Taiwan and operates to handle disputes between citizens and administrative bodies. Everyone has the right to bring his or her cases to the administration court if he or she finds the administration agencies to be unfair. This may concern a fine on violations of the traffic laws, or tax laws, or can be any decisions based on the constitutional rights of the citizens, such as meeting or having an organization. However, one cannot pursue the justice at the administration court without going through the appeals at the previous administrative agency. One has to ask for justice from the previous government unit before one can bring the case to the administration court. This special administration court has only two levels, the high court and the highest court, and there are about 75 judges to run this system.

In Taiwan, there is a special design for the constitutional court. It consists of 15 grand judges. The constitutional court has the power to dissolve a political party which violates the constitution. This court also has the power to impeach the president and vice president. Other than the above two powers, the grand judges also have the power to interpret the constitution, or the law and administration regulations. To date, however, they have never exercised their power to impeach a president or a vice president, and they have never sought to dissolve a political party.

The grand judges are nominated by the president and the confirmations are made in the congress, the Legislation Yuan in Taiwan. This part of the operation is very similar to the justices in the United States. However, the following points are different. The Taiwanese grand judges have a term limit, 8 years of service for a term only. By law, they are not allowed to set a second term. However, all the nine members of the Supreme Court Justices in the United States are life term appointed. Moreover, the Supreme Court is the highest level, whereas the constitutional court of Taiwan organized by the grand judges is not. Therefore, one cannot take the advantage of the constitutional right to appeal his or her case from the highest court to the constitutional court. The constitutional court in Taiwan could operate to deal with the impeachment of the president and vice president and it also operates to deal with the legal status for a political party. These are their major and only powers.

The grand judges in Taiwan have another power, which is the power to interpret the law including all governmental rules and regulations. The grand judges meet together, express their independent opinions, and come to a conclusion by vote. The latest meeting issued by the grand judges was on November 4th, 2011. There have been 692 cases issued by the grand judges since 1949. A recent case involved a Taiwanese businessman, working in Mainland China, applying for tax deduction for his daughter studying at Peking University. The Taiwanese tax agency rejected his application for the reason that children studying at a university not recognized by the Ministry of Education in Taiwan does not qualify for tax deduction. Peking University was not a recognized legal institution by the Taiwanese Government at the time the said case happened. However, the grand judge ruled that the practice from the tax agency was unconstitutional since tax deduction for children is designed to help the parents to achieve their responsibility of taking good care of their children, regardless of where they stay or what school they study in.

The grand judges in Taiwan take cases from all the highest governmental bodies in Taiwan. They can be the executive branches or the justice branches. They can also take cases from the legislation branches. In addition, they can take cases from the general public, the interest groups, or the political parties as long as there is a need for the grand judges to provide an opinion on law. According to the statistics of the court in 2010, the grand judges took 541 cases. Among them, 12 were from the governmental bodies and the remaining were from the general public. Obviously, it is quite simple for general citizens to bring their cases to the grand judges, as long as cases are points needing interpretation. However, most of the time, it is very difficult for cases to appear. In 2010, the grand judges finalized a total

of 561 cases, with only 14 explanations. And, the remaining cases were dismissed by the grand judges.

In Taiwan, the courts are very busy, busier than the prosecutors' office and the police bureaus. More and more people now bring their cases to the court. Criminology textbook describes a filter process phenomenon in the criminal justice system, where cases are reduced as they go through the justice system. However, you will be unable to see such a filter process in Taiwan. On the contrary, the district courts have the largest number of cases in the system. For example, in 2010, there were 1,075 serious criminal cases, 477,261 criminal cases, and 48,000 juvenile delinquent cases. As described earlier, the police forwarded about 360,000 cases a year and there are about 410,000 cases at the prosecutors' office. Obviously, the courts handle more criminal cases than the prosecutors as well as the police officers. In addition to criminal caseload, the district court judges have other duties, such as providing signature for married couples having the wedding ceremony in the court, handling of bankruptcy cases, and any law suits against the government for compensations from the victims of the state. These heavy loads have created problems in the operations of the court, the slowdown of the justice system and the quality of judicial decisions.

The office of the Judicial Yuan (2011), the administrative body of the judicial system, conducted a survey on consistency of the district courts judges and the high courts judges and concluded that the consistency rate for criminal cases was 61.9% in 1996 and 57.8% in 2006. The statistical figure improved in 2008 with a rate of 69.91%. This year, the rate is 71.01% which is the highest rate of consistency yet achieved. The consistency rate is now used by the Judicial Yuan as a measure of the quality of judicial discretion. It shows that the quality of the judicial discretion is improving. Yet, it also indicates that there are still a significant number of inconsistent decisions made by different level of courts. The office of the Judicial Yuan also indicated that the inconsistent rate is much higher in the civil court cases. Furthermore, the senior judges often made decisions which are contrary with decisions made by the other court. The inconsistent decisions made by different level judges have raised a concern about whether justice can be done in the court, or if there is a fair trial in the court. This is the reason that Taiwanese describe the judges as "dinosaurs." They are influential and they can do whatever they want. In the September of 2010, a female group in Taiwan mobilized a social movement, the white rose movement, which intended to protest against judges abusing their powers, particularly, in regard to sexual predators' cases, where the judges made apparently lenient punishments. The protestors took white roses and marched on the streets to express their distrust of the judges. The group also asked for professional evaluation to be established for all the judges.

A survey conducted by Jou et al. (2011) showed that 68.5% of the 527 respondents in Taipei city are doubtful about the fairness of the judges. The widely spread cynicism among the public concerning the fairness in the judicial system has to do with the abuses of the power by the judges. Theoretically, the judges after careful review of the evidence would make their own decisions. However, this might easily create a problem if a judge takes a bribe and changes the decision, from guilty to non-guilty, or from a prison term of 10 years to 1 year. The unlawful use of the discretionary power by the judges has created a feeling of distrust by the public concerning the integrity of the judges. The judges' illegal conduct became a reality when in 2010 the prosecutor's office placed a bribery charge against thirteen judges.

There have been voices calling for judicial reform to help regain trust from the public. Among the suggestions, people are being encouraged to call the prosecutor's office if they find wrongdoing in relation to judges as well as prosecutors. People are also encouraged to appear in court so that this possibly will have an impact on judges. The reforms also ask for legislation on judges' performance, including professional evaluation among the judges. Lastly, reforms suggest adoption of the jury system in Taiwan. There was a significant reform recently when the Taiwanese Government passed the "Judges Law" on June 14, 2011. The law requires establishment

of the personal review board to process all the recruiting and promotion of the judges. The law also requires all judges to be evaluated every 3 years. This will need time and work before one can examine the effects, but it should help to minimize the abuse of power by the judges.

19.6 Death Penalty in Taiwan

The latest execution was in March 2011. Five criminals were executed. Previously, in 2010, four death penalty convicts were executed and in the period 2006–2009, for 4 years Taiwan did not have any execution. Until the end of November 2011, there are a total of 53 persons on the death row.

In Taiwan, the minister of justice is responsible for the execution. It requires the Minster to sign the document for the execution to be handled. As long as the minister refuses to sign, there will be no execution. However, if the minister does so, he or she will face serious protests from the public. One Minister, Miss Wang Ching-feng (王清峰), stepped down due to her refusal to carry out an execution in 2010. A tremendous number of complaints arose and forced the minister to resign.

In Taiwan, the Prosecutor General is the only authority having the power to delay the execution. The Prosecutor General has the right to exercise the right of special appeal after all the courts have finalized their independent judgments. The President of Taiwan does not have the right to exercise this special power, neither does the Minister of Justice. The exercise of this special power would request the highest court for another trial. If the special appeal is raised, the execution has to be temporarily halted since the process of justice is not finished. The constitution in Taiwan does not set a limit on the use of the right of special appeal. It can be any number of times as long as the Prosecutor General asks for another trial.

The death penalty is a highly disputed issue in Taiwan. There is a social movement group, the Taiwan Alliance to End the Death Penalty, calling for the abolition of capital punishment. They protest against the death penalty saying that it is inhumane and could lead to wrongful execution of the innocent. They also argue that unfair trials are very common in the criminal justice system. In fact, in 1997, a young soldier, at the age of 21, was executed for committing forcible rape. On 12th of September 1996, a 5-year-old girl was found dead in a military compound. The young soldier confessed through torture. He later denied his crime and said that he was tortured and forced to admit his offense. The military court did not accept the argument and executed the soldier immediately. Later, no DNA evidence of the young man was found on the toilet papers which were used as the major evidence of the offense. In fact, it was later found that another soldier, a pedophile, had raped and killed the girl. The fingerprint matched with the evidence left at the scene. The use of death penalty can be dangerous and unfair. This is the reason that people at the Taiwan Alliance to End the Death Penalty are calling for a stop to the executions.

Although there is a social movement calling for the abolition of the death penalty, public opinion continues to support capital punishment. In 2010, a domestic newspaper conducted a poll that showed that 74% of the respondents were against the abolishment of the death penalty (United Daily News 2010). The poll showed only 12% of respondents supporting the abolishment of death penalty. Public opinion continues to lead discussions about the current policy of the death penalty, and it is very unlikely that the death penalty will be taken away in Taiwan soon. However, the author suggests that judicial decision of a death sentence needs stricter regulation. For example, it must be a unified opinion in the court if a death penalty is to be used for a convicted criminal but an oral or a written statement cannot be used as the only evidence of crime in death penalty cases.

The right for a counsel is a constitutional right for a criminal suspect and can be found in the criminal justice system in Taiwan. However, it is not a right guaranteed for everyone. In Taiwan, a counsel can be appointed to assist you only if your cases are processed at the court. There is no lawyer to help you when police arrest a suspect.

There is also no lawyer to accompany you before the prosecutors. Yet there are two conditions to be met so that a lawyer can be appointed to assist you. First, it has to be a serious offense, punishable for more than three years imprisonment and, second, it has to be a condition where the accused does not have the ability to describe the details of the offense. The appointed counsels are governmental employees and their incomes are similar to judges. There are a total of 51 public defense lawyers in Taiwan.

On the other hand, there are other alternatives through which members of the public can find legal assistance. You can request for legal assistance from a nonprofit organization, the Legal Aid Foundation. The organization will send a lawyer to protect your rights in the justice system. The requirement for granting a lawyer is that you are poor and you cannot afford to hire a lawyer. In 2009, there were a total of 83,373 applications and 32% of them, 27,071, were granted legal services (Legal Aid Foundation 2010).

The following are two legal rights shared by citizens in the United States which are not the case in Taiwan. From a comparative criminology perspective, it is worthy of discussion since it could reflect how the culture may affect the operation of the justice system. Firstly, it is the right of trial by the general public, the jury. The sixth amendment of the US constitution guarantees the right of trial by jury. Regardless if it is a serious or a minor offense, one has the right to a jury trial. In the United States more than half of the trials are made by jury trial, while 44% of the trials are made by judges. However, due to the difference in the legal system, there is no jury trial in Taiwan. Judges take the responsibilities of making the decisions in the court. The judge-based legal system is also integrated with the imperial examination (科舉), where the elites or public bureaucrats are selected in Chinese society. And, the road to a judge is an uneasy one. You have to take a series of examinations, and you have to surpass many competitors.[5]

[5] In 2011, 7,981 people took the exam to compete for 70 judges positions.

Secondly, the due process right of double jeopardy is not practiced in Taiwan. According to the 5th amendment of the US constitution, no person shall be subject for the same offense to be twice put in jeopardy of life or limb. If no verdict is reached and release is decided upon the state cannot appeal in the same offense. This is to forbid a defendant from being brought to trial all over again and thus, remained to be uncertain with the justice system. Currently, in Taiwan, the double jeopardy rule cannot be invoked. The local court makes the judgment of not guilty but this is not the final say within the criminal justice system. The prosecutors can still litigate your case to the upper court for a trial. The exercise of the right of appeal is to assure that justice can be fairly handled. However, this creates an uncertainty for the defendant. As previously discussed, there are about 30% of the cases inconsistently ruled by different judges and naturally the decision of the criminal justice system could be very different if a retrial is appealed.

19.7 Conclusion

This paper addresses three major components of the criminal justice in Taiwan, the police, prosecutor, and the court. We examine the organizations and their functions. We also describe how they actually process the cases brought to the system. The system is a formal social control mechanism and it exercises the work of the authorities to bring these violators of the law to rightful punishment. It functions this way to maintain social order within the community in order to achieve a sustainable environment for all the people. Moreover, this system is also often used by the general public to protect their personal rights, especially when they encounter disputes or conflicts with others.

There is another component in the criminal justice system that was not discussed in this chapter, the correctional institutions. In Taiwan, there are 24 prisons, 12 detention centers, four drug abuser treatment centers, three occupational training agencies, two juvenile reform centers, and two juvenile correctional schools. There are

a total of about 65,000 people in correctional facilities. If we translate this number into the International Standard of inmate's population, we obtain 280 per 100,000 people, ranking at the 25th of about 160 countries (NationMaster.com 2012). Without doubt, the prison body is a major component in the justice system.

From the above discussion, we understand that the three components of the justice operate independently and they exercise their individual powers given to them by law. They have their own roles and responsibilities and they are connected to each other in the system. The police act as gatekeepers, determining the intake stage and they forward the arrested suspects to the prosecutor office. The prosecutors play the key role of crime investigations and move the cases to the judges, if they find any violation of the criminal code. The judges then make the final disposition and change the status for an accused from a suspect to a criminal.

The criminal justice system is designed for all the members of a society to have their rights to pursue justice. In the case of Taiwan, we found that more and more people are willing to bring their cases to the system, revealing the increasing level of awareness of legal rights among the Taiwanese. It also means that more and more Taiwanese are searching for their own justice from the system, rather than through personal means.

Furthermore, restorative justice, popularized by Australian criminologist John Braithwaite (1989), is now a formal policy in Taiwan. In 2009, the Ministry of Justice announced this policy and encouraged restorative programs to develop in the criminal justice system. Particularly, it encourages a dialogue between the victims and the offenders so that normal relationships can be restored. The court, the prosecutor offices, and the prison are allowed to organize a meeting for the victims and the offender, along with the participation of a mediator. The majority of programs involve minor offenses, such as family violence, theft, and traffic incidents. Restoration programs are legally part of the justice system in Taiwan now and we expect that the Justice office will implement and develop restorative justice practices to enhance the justice system.

The purpose of criminal justice is to bring law violators into the system for justice to be dispensed. However, there is a problem when this system does not operate according to its purpose. If this happens, the system might not be able to meet the needs and expectations for people who are searching for justice. Unfortunately, very often we witness the system serves the interests of a certain segment of the people, particularly those who are powerful or those who are rich. Here, we have to admit that the justice system operates with its limitations.

Finally, as a sociologist, I understand that every society finds its own way of providing formal justice and this lays a ground for the particular operations of the justice system. Indeed, the functional operations of the criminal justice system need a cultural basis. Therefore, the criminal justice system in Taiwan operates with its own characteristic style, underpinned by cultural support. The author would argue that traditional Chinese officialdom, centralization, and big state, rather than the individual, underpin the operations of the criminal justice system in Taiwan, with its judge-centered and statute-based approach. It is suggested that criminologists study these cultural underpinnings to better understand criminal justice both in Taiwan and elsewhere.

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Contemporary Crime and Punishment in Thailand

20

Lesley D. Junlakan, Yossawan Boriboonthana, and Assanee Sangkhanate

20.1 Introduction

Thailand is unique amongst its Southeast Asian neighbors in never having been colonized and in remaining to this day a constitutional monarchy. A fledgling democracy prone to political instability and with a long tradition of resorting to coup d'état to resolve political stalemate or tension, over the past several decades the nation has witnessed enormous social and economic change. All these and other factors have contributed to the character of the country's criminal justice system as it is today, including the existence of the right of prisoners to claim and benefit from royal pardons and fluctuations in successive governments' penal policy.

Working within the acknowledged limitations imposed by flaws in the recording and maintaining of statistics in Thailand, the chapter aims to highlight the country's current crime trends, punitive measures, and criminal justice reform A particular focus is on the links—or discrepancies—between penal policy and practice, with special attention being paid to the drug issue, including related legislation and the distinction that is now made between drug users as opposed to drug producers/traffickers. It is also demonstrated how the hard line approach to the latter has affected the caseload of core criminal justice agencies, in particular the Department of Corrections and the Department of Probation.

In drawing attention to and being objectively critical of several aspects of the Thai criminal justice system, including the weaknesses in databases and the policy/practice dichotomy referred to above, the authors hope to make a small contribution to instilling awareness of the constant need for improvements in the system in order to slowly bring it on a par with international norms and standards.

20.2 Current Crime Situation

The primary objectives of this section are to demonstrate the *type*s of crime which Thailand has faced in recent years through the workload data of relevant criminal justice system agencies. This sets the foundation for later discussion of the reform of Thailand's criminal policy and the criminal justice system. At the outset it has to be stated that a holistic approach has not yet been applied to the management of crime-related data in Thailand. Therefore, currently the best approach that can be taken is to rely on individual agencies' data. As the authors are well aware that dealing with secondary data might have a negative

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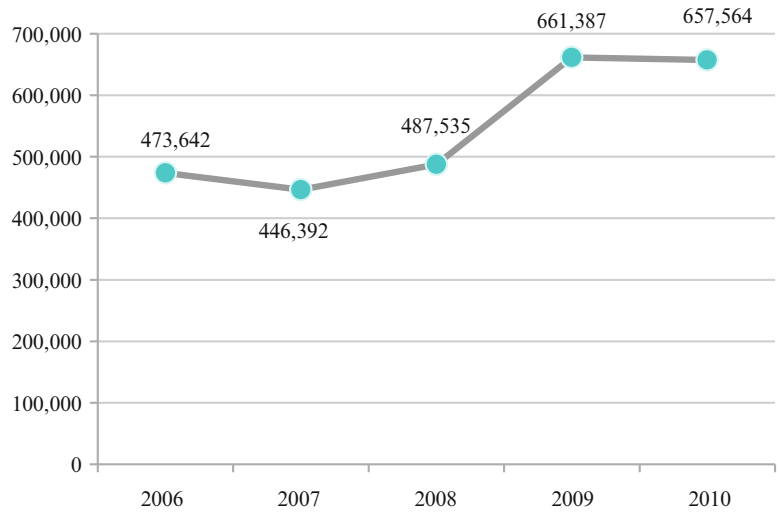

Fig. 20.1 Number of crimes reported to the police, 2006–2010. Source: Office of Justice Affairs (2011)

impact on the validity and reliability of this paper, a triangulation approach was used during the analysis in order to maintain a balance between data from different sources: namely, police records, prosecutors' caseloads, and the judiciary's statistics.

Although Thailand does not have a "*uniform crime report*"[1] as such issued by law enforcement agencies, the statistics presented by the Royal Thai Police can provide general data on crimes reported to the authority. Generally speaking, since 2006 the number of crimes reported to the police has gradually climbed (Fig. 20.1). In detail, 473,672 cases were received by the police in 2006, with the number slightly decreasing to 446,392 in 2007 before steadily rising to 487,535 and 661,387 in 2008 and 2009, respectively. The authors believe that the pronounced increase between 2008 and 2009 stems from the reintroduction of the "get tough" on drugs policy, initiated originally in 2002 (see also below). The latest figures show another slight decline to 657,584 in 2010. Thus, the annual average number of crime reports over this 5-year period is 545,304. It is worth noting that these statistics do not include cases which victims decided not to report to police. (This issue is discussed further below.)

Table 20.1 Violent crimes reported to the police in 2010

Offense	Number of reported cases
Murder	3,658
Attempted murder	4,976
Manslaughter	265
Assault	16,805
Rape	4,468
Robbery	1,691

Source: Office of Justice Affairs (2011)

The most commonly reported violent crime is assault, followed by attempted murder and rape (Table 20.1). A fairly recent definition change in violent crime involves rape: in 2007, the Thai Criminal Code was amended to expand the definition to cover all types of rape, including marital rape; rape by/of either sex; and all types of sexual penetration.

In addition, Fig. 20.2 indicates the top five major offenses resulting in arrests between

[1] The Uniform Crime Report (UCR) has been under the supervision of the Federal Bureau of Investigation since 1930. The report aims to produce reliable and uniform crime statistics from law enforcement agencies across the USA. See http://www.fbi.gov/about-us/cjis/ucr/ucr.

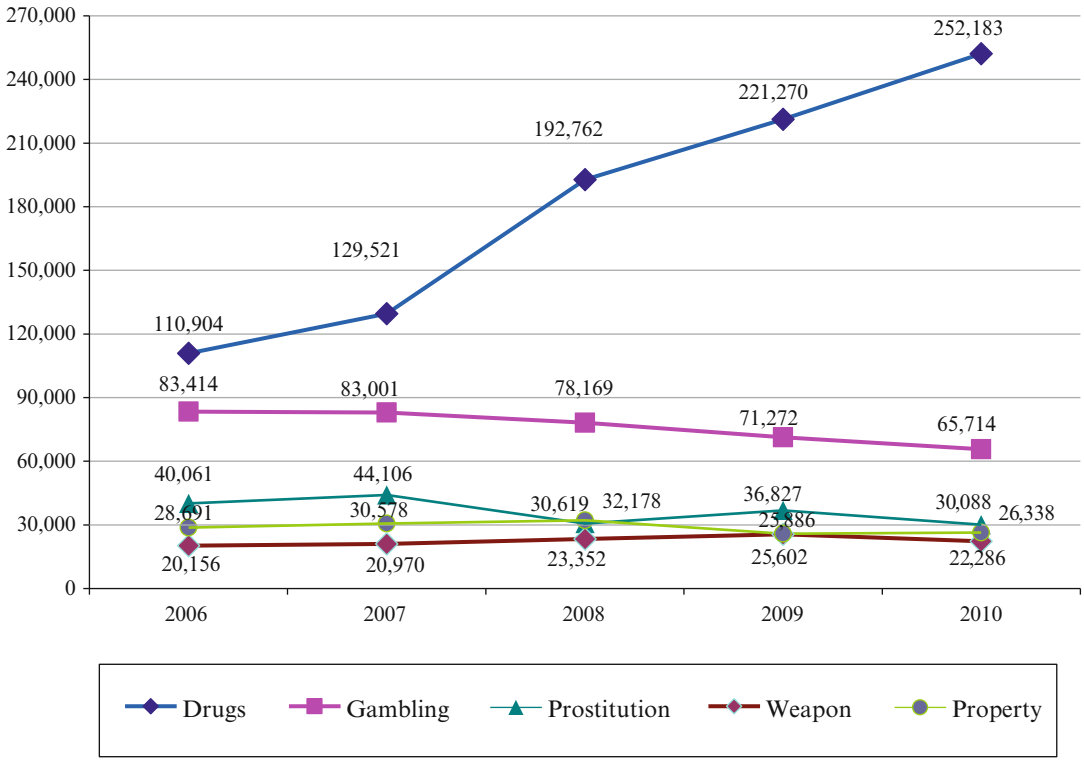

Fig. 20.2 Crimes reported to the police and resulting in arrests, 2006–2010. Source: Office of Justice Affairs (2011)

2006 and 2010. The numbers show that arrests on drug-related offenses rose sharply over the period while the numbers of other orthodox offenses, except property crime, decreased. Arrests in property crimes slightly increased in 2010. This was consistent with the recent victim survey which revealed that the majority of the respondents were victims of property crime (see the discussion on "dark figure" below). When specifically looking at the 2010 statistics, the number of drug arrests was as high as 252,183 cases, increasing from 2006 by almost 130%.

However, it would be wrong to assume that the increase in arrests on drug-related offenses was solely due to an increase in the abuse of *traditional* drugs (viz. heroin and cocaine): the criminalization of new substances, especially methamphetamine, together with recent governments' strict policies on drug suppression are also significant factors which led to this sharp rise.[2] Evidence shows that considerable resources have been allocated to ensure the success of such policies (Chokprajakchat et al. 2010). Relevant law enforcement agencies, in particular the Royal Thai Police and the Office of the Narcotics Control Board, have been urged to play a more proactive role in combating the supply of drugs whilst simultaneously reducing the demand. The present government of Yingluck Shinawatra has even made the drug problem a "*national agenda*,"

[2] The Nacotic Addict Rehabilitation Act in a way "decriminalized" the act of drug abuses and treated drug users as "patients" who needed treatment rather than "criminals" who deserved punishment. Therefore, the rise in drug cases presented here was mostly related to the production, distribution, export, and import of the illegal drugs or substances.

classifying it as one of the "Urgent Policies to be Implemented in the First Year."[3] Evidently, therefore, a crime control approach prevails when it comes to dealing with drugs in Thailand.

Gambling[4] and prostitution,[5] the second and third most common crimes resulting in arrests, respectively, should also be highlighted here. Although many countries have already decriminalized gambling and prostitution, Thailand continues to regard them as crimes in need of punishment, possibly due to the fact that Thailand is a predominantly Buddhist country.[6] According to Buddhism, there are six evil consequences for those who indulge in gambling. All forms of gambling, therefore, are prohibited not only on religious and moral grounds but also under the nation's legislation and criminal policy. In recent years there have been attempts to decriminalize gambling on the basis of enhancing the national revenue through the operation of casinos. However, advocates for this still have not succeeded in convincing the policy makers of the desirability of doing so, despite the fact that most of Thailand's neighbors, including Cambodia, now benefit financially from casinos.

A similar approach has been adopted to the criminalization of prostitution. Although recognized in theory as a victimless crime, prostitution can lead to both the violation and exploitation of the rights of those forced into the sex industry. Again, Buddhism condemns prostitution, believing that it potentially provokes infidelity which runs counter to religious doctrine. Therefore, as a result of the strict policy on this agenda (Samran 2010) together with pressure from the public and both domestic and international media, the number of arrests in prostitution cases has remained in the top five since 2006.

The process for the passage of these and other cases through the Thai criminal justice system is relatively similar to that in other jurisdictions. That is, after the inquiry process by the police and the amassing of evidence, the case proceeds to the Office of the Attorney General (OAG). In 2010, 3,143,686 cases were handled by the OAG.[7] Cases which, in the opinion of the public prosecutor, are supported by sufficient evidence and are capable of being proved beyond reasonable doubt will be indicted in the Court of First Instance. Table 20.2 demonstrates that the five most common types of cases prosecuted by the OAG very largely reflect the five most common causes of arrest as presented in Fig. 20.1, the main difference between the two statistics being that prostitution, which ranks 3rd in police

[3] According to the Policy Statement of the Council of Ministers delivered by Prime Minister Yingluck Shinawatra to the National Assembly, 23 August 2011: "1. Urgent Policies to be Implemented in the First Year. 1.2 Prevention of and define solutions to drug problems as a "national agenda" by adhering to the rule of law to crack down on and penalize producers, dealers, influential persons and wrong doers by strictly enforcing laws; adhere to the principle that a drug addict is a patient who shall receive treatment to enable him/her to return to be a productive member of society; have a systematic mechanism to monitor and provide assistance; seriously expedite the prevention of drug problems by seeking proactive cooperation with foreign countries in controlling and seizing narcotic drugs, chemicals and materials used in the production of narcotic drugs smuggled into the country in an integrated and effective manner; and, prevent vulnerable groups and the general public from getting involved with narcotic drugs by harnessing all sectors of society to fight against narcotic drugs." See The Secretariat of the Cabinet. (2011). Government's Policy. http://www.cabinet.thaigov.go.th/eng/bb_main31.htm.

[4] The principle law against gambling in Thailand is Gambling Act 1935. It, however, does not provide the exact definition of "gambling" but rather specifies the activities which can lead to "gambling," i.e., lottery, Bingo, and billiard. It should be noted that the activities themselves are not "illegal" but the "intention" of the parties involved can be deemed as illegal. Basically, the law prohibits the act of betting or wagering for money on such activities.

[5] According to the Prevention and Suppression of Prostitution Act 1996, "prostitution" is defined as "sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not."

[6] A census in 2005 (http://www.onab.go.th) revealed that there were 46,902,100 Buddhists in Thailand (or approximately 73% of the total population—the authors).

[7] This figure includes both new cases and pending cases carried over from previous years. See http://www.stat.ago.go.th/stat/53/p-cri-.htm for further details.

Table 20.2 Number of cases prosecuted by the OAG in 2010, ranked in descending order

Offense	Number of cases in 2010
Drugs	134,469
Gambling	64,762
Immigration[a]	31,926
Theft	29,805
Weapon	16,223

Source: Office of the Attorney General (2012). http://www.stat.ago.go.th/stat/53/cri%2011.htm

[a]These were offenses against Immigration Act, 1979 and the majority involved illegal entrance to the country and the use of false documents. Section 58 of the Act indicates that "any alien who has no lawful document for entering the Kingdom under Section 12 (1); or has no Residence Certificate under this Act; and also has no identification in accordance with the Law on Alien registration, is considered to have entered into the Kingdom in violation to this Act"

records, is replaced by immigration cases in the OAG's statistics. It is a moot point as to where these prostitution cases have "disappeared" and available statistics have not enabled the authors to draw a definitive conclusion. However, opting for an alternative source of data has helped to identify a possible explanation: the key legislation concerning prostitution. Although efforts have been made by the authorities to effectively deal with the issue of human trafficking in Thailand, the specific laws against prostitution, one of the core "businesses" of human trafficking, and their enforcement are ineffective (Samran 2010). For example, according to the Prevention and Suppression of Prostitution Act 1996 (Articles 5–7), the commission of many of the prohibited acts can be settled out of court by the payment of a fine. The law also provides room for police discretion, e.g., in determining the acts of "communication," "self-introduction," and "invitation," between the prostitutes and their customers. This, therefore, could result in many prostitution cases being dropped by the police when offenders pay the fine, with the result that prostitution does not figure among the five most common types of cases in the OAG's statistics.

Lastly, an examination of the judiciary's statistics reveals that in 2010 there were 544,258 cases admitted to the Court of First Instance (Office of the Judiciary 2012). Table 20.3 demonstrates that the five most common offenses in that year were, in descending order, as follows: drug-related offenses (160,478 cases); traffic offenses (106,679 cases); gambling (63,228 cases); violations of immigration laws (34,231 cases); and theft (31,739 cases) (Office of the Judiciary 2012a, b). These statistics confirm that drug cases have dominated the workload of key agencies in the criminal justice system in recent years. Gambling and theft remain in the top five, while the number of traffic and immigration cases surpassed those involving prostitution and weapons in the Court of First Instance (some prostitution and weapon cases were minor offenses and thus not pursued in Court—the authors). In addition, in 2010 the three most frequent sentences imposed

Table 20.3 Number of cases admitted to the Court of First Instance in 2010, ranked in descending order

Offense	Number of cases in 2010
Drugs	160,478
Traffic	106,679
Gambling	63,228
Immigration	34,231
Theft	31,739

Source: Office of the Judiciary (2012a)

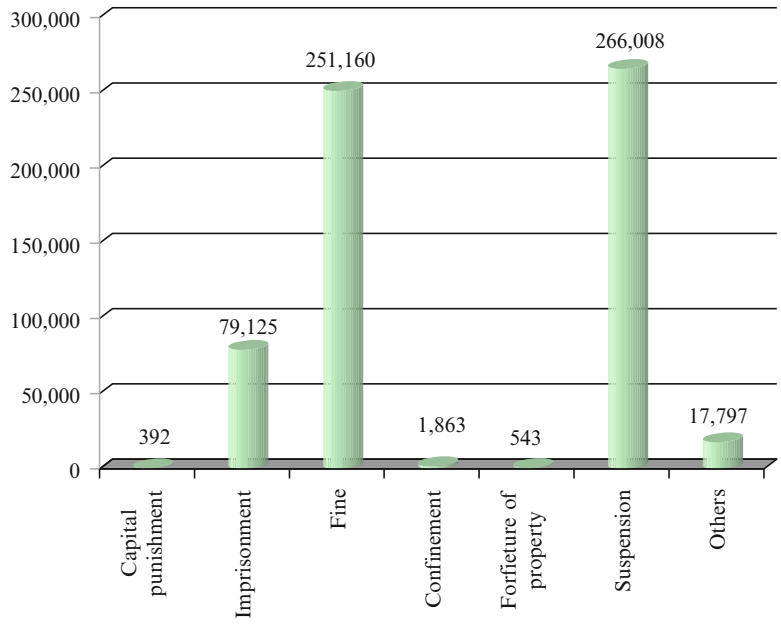

Fig. 20.3 Types of sentences handed down by the Court of First Instance, 2010.Chart adapted from the original in Office of the Judiciary 2012, p. 31. Source: Office of the Judiciary (2012b)

on convicted offenders by the Court of First Instance were, in descending order, suspension of punishment, fine, and imprisonment (Fig. 20.3).

To sum up, according to the data presented above, drug-related offenses represent a major crime problem in Thailand, dominating the workloads of the police, prosecutors, and the judiciary. However, as has been suggested by earlier scholars (Biderman and Reiss 1967; Pepper and Petrie 2003; Pepper et al. 2009; Skogan 1975), measuring crime is not an easy task and relying solely on official data can result in problems of validity and reliability. Skogan (1975) states that a civilian's decision to report an incident to the police is "probably the most important factor shaping official statistics on crime" (p. 20) whilst the police's discretion to record or write a formal report also affects the official data (p.22). What is left unreported is referred to in criminology as the "dark figure." According to Bidderman and Reiss, Jr. (1967), "the history of criminal statistics bears testimony to a search for a measure of 'criminality' present among a population, a search that led increasingly to a concern about the 'dark figure' of crime—that is, about occurrences that by some criteria are called crime yet that are not registered in the statistics of whatever agency was the source of the data being used" (p. 1) and that "in exploring the dark figure of crime, the primary question is not how much of it becomes revealed but rather what will be the selective properties of any particular innovation for its illumination" (p. 1). These notions date back 35 years, yet the only "innovation" with which most jurisdictions are familiar is the crime victim survey as a supplement to the official data. The most recent attempts to measure crime are the development of *Crime Severity Index* and *Uniform Crime Reporting Survey* in Canada. However, these tools are still based on the combination of official crime surveys and victim reports.

In Thailand, as mentioned above, a systematic approach has not yet been adopted to the management of crime statistics, unlike in developed countries. Having said that, an attempt to identify unreported crimes was made by the Office of Justice Affairs, Ministry of Justice, in 2008, when

a ground-breaking crime victim survey was carried out to examine crimes occurring from 1 January to 31 December 2007 (Office of Justice Affairs 2009).[8] In total, approximately 18.2 million households consisting of members 15 years old or above were selected as the sample, representing a total of 51,070,971 interviewees. (To put this in context, the total population of Thailand at the end of the survey year was estimated to be 66 million.) Of the total sample, 288,683 persons (0.6%) reported that they had been victims of crime during the period involved. Interestingly, the overwhelming majority of the victims (94.0%) were victims of property crimes (most commonly theft, breaking and entering, vehicle theft, and destruction of property in that order). As for the characteristics of the victims themselves, the report demonstrated that the majority were male (51.9%), married (74.8%), with a mean age of 43 and low education (primary level) (51.9%). Half of the crimes were committed by a single offender (51.0%), with offenders being generally unknown to their victims. Of all these cases, the vast majority of offenders were male (83.2%), assessed to be aged from 18 to 25 (30.7%), and acting independently. The most common response to the question concerning when the crime occurred was between 18.01 h and 06.00 h (36.5%) whilst the crime location was most commonly the victim's own residence.

One of the most interesting findings of this pilot project was that 65.2% of actual crimes, in particular sexual and property crimes, were not reported to the authorities due to either the victim's assumption that the police could not do anything to help (62.0%) and/or the victim's inability to provide any details of the offender (74.5%). The project not only uncovered unreported crimes but also pinpointed the public's low level of confidence in the Thai criminal justice system, a key issue which needs to be taken into account by policy-makers and relevant authorities. Finally, but not the least, a significant issue to emerge from the data is that there are as many hidden, unreported crimes in Thailand as reported ones. However, to date no visible action has been taken or new policies introduced by the authorities to effectively respond to this issue.

[8] This victim survey represented the state's effort to incorporate missing crimes which were not officially reported to the authority. This operation was not part of the International Crime Victim Survey (ICVS) format. More detail of the survey can be found at http://www.thaicvs.org/.

20.3 Key Punitive Measures

This section discusses criminal policy through the examination of the criminal justice process and official facts and figures in recent years. In Thailand, no *official* policy as such is made public. Having said that, the government's discourses, together with statistics from relevant criminal justice system agencies, can be used as substitutes when exploring the country's approach to dealing with crimes and offenders.

20.3.1 The Justice Process

In order to have a clearer picture of the treatment of offenders, the Thai justice process should first be briefly introduced. The key legislation is the Criminal Procedure Code, which guarantees the right of the accused to counsel during the pretrial phase, preliminary hearing, and trial itself. Pursuant to the Constitution, the defendant is also guaranteed the right to a public trial and to be present at that trial. As in other jurisdictions, the law adopts the principle of presumption of innocence, whereby the defendant must not be treated as a criminal until found guilty by the Court. It is the burden of the public prosecutor to prove beyond a reasonable doubt that the defendant actually committed the crime before the Court can penalize him or her. However, unlike some countries there is no plea bargaining in Thailand, although research is currently underway as to the feasibility of introducing this. For offenses carrying imprisonment terms of five years or more, even if the defendant pleads guilty the Criminal Procedure Code requires that there should be proof beyond reasonable doubt that the defendant actually committed the offense. However, when the defendant pleads not guilty, or when the case

requires further hearings, the Court will set a date for the trial. Normally, the trial proceeds with the examination and cross-examination of witnesses, first by the prosecutor and then by the defense lawyer.

The Thai judiciary plays a passive, neutral role during the trial, with the Court basing its verdict on the facts that emerge during the examination and cross-examination processes carried out by the public prosecutor and the defense lawyer. Sentencing is the culmination of the trial process, with the Court delivering its verdict together with a proportionate sentence for a defendant who is found guilty. To arrive at this and to ensure uniformity in sentencing, the Court uses sentencing guidelines, although these are neither legally binding nor do they officially limit the discretion of the judge.

The Criminal Code and other criminal statutes specify the range of minimum and maximum penalties for a particular offense. The Criminal Code specifies five types of penalty, viz., *capital punishment*; *imprisonment*; *confinement*; *fine*; and *forfeiture of property to the state*. Section 39 of the Code also stipulates the following "safety measures": protective custody; prohibition on entering specified locations; the execution of a bond upon receipt of a security for keeping the peace; confinement to an institution for treatment; and prohibition on engaging in specified occupations. As specified in the Criminal Code, in cases for which the maximum term of imprisonment is not more than three years and the accused has not previously served a prison term, except for negligence or petty offences, the Court can use its discretion to grant a suspension of the sentence and a suspension of the punishment for a fixed period of time. If the accused does not commit another offense during this period, they will be discharged.

When found guilty of an offense punishable by imprisonment, the convicted offender is detained in a state prison administered by the Department of Corrections. If the Court of First Instance imposes a sentence of capital punishment or life imprisonment, it must send all files relating to the judgement to the Court of Appeal for review, even if no appeal has been lodged against such a judgement, as such sentences are not final unless confirmed by the Court of Appeal. Execution of sentence may be suspended if the defendants are insane; if it is feared that their life will be endangered by imprisonment; if they are pregnant; or if less than three years have elapsed since they gave birth. In cases where the defendant has been sentenced to capital punishment, this cannot be executed until the provisions of the Criminal Procedure Code governing pardon have been complied with. If a person sentenced to capital punishment becomes insane before being executed, the execution is suspended pending his or her recovery. Furthermore, the death sentence is not applicable to a person under eighteen and such a sentence on a pregnant woman will be commuted to life imprisonment after being suspended for the first three years after the child is born. In fact, very few executions take place in Thailand, the most recent having been carried out in 2009 when two convicted drug offenders and a murderer were executed. It should also be mentioned in passing that the execution method was "modernized" in 2003 when legislation was enacted to replace the firing squad by lethal injection.[9] As of 20 March 2012, seventy-one prisoners, all male, were on death row in Thailand (Department of Corrections 2012, unpublished data).

Under the terms of the Criminal Procedure Code, if either party is dissatisfied with the judgement of the Court of First Instance, they can appeal to the Court of Appeal. Disagreements on legal issues can, without exception, be sent to the Court of Appeal and then, if necessary, to the Supreme Court. Factual disputes can also be appealed in both these Courts, subject to restrictions at both stages. In theory, the appeal has to be lodged within thirty days of the issuance of the Court of First Instance's verdict or order.

One component which distinguishes the Thai criminal justice system from that of other juris-

[9] The prisoner is injected with three kinds of drugs: sodium thiopental, a barbiturate which renders the prisoner unconscious; pancuronium bromide, a muscle relaxant which paralyzes all muscles and stops breathing; and potassium chloride, to stop the heart and cause cardiac arrest.

dictions is the active use of the Royal Pardon. This can be granted to any eligible individual or group of individuals at the discretion of the monarch, as stated in the 2007 Constitution[10] and in the Criminal Procedure Code.[11] The pardon may be in the form of an unconditional release, a commutation, or reduction of punishment. A Collective Royal Pardon is granted on certain auspicious national occasions: in recent years these have included the so-called Seventh Cycle Birthday Anniversary (i.e., 84th birthday) of His Majesty the King on 5 December 2011 and the 60th Anniversary of His Majesty's Accession to the Throne in 2006. On the other hand, an Individual Royal Pardon is granted as a matter of routine procedure: any convicted prisoner; a concerned person (parent, offspring, or spouse); or diplomatic representative (in the case of foreign prisoners) wishing to petition the monarch for a pardon may do so by submitting the petition through official channels, viz., the prison authority, the Ministry of Justice, and the Office of His Majesty's Principal Private Secretary, and for foreign nationals, the Ministry of Foreign Affairs or their country's diplomatic mission.

Overall, it is fair to state that Thailand's criminal justice process is relatively similar to that of other jurisdictions, especially the British court system, as most of the key founders of the modern Thai justice system were trained in England. In fact, many recent developments in the Thai system continue the shift towards Western methods and standards, for example, restorative justice; "the re-emergence of feminism" (Newburn 2003:235); and "the rise of victim support" (2003:241). The reform of criminal justice is discussed later in this chapter.

20.3.2 Imprisonment

Founded in 1915, the Department of Corrections (DOC) plays a significant role in keeping in custody those sentenced by the Court. The two key thrusts of the correctional service as presented in the organization's vision are *custody* and *rehabilitation*. In order to attain the objective of secure custody, currently the DOC's principal strategy focuses on enhancing prison security for effective management of high-profile prisoners by equipping its main facilities with the necessary custodial technology as well as competent human resources. As for rehabilitation, the DOC has established a new paradigm of correctional works which emphasizes the importance of rehabilitation during incarceration, with the ultimate goal of returning inmates to the community as good, law-abiding citizens.

Rehabilitation programs for offenders in correctional facilities can be categorized into 3 groups: basic programs; supporting programs; and reentry programs. The first comprises the main activities for inmates, e.g., both mainstream and vocational educational training; artistic training; and religious and recreational activities, all of which aim to equip offenders with basic competencies in readiness for their return to society. The second group involves short-term programs which emphasize knowledge enhancement and skills training, e.g., anger management, abstention from alcohol and tobacco, and empathy with victims' feelings. Lastly, the third block recognizes the necessity of preparing prisoners for reintegration and therefore focuses on such issues as family, employment, social reintegration, and necessary life skills, with the objective of reducing the risk of reoffending. Simultaneously, this enhances the general public's confidence that offenders will return to society as law-abiding citizens.

Figure 20.4 shows the Thai prison population over the past twelve years. In 2002 the prison population reached a historical peak, with 252,879 prisoners incarcerated nationwide. This was primarily due to the lead-up to what in 2003 officially became known as the "War on Drugs" policy of the then government, with most drug offenders of whatever nature being indiscriminately imprisoned. The subsequent decline (2004–2007) reflects three factors: the release of prisoners under Royal Pardons; the implementation

[10] Section 191.

[11] Sections 259 to 267 of Division 7: Pardon, Commutation and Reduction of Punishment.

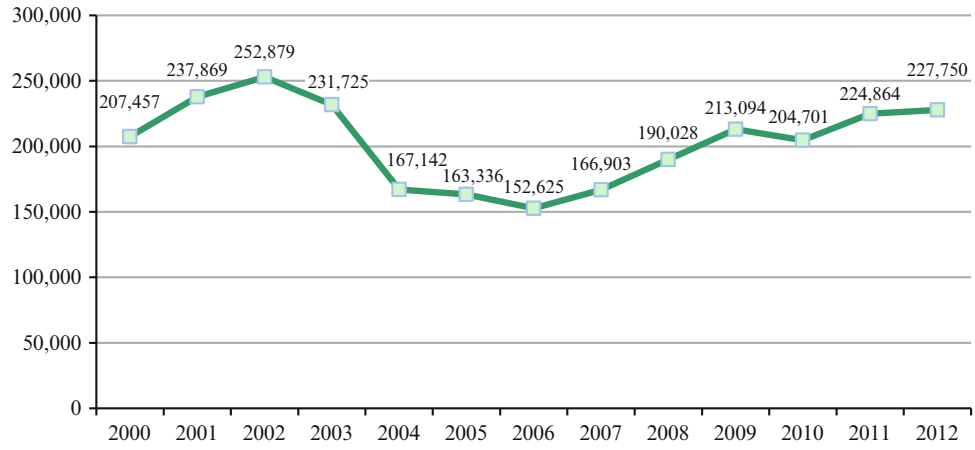

Fig. 20.4 Trends in prison population, 2000–2012 (as of 1 February 2012). Source: Department of Corrections (2012)

Table 20.4 Number of persons in custodial institutions (as of 1 February 2012)

	Male	Female	Total	%
1. Convicts	142,687	24,577	167,264	73.44
2. Remandees	49,185	8,752	57,937	25.44
2.1 Awaiting appeal	25,472	3,947	29,419	12.92
2.2 Awaiting trial	9,210	1,804	11,014	4.84
2.3 Awaiting investigation	14,503	3,001	17,504	7.69
3. Juveniles ordered by the Court	373	13	386	0.17
4. Relegated persons	7	0	7	0.00
5. Detainees	2,004	152	2,156	0.95
Total	194,256	33,494	227,750	100

Source: Department of Corrections (2012)

of the Narcotic Addict Rehabilitation Act 2002; and the use of alternatives to imprisonment to help overcome overcrowding. From 2008 the graph starts to rise again as a result of the reintroduction of more stringent policies together with a tendency to impose very long sentences on major drug offenders. Nevertheless, in 2010 a large number of prisoners were released under Royal Pardons, granted for qualified prisoners to celebrate the 60th Anniversary of HM King Bhumibhol's Coronation: this somewhat alleviated overcrowding. However, the most recent statistics show a further increase in the prison population, mainly due to a renewed rise in the number of convicted drug offenders.

As of 1 February 2012, 227,750 individuals were being kept in custody across the country, with the breakdown of their legal status being

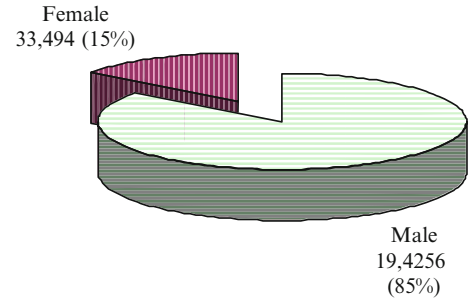

Fig. 20.5 Prison population classified by gender (as of 1 February 2012). Source: Department of Corrections (2012)

73.44% convicts; 25.44% remandees; and 1.12% others (Table 20.4). In line with other prison systems, the majority (85%) of the prison population is male (Fig. 20.5). The evidence, however, shows

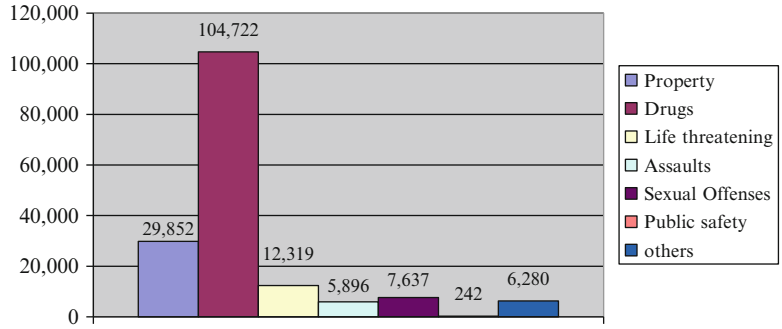

Fig. 20.6 Number of convicts in prisons, classified by offense (as of 31 January 2012). Source: Department of Corrections (2012). Note: "Life Threatening offenses" include murder, attempted murder, manslaughter, and negligence resulting in the death of others

that the growth in the number of female prisoners is on a par with, or even higher than, their male counterparts. In addition, recent international data comparing the incarceration rate of 218 countries ranked Thailand at 28th, with an incarceration rate of 328 per 100,000 population[12] (International Centre for Prison Studies 2012). In a specifically Asian context, Thailand came second after Iran.

When looking at types of offenses (Fig. 20.6), the majority of convicts (104,722 or 62.73%) were drug offenders, followed by those convicted of property crimes (29,852 or 17.88%) and life-threatening offenses (12,319 or 7.38%). It should be noted that currently incarcerated drug offenders consist mainly of producers and pushers: as a result of legal reform and diversion programs, most drug users are now diverted to drug rehabilitation centers (see discussion on probation below). In addition, in view of the discussion in the previous section on both crimes reported to the police and the crime victim survey, it is not surprising that the proportion of drug prisoners is much greater than other subgroups. Again, this confirms that the "get tough on drugs" policy has led to the imposition of the maximum sentence for those convicted of drug-related offenses.

20.3.3 Probation and Parole

In Thailand, probation is the main alternative sanction to imprisonment. The probation system for adult offenders was introduced into the country with the establishment of the Central Probation Office under the Probation Procedure Act 1979. Since then the Thai probation system/agency has gradually expanded and in 1992 the office was upgraded and renamed the Department of Probation (DOP).

The administration of probation work in Thailand is broadly on a par with other jurisdictions. Adult offenders on probation are those who have committed an offense punishable by a term of imprisonment of not more than 3 years, with the Court either suspending the determination of punishment or designating the punishment but suspending the implementation thereof. In addition, the Court may order probation officers to conduct a social investigation for its consideration on the suspension of a punishment. Table 20.5, showing presentence investigation cases from 2007 to 2010, reflects the small but notable decrease in this over the past few years.

In July 2002 a Cabinet resolution conferred on the DOP the responsibility for administering pretrial, trial, and posttrial probation, thereby initiating

[12] Data available at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wbpoprate. International Centre for Prison Studies noted that this figure was "based on an estimated national population of 68.4 million at the beginning of March 2011 (from United Nations figures)."

Table 20.5 Presentence investigation cases, 2007–2010

Year	Presentence investigation cases
2007	47,966
2008	46,516
2009	44,694
2010	44,895

Source: Department of Probation (2011)

Table 20.6 The number of probationers and parolees, 2003–2010

Year	Adult probationers	Parolees	Juvenile probationers	Total
2003	64,232	49,086	4,674	117,992
2004	70,428	35,095	12,890	118,413
2005	81,995	29,459	15,520	126,974
2006	86,937	23,547	18,470	128,954
2007	92,279	22,900	21,999	137,178
2008	102,880	19,873	23,278	146,031
2009	130,048	25,852	22,936	178,836
2010	125,949	22,721	23,733	172,403

Source: Department of Probation (2011)

a comprehensive mechanism for developing the probation system. Thus, by the end of October 2003, the responsibility of the DOP had been modified to cover probation sanctions against the accused and offenders at all stages of adjudication, including adult probation, parolees, and juvenile offenders on suspension of sentence or conditional release from a training center.

Table 20.6 represents the probation and parole population from 2003 to 2010. Overall statistics show that the probation population has been increasing constantly at an average rate of 5.8% per annum. The number of adult probationers doubled from 2003 to 2010, while the number of juvenile probationers showed an even more remarkable increase (fivefold) over the same seven-year period, from 4,674 in 2003 to 23,733 in 2010. On the other hand, the parole population in 2010, including prisoners released on sentence remission, decreased about 56% from 2003. When putting types of offense in perspective, most of the caseload in the probation and parole system was involved with traffic and drug cases. Statistics show that traffic-related offenses were at the top of the chart in 2007 (34.22% of all newly admitted cases), and again in both 2008 (30.76%) and 2010 (40.12%), with drug offenses in second place in both these years. However, drug cases[13] topped the chart in 2009 (45.34% of all cases) and again in 2011 (38.41%).[14]

Table 20.7 Successful completion of probation, 2006–2009

Year	Number of cases	Percent
2006	117,567	93.1
2007	112,237	93.2
2008	117,287	92.7
2009	128,339	91.9

Source: Department of Probation (2011)

Table 20.8 Revocation and reoffending rates of probation population, 2007–2009

Year	Revocation rate (%)	Reoffending rate (%)
2007	6.8	15.3
2008	7.2	10.7
2009	8.1	14.2

Source: Department of Probation (2011)

Compared with the number of cases successfully completed each year over the period 2006–2009 (Table 20.7), the rate is satisfactory, with a range of 91–93%, even though there has been a slight year-on-year percentage decline since 2007.

Over the period 2007–2009, the percentage of probationers who had their probation revoked due to a breach of conditions ranged from 6.8% (2007) to 8.1% (2009) (Table 20.8). Probationers and parolees who reoffended after completion of their sentence ranged from 10.7% to 15.3% over the same 3-year period.

Looking at the criminal justice system agencies' data in both this section and the previous one, the authors wish to argue that they reflect an uncoordinated criminal policy driven by the political agendas of the ruling governments (as also suggested by scholars, e.g., Garland 2001; Newburn 2003; Simon 1997). An obvious exam-

[13] Drug cases under probation include "drug possession" and "drug production" offenses involving limited amounts of less serious types of drug as identified by the Narcotic Addict Rehabilitation Act, e.g., opium and marijuana.

[14] Unpublished data from the Department of Probation, 2012.

ple is the policy towards drug offenses: it seems that the government chose to "get tough" on one specific crime which would attract the attention of the public and the media (see Newburn 2003, 264–267). This has resulted in a case overload problem for criminal justice agencies, especially the two core agencies—the Department of Corrections and the Department of Probation—which are key administrative bodies responsible for implementing the Court's sentences.

Although attempts have been made to deal with drug offences by diverting drug use offences from the justice system, drug-related offences are still in the majority, consuming vast resources from agencies across the system. Additionally, the statistics from the DOC suggest that imprisonment remains the most convenient and safest option to punish wrongdoers. The authors wish to emphasize that a holistic approach should be adopted in dealing with crimes, especially drug crimes. Currently, overreliance on imprisonment still exists, whilst the employment of alternative sanctions remains limited. Moreover, the efficiency of the criminal justice system in dealing with crimes appears to be suspect. These are some of the challenges facing the criminal justice system which are discussed in detail in the next section.

20.4 Criminal Justice Reform

When looking at the incarceration rate and punishments specified by Thai law, it is undeniable that the Thai criminal justice system relies excessively on the use of imprisonment, with a higher incarceration rate in comparison with that of other countries. Sanctions imposed on offenders primarily consist of payment of a fine and suspension of sentence/punishment with or without probation, traditionally the standard noncustodial measures applied in Thailand. Community service, which is a popular, mainstream noncustodial measure in many countries, is not widely applied in Thailand and is limited to some specific groups.[15]

In addition, the criminal justice system has been criticized on many fronts over the past decade—including miscarriage of justice; rights violations of both the accused and victims; abuse of power; delay in the administration of justice; and prison overcrowding (Kittayarak 2001; Thailand Criminal Law Institute 1998;[16] Ua-Amnoey 1999). These issues have been repeatedly raised by politicians, scholars, human right advocates, and other stakeholders whenever flagrant cases of injustice have occurred and have been sensationalized in the media. It has been argued that the inefficiency of the criminal justice system is partly caused by the lack of clear criminal policy and overemphasis on crime control. However, other scholars regard the root of the problem as being the "nonsystem" of criminal justice agencies (Kittayarak 2003).

During the 1990s, there was status disparity among the core criminal justice agencies. The Office of the Attorney General[17] and the Courts of Justice[18] at that time were independent, although as court administration remained one of the core responsibilities of the Ministry of Justice, the ministry was somewhat scathingly referred to as the "Ministry of Court." On the other hand, the Royal Thai Police and the Department of Corrections were under the Ministry of the Interior and the Department of Probation was under the Ministry of Justice. Thus not only was the structure of the criminal justice system inappropriate and fragmented, but the agencies' operations were also uncoordinated, focusing primarily on their own particular goals, with the policy and the objectives of their umbrella organization accorded lower priority.

The inefficiency of the criminal justice system gradually became the focus of both the public and successive governments. Therefore, when

[15] In Thailand, community service is applied to those who are on probation and consent to do such service; those who request to do community service in lieu of fine; or drug users who are under compulsory drug treatment.

[16] Thailand Criminal Law Institute (1998). Seminar Report on Direction of Thai Criminal Justice in the Next Decade. Unpublished manuscript.

[17] From 1991 to 2001, the Office of the Attorney General was an independent agency under the Prime Minister but was transferred to the Ministry of Justice in 2002.

[18] The courts were independent but remained administratively under the Ministry of Justice from 1991 to 2000.

the 1997 Constitution was drafted, the reform of criminal justice and rights protection were two core issues to which the drafting committee paid particular attention. As a result, the so-called People's Charter contained many Sections focusing on due process and the reform of the criminal justice system. Subsequently, the 2007 Constitution maintained most of the ideology enshrined in its 1997 counterpart whilst putting further emphasis on criminal justice agencies' efficiency, including public participation in the administration of justice and the establishment of independent agencies to provide checks and balances.

However, midway between these two Constitutions, significant criminal justice reform took place in 2002 when the government decided to reorganize the Ministry of Justice and establish new departments to improve the system's efficiency. The reorganization of the Ministry was also a response to overall civil service reform based on citizen-centered principles and result-based implementation. This, along with other factors, led to changes in policies and the reorganization of criminal justice which are discussed later in this section.

20.4.1 Reform of Criminal Policy

In recent years—and in particular since the major criminal justice reform of 2002 referred to above—there have been changes and new directions in Thai criminal policy, not so much explicitly stated, but clearly reflected in related legislation and policy, including both the Criminal and Criminal Procedure Codes, the National Master Plan on Criminal Justice, and government policy as a whole. To illustrate this shift, policy and practices as applied over the past few years are outlined below.

20.4.1.1 Increased Emphasis on the Rights of Victims, the Accused, and Offenders

Due to the 1997 and 2007 Constitutions' emphasis on rights protection and conformity with international standards for promoting the rule of law and human rights, Thai criminal policy now increasingly stresses the rights of victims, the accused, and offenders, especially the vulnerable, such as children and women. Acknowledging losses suffered by both crime victims and accused persons who themselves become victims of the miscarriage of justice, Thailand enacted the Compensation for Crime Victims and Accused Act 2001 to financially compensate them for their mental and/or physical suffering. Under this law, victims of serious crime, such as rape, murder, and assault, are entitled to receive compensation from the State to cover loss of earnings, medical expenses, death, and other losses if applicable. In the case of accused persons, the compensation applies to those who have been prosecuted, confined, and then had the case against them withdrawn due to their innocence, or when the Court's judgment is one of not guilty. The compensation covers their criminal defense expenses, loss of liberty during confinement, medical expenses, and death.

To protect the rights of children and juveniles, the Criminal Procedure Code and legislation relating to juvenile justice have been amended to guarantee the rights protection of juvenile witnesses and offenders. The amendments[19] stipulate that the questioning of a child/juvenile by an inquiry official must be carried out separately from other offenders; in an appropriate place; and without discrimination or stigmatization. The legal adviser of the alleged child/juvenile offender is required to be continually present at the time of their being informed of the charge and during their interrogation. Additionally, in the case of an alleged serious offence, the inquiry official must interrogate the child/juvenile offender in the presence of a psychologist or a social worker; a person designated and requested by the child/juvenile; and a public prosecutor.

Likewise, on the issue of women offenders, Thailand has become a leader in the promotion of their enhanced treatment and protection of their rights. Under the royal patronage and leadership

[19] Sections 133, 134, and 172 of the Criminal Procedure Code as amended in 1999.

of HRH Princess Bajrakitiyabha, in 2008 Thailand initiated the Enhancing Lives of Female Inmates (ELFI) project to promote appropriate treatment programs for women prisoners, from their entering the correctional system to the aftercare phase. The recommendations proposed by ELFI became internationally recognized and supported, leading to their ultimate adoption by the United Nations as the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, or "Bangkok Rules," in December 2010. Consequently the United Nations Office on Drugs and Crime (UNODC) was given the task of disseminating the Rules as a supplement to the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules.

20.4.1.2 Application of a Wider Range of Alternative Measures

The problem of excessively large caseloads, found at every stage of the Thai criminal justice system, especially prison overcrowding, has driven criminal justice agencies to apply a range of alternative measures to divert cases from the system. This policy was in effect initiated by a Cabinet Resolution of 10 July 2001, providing guidelines on reducing caseload and overcrowding. These include the use of conflict resolution as an alternative measure and sentencing option, as well as the implementation of compulsory drug treatment to divert drug users from the system.

The implementation of this policy is also evident through the application of restorative justice practices, which are currently implemented at both the pretrial and trial stages in both adult and juvenile cases. When the amended Juvenile and Family Court and Procedure Act was promulgated in 2010, conferencing became extensively used with child/juvenile offenders as an alternative approach to divert cases from the juvenile justice system and rehabilitate young offenders. In such cases, if the victim(s) and responsible official agree, conferencing takes place and a rehabilitation plan, aiming simultaneously to reform the offender, make restoration to the victim(s), and promote public safety, is devised. Although the basic principle of restorative justice aims to provide restoration for the victims and the community, this approach also benefits offenders by providing an opportunity for them to make reparation and be diverted from the justice system. Since its implementation in 2003, 20,000 children and juveniles have been diverted by non-prosecution orders.

Another alternative measure development is the compulsory drug treatment scheme, endorsed by the Narcotic Addict Rehabilitation Act 2002. This scheme was innovatory in that it made a distinction between drug users and drug producers, sellers, and exporters: the users became classified as "patients" and therefore sent to rehabilitation centers for drug treatment programs, depending on the nature of their case. If the treatment shows satisfactory results, they are then diverted from criminal procedures without a criminal record. Since its implementation in 2003, over 500,000 drug users have been diverted from the criminal justice system.

20.4.1.3 Promotion of Community Participation at Policy and Practice Levels

Lastly, the change in criminal policy can be observed through new schemes aiming to encourage community participation in criminal justice. In accordance with the National Master Plan for Justice Administration 2009–2012, a strategy is in place to promote justice system participation by all social sectors, including the community, the private sector, local administration, and the media. In fact, this policy had previously been put into practice, with the National Master Plan serving to promote its continuation and emphasize its importance. For example, the concept of voluntary assistance, such as acting as a volunteer probation officer, was established in 1986 but was subsequently extended to cover other areas, such as the scheme for volunteering in rights and liberties protection established in 2005. However, the most innovatory project for public involvement in the justice system is the Community Justice Scheme, introduced by the Department of Probation in 2003, under which opportunities are provided for members of the community to work in partnership with justice

officials. Volunteers establish centers in their own locality and they are then collaboratively involved in justice activities, such as crime prevention, offender rehabilitation, and conflict resolution. The primary aim of the Community Justice Scheme is not to lessen the burden of justice agencies or help justice officials perform their duties but to empower the community to make itself strong and just through its own members. After nearly a decade since its inauguration, the Community Justice Scheme has proved to be an appropriate channel for the Thai criminal justice system to respond to the needs of the public and improve confidence in its services. Indeed, it could be argued that as Thailand moves towards becoming a more mature democracy, greater public involvement in the criminal justice system is an inevitable step and this is the direction which all justice agencies should follow.

20.4.2 Reform of the Organization of Criminal Justice Agencies

As has already been mentioned, the 1997 and 2007 Constitutions, coupled with overall civil service reform, have had a major influence on Thai criminal justice reform. Section 230 of the 1997 Constitution paved the way for the establishment of new ministries, sub-ministries, or expanded departments through the promulgation of a specific law. Thus in 1998 the Royal Thai Police became an independent organization under the Prime Minister in order to improve its efficiency, whilst in 2000 the Courts of Justice became fully independent when its administrative work, judicial affairs, and legal affairs were separated from the Ministry of Justice and transferred to the newly founded Office of the Judiciary. There was also major reorganization of the Ministry of Justice itself, with the substantial changes including the transfer of departments from other ministries and the establishment of five new departments.[20] Since the establishment of these is essential to improving the efficiency of the criminal justice system and promoting the coordination of criminal justice administration, each organization is briefly introduced below.

20.4.2.1 Office of Justice Affairs

The Office of Justice Affairs was founded to support the new approach to the justice system under the reform policies, with its core functions including being responsible for the administrative work of the National Commission for Justice Administration Development and studying and analyzing policies, strategic plans, and justice system management.

20.4.2.2 Department of Special Investigation

The Department of Special Investigation was established specifically for the surveillance, deterrence, and effective prevention of increasingly complex crimes perpetrated by organized criminal groups, especially those of a transnational nature, which jeopardize the nation's economy, social order, and stability, as well as for the eradication of illicit groups or activities that endanger international security.

20.4.2.3 Department of Rights and Liberties Protection

The mission of the Department of Rights and Liberties Protection is to promote and protect the people's rights and liberties as stipulated by law through the development of the promotion of justice and the enhancement of the public's awareness of their rights and liberties. In addition, it offers protection and primary assistance to witnesses, victims, and accused persons in criminal cases.

20.4.2.4 Central Institute of Forensic Science

The institute's main responsibilities are to receive complaints from the public affected by forensic science malpractices; to provide forensic science services, e.g., the identification of missing persons and the verification of evidence; to study and research forensic science issues with both governmental and nongovernmental sectors; and

[20] A sixth new department, the Office of the Public Sector Anti-Corruption Commission, was later established in 2008, in accordance with the 2007 Constitution.

to supervise forensic science personnel to ensure that they comply with codes of practice, standards, and ethics.

20.4.2.5 Department of Juvenile Observation and Protection

The Juvenile Observation and Protection Center was upgraded to the Department of Juvenile Observation and Protection with the expectation that it would serve as the core agency for protecting the rights and welfare of children in the juvenile justice system. Its main responsibilities are to promote the rehabilitation of child and juvenile delinquents; to facilitate restorative justice and other alternative measures for diversion; and to provide other assistance services for children by liaising with their families and community networks.

20.5 Challenges and Conclusion

In accordance with the core principles of the Constitution—including the protection of the people's rights and liberty, independence, and good governance—Thailand's criminal justice system is continually being reformed. This reform has clearly wrought changes in criminal justice administration and processes, which require the understanding and cooperation of those both inside and outside the system: criminal justice personnel need to understand the revised concepts and implement them accurately, whilst public support for the new policies is also needed. Since Thai society is accustomed to the conventional criminal justice system based on the punishment of offenders, the new policy and schemes focusing on rights protection, public involvement, and alternative approaches may not be readily understood (Ua-Amnoey 2002). To gain support and implement the reforms smoothly, communication with and education of the public as well as justice personnel are of critical importance.

Another concern regarding the changes in Thai criminal justice is the implementation of alternative approaches, especially alternatives to imprisonment. Even when new laws or approaches relating to alternative measures are promulgated or launched in Thailand, it is all too likely that they will not be implemented immediately, either because no one agency assumes the responsibility for doing so or appropriate resources are not provided. Indeed, it would appear that changes in criminal justice have been occurring at a rate which prevents the system from responding in a timely and appropriate manner. For example, the Criminal Procedure Code was amended to enable the use of home detention and electronic monitoring in 2007 but neither of these measures have yet been implemented because, as referred to above, it is not clearly specified which agency should be responsible for these innovative approaches and no clear budgetary policy was provided. This problem of implementation is likely to continue if there is no single authority capable of making such decisions for the system as a whole and which simultaneously has the power to compel the government to provide sufficient resources.

Recent developments seem to indicate a start in addressing the above concerns but much remains to be done. In order to provide an effective response to these challenges as well as to strengthen the unity, effectiveness, and efficiency of the justice system, the National Commission for Justice Administration Development was established by the National Justice Administration Development Act 2006. The commission, chaired by the Prime Minister or the designated Deputy Prime Minister, consists of heads of relevant organizations including the judiciary, the Ministry of Justice, and the Ministry of the Interior. However, to date this commission has not made significant progress, due in part, it can be speculated, to the political upheavals and changes of the past six years which have necessarily resulted in changes of the chairperson.

Evidently, there still remains a long way to go in the development of the Thai criminal justice system, with more challenges to be faced. Political uncertainty and instability remain prevalent, with the associated policy changes in agencies. Although some criminal justice organizations are now independent, successive governments still have the potential to generate policy inconsistencies and inefficient resource allocation.

However, international trends and organizations are putting pressure on Thailand to adopt standards and safeguards concerning human rights and good governance, and this can only have a positive influence on the Thai criminal justice system, leading eventually to the development of more effective and fairer processes.

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Part III

Victims and Offenders

Violence Against Women in Singapore: Initial Data from the International Violence Against Women Survey

21

Wing-Cheong Chan

21.1 Introduction

The international recognition of violence against women as human rights and health-related issues of priority began in the 1990s. Key events include the Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993 (United Nations General Assembly 1993), the appointment of a special rapporteur on Violence Against Women by the Commission on Human Rights in 1994 (United Nations Commission on Human Rights 1994),[1] the resolution to "combat all forms of violence against women" as one of the Millennium Goals by the United Nations General Assembly in 2000 (United Nations General Assembly 2000), discussion of the in-depth study on violence against women at the United Nations General Assembly in 2006 (United Nations General Assembly 2006), and more recently, the launch of the campaign to end violence against women (UNiTE) by the United Nations Secretary-General Ban Ki-moon in 2008 (United Nations 2008). Closer to Singapore, the establishment of the ASEAN Commission on Promotion and Protection of Rights of Women and Children in 2010 portends greater efforts towards the elimination of violence against women in Singapore (ASEAN 2010).

However, unless there is systematic data collection on the types and extent of violence against women, it is not possible to have an accurate evaluation of the effectiveness of international and national strategies tackling such violence. Different types of violence may also impact groups of women in different ways, leading them to decline assistance or redress. It is difficult to know the true prevalence of violence against women, particularly if it is violence committed by a husband or an intimate partner since these forms of violence are seldom reported. In a 2005 study published by the World Health Organization based on a survey of 24,000 women in ten countries, it was found that between 55% and 95% of women who had been physically abused by their partners had never sought help from formal service providers (such as the police, hospitals, social services, or shelters) or persons in a position of authority (such as local or religious leaders) (Garciá-Moreno et al. 2005).

There is limited knowledge about the true prevalence of violence against women in Singapore as well. Police data that is publicly available do not disaggregate "crime against the person" into gender or the type of crimes

[1] Under this mandate, fact-finding country visits and annual reports are submitted, see http://www2.ohchr.org/english/issues/women/rapporteur/ (last accessed 2 July 2010).

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committed (Singapore Police Force n.d.).[2] Other data available in Singapore focus on aspects such as women who report spousal violence to the police (Ministry of Community Development, Youth and Sports, n.d.(a)), women who seek medical assistance in public hospitals for domestic violence (Ministry of Community Development, Youth and Sports, n.d.(b)),[3] and applications to the Family Court for protection orders against family violence (Ministry of Community Development, Youth and Sports 2009).[4] These do not give a complete picture of all women who have experienced violence from men since they require the victims to come forward to seek services from the police, public hospital, or Family Court, and only count them if the violence is experienced in a certain way (namely, "spousal" violence, "family violence", or where the injuries are severe enough to warrant medical assistance).

Several studies have appeared over the years in Singapore which attempt to give a picture of the socio-demographic profile of women victims of violence (Seow et al. 1995; Subordinate Courts of Singapore 1998; Lim 2002; Foo and Seow 2005; Basu 2009). However, they are limited in nature as well since only those who actively seek help from public hospitals, the Family Court, or a social service agency are covered. There has not been an effort to uncover the true extent of male violence against women, the victims' profile and their experiences when engaging help from the police, and so on through a victim survey.

It is in the light of this background that the present study was conducted using the International Violence Against Women Survey ("IVAWS").[5] It aimed to uncover the prevalence and types of violence against women in Singapore through a random sampling of Singapore households. Socio-demographic details of those women who experienced violence in the last 12 months, the severity and perception of the incident, and contact with the police will also be discussed here. Through the adoption of the IVAWS, it is also hoped that the Singapore data will contribute to future cross-cultural analyses of violence against women in other parts of the world and promote policy evaluation of national and international efforts to curb violence against women.

21.2 Methodology

The Nielsen Company was engaged to carry out the IVAWS in Singapore. The survey was translated into Chinese and Malay by Nielsen's experienced translators. A total of 2,006 women aged between 18 and 69 years old were surveyed through a random sampling of Singapore households (mean age of respondents: 42.5 years).[6] Only one woman (whose birthday was next) in each household was identified for the survey. Female interviewers were used and all the interviews were conducted in person. The interviews were conducted between February and May 2009.

Owing to earlier studies which found a disproportionate number of Indians among women who experienced violence (Seow et al. 1995; Subordinate Courts of Singapore 1998; Lim 2002;

[2] Even when statistics on the category of "rape" was provided for 1989–2008 (see http://www.spf.gov.sg/stats/stats_doc/stats_selected_areasconcern08.pdf, last accessed 2 July 2010), this included cases of "statutory rape", i.e. consensual sex with an underaged girl, which raise different concerns from cases involving non-consensual sex.

[3] The data for the second half of 2001 and for 2006 are missing.

[4] This category includes applications from men as well as women applicants who may have been abused by other women in the household, e.g. by their daughter or mother. Protection orders are only available against certain forms of violence and for those in (or have been in) certain relationships with the abuser. A "protection order" is a form of restraining order made by a court which requires an abuser to refrain from further acts of violence or he/she will be sent to jail or fined otherwise. See the Women's Charter (Chapter 353, 2009 Revised Edition) Part VII and Chan (1996).

[5] The IVAWS has been conducted in 11 jurisdictions to date: Australia, Costa Rica, the Czech Republic, Denmark, Greece, Hong Kong, Italy, Mozambique, the Philippines, Poland, and Switzerland (collectively called "IVAWS participating countries"). See Killias et al. (2004); Mouzos and Makkai (2004); Johnson et al. (2008).

[6] Using the Nielsen Residential Sampling Frame which spreads the potential households across all the geographical locations and dwelling types in Singapore.

Table 21.1 Profile of respondents

	Percentage of respondents (weighted N)	Percentage of Singapore population[1]
Age group		
18–24 years	13.4% (268)	9.2%
25–29 years	11.0% (221)	10.9%
30–34 years	10.9% (218)	11.8%
35–39 years	10.5% (211)	12.4%
40–44 years	10.5% (210)	12.0%
45–49 years	10.1% (202)	12.2%
50–54 years	8.8% (177)	11.3%
55–59 years	7.5% (150)	9.1%
60–64 years	5.3% (106)	6.6%
65–69 years	12.1% (243)	4.6%
Ethnicity		
Chinese	73.1% (1,467)	76.1%
Malay	10.8% (216)	12.2%
Indian	8.1% (163)	8.4%
Others[2]	7.9% (159)	3.3%
Type of housing		
HDB 1- and 2-room flats[3]	6.2% (125)	2.7%
HDB 3-room flats	17.8% (358)	18.0%
HDB 4-room flats	37.5% (752)	34.5%
HDB 5-room and executive flats	21.5% (431)	27.7%
Condominiums and private flats	11.6% (233)	9.3%
Landed property	5.3% (106)	6.5%
Others	0% (0)	1.1%
Monthly household income[4]		
Below $1,000	7.2% (145)	9.7%
$1,000 to $1,999	11.2% (225)	10.6%
$2,000 to $2,999	17.9% (358)	10.5%
$3,000 to $3,999	15.5% (310)	10.2%
$4,000 to $4,999	8.1% (162)	8.9%
$5,000 to $5,999	7.0% (140)	8.3%
$6,000 to $9,999	12.6% (252)	20.3%
$10,000 and over	8.3% (167)	21.4%
No income	0.5% (11)	0%
Don't know/can't remember	6.9% (138)	0%
Refused/no answer	4.8% (97)	0%

[1] Extracted from Department of Statistics 2009a and Department of Statistics 2009b. Percentages for age group and ethnicity are based on the female Singapore citizens and Singapore permanent residents aged between 20 and 69 years old, but the percentages for type of housing are based on male and female Singapore citizens and Singapore permanent residents in this age range

[2] The ethnic group of "Others" is defined in official statistics as those who do not fall within the categories of Chinese, Malay, or Indian. This diverse group includes Arabs, Eurasians, Japanese, and so on

[3] HDB refers to the Housing and Development Board which is responsible for public housing in Singapore

[4] The average monthly household income is $7,440 for 2007/2008 (Department of Statistics 2009b)

Foo and Seow 2005) it was decided to over-sample this ethnic group in order to capture their experiences. The final figures were re-weighted to reflect the overall profile of the residents in Singapore.

Table 21.1 provides the profile of the respondents in the survey as compared with the female population aged between 20 and 69 years old in Singapore given by official sources. It can be seen

that the profiles are not exact matches. This can be explained on the basis that the respondents surveyed include not only Singapore citizens and Singapore permanent residents (whose profile is given in the official data) but also foreigners who have set up a home in Singapore on a temporary basis such as students, those who are in Singapore on work contracts, and dependants of foreigners who are entitled to bring them into Singapore while they are here on work or study arrangements.[7] The latter groups tend to have a higher proportion who are younger as well as older persons, be of different ethnic minorities, and have different housing options as compared to the Singapore population. These differences are also reflected in their monthly household income as shown below.[8] A decision was taken to include foreigners who have set up a home in Singapore as well since they have been included in the IVAWS conducted in other parts of the world and there is a need to respond to all those who have been victimised in Singapore or victimised abroad but are currently living in Singapore.

21.3 Preliminary Findings

21.3.1 Lifetime Experience of Violence

The IVAWS asked respondents specific questions about whether they had ever experienced, since the age of 16 years, 7 types of physical violence and 5 types of sexual violence used against them by any man. They are the following:

21.3.1.1 Physical

1. Threatened with hurt physically
2. Thrown something or hit with something
3. Pushed or grabbed, having arm twisted or hair pulled
4. Slapped, kicked, bitten, or hit with a fist
5. Tried to strangle, suffocate, burn, or scald
6. Used or threatened to use a knife or a gun
7. Any other physical violence

21.3.1.2 Sexual

1. Forced into sexual intercourse
2. Attempted to force into sexual intercourse
3. Touched sexually
4. Forced or attempted to force into sexual activity with someone else
5. Any other sexual violence

It was found that Singapore had the lowest rate of lifetime violence victimisation (9.2%) as compared to the other IVAWS participating countries (see Fig. 21.1). Singapore also had the lowest rate of lifetime physical violence victimisation (6.8%) and the lowest rate of lifetime sexual violence victimisation (4.2%) as compared to the other IVAWS participating countries (see Fig. 21.2).

21.3.2 Experience of Violence in the Last 12 Months

The respondents in the Singapore survey reported the second lowest rate of 1-year violence victimisation (2.6%) as compared to the other IVAWS participating countries (see Fig. 21.3). Singapore, together with Hong Kong, had the second lowest rate of 1-year physical violence victimisation (2.1%). Singapore also had, together with Switzerland, the lowest rate of 1-year sexual violence victimisation (0.5%) as compared to the other IVAWS participating countries (see Fig. 21.4).

The most common forms of physical violence were (1) being threatened with hurt physically, followed by (2) being pushed or grabbed, having arm twisted or hair pulled; and (3) being slapped, kicked, bitten, or hit with a fist. The most common form of sexual violence was non-consensual sexual contact.[9]

[7] It was reported that of the total population of Singapore in 2008 of 4.8 million, only 3.6 million were Singapore citizens and Singapore permanent residents (Department of Statistics 2009a).

[8] A household refers to persons living together in the same house and sharing common food or other living arrangements. It includes a person living alone or a person living with others but having her own food arrangements.

[9] Note that some victims may have experienced multiple types of violence.

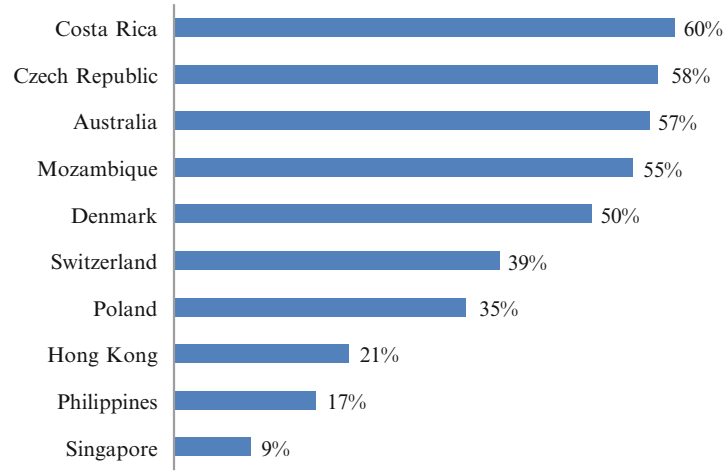

Fig. 21.1 Respondents' lifetime rate of any violence (at least once)

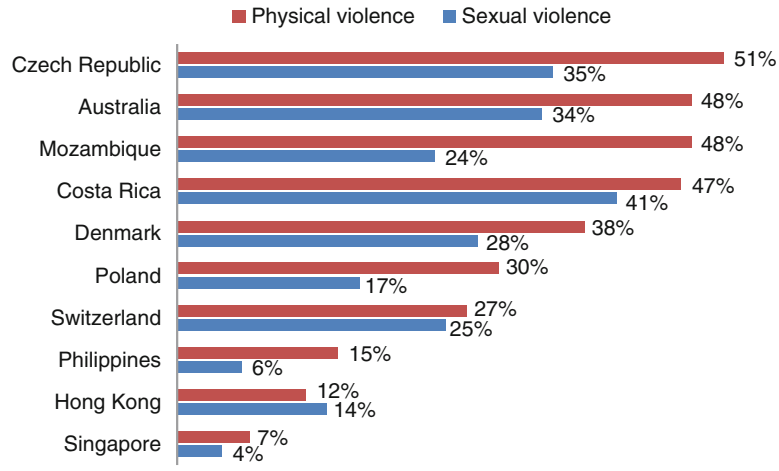

Fig. 21.2 Respondents' lifetime rates of physical or sexual violence (at least once)

21.3.3 Repeat Victimisation

A total of 58.8% of victims experienced repeated victimisation in Singapore. This comprised 35.7% who experienced violence two to four times; 9.7% who experienced violence five to nine times; and 13.4% who experienced violence ten times or more.

Repeated victimisation was higher for those who experienced physical violence (64.0% of victims of physical violence experienced repeated victimisation) as compared to victims of sexual

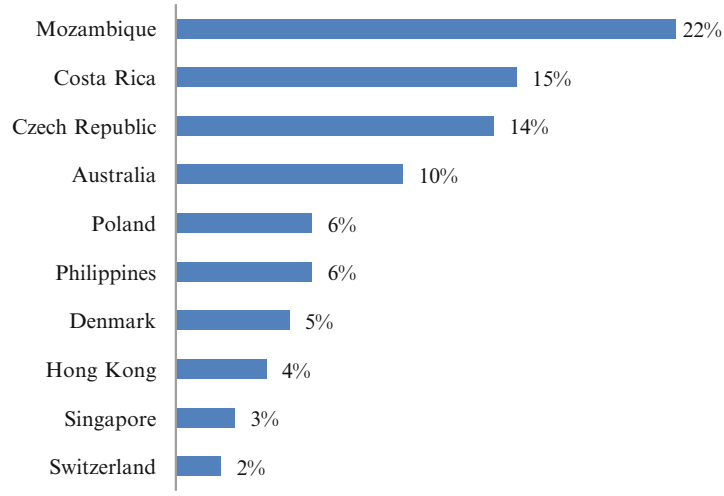

Fig. 21.3 Respondents' 1-year rate of any violence (at least once)

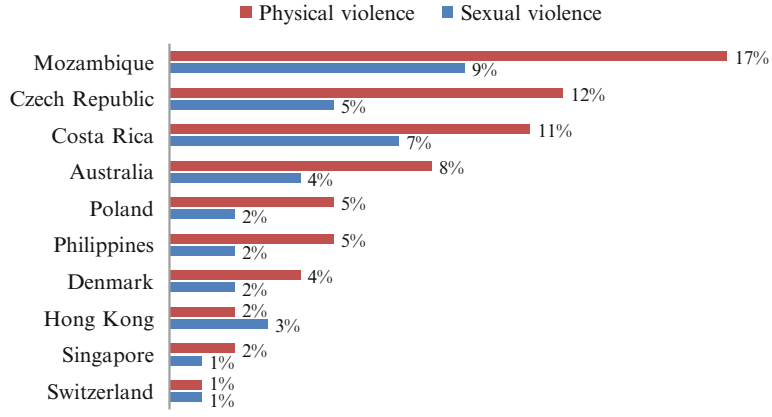

Fig. 21.4 Respondents' 1-year rate of physical or sexual violence (at least once)

violence (44.9% of victims of sexual violence experienced repeated victimisation).

21.3.4 Respondents Who Experienced Violence in the Last 12 Months

The profile of 53 respondents who have experienced physical or sexual violence in the last 12 months is shown below as compared to the profile of all respondents in survey (see Table 21.2). It can be seen that there is an over-representation among respondents who experienced violence in the last 12 months of those who are (1) aged between 30 and 39 years old; (2) Malays; (3) living in HDB 1 and 2 room flats; and (4) those who have university or postgraduate education.

Table 21.2 Profile of respondents who have experienced violence in the last 12 months

	Percentage of respondents who have experienced violence in last 12 months (weighted N)	Percentage of all respondents (weighted N)
Age group		
18–29 years	15.1% (8)	24.4% (489)
30–39 years	47.2% (25)	21.4% (429)
40–49 years	20.8% (11)	20.5% (412)
50–59 years	17.0% (9)	16.3% (327)
60–69 years	1.9% (1)	17.4% (349)
Ethnicity		
Chinese	71.7% (38)	73.1% (1,467)
Malay	18.9% (10)	10.8% (216)
Indian	7.5% (4)	8.1% (163)
Other	0% (0)	7.9% (159)
Type of housing		
HDB 1- and 2-room flats	17.0% (9)	6.2% (125)
HDB 3-room flats	15.1% (8)	17.8% (358)
HDB 4-room flats	43.4% (23)	37.5% (752)
HDB 5-room and executive flats	7.5% (4)	21.5% (431)
Condominiums and private apartments	15.1% (8)	11.6% (233)
Landed housing	0% (0)	5.3% (106)
Highest education level attained		
No formal education	0% (0)	4.8% (97)
Some primary/completed primary	9.4% (5)	18.0% (362)
Some secondary/completed secondary	43.4% (23)	35.3% (709)
Pre-university/Junior College	0% (0)	7.6% (153)
Polytechnic/Diploma	15.1% (8)	14.3% (286)
University Degree/Postgraduate	30.2% (16)	19.7% (396)

21.3.5 Severity and Perception of Incident

The respondents were asked to recall the most recent incident and their responses were categorised according to whether the incident involved a partner with whom they have (or had) a physically intimate relationship or not. Such intimate partners include current or previous husbands and boyfriends, while non-intimate partners include strangers, colleagues, friends, and family members such as a father or uncle.

Different measures were used to determine the severity of the incident:

1. Whether the respondent felt that her life was in danger
2. Whether the respondent was physically injured
3. If the respondent was physically injured, whether she needed medical care (even if she did not receive it)
4. Whether the respondent considered the incident as very serious at the time
5. Whether the respondent used alcohol and/or medication to cope
6. Whether the respondent regarded the incident as a crime or a wrong

It was found that incidents involving intimate partner victimisation were invariably considered to be more serious than non-intimate partner victimisation on the different measurements used. However, victims of intimate partner violence were less likely to regard the incident as a crime or a wrong as compared to victims of non-intimate partner violence (see Table 21.3).

Table 21.3 Respondents who experienced intimate partner and non-intimate partner victimisation

	Percentage of respondents who experienced intimate partner victimisation (weighted N)	Percentage of respondents who experienced non-intimate partner victimisation (weighted N)
Felt life was in danger	42.4% (42)	34.3% (35)
Was physically injured	45.5% (45)	26.5% (27)
If physically injured, those who needed medical care	28.9% (13)	22.2% (6)
Considered incident very serious at the time	28.3% (28)	19.6% (20)
Used alcohol and/or medication to cope	15.2% (15)	6.9% (7)
Regarded incident as a crime or a wrong	63.6% (63)	76.5% (78)

Table 21.4 Reporting of incident

	Percentage of respondents who experienced intimate partner victimisation (weighted N)	Percentage of respondents who experienced non-intimate partner victimisation (weighted N)
Reported incident	25.3% (25)	21.6% (22)
Did not report incident	71.7% (71)	77.5% (79)
Don't know/can't remember	0% (0)	1.0% (1)
Refused/no answer	3.0% (3)	0% (0)

Table 21.5 Reasons for not reporting incident to police

	Percentage of respondents who experienced intimate partner victimisation	Percentage of respondents who experienced non-intimate partner victimisation
Dealt with it myself/involved a friend or a family member	38.1%	24.5%
Too minor/not serious enough	20.3%	23.8%
Did not want anyone to know	11.0%	10.5%
Did not want offender arrested/in trouble with the police	8.5%	3.5%
Shame/embarrassment/thought it was her fault	5.9%	7.0%
Did not think the police could do anything	4.2%	9.1%
Fear of offender/fear of reprisals	3.4%	4.9%
Did not think the police would do anything	1.7%	5.6%

21.3.6 Involvement of Police and Assessment of Police Response

While the percentages of those whose victimisation was reported to the police or other judicial authorities did not differ much between those involved in intimate partner and non-intimate partner victimisation (see Table 21.4), the former were more likely to be pleased with the way the police handled the case than the latter (see Table 21.7).

Where the incident was not reported to the police, the three most common reasons given by those in intimate partner and non-intimate partner victimisation were the same: (1) "dealt with it myself/involved a friend or family member"; (2) "too minor/not serious enough"; and (3) "did not want anyone to know" (see Table 21.5).[10]

But it should be noted that those involved in intimate partner victimisation were more likely

[10] More than one response could be given by the respondents. A small number of responses were also given for "would not be believed", "part of the job", "reported to someone else", and "other reasons".

Table 21.6 Actions taken by the police

	Percentage of respondents who experienced intimate partner victimisation	Percentage of respondents who experienced non-intimate partner victimisation
Took a report	43.1%	53.1%
Gave a warning	21.6%	9.4%
Suggested services	11.8%	12.5%
Followed through with the court procedures	5.9%	6.3%
Arrested the man	2.0%	6.3%
Police did nothing	0%	6.3%
Brought charges against man	12.0%	18.2%

Table 21.7 Satisfaction with the police

	Percentage of respondents who experienced intimate partner victimisation (weighted N)	Percentage of respondents who experienced non-intimate partner victimisation (weighted N)
Very satisfied	12.0% (3)	13.6% (3)
Satisfied	64.0% (16)	27.3% (6)
Dissatisfied	8.0% (2)	27.3% (6)
Very dissatisfied	16.0% (4)	22.7% (5)

to give the reason "dealt with it myself/involved a friend or family member" and "did not want the offender arrested/in trouble with the police" for not reporting the incident to the police than those involved in non-intimate partner victimisation. On the other hand, those involved in non-intimate partner victimisation were more likely to give the reason "did not think police could do anything" and "did not think the police would do anything" for not reporting the incident as compared to those involved in intimate partner victimisation.

If the incident was reported to the police, the most common form of action taken by the police in both intimate partner and non-intimate partner victimisation cases is to "take a report", but the police are more likely to "give a warning" in intimate partner victimisation incidents.[11] On the other hand, the police were more likely to "take a report" and "do nothing" in cases of non-intimate partner victimisation (see Table 21.6).

Criminal charges were slightly more likely to be brought against the perpetrator in non-intimate partner incidents than intimate partner incidents (see Table 21.6).

Where the incident was reported to the police, those involved in intimate partner victimisation were more likely to be satisfied with the way the police handled the case than those involved in non-intimate partner victimisation (see Table 21.7). A total of 76% of those involved in intimate partner victimisation who reported the incident to the police were "very satisfied" or "satisfied" as compared to 40.9% of those involved in non-intimate partner victimisation.

21.4 Comparison with Previous Singapore Studies

Several limited scale studies have emerged in Singapore on female victims of violence. These give a profile of those who had gone to public hospitals for medical assistance (Seow et al. 1995; Lim 2002; Foo and Seow 2005), to the Family Court for a protection order (Subordinate Courts of Singapore 1998), or to a social service agency for counselling support (Basu 2009). Although they are limited in scope, it is nevertheless useful

[11] More than one response may be given by the respondents. A small number of other responses were also given for "provided protection to me" and "something else".

to compare the results of the present survey with these earlier studies to note commonalities and differences.

First, in common with three out of four of the earlier studies where information on age groups was available (Subordinate Courts of Singapore 1998; Lim 2002; Foo and Seow 2005),[12] the present survey also found that the highest proportion of victims who reported experiencing violence in the last 12 months came from those who are in their 30s (47.2%).

Second, in common with three of the four earlier studies where information on educational attainment was available (Seow et al. 1995; Foo and Seow 2005; Basu 2009),[13] this survey also found that the highest proportion of victims who reported experiencing violence in the last 12 months came from those who had secondary school education (43.4%).[14]

Third, the high proportion of victims with tertiary education who reported experiencing violence in the last 12 months in this survey (30.2%) is supported by one of the studies where this group was also found to be the second highest in proportion. That study which looked at the profile of female victims of family violence who approached a social service agency for counselling found that 24.9% had tertiary education, as compared to 48.2% with secondary education and 15.7% with primary education (Basu 2009).

Fourth, in common with all the four earlier studies where information on the ethnicity of the victims was available (Seow et al. 1995; Subordinate Courts of Singapore 1998; Lim 2002; Foo and Seow 2005), the present survey also found that the Malays were over-represented among those who reported experiencing violence in the last 12 months (18.9%). Malays in the earlier studies ranged between 15.0% (Seow et al. 1995) and 20.9% (Foo and Seow 2005). The proportion of Malays in Singapore's resident population amounted to 13.6% in 2008 (Ministry of Community Development, Youth and Sports 2010) and, as noted above, comprised 12.2% of Singapore's female population aged between 18 and 69 years old.

On the other hand, one aspect of inconsistency is that the present survey did not find an over-representation of Indian victims unlike the four earlier studies which did (Seow et al. 1995; Subordinate Courts of Singapore 1998; Lim 2002; Foo and Seow 2005). The present survey found that Indian female victims accounted for 7.5% of those who reported experiencing violence in the last 12 months. In comparison, the earlier studies found that Indians comprised between 15.3% (Lim 2002) and 28.1% of their samples (Subordinate Courts of Singapore 1998). The proportion of Indians in Singapore's resident population in 2008 amounted to 8.9% (Ministry of Community Development, Youth and Sports 2010) and 8.4% of Singapore's female population aged between 18 and 69 years old.

21.5 Discussion

More data will be forthcoming from the IVAWS conducted in Singapore when the final report is ready. Until then, some comments may be made based on the preliminary results presented here.

21.5.1 Prevalence of Violence and Repeat Victimisation

It comes as no surprise that Singapore has very low rates of violence against women amongst all the IVAWS participating countries. It confirms

[12] But note that the Subordinate Courts of Singapore (1998) study included men who applied for protection orders as well. In the Seow et al. (1995) study, those who were in their 30s were the second highest group, comprising 35.6% of the total and those in their 40s accounted for 44.2% of the total.

[13] Lim (2002)'s results are inconsistent with the other studies in showing a very high proportion of those with no education (33.3%) and those with primary school education (44.4%).

[14] It is unclear whether the earlier studies classified those with GCE A levels and diplomas as having secondary or tertiary education, but this statement is correct regardless how they are classified as it will not affect the proportions substantially.

what is known from rates of reported crime that Singapore has one of the lowest crime rates in the world (United Nations Office on Drugs and Crime n.d.). More research of a cross-cultural nature will be needed to uncover the possible commonalities shared by Singapore and other countries with a low rate of violence against women.

However, the number of victims who experienced multiple victimisations is a source of concern. The rate of repeated victimisation reported in Switzerland, another country with a very low rate of violence against women, was 39.4% (Killias et al. 2004) as compared to 58.8% in Singapore. Singapore's record in encouraging victims of family violence to come forward has been dismal. It was found that 90.4% of persons seeking a protection order were assaulted more than once before they sought the order from the Family Court: 23.2% were assaulted twice, 24.5% were assaulted 3 times, 21.8% were assaulted 4 times, and 20.9% were assaulted 5 or more times (Subordinate Courts of Singapore 1998).[15] In another study, it was reported that about three-quarters of applicants suffered physical and non-physical forms of abuse for more than a year (with more than 20% having suffered for more than 10 years) before seeking a protection order (Subordinate Courts of Singapore 2001).

It will be interesting to see to what extent repeated victimisation is affected by the relationship between the victim and the offender. It is likely that repeated victimisation is far more common among those victims who have or had, at least temporarily, shared an intimate relationship with the offender which is reflected in the data from the Family Court on protection orders cited above. It is less likely for strangers, and perhaps for friends and relatives, to have the same opportunities to commit repeated acts of violence against the same victim.

[15] These results were confirmed by a later study which found that only 11% of cases did not have any history of past violence when they applied for a protection order (Subordinate Courts of Singapore 2004).

21.5.2 Profile of Victims Who Experienced Violence in the Last 12 Months

Contrary to what has been found in surveys overseas (Bachman and Saltzman 1995; Killias et al. 2004; Mouzos and Makkai 2004; Perkins 1997; Tjaden and Thoennes 1998, 2000) where it was found that younger women were more prone to victimisation as compared to older women, the present survey found that more women in their 30s reported to have experienced violence in the last 12 months than any other group. Further research on this difference is needed. One possibility is that higher victimisation rates occur when women are married or when they join the workforce as compared to when they are in dating relationships or still in school.

Some studies overseas (Mouzos and Makkai 2004) have found that women from minority populations experienced a higher level of victimisation. The present survey also found that violence was over-reported by Malays but this was not true of Indians in Singapore. Further research will be needed to confirm this finding as well as postulate why this should be so. The over-representation of Indians in the previous studies in Singapore (Seow et al. 1995; Subordinate Courts of Singapore 1998; Lim 2002; Foo and Seow 2005) suggests that Indians are more aware of the help services available and are more willing to seek public assistance even though their level of victimisation may not be disproportionate to their numbers.

Further research is also needed to confirm the finding that those who have experienced violence in the last 12 months are over-represented among those living in 1- and 2-room public housing as well as those with university education. This appears inconsistent at first sight as it can be expected that those with higher education will be more likely to live in better housing. There could also be differences in these two groups in the type of violence experienced. Those living in 1- and 2-room public housing may experience more intimate partner violence whereas those with university education could experience more non-intimate partner violence since they are likely to spend more time away from the home.

21.5.3 Severity and Perception of Incident

In common with many of the IVAWS participating countries (Johnson et al. 2008), it was also found in Singapore that although violence inflicted by an intimate partner was more serious and, in more than four in ten of the cases, life-threatening, fewer considered it to be a crime or a wrong than those involved in non-intimate partner victimisation who may have less serious injuries. This shows that many women may still perceive violence committed by an intimate partner as a "family" or a "private" matter, leading them to endure serious injury for many years. This is supported by the finding in the survey that the most common reasons why victimisation by an intimate partner was not reported are the following: (1) "dealt with it myself/involved a friend or family member", (2) "too minor/not serious enough", and (3) "did not want anyone to know". These were also the common reasons reported by other IVAWS participating countries (Johnson et al. 2008).

Among the IVAWS participating countries, it was also found that even though a woman may perceive the incident as "serious" or a "crime", it was not always followed by a decision to report it to the police. Many other factors may influence the decision whether to report the incident to the police or not, including the availability of other resources to help her cope with the situation.

Education to improve awareness of the unacceptability of violence regardless of the relationship between victims and offenders must be reinforced, as well as enhancement of the criminal justice system's ability to provide an effective response to the wish of victims which may often be to stop the violence without necessarily having the offender arrested or punished.

21.5.4 Involvement of Police and Assessment of Police Response

The reporting behaviour of those who were victimised by intimate partners and non-intimate partners is similar. This is similar to the behaviour reported in other IVAWS participating countries (the Czech Republic, Denmark, Hong Kong, and the Philippines) where less than a quarter of victimisations were reported to the police (Johnson et al. 2008).

Where the incident was reported to the police, it was found in the present survey that those who were victimised by an intimate partner are more likely to be satisfied with the way the police handled the case. This may appear at first sight as inconsistent since those who were victimised by intimate partners were more likely not to regard the incident as a crime or a wrong. A possible explanation to the survey result is that those who have been victimised by an intimate partner had to overcome social conditioning that the incident is "private" or that it is "shameful" to tell on a loved one, but once that is done, the victim is relieved that she did so, even though the most common response given may be, in general, ineffective ones such as "taking a report", "giving a warning", or "suggesting services". Since violence committed by an intimate partner is often downplayed in society, the satisfactory rating for the police is also not affected by the small number of offenders who had criminal charges brought against them. Such victims may be of the view, rightly or wrongly, that there is very little that can be done in their case. What may be most important to them is that they were listened to, taken seriously, cared for, and supported, but not necessarily having the offender arrested or punished (Fleury 2002; Johnson 2006).

On the other hand, those who have been victimised by non-intimate partners may feel more indignant at their violation or fearful of a repeat incident, and expect the police to be more active in their intervention—even though this may not be always possible if the incident was committed by a stranger who cannot be properly identified subsequently. Further research will be needed to examine the extent to which the objectives of the female victims and the police can, and should, be aligned together.

More women being satisfied with the police in situations of intimate partner violence than for non-intimate partner violence was also found in 3 of the IVAWS participating countries: Mozambique, the

Philippines, and Poland (Johnson et al. 2008). It should also be noted that positive attitudes towards the police do not necessarily translate to a sense of satisfaction with the criminal justice system in general (Johnson et al. 2008).

21.6 Conclusion

More research, both qualitative and quantitative, on the issue of violence against women in Singapore is needed in order to fill the gaps in what we know about it as well as formulate effective strategies to tackle this problem. Although this survey, like other surveys of this nature, may be criticised in that it may be inaccurate owing to under-reporting and wrong information being given by respondents, it is nevertheless a first attempt at giving a systematic view of the issue in Singapore through a large-scale victim survey. It is hoped that the present survey, with a fuller report to follow soon, will go towards a better understanding of the issue and aid policy formulation to eradicate violence against women and promote gender equality in Singapore.

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Victims of Crime in Taiwan

22

Hsiao Ming Wang

22.1 Introduction

Victimology as a new area in criminology emerged in the 1970s but interest in crime victims is by no means new (McShane and Williams 1992). In 1970 victimization first time became a research topic of criminologists in Taiwan. However, "the victimization issue in Taiwan seems to be underdiscussed and investigated" (Kuo et al. 2009, p. 461). To shed some light on this issue, this chapter briefs the background of victimology as well as looks at the development of victimization and movement of victims' right in Taiwan by reviewing related literatures and statistics. In the section of background, a brief history of conceptual framework of victimology is reviewed, practical and theoretical issues in the relationship to the formal criminal justice system are discussed, and the potential and limitations of "alternatives" to criminal justice are also addressed. The main focus of this chapter consists of four angles in Taiwan: unfolding the role of victim surveys in generating criminological interest in victims, describing the nature and scope of victimization, tracing the role of victim movements, and identifying changing service and procedural rights for victim. The nature and scope of victimization in Taiwan is presented in three features, including individual, household, and commercial. The changing service and procedural rights for victim are illustrated from three prospects: victim compensation, victim advocate, and victim right. The content of main focus of this chapter led to the discussions of two future trends: victimization of new residents in Taiwan and a tertiary crime victim caused by using CCTV as a self-protection measure. Finally, this chapter concludes that many criminologists in Taiwan have dedicated them to the new area of victimology and the victims' right in Taiwan seems considerably improving after the enactment of the Crime Victim Protection Act in 1998.

22.2 Background

22.2.1 A Brief History of the Principles and Conceptual Framework

The concept of victim dates back to prehistoric cultures such as the ancient Hebrews (Huang and Zhang 2011, p. 2). The original meaning of victim was rooted in the idea of sacrifice (Genesis 31:54) or scapegoat (Leviticus, 16:8) (New American Standard Bible 1997). Over the centuries, the word victim came to have additional meanings. Today, the concept of victim includes any person who experiences injury, loss, or hardship due to any cause; and crime is one of the causes (Fattah 1991). In this chapter, the focus is on crime victims.

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The term "crime victims" generally refers to any person, group, or entity who has suffered injury or loss due to illegal activity. The harm can be physical, psychological, or economic (Karmen 2007). The individuals to whom the offense actually occurred are called "primary crime victims." However, crime victimization is not limited to the primary victim. Secondary crime victims are those who experience the harm second hand, such as intimate partners of rape victims or children of a battered woman (Karmen 2007). Besides "secondary crime victims," there are also "tertiary crime victims" who experience the harm vicariously (Sessar 1990). In a case that A kills B, for example, B is the primary victim while his family dependants are secondary crime victims. Supposed B is a project manager of a software company; his boss is the tertiary crime victim for losing the contract due to the sudden death of B.

From criminological perspective, the above statement presents a broad view of crime victims. In line with criminal law, a victim of crime is an identifiable person who has been harmed individually and directly by the perpetrator, rather than by society as a whole. However, this legal definition is system-oriented and has its restriction (McShane and Williams 1992). For example, Croall (2001) argued that the system-oriented definition may ignore or even deflect attention from white-collar crime victims whom may not be clearly identifiable or directly linked to crime against a particular individual. In this chapter, the broad view of crime victims is applied.

The process of becoming a victim refers to "victimization," and the scientific study of victimization is named "victimology" (Karmen 2007). The term "victimology" was coined by Benjamin Mendelsohn in 1947 (Huang and Zhang 2011). Although its roots can be traced to a number of earlier works on crime victims in the 1940s, victimology emerged as a recognized specialization within criminology in the early 1970s (McShane and Williams 1992; Miethe and Meier 1994). In the past, criminology was primarily focused on the offender; victimology shifted the interest to the victim of crime (Schneider 2001a). Victimology encompasses not only the study of victimization but also victim–offender relationships, victim–criminal justice relationships, victims and the cost of crime, victims and the media, as well as victims and social movements (Karmen 2007).

Scholars who dedicate themselves to advance the knowledge of victimology are called "victimologists." Because official data usually cannot present a whole picture of crime, victimologists often use surveys of large number of people about the crimes that have been committed against them. Several large-scale victimization surveys have been conducted in various countries, such as the National Crime Victimization Survey (NCVS)[1] in the United States and the British Crime Survey (BCS)[2] in the United Kingdom (Maxfield and Babbie 2009). Today, most victimologists are engaging in at least one of the following activities (Huang and Zhang 2011):

- *Define the problem*: Find the asymmetry of power, analyze responsibility, explore the kinds of harm.
- *Measure true dimension of the problem*: Analyze statistics, see what kind of people are involved, accurately gauge the extent of harm.
- *Investigate how criminal justice system handles the problem*: Look at what criminal justice system ignores, ask what victim wants, analyze effects, chronicle emergence of victim's movement.
- *Examine societal response to problem*: Look at issues of constitutional rights, analyze proposed legislation, analyze media reaction, see if anyone is cashing in on the problem.

The studies of victimization in Taiwan can be traced to 1970 (Huang and Zhang 2011). The first national criminal victimization survey

[1] The NCVS, administered by the US Bureau of Justice Statistics, is a national survey of approximately 77,400 households twice a year in the United States. The survey focuses on gathering information on the offenses assault, burglary, larceny, motor vehicle theft, rape, and robbery as well as characteristics and consequences of victimization.

[2] The BCS, presently carried out by BMRB Limited on behalf of the Home Office, seeks to measure the amount of crime in England and Wales by asking around 50,000 people aged 16 and over (as of January 2009), living in private households, about the crimes they have experienced in the last year.

in Taiwan was undertaken in 2000. However, "the victimization issue in Taiwan seems to be underdiscussed and investigated" (Kuo et al. 2009). The development of victimology and victims' rights movement is addressed in this chapter.

22.2.2 Practical and Theoretical Issues in the Relationship to the Formal Criminal Justice System

The concept of "criminal justice" was first coined by Jerome Michael and Mortimer Adler in 1932 (Laub and Edwin 2006). In a report titled "the challenge of crime in a free society," the President's Commission on Law Enforcement and Administration of Justice created the term "criminal justice system" and advocated a "systems" approach to criminal justice, with improved coordination among law enforcement, courts, and correctional agencies (Walker 1992). Traditionally, criminologists look into crimes from the perspective of criminals. However, Hans von Hentig argued that "the study of crime is not complete unless the victim's role is considered" (Siegel 2009, p. 15). The argument of von Hentig highlights the importance of the relationship between crime victims and criminal justice system.

The police are the starting point of the criminal justice system to most crime victims. It is necessary to know why many victims do not report crimes to the police. In addition to that, the criminal justice system usually focuses on the individual to whom the offense actually occurred (Karmen 2007). However, crime victimization is not limited to the primary victim. Secondary victims are usually being ignored by the criminal justice system. The psychological effect of criminal victimization is another practical issue being ignored by the criminal justice system. The psychological effect can be nonexistent to extreme, and can range from short to long term (Wallace 1998), depending on the type of victimization, amount of loss incurred, and trauma suffered. Additionally, both primary and secondary victims are equally likely to suffer from psychological disruptions (Schneider 2001b). When more intense psychological reactions occur the most common include "fear, resentment, anger against offender and CJ system, and humiliation" (Williams 1999, p. 51). In Taiwan few prior research projects have examined those practical issues; this chapter briefly reviews related findings in the following sections.

The victim precipitation theory, an earlier explanation of victimization in the context of research on homicidal criminality, postulated that some victims may "contribute" to their own victimizations (Wolfgang 1958). Siegel (2009) pointed out two types of precipitations: active and passive. "Active precipitation occurs when victims act provocatively, use threats or fighting words, or even attack first," whereas "passive precipitation occurs when the victim exhibits some personal characteristic that unknowingly either threatens or encourages the attacker" (Siegel 2009, p. 73). Over the years, the victim precipitation theory has been perceived as a negative connotation against victims and victim advocates, whereas routine activities theory and lifestyle theory were shaped and substantially tested (Schneider 2001a).

Routine activities theory, developed by Cohen and Felson (1979), maintained that crime occurs whenever three conditions come together: suitable targets, motivated offenders, and absence of guardians. This theory assumed that motivated offenders always existed and were waiting for an appropriate time, place, and target; therefore, "engagement in activities in non-household settings elevated the likelihood of becoming a victim" (Kuo et al. 2009, p. 462). Lifestyle theory claimed that "crime is not a random occurrence but rather a function of the victim's lifestyle" (Siegel 2009, p. 73). For example, college students who frequently joined parties and took recreational drugs were much more likely to be violent crime victims than those who avoid such risky academic lifestyle (Fisher et al. 1998). A number of empirical studies tested these two theories in Taiwan, which are also reviewed in this chapter.

22.2.3 The Potential and Limitations of "Alternatives" to Criminal Justice

As victimology advanced and matured, the public were more aware of victim's rights in the past decades. As a result in addition to victim compensation, many victims' crusading groups had emerged to focus on specific needs of different offenses, such as drunken driving, missing children, and rape (McShane and Williams 1992). In the United States, victim-oriented crime policies had made large progress. Schneider (2001b, p. 548) summarized eight federal laws to illustrate this achievement as below:

- The 1982 Victim and Witness Protection Act improves victims' rights and services.
- The 1984 Victims of Crime Act provides substantial financial funds for victim assistance and treatment programs. It supports the establishment of interdisciplinary victimological institutes of teaching and the publication of victimological literature.
- The 1986 Children's Justice and Assistance Act reforms the handling of cases of child abuse and reduces the effect of the traumatic experiences that children undergo during their participation in the criminal justice proceedings.
- The 1990 Victims' Rights and Restitution Act endows the victim with the right of restitution. This act entitles the victim to be treated with fairness and due respect for his or her dignity and sphere of privacy.
- The 1990 Victims of Child Abuse Act supplements the reform of the treatment of child victims and witnesses in the federal judicial system.
- The 1994 Violent Crime Control and Law Enforcement Act grants the victims of violent and sexually motivated crimes a right of participation in the criminal proceedings. It guarantees the victims' restitution and intensifies the punishment for crimes of violence against women and elderly persons.
- In 1996, the Megan's Law amendment to the Jacob Wetterling Crimes against Children and Sexual Violent Offender Act was enacted to help ensure that communities are notified of the release and location of convicted sex offenders.
- In 1997, Congress passed the Victim's Rights Clarification Act, asserting that victims should have the right to both attend proceedings and deliver or submit a victim impact statement.

However, this achievement still has its limitations due to the fact of middle-class symbolism. McShane and Williams (1992) distinguished two perspectives of crime victim definition: static and dynamic. The static perspective presents the middle-class symbolism and views the victim and offender as "part of a strict dichotomy, a mutually exclusive set of categories. The offender cannot be viewed as victim, nor can the victim be viewed as offender" (McShane and Williams 1992, p. 261). The dynamic perspective suggests that "at least some offenders and victims can be thought of as participants in a dynamic, ongoing interaction. At any point, participants can be called the victim or the offender, depending on the stage of the interaction" (McShane and Williams 1992, p. 261). McShane and Williams (1992) argued that the static perspective is dominant among the public and the media for the purpose of social order maintenance. They suggested victimology to undertake the dynamic view; otherwise victimology remains "a pawn of the state and political process" (McShane and Williams 1992, p. 269).

22.3 Main Focus of the Chapter

22.3.1 The Role of Victim Surveys in Generating Criminological Interest in Victims

The crime victimization survey in Taiwan can be traced back to a research project undertaken by Professor Chuen-Jim Sheu (1994). This project, contracted by Kaohsiung City Police Bureau, investigated 2,416 people from Kaohsiung City and other six counties in Taiwan about their experiences of victimization. Because of the limited size of samples and the method of non-probability sampling used, the results of this pioneer work are very difficult to be used for inferential statistics (Huang 2006).

The first nationwide crime victimization survey in Taiwan was conducted by Sheu and his associates in 2000 (Kuo et al. 2009). This survey was initiated by the National Police Agency

(NPA) as a response to a newly enacted law for strengthening the crime victims' protection. However, there are certain limitations of the 2000 victim survey. For example, it cannot estimate the "dark figure" and has no capacity for comprehending repeat victimization (Huang 2006). Therefore, a second wave of nationwide crime victim survey was conducted by the same NTPU research team in 2005.

The 2005 survey had used two methods of gathering information—telephone survey and in-person interview. The telephone survey is used for understanding the prevalence of crime and "dark figures," while in-person interview is used for understanding the victims' reaction to police case processing and citizens' request (Huang 2006).

The third wave of crime victim survey in Taiwan was undertaken in 2010. Research team used the method of Computer-Assisted Telephone Interview (CATI) for gathering victimization information in 2009 but seek to represent the nationwide population of persons aged 12 living in household. A sample size of 16,015 was obtained by using stratified sampling over the 20 counties/cities in Taiwan. Among the persons experiencing victimization in 2009, research team used multistage cluster sampling (i.e., theft, motorcycle theft, auto theft, fraud, robbery, and snatch) to obtain 1,800 samples for in-person interview (Sheu et al. 2011).

In addition to these three waves of crime victimization survey undertaken by Sheu and associates, the Crime Research Center of the National Chung-Cheng University (CRC-NCCU) also conducted biannually nationwide survey in 2009, 2010, and 2011. The CRC-NCCU successfully obtained a sample of 2000 in each wave of the phone survey by randomly selecting persons aged 20 living in households in Taiwan (CRC-NCCU 2011).

22.3.2 The Nature and Scope of Victimization in Taiwan

22.3.2.1 Individual Victimization

The 2010 Taiwan Areas Criminal Victimization Survey (TACVS) examined individual victimization of larceny, assault, robbery, and snatch[3] happened in Taiwan in 2009 (National Taipei University 2010). The 2010 TACVS indicated that larceny is the most prevalent offense (10.43%), followed by assault (0.59%), snatch (0.42%), and robbery (0.04%). The robbery victims are most likely to report their victimizations to police (42.86%), followed by snatch (37.33%), assault (29.11%), and larceny (18.36%) victims. In other words, individuals in Taiwan are most likely become crime victims of larceny but are least likely to report this kind of crime to police. The main reason why victims do not report individual victimizations to the police is "too petty to report" (55.35%), followed by that "it won't do anything good" (27.63%). The average loss of larceny, robbery, and snatch was $173,[4] $379, and $255, respectively (National Taipei University 2010).[5] According to the R.O.C. (Taiwan) National Statistics, the 2009 GDP in Taiwan was US$16,359 (National Statistics 2011a). This figure is about one-third of that of the United States in the same year. However, given the facts of relatively low living expenses ($6,548 per person) and high savings ($1,919 per person) in Taiwan, damages ranged between $173 and $379 perhaps are still bearable for most Taiwanese (National Statistics 2011a).

The findings of 2010 TACVS were partially consistent with the CRC-NCCU crime victimization survey in the same time period.[6] According to the

[3] According to the Glossary in the 2010 TACVS Report (National Taipei University 2010, p. 181), these four offenses were defined as below:

- Larceny: Taking property away from persons without their awareness, including bicycle thefts, items taken away from vehicles and motorcycles, but excluding motor vehicle thefts, motorcycle thefts, and taking property from residences.
- Assault: An unlawful injury of other person's body or health.
- Robbery: Offenses where valuables were taken from persons by force, threat of force, drug, or hypnosis.
- Snatch: Offenses where valuables were taken from persons in surprise but not by force.

[4] The average exchange rate between the US dollar and TW dollar was 1:33 in 2009. Hereafter, all monetary unit is noted in the US dollar.

[5] The monetary damage of assault was not inquired in the 2010 TACVS (National Taipei University 2010, p. 24).

CRC-NCCU crime victimization survey, 11.3% of respondents indicated being victimized in larceny with an average loss of $2,485 in the first half year of 2009. In the second half year of 2009, 16.8% of respondents indicated being victimized in larceny with an average loss of $3,327. Comparatively, the prevalence of larceny between these two nationwide crime victimization surveys in Taiwan is about the same. The results are also consistent with that of National Crime Victimization Survey in the United States. According to Klaus (2004), theft (10%) was the most frequently reported crime in the year 2002. However, the damage figure of CRC-NCCU is much higher than that of TACVS. A possible reason is that the unit of analysis of CRC-NCCU is all individuals in a specific household, while that of the TACVS is individuals.

It is worth to note that about 40% of victims of CRC-NCCU chose not to report crimes to the police for the reason that "it won't do anything good." The CRC-NCCU further provided estimation of total loss of larceny in Taiwan in 2009. There were 7,720,983 households in Taiwan in June 2009 (National Statistics 2011b). It is estimated that in the first half year of 2009 the total damage for larceny was $2.17 billion. There were 7,805,834 households in Taiwan in December 2009 (National Statistics 2011b). It is estimated that in the second half year of 2009 the total damage for larceny was $2.74 billion.

Prior research suggested that demographic characteristics distinguish victims and non-victims. The 2010 TACVS presented a general picture of individual victim, including gender, age, education, marriage status, and nighttime activity (National Taipei University 2010).

Gender

Males are more likely than females to be the victims of larceny (54.27%) and assault (63.53%) but not snatch (44.06%).

Age

Adults (30–54 years old) are more likely than other age groups to be the victims of larceny (54.62%), assault (48.57%), and snatch (42.67%). However, the proportion of young adults and youths being victims of snatch (42.15%) is very close to that of adults.

Education

People with higher education level (high school and above) are more likely than their lower education counterparts (middle school and below)[7] to be the victims of larceny (78.24%), assault (71.51), and assault (70.82%).

Marriage Status

Married or cohabited people are more likely than their not married counterparts (never married, widowed, separated, or divorced) to be the victims of larceny (57.09), assault (50.73%), and assault (50.54%).

Nighttime Activity

People engaged in nighttime activities (going out twice and above per week) are more likely to be the victims of larceny (63.27%), assault (59.87%), and snatch (56.34%).

22.3.2.2 Household Victimization

The 2010 TACVS also examined household victimization of residence larceny, motorcycle theft, motor vehicle theft, and fraud happened in 2009 (National Taipei University 2010). The phone survey results indicated that residence larceny is the most prevalent offense (3.72%), followed by motorcycle theft (2.16%), fraud (1.57%), and motor vehicle theft (.78%). The motor vehicle theft victims are most likely to report crimes to police (97.14%), followed by motorcycle theft (90.26%), fraud (54.17%), and residence larceny (41.49%) victims. In other words, residence larcenies are most likely to happen in Taiwan but victims are least likely to report this kind of crimes to police. The main reason why people do

[6] The CRC-NCCU conducted biannual crime victimization surveys in July 2009 and January 2010. The survey in July 2009 examined the victimization in the first half year of 2009, while the survey in January 2010 investigated the victimization in the second half year of 2009.

[7] Taiwan put 9-year compulsory education into practice in 1968. Since then, each student is required to complete at least middle school education (7–9 grades).

not report household victimizations to the police is "too petty to report" (49.22%), followed by that "it won't do anything good" (25.21%). The average loss of residence larceny was $1,470 (National Taipei University 2010).

The 2010 TACVS did not present the average loss of fraud but indicated that about 65% of respondents were victims of fraud with no loss and only 1.1% of respondents were victims of fraud with loss. On the other hand, the CRC-NCCU crime victimization survey showed that 4.1% of respondents were victims of fraud with an average loss of $8,576 in the first half year of 2009, and 3.5% of respondents were victims of fraud with an average loss of $6,848 in the second half year of 2009. It is estimated that the total damages for fraud in Taiwan in the first and second half year of 2009 were $2.71 billion and $1.8 billion, respectively.

22.3.2.3 Commercial Victimization

In Taiwan, most research projects in victimization focus on individuals or households instead of business (Mong 2006). Dr. Weide Mong, a professor of the Central Police University, conducted a research about the perception of commercial victimization in Taiwan in 2005. He surveyed 242 security managers of 242 large retail stores in Taiwan (one manager from each store) and 165 police chief or deputy chief from 165 police substations which have at least one retail store located in their jurisdiction (one chief or deputy chief from each substation) about their perceptions of crime victimization happened in the business venue in the past 6 months.

Mong's findings presented in six directions: general profile, amount of loss, crime reports, interactions between retails and police, risk perception, and security management. Both security managers and police officers agreed that the most common offenses happened in the business site are shoplifting and cars/scooters (a very popular vehicle in Taiwan) theft, and that consumers are more likely to be the suspects, comparing to store employees. On average, 1–5 cases happened per month. In terms of amount of loss, security mangers and police officers disagreed with each other. Security managers believed that the minimum loss of each case is less than $3.3, while police officers maintained that the minimum loss ranged between $3.4 and $100. The possible reason for this difference is that the cases that involved small amount of loss were not being reported to the police (Mong 2006).

When a case was reported to the police, most police officers believed that they will be at the site within 5 min whereas most security mangers perceived more than 5 min of police's arrival. In addition to this disagreement, more than 75% of police officers believed that most reported cases were cleared while only 42% of security mangers had the same perception. Furthermore, most police officers perceived a good interaction between their substations and retail stores in their beats but less security mangers maintained the same perception as that of police. Mong (2006) asserted that the interaction between police and retails should be strengthened. In the regard of security management, most retail stores perceived themselves in good conditions with qualified personnel but police saw the other way around.

22.3.2.4 The Impact of Victimization

The research indicated that being the victim of predatory crime (e.g., rape, robbery, or assault) has a terrible burden that can have considerable long-term consequences. The costs of victimization not only include physical injuries, property loses, and psychological trauma but also the involvement of the police and other agencies of the justice system (Huang and Zhang 2011). Fear of crime is the most significant impact of victimization indicated by prior research (Siegel 2009).

Prior research projects on fear of crime focused on four core factors: demographics, experience of victimization, social disorganizations, and police performance (Sheu et al. 2011). It was found that females (Box et al. 1988), elders (Acierno et al. 2004), and people with victimization experiences (Skogan and Maxfield 1981) and perception of social disorganization (Gibson et al. 2002) were more likely to fear of crime.

As for police performance, most previous studies found that a better police performance can decrease citizens' fear of crime (Dietz 1997). In sum, the studies in the Western societies

indicated that many people fear crime, especially females, elders, and persons with victimization experience and perception of social disorganization. It is worthy to know to what extent this finding is true in Taiwan.

Dr. Xie Jinqi, a social psychology professor at the Shih-Hsin University in Taipei, did an exploratory study about fear of crime in Taiwan. She surveyed 1,000 people who ranged from 10 to 86 years old. She found a reverse liner relationship between age and fear of crime. Different from the finding of Acierno et al. (2004), Xie (2005) found that the older the age, the less the fear of crime. When the gender is taken into consideration, the reverse liner relationship is still true in general for females but not males. The men in the groups of young adults (19–34 years old) and adults (35–54 years old) fear more being victimized of car/scooter theft when compared to the groups of youths (10–18 years old) and seniors (55–84 years old).

On the other hand, the seniors and youths fear more to take taxies alone in the evening. Xie (2005) pointed out that this phenomenon could be caused by the fact that young adults and adults in Taiwan are more likely to have cars and/or scooters for their daily transpirations, while youths and seniors are more likely to rely on the public transportations or taxies. In addition to that, almost all age groups across gender (except female and male youth as well as male young adult) fear most being kidnapped.

Xie (2005) urged that a specific historical event may threat the validity of this finding. During the time period of Xie's survey, a hideous case of abduction and murder happened in Taiwan in 1997. The victim named Hsiao-Yen Pai (Hanyu Pinyin: Bái Xiǎoyàn) was missing after leaving for her school in the morning of April 14, 1997. Her family received ransom request of $5,000,000 along with a severed piece of her little finger and a photograph of a half-naked girl bound with tape. Pai's deformed body was found in a drainage ditch on April 25, 1997. It was perhaps because the victim's mother Pai Ping-ping was a popular Taiwanese TV host and actress in Taiwan, the press paid a lot of attentions on this case. The detail reports about suspects' violent behaviors indeed terrified many Taiwanese at that time.

Sheu et al. (2011) used the data set of 2011 TACVS to examine the issue of fear of crime in Taiwan in a more comprehensive way. The major findings are summarized as below:

- Most people (71.5%) in Taiwan are worried about being crime victims.
- Females, middle-aged (40–49 years old), and married/cohabitated people are more likely to fear of crime.
- Persons who experienced victimization of larceny, assault, snatch, residence larceny, motorcycle theft, and fraud are more likely to fear of crime. Among these offences, assault and snatch have most serious impacts on fear of crime.
- Social disorganizations index (e.g., youths wandering on streets, fighting, and existence of arcade in the neighborhood) is significantly related to fear of crime. The more perception of social disorders, the more fear of crime.
- Police officers' attitude toward the victims is significantly related to fear of crime. The more officers were able to patiently listening victims' statements and more efficiently handle the case, the less fear of crime.

To sum up, fear of crime commonly exists in the society of Taiwan. Females, middle-aged people, and those with experienced victimization and perception of social disorders are more likely to fear of crime. However, the quality of police service can ease the fear of crime. The last finding implicates that the police administration should not only promote the crime prevention measures (e.g., installation of CCTV, branding ID on vehicles, and 165 antifraud hotlines) but also educate officers in upgrading their services, especially receiving reports from crime victims.

22.3.3 Tracing the Role of Victim Movements in Taiwan

The victimization first time becoming a research topic in the context of criminology in Taiwan was in 1970. In the same year, the victimology was taught when the Central Police University (CPU) in Taiwan established a section of crime prevention in the policing graduate program (Huang and Zhang 2011).

In the late 1970s and early 1980s, a democratic movement was emerging in Taiwan where many grassroot foundations were created for promoting human rights, including crime victims' rights. For example, Modern Women's Foundation (MWF) was formally incepted in Taipei in 1987. The primary objective of MWF is to assist modern women in seeking a balance role in the fast-changing society where modern and traditional value coexists in Taiwan. In the process, the MWF discovers that the basic personal safety of women has never had the attention it deserves. Consequently, as early as in 1988, the MWF set up a women protection center, offering professional information as well as legal and medical services to female victims. The MWF further translates its services into a professional network for female victims of domestic violence, sexual abuse, or sexual harassment.

The Republic of China Association of Vehicle Victim Rescue (AVVR), another example of grassroot organization for victims' rights in Taiwan, was created in 1988. At that time, it had no mandatory auto insurance in Taiwan. In other words, the victims of auto incidents often faced no compensations from the offenders. Hence, the main purpose of creating AVVR was helping the victims of auto incidents to obtain fair opportunities on trials and to claim reasonable civil compensations from the offenders. The AVVR changed its name to the Association of Auto Incidents Concerns after the mandatory auto and motorcycle insurance law was enacted in 1998 (Wu 2000). As of today, the minimum coverage for a death in the car accident is up to $50,000.

The victim rights movement in the 1980s inevitably pushed the Ministry of Justice (MOJ) in Taiwan to promote the legislation for crime victims' protection and compensation in 1993, and the Crime Victim Protection Act (CVPA) was finally enacted in 1998. Before the 1998 CVPA's enactment, there was an extensive debate about the scope of victims' compensation.

In terms of state responsibility and the consideration of government budget, there are four different perspectives: state responsibility, social welfare, life protection, and risk dispersion. The state responsibility perspective maintains that the state has the responsibility to protect citizens' life and properties according to social contract. When citizen's life and/or property were being damaged because of crime, the government has the obligation to compensate citizens' damages. The social welfare perspective sustains that the people of disadvantage groups are more likely to be victimized according to crime data. The state has obligations to protect disadvantage people and provide necessary compensations when they are being victimized. The life protection perspective upholds that the state has obligations to relieve people in miserable situations. Hence, only people in miserable situation because of victimization are entitled to compensation from the government. The risk dispersion perspective, derived from insurance theory, argues that there is a risk for each person to being victimized. Hence, every citizen should share the damages to victims (see Hsu 2005).

Initially, the life protection prevailed in the consideration of governmental budget.[8] The draft of CVPA stated that only the victims in miserable life, when the offenders either cannot be identified or have no capacity for compensation, are entitled to request the government to support their life (Jiang 1998). The Legislation Yuan (the highest legislation branch in Taiwan) asserted that it is not reasonable to ask the victims to locate offenders and to prove that offenders have no capacity to provide compensation hence revised the draft accordingly. However, not all crime victims are entitled to request compensation in the consideration of government budget. The Article five of 1998 CVPA spells that only the severely injured victims and dead victims' family members are entitled to request compensations from the government when the injury and death were caused by crimes defined by ROC Penal Code. The compensation for medical expense is up to NT$400,000,

[8] As of 2011, the debt of Republic of China (Taiwan) is estimated as NT$4,961,800,000,000 (about US$177.2 billion in the rate 1:28), which is about 37.5% of GDP (Lai et al. 2011). The debt situation of Taiwan is much better than that of the United States, but the ROC Government is always more conservative about raising debt.

for funeral expense is up to NT$300,000, and for legal aliment is up to NT$1,000,000.[9]

22.3.4 Identifying Changing Service and Procedural Rights for Victim

22.3.4.1 Victim Compensation

Because of public concern over welfare state and the change of criminal policies, the MOJ in Taiwan began to promote the ROC legislative of crime victims' protection in 1993 (Zheng and Wang 2004). The ROC legislative Yuan promulgated the CVPA on May 27, 1998, and officially enforced on October 1, 1998. However, not all types of crime victims are protected by this Act. The protection is limited to "the family members of deceased victims, seriously injured victims of criminal acts and victims of sexual assault crimes" (Article 1). According to the Article 4 of the Act, those people are entitled to apply for crime victim compensation paid by the prosecutors' office of a district court or its branch court out of the following funding sources:

- The funds budgeted by the MOJ.
- Amounts deducted from the total labor wages paid to prisoners who participate in work programs in prison.
- The proceeds from the criminal venture, the proceeds from sale of confiscated property of the criminals, or other proceeds.
- Certain amounts deducted from the sum of amounts payable by criminals for suspension of sentence, deferred prosecution, or negotiations relating to criminal judgments.

In line with the Article 9 of the Act, compensation may be made for loss of wages (up to US$33,333), loss of future earnings for family living (up to US$33,333), medical bills (up to US$13,333), mental counseling (up to US$13,333), and funeral expenses (up to US$10,000). In the United States, rarely are two compensation schemes alike. Awards are typically in the range of US$100 to US$15,000 (Siegel 2009, p. 78). Comparing to that, the compensation schemes seem reasonable. However, those compensations are considered as secondary. In other words, if the applicant has already received any social insurance benefit, damage or any other pecuniary benefit for the harm he/she suffered from a criminal act, the sum of such other payments received by him/her shall be deducted from the amount of crime victim compensation payable to him/her under this Act (Article 11).

The compensation decisions are made by two-level committees. The Crime Victim Compensation Review Committee (hereinafter "Review Committee") is established in each district court prosecutor's office, while the Crime Victim Compensation Reconsideration Committee is created in a high court prosecutors' office for examining the appeals against the Review Committee's decisions. Each level's committee usually consists of six to ten members who are public prosecutors and law or medical science experts appointed by the MOJ, and is presided by the chief prosecutor (Article 14). Upon payment by the prosecutors' office of any crime victim compensation under the Act, the prosecutors' office has the right to make a claim for reimbursement against a convicted defendant but such reimbursement shall not exceed the compensation paid to the crime victim (Article 12). In order to preserve the right to claim reimbursement, the prosecutors' office may request the court to provisionally seize the property of the convicted defendant or others liable for indemnification for damage in accordance with the applicable laws (Article 27).

22.3.4.2 Victim Advocates

In order to assist crime victims or their family members to return to their normal lives, the Article 29 of the CVPA ruled that the MOJ and the Ministry of the Interior (MOI) shall work jointly to establish a crime victim protection institution but under the MOJ's direction and

[9] According to Article 192 of the Civil Code in Taiwan, the perpetrator should assume liability for damages to victim, including medical expenditures, increased living expenses, and funeral expenses in the case of wrongful deaths against others; the perpetrator should also assume liability for the third person as long as the victims have a statutory maintenance obligation to the third person. The calculation of the amount of maintenance obligation should consider the actual conditions in line with the "Average Life Tables" calculated by the Ministry of Interior.

supervision. Hence, an organization named "Association for Victims Support" (AVS) was created in 1999. The AVS has its head office in Taipei City and 21 branch offices located in each Public Prosecutors Divisions under district courts across Taiwan. The Board of Directors is the AVS' highest authority. It is composed of nine to 17 directors, being chosen from the MOJ staff and serving a tenure of office for 2 years with no remuneration. The Prosecutor General of the Public Prosecutors Division under the Taiwan High Court serves the Chair of the Board.

In order to maximize the protection function by assisting the victims or their survivors to rehabilitate their normal life, the Association and its representative offices in various areas have recruited and encouraged some social public having enthusiasm for safeguarding public interests to act as volunteers and join the team dedicated for protection of victims of criminal acts and establishment of protection service networks for victims of criminal acts by working actively to the furtherance of the victims protection task. Presently, a total of some 1,300 volunteers, individuals, and/or in-groups have joined this force. Most of them are college/university graduates and currently working in industrial/commercial sectors or in governmental agencies.

The operational funds of AVS mainly come from the budgets of the MOJ and the MOI and public donations. In line with the Article 29 of the CVPA, the AVS not only advocates the protection of crime victims but also provides necessary help to crime victims, including securing emergent physical and mental treatments, finding a place for staying, legal counseling in the course of the judicial investigation or trial, applying for compensations, and obtaining medical treatments and rehabilitations.

Zheng and Wang (2004) conducted a research about the crime victims' perception of the AVS' performance. The researchers used the method of quota sampling to mail questionnaires to 600 crime victims across 19 jurisdictions in Taiwan (Jinmen and Mazhu counties were excluded), and 144 questionnaires were sent back, making a response rate around 25%. More than half (53.2%) of the respondents were auto incident victims, whereas more than a third (36.1%) of the respondents were violent crime victims. Forty-one respondents indicated that they received compensations but only 17 people satisfied the amount of compensations. While the crime victims were being asked "how do you know the service of AVS" more than one-fourth of the respondents indicated that the AVS actively contacted them; but only one respondent was aware of the AVS' service from the media. In addition to that, because the interaction between the AVS and crime victims was most likely depending upon the AVS staff's active contacts, 64 respondents indicated that the first contact by AVS happened 30 days or later after their victimizations. When the researchers used chi-squared test to examine the relationship between the first-contact days and satisfactions of AVS' service, it was found that the fewer the first-contact days, the more satisfied victims were with AVS' service. However, the AVS is not a part of government organizations; the prosecutor's office has no obligation to notify the AVS about the crime victims who entitled the assistances under the CVPA. Zheng and Wang (2004) suggested that the AVS should strengthen its media connections to let publics to know its availability to crime victims.

Recent news shows a progress of victim advocates in Taiwan. The legislature voted on November 15, 2011, to expand protection for crime victims to cover foreigners, including workers and spouses from China, Hong Kong, Macau, and other countries. Under the current version of the CVPA, a set of measures designed to protect crime victims does not extend to foreign spouses and workers from countries that do not provide reciprocal treatment to Taiwanese. After the amendment comes into force, those foreign spouses and other foreigners are entitled to the service from the AVS. Lawmakers in Taiwan "agreed to remove the principle of reciprocity on the grounds that it went against the spirit of the International Covenant on Civil and Political Rights, which Taiwan has signed and ratified even though it is not a UN member" (Shih 2011).

22.3.4.3 Victim Right

Taiwan enacted the CVPA in 1998 and amended it in 2011. However, the focus of the Act is restitution or compensation to crime victims rather than the victim right. According to Song (2007), the legal protection of victim right in Taiwan is still based on the Code of Criminal Procedure (CCP). With respect to the CCP, crime victims (or their family members) in Taiwan have four basic rights:

- Right to examine the case file and exhibits and make copies by defense attorney (Article 33)
- Right to state their opinions in the court (Article 271)
- Right to be noticed of the date of trial (Article 271)
- Right to appeal by requesting the prosecutor (Article 344)

Song (2007) argued that those rights are not appropriate for crime victims, especially the right to state opinions in the court, comparing with the victim impact statement in the United States. The US Supreme Court first recognized the rights of crime victims to make a victim impact statement during the sentencing phase of a criminal trial in the case of *Payne v. Tennessee* 501 U.S. 808 (1991). The victims and their family members may present the written or oral information about the impact of the crime on them. Such statements provide a means for the court to refocus its attention, at least momentarily, on the human cost of the crime. They also provide a way for the victim to participate in the criminal justice process. In Taiwan, as the term indicated, victims' presentations in the court are just "opinions," which have no legal efficacy as that of victim impact statement.

22.4 Future Trends

Taiwan has experienced a lot of political and economic advancement in the past decades. In terms of politics, Taiwan has been moving from authoritarian government to democratic administration since late 1980s. The Democratic Progressive Party (DPP) was formed as a genuine opposition party in 1986. In 1996, citizens in Taiwan for the first time elected the ROC President by direct votes rather than by the National Assembly. In 2000, DPP candidate Chen Shui-bian was elected president, marking the first-ever transfer of governing power between political parties. The presidential inauguration of the KMT's Ma Ying-jeou in 2008 marked the nation's second democratic transfer of power between parties (Government Information Office 2011).

In terms of economy, Taiwan is moving from agricultural economy to industrialized state. As it took the United States 150 years to reach its present living standard, Taiwan has achieved a similar level to the United States within 40 years (Chow 2002). The impressively political development and economic growth inevitably triggered certain trends in the context of victimization.

The first trend relates to an influx of immigrations from Southeast Asia and Mainland China. According to Government Information Office (2011), starting in the late 1990s, an increasing number of marriages between ROC citizens and foreign nationals have further diversified the nation's ethnic makeup. The cross-border marriage accounted for one in every five weddings in 2009. As of October 2011, the population of "foreign spouse" is 456,814, with 67.1% from mainland China (including Hong Kong and Macau) and 18.8% from Vietnam (National Immigration Agency 2011). Those foreign spouses account for about 2% of total population in Taiwan.

Taiwan society (including the media and government) has long been used "foreign spouse" to call brides from Southeast Asia and Mainland China. As the population of foreign spouse increased, scholars suggested using the term "new resident" to replace "foreign spouse," because the latter one has a sense of discrimination. Now the term "new resident" has been gradually accepted by Taiwan society. The creation of R.O.C. Empathy and Care Association for New Residents in 2009 exemplified this trend.

Yet new residents are still suffering many social conflicts, including domestic violence (Yu and Williams 2006). The official data

indicated that the ratio of foreign spouse as victims of domestic violence is 240 per 100,000 populations in 2008. This figure is eight times higher than that of national spouse (30 per 100,000 populations) in the same year (Hsu 2010). The actual problem could be even severer because foreign spouses as domestic violence victims are underreported for varied reasons (Yeh 2006). Recent news squarely highlights this issue, in which a 40-year-old taxi driver killed his 30-year-old Vietnamese wife and dumped her body into a harbor for long-term domestic conflicts ("Half-naked female body case," 2011). It is not the purpose of this chapter to examine why this type of victimization happened. However, this chapter challenges criminologists to pay more attention of this type of victimization in the future.

Another trend relates to self-protection. Prior research indicated that fear of crime has prompted crime victims in taking an active role in self-protection (Flaherty and Flaherty 1998). One manifestation of this trend is the concept of *target hardening* (Clarke 1997, p. 17), making one's residence or business crime-proof through locks, bars, alarms, guards, or CCTV. According to the 2010 TACVS, many households adopted target hardening approach after being victims of theft by hiring security guards (increasing from 7.5 to 11.7%), installing alarms (increasing from 7.9 to 20.6%), fixing burglarproof bars (increasing from 66.4 to 73.2%), keeping dogs (increasing from 21.4 to 26%), and mounting CCTV (increasing from 25.7 to 40%).

It can be concluded that burglarproof bars and CCTV are the most common self-protection measures in Taiwan. However, the popularity of CCTV caused another new type of victimization—privacy impairment ("Theft-prevention CCTV," 2011). In addition to that, some victims may take self-protection to its ultimate end by killing the offenders. For example, a 29-year-old Vietnamese wife recently stabbed her 58-year-old Taiwanese husband to death because of long-term psychological abuse by her husband for not allowing her to talk with other males ("Husband stabbed to death," 2011). This chapter also suggests victimologists examining the issue of self-protection in depth in the future.

22.5 Conclusion

The victim was a forgotten component in the criminal justice system until the 1970s. Now the victimology is truly becoming an international focus. Regardless of whether the criminal justice system of a specific country is based on adversarial traditions or inquisitorial jurisdictions, "they all share the ambition of reform on behalf of victims of crime" (Lehner-Zimmerer 2011, p. 14). Although the Republic of China is not a member of the United Nations, criminologists in Taiwan have never self-isolated themselves from the global trend.

The topic of victimization was first introduced to Taiwan in 1970. In the 1980s, Taiwan society experienced a democratic movement, which inspired the creation of victim's groups focused on singular crimes, such as female protection (1987), drunken driving (1990), and severe violent offense (1994). The CVPA was enacted in 1998, and Association for Victims Support was established in 1999 in line with the CVPA. The first national criminal victimization survey was undertaken in 2000.

This chapter examined most recently nationwide crime victim surveys in Taiwan, including the 2010 TACVS and the CRC-NCCU's biannual surveys in July 2009 and January 2010. Those surveys looked at the individual and household victimizations happened in 2009 and indicated that larceny was the most rampant offense, with prevalent rates ranging between 10.43 and 16.8%. However, the victims of theft were least likely to report crime to the police. The main reasons for not reporting were "too petty to report" and "it won't do anything good." This chapter also examined commercial victimization in Taiwan based on a study in 2005. It showed that shoplifting and car/scooter theft were the most common crimes happened in the commercial site. There was a disagreement about the loss of crime between private

security managers and police officers. The figures of police were much higher than those of their security counterparts. This disparity perhaps validated the finding of individual and household surveys that many victims would not report crimes to the police unless the loss was large enough.

The victimization surveys indicated that more than two-thirds of people in Taiwan were worried about being crime victims. The past experiences of victimization had significant influence, especially by violent crimes. The social disorganizations index also significantly connected with fear of crime. Given the fact that official crime rate in Taiwan is continually decreasing from 2005 (2,442 cases per 100,000 population) to 2010 (1,607 cases per 100,000 population), this finding suggested that the community policing should be seriously employed in Taiwan.

Victims rights in Taiwan seems considerably improving after the enactment of the CVPA in 1998. The family members of deceased victims and seriously injured victims of criminal acts and sexual assaults are entitled to apply for compensation up to $33,333. The AVS, established in 1999, has created networks to rehabilitate crime victims' normal life. An empirical research (Zheng and Wang 2004) indicated that more than 40% of crime victims who received compensations were satisfied with the amount, and the less the first-contact days, the more satisfied of AVS' service. However, the CVPA is restitution-oriented, and the legal protection of victim right in Taiwan presently is still based on the CCP. The victims' right described by the CCP is nominal, especially the right to state opinions in the court (Song 2007).

This chapter identifies two interrelated trends due to the dramatic advancement in politics and economy in Taiwan in the past decades. The first trend involves a new group of residences in Taiwan. They are more likely to be victimized because of their social status. The second trend associates with the concept of self-protection. Many households in Taiwan install the CCTV, which has a potential to invade neighbors' privacy. Certain crime victims may even go further to "fight back." Criminologists may pay more attention to the above issues in the future.

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Child Protection in Asia

23

Mari Hirayama

23.1 Introduction

Children are the most vulnerable of human beings in many ways. There are many risks for children outside their homes. Children are, however, also victimized by their family members. When abuse and crime happen in the private sphere, inside the family, it is very difficult to be discovered. Also, it is difficult for law enforcement to intervene in abuse within the family. This tendency may be stronger in Asian countries where the society respects family decisions in what happens within the family (Neary 2002). Asian countries are home to the largest share of the children in the world. Asian countries are also where rapid economic development is happening. It is also true that children are often the last parties who can enjoy this prosperity. They are often exploited in many ways. In this first section, the laws and legal networks to prevent child abuse, commercial sexual exploitation of children, and child prostitution in Asian countries are explained.

23.2 Child Abuse

It is quite common that in many countries, focus has mainly been put on crime against children which occurred in the public sphere, and crimes within private sphere (e.g., abuse against children by their family members) have been considered to be less serious. Since 1970s, feminist campaigns have been playing a great role in family violence, and many laws regarding family violence have been enacted in many countries. In most western countries, it was around late 1970 when laws to protect children from being abused were enacted. It takes more time, however, in many Asian countries to let these movements happen, and the legality of "reasonable chastisement by parents" is still deeply rooted not only in general public sentiments but also in law enforcement. In most Asian countries, it was around late 1990s–2000 when laws to protect children from being abused were first enacted (for example, the Yokohama Conference Report 2002).

23.2.1 Child Abuse in Japan

23.2.1.1 How the Law Has Changed to Prevent Child Abuse Cases

Child abuse is becoming a more and more serious problem in Japan (Nishizawa 2007). The number of child abuse cases reported to the Child Guidance Centers (CGC) during 2010 was about 55,000, and the number is increasing every year. One of the reasons for this is, of course, that the society has become more aware of the problem in these 10 years. At the same time, it should be also stated that the family style has been changing in Japan. The family style has been bipolarized after around late 1990s. Some women get to have their

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children at a quite early stage in their lives, such as late teens; on the other hand, other women choose to marry and get pregnant when they are in their 30s. When teenagers get pregnant and cannot seek enough support from their family members, relatives, and community, they face a quite high risk in abusing children.

There was no specific law, other than the Child Welfare Act (1947), to prevent and interact child abuse cases in Japan until 2000.

The Child Abuse Prevention Act was enacted in 2000. The Act defines child abuse as physical abuse, psychological abuse, sexual abuse, and neglect against children under 18 years. The Act first defines offender as parents and legal guardian of the children; abuse committed by someone who lived with the children (e.g., ex-boyfriends) could not be categorized as child abuse cases. In order to fill this gap, the Act was amended in 2004. The Child Abuse Act (2004) states that those who lived with the children and do not have any legal rights over them could be also categorized as a child abuser.

One of the other important amendments was that the Act clearly defines what constitutes physical abuse, and also stated that the situation where children had to observe the domestic violence between their parents could be also psychological abuse. Under the old Act the definitions of psychological abuse were not clear, so it was difficult to judge whether a reported case was defined as a psychological abuse case or not. Under the Act (2004), psychological abuse was defined as "behaviors such as rejecting children in an extreme manner, which gives children mental and physical harm." Domestic Violence happening between the parents was also defined as psychological abuse. It is easy to imagine that children who have to observe the violence between their parents are put under great agony, and these "forgotten victims" (Morita 2001) were protected by the amendment in 2004.

Even after the amendment in 2004, child abuse problems were still facing many difficulties. The biggest issue then was the CGC often hesitated to inquire and intervene with families even though they did not doubt abuse cases happened. The norm that "laws should not concern itself with family matters" still strongly existed then. Most of the severe cases where children die or are heavily injured are due to this "delay." Therefore, in order to give the local government and the CGC the power to summon the parents and search their dwellings when they were suspicious that children are abused, the Child Abuse Prevention Act was amended for the third time, in 2007 (hereinafter the Act 2007). Under the Act 2007, if the parents refuse to come to the CGC after their being summoned twice, family courts can order the staff of the CGC to search the houses with help from police officers. In this sense, the Act 2007 gives greater power to CGC to intervene with families where risk of child abuse is high. Also, the article 12 of the Act 2007 gives prefectural governors the power to give out restraining orders against abusive parents so that they cannot contact with their children in a children's home (jido-yogo-sisetsu).

23.2.1.2 Some Remaining Problems

The Child Abuse Prevention Act Japan has been amended twice since its enactment in 2004. The system and scheme for preventing and intervening in child abuse have been gradually improving. At the same time, the CGC and other welfare agencies still hesitate to use their enforcing power to intervene with abusive families though the Act allows them to do so. It is true that changing the widely believed cultural myth that "law should not intrude in the private sphere" is very difficult. In order to discover and prevent abuse problems as early as possible, we should not expect that only CGC or other government agencies should be involved. Not only CGC but also other social welfare agencies, law enforcement, medical staff, and so on need to cooperate well in order to prevent child abuse cases. Also, building community networks surrounding families with children often works the best to find out problems within the family. The government should pay much more attention to how to build such bonds.

Also, what the Act is lacking is how to deal with problems in the aftermath. There are very few programs and schemes for reeducation of abusive parents. It is sometimes necessary to take efforts to reintegrate abused children and their

parents in order that there would be no risk for the children to be re-victimized.

The Japanese Civil Code amended its provision regarding child custody rights in 2011 so that these rights can be suspended for up to a given number of years. Before this amendment, these rights could be deprived; if there was severe abuse, however, judges were reluctant to do so as it would deprive the possibility for restoration of the family. Under the amended provision, efforts for restoration can be taken, while these rights are suspended.

23.2.2 Child Abuse in South Korea

Because of the strong influence of Confucianism, it had been very difficult for law to intervene in the private sphere in South Korea, which means that many child abuse cases were hidden. On the other hand, the rapid economic and social growth since 1960s made South Korea more concerned about human rights of more vulnerable people such as women and children. In 2000, there was a first national survey on child abuse in South Korea. It showed that over 30% of children had been abused. The recent survey by the Department of Health and Welfare showed that the number of abused children in 2009 was 2.3 times as that in 2001. It is also true in South Korea that child abuse is becoming a major political issue.

In South Korea, the law to prevent family violence was enacted earlier than in other Asian countries. In 1997 two laws, The Special Act for Punishment of Family Violence and The Act for Prevention of family Violence and Protection of Victims, were established. The former law not only states probation and community order but also provides various treatment programs for offenders for restoration of the family. The latter law focussed on victims protection, such as support system for children in shelters.

One of the unique points of laws for child abuse in South Korea is that they aim to respond to not only child abuse problems but also broader issues as family violence. When child abuse happens in a family, they often have another problem such as domestic violence; therefore comprehensive responses to violence in many forms maybe important.

23.3 Commercial Sexual Exploitation of Children

The market for commercial sexual exploitation of children now spreads across the world. Also, recent developments in information and communication technology have made this crime more widely spread around the world, and what is worse, it is difficult to trace. Unfortunately, Asian countries are the big markets for sexual exploitation of children, and attract many pedophiles from all over the world. Commercial sexual exploitation of children (hereinafter CSEC) takes in many forms, such as child pornography, sexual trafficking, child prostitution, and so on. CSEC often are committed in a form of an organized crime. Organized crime groups find CSEC as a way of obtaining profits.

Children who are exploited sexually suffer serious injury both physically and mentally. Many of these children are suffering from serious sexually transmitted diseases such as HIV. Most children who are victimized in CSEC are from poor families and communities. Just enacting laws and punishing offenders are not enough to respond to CSEC problems. Not only government agencies but also NGO, NPO, and private companies must cooperate to deal with underlying problems of poverty, education, and social welfare.

23.3.1 Child Pornography

It is difficult to define Child Pornography. Child Pornography can be defined as films, magazines, and photos where improper nudity of child or sexual activities involving child are depicted. With the rapid growth of electronic communications, such as Internet, Web mails, chatting, and social service network, child pornography can be delivered and distributed in various forms, and they are also easy to be exchanged from one

country to other countries. Therefore a global definition of sexual abuse against children is necessary. Pedophilia groups who produce and distribute child pornography are often called sex rings. Child Pornography must be criminalized because (1) children are abused during production of child pornography, which hurts the child both physically and mentally, and (2) watching child pornography may trigger potential child molesters to commit actual crimes against children.

According to the 2008 report by the World Congress against CSEC, "While impossible to obtain accurate data, a perusal of the child pornography readily available on the international market indicates that a significant number of children are being sexually exploited through this medium." (the World Congress against Commercial Sexual Exploitation of Children).

Most countries have struggled to criminalize and prevent Child pornography. The 87th Session of General Conference of the International Labor Organization in Geneva in 1999 adopted C 182 Worst Forms of Child Labor Convention 1999. In this convention, child pornography is categorized as one of the work forms of child labor. The Convention is ratified by many Asian countries such as Malaysia, Japan, Singapore, Republic of Korea, Thailand, China, and so on.

Also, the Protocols to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography are ratified by 118 countries including many Asian countries. The Protocols demand ratifying countries to criminalize any behaviors relating to child pornography such as production, distribution, import/export and selling, and possession for these purposes. Many of these ratifying countries have their own domestic law to criminalize and prevent child pornography, such as "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children" (Japan, 1999).

One of the issues here is whether mere possession of child pornography should be criminalized or not. Even mere possession may motivate potential pedophiles to commit crime against children. On the other hand, however, as it is difficult to define what constitutes "child pornography," criminalizing and punishing mere possession may give law enforcement a diffuse and wide authority to arrest, search, and seize material from citizens.

In Japan, there is another problem such as "Child Pornography of non-real Children." This refers to comics and animations where nudity and sexual intercourse with child characters (which do not really exist) are depicted. Sometimes such images are called "pseudo-photographs." Even though no children are actually exploited or harmed in these comics, some claim that they must be prohibited as they exhibit a pedophilic culture. At the same time, if the images are not of real children, it is difficult to define what "child pornography" is. In 2010, the Governor of Tokyo tried to submit a draft of an ordinance to restrict these comics where images of "non-real children" are depicted; however, no regulation has been realized yet.

23.3.2 Child Trafficking and Prostitution

In 2008, one very shocking movie, entitled "Children in the Darkness" (directed by J. Sakamoto), was released in Japan. It involved child trafficking and prostitution in Thailand. Most of these exploited children are abandoned street children or from poor families. They are sometimes "sold" to rich people from Western countries and other Asian countries. In this sense, these children trafficked are akin to "slaves" in the modern era. As in these crimes, both offenders and victims can be spread all over the world, it is very important to control and prosecute these crimes within a universal jurisdiction.

There have been many Conventions and Protocols at government level to combat human trafficking.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography requires State Parties to take suitable measures to submit the case to its competent authorities

for the purpose of prosecution, regardless of nationalities of offenders or victims, and the place where a crime had been committed.

In 2002, the South Asian Association for Regional Cooperation (SAARC) adopted the Convention on Trafficking in Women and Children. Under the Convention, SAARC member States corporate not only to prevent and intervene in human trafficking of children and women but also to provide sufficient support to victims for their recovery.

Also, ASEAN adopted the ASEAN Declaration against Trafficking in Persons Particularly Women and Children in 2004 in Vientiane, Lao People's Democratic Republic. The aim of the declaration is to establish regional networks to prevent and combat trafficking in women and children in ASEAN countries. The declaration also puts focus on providing support and treating with respect victims either in receiving/recipient countries, and repatriating the victims promptly to their own countries.

23.3.3 Child as Victims of Sexual Crime

Criminal justice policy to prevent sex crime against children often becomes irrational and overly radical. Crimes against the most vulnerable people who cannot defend their own selves trigger moral panic in society. In some jurisdictions, laws to require released sex offenders to register at the law enforcement agencies and to notify the information to neighbors or the broader community are enacted. The most well-known example of these laws is Megan's Law; the US Megan's Law was enacted named after Megan Kanka, a 7-year-old girl who had been molested and murdered by a sex offender who lived in the neighborhood. It was only after the death of the girl when her parents and the community came to know that the offender had two previous convictions for sex crime and that he had been released from the prison for good-time release. The parents and the community then claimed that they needed a law to let the community know when a sex offender is released, namely, Megan's Law.

Each country has its own way of responding to sex crime committed against children by repeat sex offenders. I now look at two different types of responses, namely, in Japan and South Korea.

23.3.4 Tracking System for Child Molesters in Japan

In November 2004, a very similar case as Megan Kanka case happened in Nara Prefecture, Japan (hereinafter the Nara Case). In the Nara Case, a 7-year-old girl was abducted. While missing, her family received an e-mail containing photographs depicting the girl's dead body, and her body was discovered the next day. The police could not find an offender for a while, and what was worse, the family received blackmail threats from the offender in which he claimed that he was now targeting the family's other daughter.

At the end of December, more than a month after the kidnapping, a 36-year-old newspaper delivery man, living in the same prefecture as the victim, was arrested.

As it turned out, the man had a record of multiple sex offenses. He had been arrested a few times for committing sex crimes, and for the last crime he had served a 3-year sentence in prison. The whole nation was put into fear and people began to doubt the justice system and the correctional system. A single case changed the crime justice policy for sex offenders greatly. Because of the Nara Case, cognitive behavior programs for sex offenders in prisons have become mandatory since 2006. Also, recidivism prevention progrmas became compulsory while they were on probation that year. There was an outcry in Japanese society, claiming that Japan should enact law like Megan's Law. However, the Ministry of Justice adopted a Surveillance System for Sex Offenders by the police (hereinafter the surveillance system). In this tracking system, when a sex offender who committed crime against victims under 13 is released from a prison, his information is released to the National Police Agency (the national headquarter of the police). Then NPA releases the information to prefectural police headquarters where the sex offender lives.

Then information is delivered to a local police station closest to the residence of the sex offender. At the local police station, recidivism prevention officers are assigned to check the residence of the offender. In the surveillance system, the police do not use any GPS or special supervision program; they just check the residence occasionally. Sex offenders are supervised for at least 5 years after their being released if they have one prior conviction. For those who have more than two convictions, they are supervised for at least 10 years. The system has not been evaluated so far (Harada 2009). But some statistics reveal that as of May 2010, 740 sex offenders had been put under the system for 5 years, and 200 out of them were unable to be located (27%).

Even though this was a very similar case as Megan Kanka case, Japan decided to reserve information on sex offenders only for the police. There is an interesting survey on people's attitude toward information of sex offenders. In March 2005, the Nomura Research Institute in Japan surveyed on public attitude toward safety, and asked "to which extent do you want information on released sex offenders "; 3.7% of the respondents answered that information must not be released to the police, 44.2% said that the information should be released to the police, 17.9% said that the information should be disclosed to the parties concerned with public securities, 15.9% agreed that the information should be disclosed to the public on their request, and only 1.3% answered that the information should be disclosed via the Internet ($N = 1{,}180$).

The most interesting result of this survey was that more than 40% of respondents said, "We do not want the information on sex offenders released into the community as long as police do their job well."

The response after the Nara case, even though it was very similar to Megan Kanka case, was quite different from that after the Megan case. It seems that Japanese society trusts more in law enforcement authority than the US society. But the question here is whether it is quite the same response in other Asian countries. South Korea has shown a quite different response.

23.3.5 The Crime Justice Policy for Child Molesters in South Korea: Supervision and Information Disclosure System

Since 2000, South Korea illustrates a very radical attitude to sex crime where children are victimized. Actually, the USA and South Korea are the only two countries which have a law to allow release of information of sex offenders to the community. In 2000, South Korea enacted "Act of Sexual Protection of Adolescence." The main background to this legislation was the increasing number of prostitution cases involving young girls. In South Korea, though Confucianism had given strong moral guidance toward sex, young people became more lenient about sex since 1990, leading to increasing number of prostitution cases by teenagers. This prostitution was quite different from traditional forms of child prostitution where children are abducted and forced to work; on the contrary, quite many teenagers have sex with adults for pocket money. Yet, of course in terms of power, it is still the same; adults take advantage of minors because these young girls often lack appropriate knowledge and information. Under the Act of Sexual Protection, South Korea introduced the system to disclose the information on offenders who commit violent sex crime or sexually exploit children under 19 years old. Under this disclosure system, name, age, job, address, and description of offenders are disclosed via an official announcement report or the Internet. If the information is disclosed by an official announcement report, the information shall be posted for 2 months, and if by the Internet for 6 months. Their disclosure system is similar to Megan's Law; however, one of the biggest differences is they do not disclose the photos of offenders. There has been much opposition to the disclosure system, because in South Korea the society puts much focus on shaming, and this notification system impacts heavily on privacy of these offenders. Also, as they do not disclose photos of the offenders, innocent people were mistakenly taken as sex offenders just because they have same or similar name as the offenders

who are disclosed. However, to protect (innocent) children, the system has been supported by the majority of the society in South Korea so far.

The disclosure system, however, has not been seemed to work well in reducing the fear within society. The fear against crime where children are victimized has grown over the years. The Nae-Yeong case in 2008 is worth noting. Nae-Yeong, an 8-year-old girl, was brutally raped by a 57-year-old man on her way to the school. The offender tortured the girl for hours, and she had to have 8 hours surgery. She lost 80% of her colon and genital organs. It turned out that the offender had a prior record of rape. The tragedy shocked the whole nation and citizens posted the offender's name, photo, and other details on the Internet. In a single day, more than 200,000 people signed the petition to seek harsher punishment.

Politically, the Lee administration also was willing to enact further protection from violent sex criminals. The outcry for preventing sex crime against children in South Korea was gaining momentum, which made South Korea the first nation in Asia which has chemical castration introduced in 2011. The law gives judges the power to order sex offenders who have attacked children under the age of 16 to undergo a medical procedure, widely known as chemical castration; the effects of such chemical procedures can last for up to 15 years.

Also the society's outcry after the Ne-Yong case amended "Child and teen Protection Law" to extend the period sex offenders must register from 5 years to 10 years. The information notification system was also further developed. In July 2011, the Ministry of Gender Equality and Family created "Registration and Information System for Sex Attackers of Teenagers," and under the system children, their parents, and school authorities have access to the information on sex offenders obtained by the police. Prior to the new system, such information included only general location of offenders (city, county, and ward) and no photo of them. Under the new system, now name, age, job information, specific address, and photo of an offender are published. Information is viewable only from certain computer terminals equipped at the police stations. Sex offenders who fail to register may be punished by up to 1 year in prison and a fine up to five million Won (approximately 5 thousand US dollars).

Also, in September 2008, "Electronic Monitoring System for Specific Sexual Violent Offenders Act" was enacted in South Korea" (hereinafter Electronic Monitoring Act). Under article 5 of the Electronic Monitoring Act, offenders who are ordered to wear electronic device system are:

1. Those who have more than two previous convictions of sex crimes and have served more than 3 years in prison and reoffend within 5 years
2. Those who are ordered to wear GPS and reoffend
3. Those who have more than two previous sex convictions and habitually offend
4. Those who commit crimes against victims under 13 years old

When prosecutors determine these above circumstances, they apply to courts, and courts can order these offenders to wear GPS on their anklet for up to 10 years (article 9).

Probation officers can preserve information obtained by these electronic monitoring system and make use of them for treatment programs for preventing offenders' recidivism. The police, also, have the access to such information for investigation when sex crime occurs in the community. Such information will be deleted after 5 years when these orders are completed.

If offenders break GPC devices, they face more than 1 year incarceration, and if they break restraining orders or fail to attend treatment programs, they face up to 3 years incarceration and/or up to 10 billion Won fine (approximately 100 thousand US dollars).

Because of the influence of Confucianism, South Korea has put much value on the norm of shame. If a person commits crime, especially a most disgusting crime such as child molestation, not only that person but also his or her family is also excluded from a society. (These tendencies may be stronger in Asian countries than western countries.) The fact South Korea introduced information disclosure system may exclude

offenders and their families from the community, which end up depriving them of the opportunities for rehabilitation. Further analysis will be needed to assess whether these radical policies actually prevent recidivism.

23.4 Conclusion

Child abuse can take place in various forms and is deeply rooted in the cultural and economic environment of the society. These problems especially are connected with poverty and lack of education and the social welfare system (Whitebook on Child Poverty Editorial Committee 2009). It is very important, therefore, to provide good welfare system and support parents and family in order to reduce abuse problems rather than punishing abusers. Also, as the role of the community is important to detect and prevent child abuse, how to rebuild bonds within community should pe put much more focus on.

Many researchers have shown that those who have been abused may be more likely to be offended against others, and become criminals when they grow up. Therefore it is very important to prevent and intervene in child abuse in order to reduce future crimes.

As children often have little voice in the society, their tragedies are often hidden. It is very important not only for professionals or the authority but also for the community to discover and prevent child abuse. Also, more outreach programs for family are needed so that those families who seek help and information can have more access to support.

Child abuse is a unique crime, in a sense victims still seek connection to the offender after being victimized (as still family). Therefore, restoration of the family should be also considered in some cases. In doing so, a Restorative Justice (RJ) approach such as Family Group Conferences (FGC) method may be workable for some child abuse cases. In New Zealand, one of the leading countries which has a formal RJ system, use FGC where victim, offender, and their (extended) family members seek the way for restoration of family for child abuse cases. In Asian countries, there are no established RJ programs for child abuse cases at this stage; however, RJ approach may be appropriate for some cases such as restoring family and reeducating offenders.

On the other hand, criminal justice policy for the most vulnerable group can often become too radical. Disclosing offenders' information to the community may deprive opportunities and rights for them, and exclude them from the community. Just excluding offenders and providing no support for them may be more dangerous, as it will be difficult to rehabilitate those who have lost bonds to the society.

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Victims of Domestic Violence in India: Do They Have Rights?

24

Sesha Kethineni and Murugesan Srinivasan

24.1 Introduction

Although women constitute about half of the total population (48%) in India and are the principal providers of care and support to families, their status is not equal to men. This has not always been the case. For example, women in ancient India enjoyed equal status with men in all fields of life, including education, whereas during the medieval period, the women held a subordinate status. In modern India, women have slowly gained status but not in all spheres. Various social indicators show that women's status is lower than their male counterparts. Although the censuses recorded between the 2001 and 2011 show improved literacy rate for women, females still represent only 43% of all literates ($n = 778{,}454{,}120$) (Government of India 2011). Further, in rural India, women are reported to be 55–65% of the total labor force (National Commission for Women n.d.). One report indicated that in some rural areas women put in more hours than a pair of bullocks in the field. For example, a man works an average of 1,212 h in a year, compared to a pair of bullocks who work 1,064 h, whereas a woman works 3,485 h (Shiva 1991). In addition, women receive lower returns for their labor due to gender discrimination. Such discrimination, according to the National Commission on Women, contributes to displacement, devaluation, and disempowerment of women, which increases the incidence of rape, female feticide, trafficking of women, and other forms of violence.

Due to their secondary status in the Indian society, women are subjected to various forms of violence. Of all the forms of violence, domestic violence has emerged as one of the most serious problems faced by women. Across the globe, criminal justice agencies recognize the problem of domestic violence as a serious crime against women. In India, however, it is largely viewed as a family matter—neighbors, friends, and even relatives of victims rarely interfere in situations of domestic violence.

24.2 Status of Women in India: An Overview

During the Vedic period (1500–500 B.C.E.), women had considerable freedom in the family and society. The *Rig Veda,* one of the four *Veda*s, indicated that women were equal to men in terms of access to and capacity for the highest knowledge of Brahma (the Hindu God of creation). The *Veda* contains hymns, which were revealed even

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by the women seers (known as *Rishikas* and *Brahmavadinis*) (Tripathy 1998, cited in Vijaya 2004). It is stated that women had a voice in choosing their partners, were educated, and held prominent positions in social and religious gatherings. In Vedic society, women distinguished themselves in science and learning and were considered intellectual companions, friends, and living helpers in the life journey of their partners. In addition, monogamy was the rule at that time. Remarriage of widows was permitted. Overall, in the Vedic age, Hindu women were honored and respected (Kumari 1994).With the passage of time, however, the status of women gradually deteriorated. For instance, in the Smriti period, the most significant lawmaker was Manu. According to Manu, a woman in her childhood must be protected by her father; in her youth, she must be protected by her husband; when she is older, she must be protected by her son. Manu's social codes and sanctions are reflected in these dictums. Although the laws of Manu were compiled between 200 B.C.E. and 200 C.E., the day-to-day life of Hindu women is still influenced by the laws of Manu. The period that followed Manu's reign put further restrictions on women. For example, the practice of child marriages, *Sati* (self-immolation of a woman following her husband's death), and a ban on widows remarrying were practiced in some parts of India. With the Muslim conquest of India, the practice of wearing veils became common among Muslim women. During the colonial era, notable Indian social reformers stood firm against social bigotry, orthodoxy, idol worship, and even encouraged women and men to seek Western/English educations. Raja Ram Mohan Roy (1772–1833 C.E.), one of the Indian social reformers, fought for the abolition of *Sati.* The efforts of other reformers resulted in the remarriage of widows and the prohibition of child marriages and bigamy. In 1929, the minimum age of marriage for girls was set at 14. Under the British rule, some significant advances were made in women's rights, including proprietary and inheritance rights. Indeed, similar reform movements emerged all over the world during the mid-nineteenth century. Some notable reformers who raised people's awareness of women's political, social, and economic rights included Susan B. Anthony, a prominent US civil rights leader and an activist of women's rights movement, and Clara Jetkin, an influential German socialist politician and a crusader for women's rights. The women of New York City marched on March 8, 1908, demanding shorter working hours, better pay, voting rights, and an end to child labor.

In India, the issue of women's rights was voiced by Mahatma Gandhi and gained the support of many women activists (Tharakan and Tharakan 1975). Such a voice was reflected in a resolution adopted by the Indian National Congress in 1931, when it made commitments to defend civil rights and economic freedom. In 1940, the Indian National Planning Committee established a subcommittee to review the social, economic, and legal status of women and to find measures to create equality of status and opportunity (Forbes and Forbes 1996). In 1927, Maharani Chimanabhai Gaickward of Baroda organized the first All India Women's Educational Conference. The All India Women's Conference held in 1945 discussed various types of discrimination faced by Hindu women and the Conference prepared a Charter of Indian Women's Rights. After India achieved independence from the British in 1947, the country adopted a socialist philosophy and passed several laws intended to protect the rights of women.

On January 26, 1950, the Constitution of India was ratified. It not only granted equality to women but also encouraged states to adopt measures of positive discrimination, that is, to obliterate social and other disabilities and deprivations. Preferential treatment for women is expressed in Article 15(3). This was "a warrant for affirmative state action" going beyond formal equal protection of the laws provided under Article 14 (Roy and Tilak 1996). Although Article 15(1) prohibits discrimination against any citizen in India on the basis of religion, race, caste, sex, or place of birth, Article 15(3) states that nothing in this article shall prevent the state from making any special provisions for women and children. In other words, in a welfare state, the welfare of children and women is of prime importance. Hence, any

Table 24.1 Crimes against women, 2005–2009

S. no.	Year	Incidence of crimes against women (IPC)	Growth rate of IPC crimes against women (%)	Incidence of crimes against women (SLL)	Growth rate of SLL crimes against women (%)	Total	Growth rate of IPC and SLL crimes against women (%)
1	2005	143,523	–	12,030	–	155,553	–
2	2006	154,158	7.4	10,607	–11.8	164,765	5.9
3	2007	174,921	13.5	10,391	–2.0	185,312	12.5
4	2008	186,616	6.7	9,240	–11.1	195,856	5.7
5	2009	194,835	4.4	8,969	–3.0	203,804	4.1

(Source: National Crime Records Bureau 2011)

special provision for their protection or empowerment would not offend against the guarantee of nondiscrimination in Article 15(1) (Basu 2003). Despite these constitutional guarantees, however, women are still subjected to various forms of abuse and exploitation.

With the economic development and progress of the last three decades, large number of Indian women in urban areas have entered the workforce. And, with economic independence, one would expect equality of women in all spheres of life; however, progress has been slow. Studies have reported that abuse against working women and violence against young widows have been on the rise (Kumar 2010). In addition, women in India face unique forms of violence such as "dowry deaths."[1]

24.3 Trends in Crimes Against Women in India

In India, crimes against women are broadly categorized into two types: (1) crimes under the Indian Penal Code (IPC) and (2) crimes under special and local laws (SLL). There are provisions in the IPC to deal with offenses such as rape (Section 376); kidnapping and abduction for specified purposes (Section 363–373); homicide for dowry, dowry deaths, or attempted dowry death (Section 302/304B); torture (both mental and physical) (Section 498a); molestation (Section 354); sexual harassment (Section 509); and importation of girls (up to 21 years of age) (Section 366b). Molestation includes assaulting a woman or using criminal force on her with the intention of outraging her modesty (Ranchhoddas and Thakore 1987).

The IPC, a major criminal code covering all substantive laws, was enacted in the year 1860 and, as a result, lacks provisions to deal with certain newer types of crimes against women. Therefore, new laws (i.e., SLL) were enacted by the government. A special law is a law that covers a particular subject matter such as dowry, whereas a local law applies to a particular state of India (i.e., the Tamil Nadu Police Act). The major SLL that deal with specific crimes against women are Immoral Traffic (Prevention Act) (1956), the Dowry Prohibition Act (1961), the Indecent Representation of Women (Prohibition) Act (1986), and the Commission of *Sati* (Prevention) Act (1987).

Table 24.1 shows the total incidence of IPC and SLL crimes against women for the years 2005–2009. It includes the growth rate of IPC and SLL crimes for the same period. It should be noted that there was a steady increase in the

[1] "Dowry" is an ancient cultural practice in many Indian communities. It involves the bride's family giving property or valuables to the bridegroom or his family in consideration of marriage. A dowry death, also known as bride burning, is a unique form of violence experienced by Indian women where young brides are either murdered or driven to suicide by torture or harassment by husbands and/or in-laws.

Table 24.2 Crimes under the IPC: Headwise incidence of crimes against women, 2005–2009, and the growth rate (by percent)

S. no.	Crime head	Year 2005	2006	2007	2008	2009
1	Rape	18,359	19,348 (5.4%)	20,737 (7.2%)	21,467 (3.5%)	21,397 (–0.3%)
2	Kidnapping and abduction	15,750	17,414 (10.6%)	20,416 (17.2%)	22,939 (12.4%)	25,741 (12.2%)
3	Dowry death	6,787	7,618 (12.2%)	8,093 (6.2%)	8,172 (1%)	8,383 (2.6%)
4	Torture	58,319	63,128 (8.2%)	75,930 (20.3%)	81,344 (7.1%)	89,546 (10.1%)
5	Molestation	34,175	36,617 (7.1%)	38,734 (5.7%)	40,413 (4.3%)	38,711 (–4.2%)
6	Sexual harassment	9,984	9,966 (–0.2%)	10,950 (9.9%)	12,214 (11.5%)	11,009 (–9.9%)
7	Importation of girls	149	67 (–55.0%)	61 (–9.0%)	67 (9.8%)	48 (–28.4%)

(Source: National Crime Records Bureau 2011)

Table 24.3 Crimes under the SLL: Headwise incidence of crimes against women, 2005–2009, and the growth rate (by percent)

S. no.	Crime head	Year 2005	2006	2007	2008	2009
1	Rape	1	0 (–100%)	0 (0%)	1 (0%)	0 (–100%)
2	Kidnapping and abduction	5,908	4,541 (–23.1%)	3,568 (–21.4)	2,659 (–25.5%)	2,474 (–7.0%)
3	Indecent representation of women (Prohibition Act 1986)	2,917	1,562 (–46.5%)	1,200 (–23.2)	1,025 (–14.6%)	845 (–17.6%)
4	Dowry Prohibition Act (1961)	3,204	4,504 (40.6%)	5,623 (24.8)	5,555 (–1.2%)	5,650 (1.7%)

(Source: National Crime Records Bureau 2011)

number of IPC crimes against women during this period. Of the 5-year crime data, 2007 showed the highest increase in IPC offenses (16.5%) compared to 2009 (4.4%). In contrast, SLL crimes against women have been decreasing.

The incidence of various types of IPC crimes against women, including their growth rates, is given in Table 24.2. The offense of rape increased between 2005 and 2008, but there was a marginal decrease in the number of rape cases in 2009. The number of dowry deaths steadily increased between 2005 and 2009.

As stated previously, there are four special laws that are gender specific. The incidence of crimes under such laws and their growth rate are given in Table 24.3. In 2005, 3,204 cases were registered under the Dowry Prohibition Act (1961). In 2006, a significant increase (40.6%) was reported over the previous year; in 2007, there was an increase of 24.8% over that in 2006. From 2008, the increases are less noticeable (see Table 24.3).

In 2009, a total of 203,804 crimes against women were registered in all 28 states and 7 Union territories. Table 24.4 provides details relating to the states and Union territories (i.e., areas that are under direct federal/central government rule) and their contribution to the total incidence of crimes against women. Some of the states where the incidences of crime against women are significantly higher include Andhra Pradesh (12.5%), Uttar Pradesh (11.4%), and West Bengal (11.4%).

Table 24.4 Incidence crimes committed against women in states/union territories (UT), 2009, and the percentage of total crimes against women (by percent)

S. no.	States/union territories	Incidence (n = 203,804)	Contribution (%)
1	Andhra Pradesh	25,569	12.5
2	Assam	9,721	4.8
3	Bihar	8,803	4.3
4	Delhi (UT)	4,251	2.1
5	Gujarat	8,009	3.9
6	Karnataka	7,852	3.9
7	Kerala	8,049	3.9
8	Madhya Pradesh	15,827	7.8
9	Maharashtra	15,048	7.4
10	Orissa	8,120	4.0
11	Rajasthan	17,316	8.5
12	Tamil Nadu	6,051	3.0
13	Uttar Pradesh	23,254	11.4
14	West Bengal	23,307	11.4

(Source: National Crime Records Bureau 2011); n total number of incidents

24.4 Domestic Violence: Its Nature and Scope

Women and girls are subjected to physical, sexual, and psychological abuse, irrespective of income, class, and cultural background. Such violence is one of the crucial social mechanisms by which women are forced into a subordinate position to men (United Nations [UN] 1995a). The UN General Assembly adopted the Declaration on the Elimination of Violence Against Women (DEVAW) in 1993. The DEVAW defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life (UN 1993). In light of this broad definition, violence against women in the family and in the general community, and violence perpetrated by the State, can also be included.

Violence against women in a family setting may include battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation (and other traditional practices harmful to women), nonspousal violence, and violence related to exploitation (UN 1995a). Though there are various definitions for domestic violence, there is a need for a broad yet focused definition, because the definition shapes the response. For instance, the type of response from the community (e.g., providing support services or need for the legal reform) is shaped by the community's understanding of what constitutes domestic violence and whether it is to be conceptualized as an intrafamily conflict or a criminal violation of rights. The definition of domestic violence by law is critical because it defines standards and thus influences the broader social perception of the problem. Thus, the elements that need to be considered include the boundaries of the relationship between the perpetrator and the victim, the norms of acceptable behavior, and the specific acts that constitute violence (International Center for Research on Women 1999).

According to a report by the National Family Health Survey ([NFHS-2] 2000, cited in Sunny 2003), inequality and violence occur throughout India. The report further states that 68% of the women in the survey reported that they needed permission from their husbands or in-laws to go to the market, and 76% had to seek the consent of their husbands before they could visit friends or

relatives. It is also revealed that only 60% of the women could use money as they wished and one out of every five women had experienced domestic violence from the age of 15 onward. The perpetrators of domestic violence, by and large, are men, particularly marital partners. One of the root causes for the aggressive behavior of marital partners against women was the influence of drugs or alcohol.

As far as the reporting behavior of the victims of domestic violence is concerned, at one time many victims would not file complaints because they feared that such complaints might create a hostile environment at their homes. As a result, they often suffered violence in silence (Sunny 2003). Public awareness of domestic violence and women's fight for equality and social justice prompted the international community to recognize violence against women as an important social issue. India recognized the problem and took measures to address them through the revision of old laws and the drafting of new ones to criminalize offenders and provide protection to women. For example, the IPC, which was originally passed in 1860, was amended in 1983 and again in 1986; the Dowry Prohibition Act was amended in 1984 and 1986. The amendments to the IPC included definitions of specific offenses such as marital violence and abuse. Under Section 498a of the IPC, domestic violence is a cognizable (i.e., felony) offense and police officers may arrest the perpetrator without a warrant. For example, if the victim complains to the police that she was treated cruelly by her husband or relatives, the police must take action. The term "cruelty" not only covers serious injury, bodily harm, or danger to life, limb, or physical health but also danger to mental health, harassment, and emotional torture through verbal abuse. The term "harassment" covers acts such as coercing the wife or her relatives, or demanding a dowry in the form of property or valuables by the husband or his family (Ranchhoddas and Thakore 1987).

More important, Section 304b, which was added to the IPC, defines the circumstances under which a death is considered "dowry death." It states that if the death of a woman is caused by burns, bodily injury, or other unusual circumstances within 7 years of the marriage, and it is shown that the victim was subjected to cruelty or harassment by her husband or his family, it is considered a dowry death. In such cases, the husband and/or his family would be deemed responsible for her death. The punishment for such a crime is imprisonment for 7 years or "life" (generally 20 years). The inclusion of dowry death in the IPC necessitated changes in the evidentiary standards for dowry death cases. Thus, a section (113b) was added to the Indian Evidence Act (1872), which shifted the burden of proof from the prosecution to the accused in dowry death cases.

Under the Dowry Prohibition Act, there are three main forms of offenses: giving or taking a dowry (Section 3[1], demanding a dowry [Section 4]), and receiving dowry for the benefit of the wife or her heirs (Section 6[1]). Section 3(1) states that anyone who takes or aids in the giving or taking of dowry shall be punished with imprisonment for a term of not less than 5 years and fine of not less than 15,000 rupees or the value of the dowry, whichever is greater. Section 4 stipulates a punishment for anyone demanding a dowry from the parents or relatives of the bride or bridegroom of at least 6 months of imprisonment, which may be extended to 2 years with a fine of 10,000 rupees. Finally, Section 6 states that if a dowry is received by anyone other than the bride, it should be transferred to the bride within a specified period of time. Despite these legislative changes, however, women in India were not accorded the protections enumerated in various international accords such as the DEVAW, the Vienna Accord of 1994 (Office of the United Nations High Commissioner of Human Rights 1996), or the Beijing Declaration (1995) (UN 1995a).

The DEVAW defines the concept of violence against women comprehensively. According to the Declaration, violence against women is "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (UN 1993, Article 1). Article 3 of the

Declaration specifies that women are entitled to the following rights:

1. The right to life
2. The right to equality
3. The right to liberty and security of person
4. The right to equal protection under the law
5. The right to be free from all forms of discrimination
6. The right to the highest standard attainable of physical and mental health
7. The right to just and favorable conditions of work
8. The right not to be subjected to torture, or other cruel, inhuman, or degrading treatment or punishment (UN 1993)

Moreover, the Declaration encouraged states to condemn and abolish all forms of violence against women.

The Vienna Accord also recognized the human rights of women and female children as inalienable, integral, and indivisible parts of human rights. It insisted on full and equal participation of women in political, civil, economic, social, and cultural spheres at regional, national, and international levels. It reiterated that any gender-based discrimination due to cultural prejudice or otherwise must be eliminated (Office of the UN High Commissioner on Human Rights 1996).

The Beijing Declaration was intended to advance women's equality and development. Specifically, it was intended to accomplish the goals enumerated in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, DEVAW, and the Declaration on the Right to Development (UN 1995b). It recognizes the human rights of women and of female children as inalienable rights. Moreover, it states that the empowerment of women can be achieved only if women are given full participation in all spheres of society, including access to power, involvement in decision-making process, and live their lives in accordance with their own aspirations (UN 1995b).

As a result of the recognition of violence against women in the private domain and that domestic violence is an unacceptable violation of human rights, ensuring that women are treated equally in all spheres of life has taken on international importance. But in the Indian context, even after the adoption of the aforementioned UN Declaration, the issue has not received the attention it deserved. This was perhaps due to deep-rooted cultural norms and patriarchal values that view domestic violence as private family matter that should be settled within the home, without any need for "unnecessary" external intervention (Lawyers Collective Women's Rights Initiative 2009). Even in India, however, domestic violence has gradually been recognized as a serious human rights issue. But there was neither a comprehensive law nor a clear legal definition of domestic violence until 2005. Of course, violence against women in the family setting/within marriages is acknowledged and remedies are available in the form of civil laws (e.g., those dealing with divorce). In addition, Section 498a of the IPC deals with cruelty by husbands and relatives. Even so, these limited legal remedies are available only to married women. For victims of violence in other domestic relationship, such as mothers, daughters, and women in live-in relationships, Section 498a of the IPC does not provide any remedy. It should also be noted that marriages in India are solemnized under personal/customary laws. And not all marriages are registered because registering marriage is not compulsory. It was against this background that the Protection of Women from Domestic Violence Act (PWDVA) came into force on October 26, 2006.

24.5 Salient Features of the Protection of Women from Domestic Violence Act

The PWDVA (2005) intended to protect the rights of women as guaranteed in the Constitution of India. Hence, the PWDVA recognizes domestic violence as a human rights issue. The PWDVA is primarily a civil law but some elements of criminal law were incorporated into it. In other words, the appropriate remedy under the PWDVA is often civil in nature but when there is a violation

of civil order by the perpetrator, the appropriate remedy could be punishment.

Concerning the definition of domestic violence in the PWDVA, it should be noted that it is the most comprehensive definition of domestic violence under Indian law, and it includes all forms of abuse and violence committed against women in a family setting. To facilitate access to justice, the PWDVA has provisions for new authorities, including a protection officer (PO) as the key implementing officer. In each district, the respective state government may appoint POs as it may consider necessary. The state government shall also notify the area(s) within which a PO shall exercise the powers and perform the duties conferred on him or her by or under this Act (Section 8[1]). The Act also provides that, to the extent possible, POs shall be women. Some of the duties and functions of the POs include the following:

(a) Assisting the magistrate in the discharge of his or her functions
(b) Reporting to the magistrate about a domestic violence incident upon receipt of a complaint from the victim
(c) Forwarding a copy of the complaint to the police officer in charge of the police station in the jurisdiction within which the incident is alleged to have been committed
(d) Applying to the magistrate for the issuance of an order of protection, if the aggrieved person so desires
(e) Ensuring that the aggrieved person is provided legal aid under the Legal Services Authorities Act (1987)
(f) Maintaining a list of all service providers
(g) Inform service providers that their services may be required in the proceedings
(h) Making a safe shelter home available to the aggrieved person
(i) Making sure that the aggrieved person is examined by medical personnel if she has sustained bodily injuries
(j) Submitting a copy of the medical report to the respective police station and the magistrate
(k) Ensuring that an order for monetary relief is complied with and executed in accordance with procedures prescribed under the Code of Criminal Procedure (1973)

The PWDVA grants the victim of domestic violence a number of reliefs: an order of protection (Section 18); a residence order (Section 19); a custody order (Section 21); a compensation order (Section 22); and interim and ex parte orders (Section 23).

Under the PWDVA, the victim/aggrieved person has the right to reside in a shared household but this right does not confer a right of ownership over the property. The right to reside is considered a procedural safeguard against dispossession of the aggrieved person. In India, the male member of a marriage is traditionally given possession of the premises. Thus, it is relatively easy for a man to dispossess a dependent wife, daughter, mother, or other female members of the household (Lawyers Collective Women's Rights Initiative 2009). In order to avoid being homeless, many women stay in a hostile home.

Although legal provisions for providing compensation to victims are available under the Code of Criminal Procedure and the Probation of Offenders Act (1958), they are limited. For example, the Code of Criminal Procedure recognizes the principle of victim compensation, and Section 250 authorizes magistrates to direct complainants or informants to pay compensation to people accused by them without a reasonable cause. Section 358 empowers the court to order a person to pay compensation to another for causing a police officer to arrest such other person wrongfully. Also, in a criminal proceeding, Section 357 allows the court to impose a sentence to grant compensation to the victim as well as order the defendant to pay the costs of the prosecution. However, this is at the discretion of the sentencing court and is to be paid out of a fine recovered from the perpetrator (Srinivasan and Mathew 2007).

In addition to the restitution provision in the Code of Criminal Procedure, Section 5 of the Probation of Offenders Act empowers courts to require released offenders to pay restitution. However, given the low rates of conviction in criminal cases (fewer than 25% of defendants in domestic violence cases are convicted), the inordinate delays in completing the proceedings, and the relatively low capacity of the average accused person to pay compensation, it is unrealistic to

say that there is a functioning victim compensation scheme (Menon 2004). Unlike prior laws, the provisions under the PWDVA for allowing monetary relief and compensation (Sections 20 and 22) are meant to provide specific financial remedies to the victims of domestic violence.

Although the PWDVA was hailed as the most important legislation yet passed for providing protection for women against physical, mental, and economic abuse/violence, the Act was criticized as being gender biased because it only protects women and some women could use this Act to teach their male relatives a lesson. Such trends were noticed in the case of anti-dowry law (Section 498a). In addition, the definition of domestic violence includes minor verbal insults and name-calling as abuse. Some critics of the Act felt that frivolous acts of "domestic violence" could increase litigation and hurt the foundation of marriages ("Amend dowry law …," 2010).

Others contend that the PWDVA has not gained the desired level of social acceptance and that one of the main barriers was delays in case processing. At the time of writing this article, the effectiveness of the Act is questionable because although India has always been exceptional in drafting legislation in accordance with international standards, it has failed in the past to enforce them effectively. In addition, the recent Supreme Court decision regarding the right of the women to a shared residence has, to some extent, limited that right. In S. R. Batra v. Taruna Batra (2007), the Court held that a "shared household" meant a house owned or rented by the husband, or a house that is part of a joint family dwelling in which the husband has a share. In other words, if the house where the victim is staying is the sole property of her in-laws, she has no right to the shared residence. This is a step backward in terms of protecting women from being thrown out of the joint family.

24.6 Conclusion

In spite of the glitches, the PWDVA is a significant legislation that offers various legal remedies including monetary relief and compensation, temporary custody of children until a case is resolved in a civil court, counseling and medical assistance, and protection orders. In addition, the Act is intended to provide easy access to justice and speedy access to relief. According to Lawyers Collective Women's Rights Initiative (2010), the Act offers a single window of access to judicial system and service providers for women facing domestic violence. Prior to the Act, women had to seek different types of relief from different courts, which was not only time consuming but also dangerous. The Act requires key criminal justice personnel (e.g., police, POs, and magistrates) to inform a woman of her rights at the time of the filing of the complaint. The periodic monitoring and evaluations, such as those conducted by the Lawyers Collective Women's Rights Initiative, will identify loopholes in the law as well as problems with its enforcement. As of 2010, the organization has completed four monitoring and evaluation reports. The most recent evaluation (in 2010) found that married women, divorced women, women in live-in relationships, and mothers (in cases filed against their sons) are filing cases under the PWDVA. Some states have even established special cells within their police headquarters to exclusively handle the cases that fall under the Act.

Despite this progress, the formal justice system is burdened with a backlog of cases and domestic violence tends to take a backseat. As a result, a new form of informal courts, known as "Mahila Court" or *nari adalat* (women's courts), have emerged in many parts of India, particularly in western and northern states. The *nari adalats* are the results of grassroot efforts by women's groups (i.e., women's collectives) to deal with violence against women and empower women (Sharma 2000). These courts operate at the block and village levels and the members are trained in legal issues, discrimination of women, and women's rights. As of 2010, there were 184 *nari adalats* in 9 states, and they had presided over 6,000 cases (Purushothaman 2011). These courts have been especially useful for women from rural areas and those who come from marginalized communities. Typically, a group of five women sit in a circle in front of a local government office

to decide cases such as divorce, disputes between women and their in-laws, complaints about husbands' infidelity, domestic violence, rape, and dowry harassment. In addition to serving as a mediating body in which the parties must agree to abide by the *nari adalat*'s decision, the *nari adalat* also ensures that the decision is implemented (Purushothaman 2011). In the future, a combination of formal legal protection, enforcement agencies, and informal courts should serve to protect the rights of women in India. It remains to be seen if the combination of these systems will be able to assist victims of domestic violence and provide the necessary protection to victims of domestic violence.

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Restorative Justice in the Asia Pacific Region: Acting Fairly, Being Just

25

Brian Steels and Dot Goulding

25.1 Introduction

The origins of Restorative Justice are often contested. Whilst the concept of Restorative Justice is often attributed to Judeo-Christian beliefs and values, it is also claimed that it has its genesis within First Nation and Indigenous communities. Even as there may be truth in the fact that restitution, reparation and apology had temporal and spiritual connotations among families and early communities in Europe, historically, violence at individual, local and national levels was also often the order of the day. A quick worldwide historical examination demonstrates that both violence and peacemaking have shaped the overall human experience. In short, human beings are often, at one time or another, both conquered and conquerors. This binary of peace and violence is the starting point of the paper as many communities and nation states try to live in global peace and harmony whilst always, in the first instance, being mindful of their own interests. This is a balance not always peacefully achieved.

Many jurisdictions now use the term "restorative justice" to incorporate varying degrees of restorative processes and practices, sometimes redefining the term to suit their social and political goals. The United Nations and Council of Europe have suggested that restorative justice processes become an integral part of the response to both juvenile and adult offending. Although it is still considered by some as an emerging social movement, local, state and national governments often see an advantage in including restorative justice in their criminal justice systems. Braithwaite (2002) points to the UN Declaration (1985) as adopted by the General Assembly in 1985, which covers many aspects of restoration. The Working Party on Restorative Justice adopted the Marshall (1996) definition of restorative justice:

> Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.

In line with this ethos, Chi-Kong Lee (2008) contends that:

> Placing a premium on the "doctrine of the mean" and peaceful resolution of conflict, Chinese traditional legal culture, being built on principles of Confucianism, historically pursued a society where the individual should live in harmony with Heaven and Nature. This philosophy is consistent with restorative justice's emphasis on restoring breaches in relationships with victims and the community.

Whilst nations develop diverse and often inconsistent criminal codes and procedures to

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suit local contexts and conditions within their criminal justice systems, advocates of restorative justice call for consistency in words, processes and outcomes across boundaries. The downside for this may be the loss of local and cultural differences as the common language of restorative justice presents a globalization in terms of service types and delivery with common values and principles. On another more positive note, a universal definition of restorative justice may be required in order to maintain its underpinning ethos, as in some jurisdictions, restorative justice has been redefined and its core principles effectively undermined to suit various governmental "tough on crime" policies. On the other hand, according to Van Wormer (2008), Confucianism contends that humankind is basically good. She argues that, "Confucius taught his disciples the principle of ren or truthfulness and kindness". Furthermore, according to Hui and Geng (2001 cited in Van Wormer 2008), "Confucianism, advocates a restorative approach to matters of crime and justice. It assumes, first and foremost, that the first victim of any criminal offence is the offender himself or herself". It remains a serious concern that the oft times redefinition of restorative justice has, in some jurisdictions, led to increasing rather than decreasing engagement with the criminal justice system.

Braithwaite (2002) maintains that the "core listening principle" and the "non-domination principle" are both central to the integrity of the restorative process, involving the telling of stories of victims, accused offenders, community members and stakeholders to deliver justice outcomes. Following on from this, Ozawa (2003:65) notes within Singapore that "in this sense, justice is not just an abstract concept, but the rectification of or recompense for interpersonal wrongs. Crime rates thus reflect not simply matters of rules and regulations, but the violation of societal norms, interpersonal values, and principles governing behaviour and the treatment of other citizens within a given nation". Pranis (2007:59), too, supports the range of values recognized as important to the restorative justice process, including "respect, maintaining individual dignity, inclusion, responsibility, humility, mutual recognition, reparation and non-domination". Other research (Goulding and Steels 2006) has found that what matters most to people, regardless of terminology, is that due process is provided in a fair and equitable way. Such due process should occur with protections for human rights, the right to voluntary participation, and the use of processes that accord sufficient time for all parties to participate in a meaningful manner, according to their needs. Currently, in many jurisdictions, restorative justice processes are quickly pushed through legal process to meet deadlines and judicial outcomes. Also, the quality of facilitator and/or mediator training is crucial, as is the manner in which people are exposed to the criminal justice system and treated at their arrest. It is also important that all victims, regardless of the nature of the offence, have an opportunity to participate at a level at which they feel comfortable.

Restorative justice processes can provide benefits to victims, offenders and communities of interest, regardless of the place and time in relation to the event. Using Howard Zehr's (1990) approach from his seminal text Changing Lenses, the RJ process looks at the following: (1) how the process can assist victims of crime and those who have offended against them; (2) how the situation can be resolved; (3) what do the people involved feel about it; (4) what needs to happen to put things right; (5) who is going to do it. The question then remains, can we live and work with a variety of restorative practices that bring sustained or even short-term benefits to victims of crime, offenders and their surrounding communities of interest, and yet are more difficult to identify and evaluate? The answer is perhaps more about being positive, than a direct "yes". A prevailing lack of perceived fairness and due process is often noted among participants of current adversarial services, and has certainly raised concerns amongst the judiciary in Australia. As Malcolm (2004:2) states:

> For society to maintain its respect for the law, the law must bear relevance to the society to which it is applied. There are many occasions upon which a judge is required to decide what is just, what is fair or what is reasonable. In cases of that kind a judge necessarily seeks to apply basic values representative of community values. In doing so, he or she

> cannot merely reflect transient shifts in public opinion …Judges should not be influenced by a temporary shift in public opinion or by prejudice, emotion or sentiment.

25.2 The Contentious Origins of Restorative Justice

In response to a commonly used notion that restorative justice has its origins among Indigenous and First Nations people of Canada, Australia and New Zealand, Cunneen (2007) identifies Indigenous and non-Indigenous sanctions that are not restorative. Many of these are traditional sanctions. According to Cuneen, Indigenous punishments for wrongdoing may include "temporary or permanent exile, withdrawal and separation within or from the community, public shaming of the individual, and restitution by the offender and/or their kin. Some sanctions may involve physical punishment such as beating or spearing". The Australian experience supports Cuneen's argument as many of Australia's traditional Aboriginal people, living in remote areas, still use tribal punishment as well as reparations and restoration. In addition to tribal forms of punishment, there is widespread belief that practices such as community forums and healing circles are closely linked to Indigenous peoples, New Zealand's Maori people, Australian Aboriginal and American First Nation cultures where people had to come face to face with other members of their community to settle disputes and put things right. In addition to these particular Indigenous peoples, we acknowledge and value the many other Indigenous peoples of the Asia Pacific region who also have practices that include many components of what we now call restorative justice.

Many of these local practices may not be immediately recognized as the prevailing academic notion of definitions of restorative justice but they are local practices that provide processes to which people agree, meeting the desired outcomes of mutually agreed settlement following a dispute. These local cultural ways of being fair and just demonstrate, for many Indigenous people in the Asia Pacific region, that they have continued their traditional ways of dealing with disputes in a way that seeks to restore harmony in a process considered and experienced as fair and just. Restorative processes throughout the Asia Pacific region often utilize deep traditional and cultural ways of striking a balance, making things fair, replacing what is lost or stolen, and making good following harm. In other words, living in harmony with others and nature. Throughout history, these processes have been fundamental among many peoples for resolving localized disputes and crimes. This was the social contract and inclusion that helped people to desist from harmful acts, belonging to community where rules bound people together. In terms of Confucian philosophy and its compatibility to restorative justice, Ozawa (2006) identifies certain values as being similar. These are:

> Compassion ("ren"); filial piety ("xiao"); righteousness ("yi"); propriety ("li"); loyalty ("chung") and reciprocity ("shu"). In this schema of life, for example, "reciprocity" sees persons not so much as individuals, but as persons caught up in an intricate web of relationships.

Conversely, many people believe that restorative justice originated in Western culture embedded within a more formalized Judeo-Christian framework. This process highlighted a variety of alternatives to revenge and retribution, moving towards notions of balance, being fair, and delivering just outcomes by law. The "giving back" or replacing what was stolen was a part of community living, especially among small social groups such as villages where people were generally known to each other.

Braithwaite (1999 :2) contends that restorative justice has been the dominant model of criminal justice throughout most of human history for all the world's peoples. Bottoms (1999) however argues that in pre-modern societies, the resolution of local disputes were more varied than restorative justice advocates and practitioners suggest, noting that many processes maintained a high degree of threat, coercion and punishment. Both arguments hold certain truths historically and in contemporary society. The notion of the common good is also reflected in these discussions

as social connections of family and community hold together the values that lend themselves to the larger social and moral order. Although Blagg (1997) remains critical of many of the restorative justice practices being claimed as Indigenous, suggesting that there is a process of re-colonizing by justice systems which further exploit Indigenous practices. He argues that states continue to colonize communities by using these techniques to impose new law and order regimes under the guise of "traditional". In support of Blagg's argument, Daly (2002:48) claims:

> If the first form of human justice was "restorative justice", then advocates can claim a need to recover it from a history of "takeover" by state- sponsored "retributive justice". By identifying current indigenous practices as "restorative justice", advocates can claim a need to recover these practices from a history of "takeover" by white colonial powers who instituted retributive justice.

Indeed, Blagg's argument rings true, for we often witness the homogenizing of practices through the use of international trainers who visit vastly different cultural groups and impose their own Western concepts and values without exploring and valuing local and traditional processes. This effectively subsumes local knowledge and experience under the guise of Western best practice. Cunneen (1999a, b) also maintains that amongst Aboriginal and First Nation cultures the processes of Indigenous governance are crucial so that local people and their communities can play an important role in their own justice processes and, as a result, empower and decolonize their knowledge base. Replacing colonial forms of justice with local Indigenous community representation means that perpetrators and their victims are more likely to comply and engage with the social contract generated from the restorative process. Although this is a delicate path to walk, it is one that the authors have experienced (Goulding and Steels 2006; Steels 2008).

In terms of criminal justice systems, there is already a Western hegemony at play with the general acceptance that Western systems of justice are better, more efficient and more effective. Western court structures are built around the jury system with the rules and regulations of colonization following the various wars and imposition of the victor's rules and practices of doing justice. Within the authors' jurisdiction of Western Australia, there is a current conversation that regards juries as being rather ineffective. The jury system, according to McCusker (2009:2), is so outdated that it "leads to unjust convictions and to guilty people being acquitted".

25.3 The Asia Pacific Region

The Singaporean legal system was originally based on British colonial forms of justice, resulting in many negative consequences. However, Ozawa (2006) contends that today:

> …the courts of Singapore are of the belief that courts are not dealing simply with complex legal matters but with complex human relationships within an overall context of societal values based on religious and moral traditions. It is not recidivism which is the touchstone of Singaporean justice, but rather the redemption of individuals from lives which violate high norms of interpersonal behaviour.

In New Zealand, too, Judge McElrae (2010:2), an experienced restorative justice practitioner, claims that:

> …restorative justice offers a quite different view of victims' interests, one that is not necessarily opposed to that of offenders—and can produce "win-win" outcomes. They are actually what is aimed at every time. If the Courts could more consistently show that victims' interests can be catered for in meaningful ways (not token ways like victim impact statements), and that their needs are better addressed in this way, much of the pressure for tougher sentences would fall away.

As previously mentioned, many nations within the Asia Pacific region have a history of being dominated in one form or another. Their justice systems have not escaped this domination. The authors note the ways in which practitioners, academics and researchers from these regions can provide a unique insight into what has worked at the grass roots level amongst local Indigenous peoples. These restorative justice practitioners provide some degree of fairness and justice, giving a voice to those who have been harmed as

well as those people who may have brought harm upon others. Such restorative practices are often claimed as local, culturally appropriate or traditional within the aforementioned regions. Restorative processes have resonance with both communities and governments in an attempt to break away from the retributive justice processes that have engulfed them. In many cases these regional nations have, at one time or another, experienced similar colonizing influences to those of Australia and New Zealand. Morris (2002:598) reminds us that "restorative justice encourages cultural relativity and sensitivity rather than cultural dominance".

For many people, being more restorative is initially more about a personal rather than a state issue, regardless of whether it is Asian, European or Indigenous. Many nation states within the Asia Pacific region agree that what matters most is the ability to make things better, and to produce harmony where there is conflict following criminal acts or anti-social behaviour. Whilst the state has the mechanism to intervene, local actions are often more desirable, effective and experienced by the people as fair and just processes and outcomes. Indeed, in Chinese culture, Chi-Kong Lee (2008) claims that the ancient Bao-Gu and traditional mediation systems reflect many aspects of contemporary restorative justice. These systems seek to restore feelings of safety and personal dignity amongst victims, encourage feelings of responsibility amongst offenders, thus facilitating their successful reintegration into the community. Moreover, Chi-Kong Lee states that:

1. The "Bao-Gu" system establishes the base of non-lawsuit practice, so that the social relation that had been broken by the offence can be restored. This helps reinforce social stability in the community and alleviates the conflict between the offender and the victim.
2. The application of the "Bao-Gu" system, like restorative justice, can spare financial resources of criminal justice system, especially in reducing the costs of imprisonment.

Pranis (2010:4) suggests that when a community can "draw on and trust its own inner resources to discover the validity of a new paradigm, the community is liberated from bondage from old embedded, fixated ways of being in the world". It becomes clear that regardless of local policies and the political ambitions of a few, the community is then, according to Pranis (ibid), "…able to embrace the creativity of chaos, the possibility of dreams". People are then "empowered to imagine new ways of being, to problem solve on a deep level" (ibid). Meanwhile, from New Zealand, Judge McElrae (2010):3) gives hope that the criminal justice system will be able to "…deliver justice for all, not just for defendants, and that the courts will be left to get on with the job of judging according to the law and applying principles of respect and compassion for all".

Further, the authors claim that these principles can reflect the underpinning values within jurisdictions. For example, Ozawa (2006:78) claims that "with a population drawn from ancestral roots in China, Malaysia, India and other parts of Asia and Southeast Asia, and populated with religions of the region (mostly Buddhist, but also Christian, Muslim, and Hindu), Singapore is also infused with Confucian values. In addition, throughout the region, informal as well as formal ways of dealing with wrongdoing are used. These are often reflective of family and community needs and dealt with in a holistic fashion. For example, in Singapore, Ozawa (2003:65) contends, "…this is a society which [is] not bred of retaliatory rules nor simply reduced to fear of legal sanctions, but steeped in the heart of the citizens—a high regard for interpersonal and familial connectivity".

In Japan, the practice of Ji-dan has a long tradition of use as a means of conflict resolution. In contemporary Japan Ji-dan remains useful as a process of negotiation between family members as a way to resolve a dispute between two parties. It may mean that no direct face-to-face meetings will occur, but that family or trusted others will negotiate for a fair and just outcome, saving face and restoring harmonious relationships. However, it is pertinent to note that Japanese social organization and cultural practices are central to the success of Ji-dan. As Komiya (2011:132/133) points out:

> As Japanese have obtained a sense of security by integrating themselves with groups, they had no choice but to strictly adhere to countless rules for

> group cohesiveness. In this process, the Japanese have become a patient and orderly people, and have successfully elevated their level of self-control.

Certainly, it is the authors' contention that such elevated levels of self-control as seen in Japan are not apparent within contemporary Australian society where individual rights continue to subsume notions of the common good as a societal and cultural norm.

Set among the problems that appear to have plagued many practitioners throughout the fields of criminology, victimology, penology, and restorative justice practices and policy is that most often we see through a Western lens. Also, we often hear through a Western ear that interprets within a frame of colonial histories and imperial expansionism. We are partially captured today by the world's marketplace of criminal justice ideas with theories and practices developed for one culture and rolled-out to another. Steels (2008:4) identifies much of this as he highlights the need for local people and their communities to have "pertinent information readily available to them" along with many other issues such as "fair and just processes in which to participate in and develop clearly defined goals that benefit the common good".

It is timely therefore to welcome and to acknowledge that whilst we are from different backgrounds, we are all the experts of our own experiences. We hold the social capital and the collective desire to reduce harm. We are a part of the collective problem with its local solutions. We also have a great deal in common as we build up our region's ability to be effective restorative justice practitioners, researchers and academics. People throughout the regions know that they no longer live in isolation and that there is much to be learned from each other as we learn to respect each other's ideas, values, customs and concerns. Some of the localized practices may not use the term "restorative justice" but already have many of the desired components in terms of process and outcome. Yet at the same time, sadly, throughout the region harsh and at times inhumane punishments remain. These are (in no particular order of importance): the over-use of prison against minority groups and marginalized people, the devaluing of Indigenous tribal and language groups and the powerful use of state sanction. These factors often disallow or remove victims' rights and due process at law, diminish offenders' rights and responsibilities and negate the notion of natural justice. Conversely, in many jurisdictions, the people are calling for discussions around their justice systems, to deliver fair and justice processes for all participants, in a safe and equitable framework.

The Asia Pacific regions hold the world's largest populations, namely China (1.3 billion) and India (1.1 billion), along with Pakistan and Indonesia. The regions encompass diverse cultures and complex belief systems from Buddhism with its Four Noble truths, the respectful Shinto temples, the simplicity and complexity of Zen, through to the mystics of India and the Teaching of the Gita. There are also the teachings of the Quran among the world's most populated Muslim country and the words of the Old and New Testaments of Christianity as well as the teachings of the Torah. The regions also include ancient Confucianism with its philosophy of restoring harmony and Taoism and the need for balance. All of these belief systems exist within nation states that can display the politics of nationalism, communism, capitalism, juntas, democratic governments and dictatorships. Such vast diversity notwithstanding, the authors argue that it is still possible to find some common ground. For example, the global ability to help others in times of anguish and disaster that often crosses national boundaries. Trying to keep a balance between yin and yang in the maintenance of harmony impacts upon the young as well as the elderly and knows no limits. Bloodlines can stretch far across land and seas and it is these interconnections that highlight the many ancient traditions working together with modern practices. They bring into the twenty-first century the Asian Pacific practices of harmony and peace with the self, among others, within local villages, small communities and peaceful co-existence between nations.

On the other hand, conflicts, competition and disunity abound, causing fractures in relationships that bring harm to individuals, communities

and even nations. Today within the region, nation states attempt to heal the wounds of the past, to reconcile, to rebuild and strengthen good and harmonious relationships through respect and with integrity. Restorative practices within the region already encourage planning and financing of resources and energy on positive intervention programs, providing rehabilitation within communities, including and prioritizing support for victims. The traditional Chinese emphasis for example, as pointed out by Van Wormer (2008:3) is on "harmony between persons and on the unity of humanity with nature. Influenced by Confucian communitarian ideology, the Chinese criminal justice system relies on grassroots committees to provide social control and to resolve conflict". These and other restorative practices help to heal fractures within families, provide wellness and harmony and promote the Asia Pacific paradigm within a sociological, psychological and criminological context. This is indeed the foundation of restorative practices, deeply rooted in the Asia Pacific fabric, interwoven into the daily lives and played out in day-to-day experiences of being fair and just.

Many traditional ways of restoring justice within a fair process have been retained by local people of the region, including but not limited to, small rural communities in India, Pakistan, Taiwan, Indonesia and Malaysia. In China, many disputants use traditional non-judicial processes whereby parties to a dispute may not face each other but are represented by a close family member who then speaks through a negotiator to the other party's relative. In turn, the negotiator speaks to the relative or representative acting on behalf of the other person at the centre of the dispute. It is a shuttle-style mediation that has a deep history within Chinese culture and is located outside of the state sanctioned system. Following on from this, Liu and Palermo (2009:51) contend that "…the Chinese Confucian legal tradition lends high promise for the development of restorative justice in China". Whilst Liu and Palermo make it clear that "few studies have analyzed and specifically identified those specific philosophical ideas and principles of the Chinese traditional legal culture which encourage restorative justice values and practices", the philosophy is currently seen as valuable. In addition, Braithwaite (2002:22) indicates that "Confucius is the most important philosopher of restorative justice" and has long argued that such philosophies are seen as valid to the region's restorative practices. Liu and Palermo (2009:51/52) also make the point that "The Confucian legal tradition was secular and largely informal… Humanity and the human world were the focus of Confucian philosophy" where "ideal harmonious human-society relationships and harmonious human-nature relationships were sought".

Liu and Palermo (2009:54) add that "…when order and harmony are disrupted by disputes and crimes, the final objective of the law is to restore that order and harmony, to restore the relationships to their original state". They claim that this principle is "in essence restorative in nature" and that by "placing social relationships over other goals, Confucian thought coincides with modern principles of restorative justice. Furthermore, Liu and Palermo, (2009:54) argue that the most import aspect of Confucian principles of justice in traditional China are that "resolution must be fair and must respect human feelings tian li ren qing". Although the Confucian ideals that support harmony through wu song (no law suit), are seen today in contemporary Chinese criminal justice circles as being "implemented at the expense of individual interests and legal rights" (ibid). The ancient and traditional way of doing justice, one based on "morality, feelings and reasonableness" (ibid) is at odds with prevailing Western legal principles now used within Chinese mainstream justice. The obvious tensions caused by any criminal act are now viewed as a break in the relationship with the state, rather than a break in the social relationship between human beings. This is as noticeable throughout China as it is elsewhere in the region.

Certainly, it is important to note, that we do not have enough evidence of whether these traditional practices reduce the likelihood of repeat offending, or if the people who use these methods are more satisfied with the process and outcome than if they went through the formal justice system. What we do know is that such practices hold

some of the key ingredients of being fair and just, of restoring a balance, producing harmony and reducing fear. These traditional restorative processes warrant more in depth research in order to ascertain their real impact, if any, on rates of recidivism, victim, offender and community satisfaction, and victims' mental health outcomes.

25.4 Underpinning Theories

Tyler (1990; 2006) claims that people are more likely to comply with the social sanctions imposed on them when they feel that they have experienced fair and just process, even if the outcome is different to what they desired. Often the use of traditional methods that, at first glance, appear not to have due process or just outcomes are more acceptable within a local context where informal rather than formal criminal justice processes are used. It is this apparent lack of faith in mainstream criminal justice systems to deliver fair and just outcomes that encourage the development of alternative paths. Perceptions of fairness are crucial to the legitimacy of the criminal justice process, for as Tyler (1990:172) indicates, being "unfairly treated" disrupts "the relationship of legitimacy to compliance" even more than "receiving poor outcomes". In other words, all participants involved in a criminal offence or fracturing of relationships (offender, victim, community of interest) ought to be in a position to feel as though they are being treated fairly and with respect. Such acceptance would apply to many local practices, including Ji-dan. We also know that many people do not experience our current adversarial regimes as fair and just from the point of arrest though to sentencing and beyond. Victims are frequently left outside of the process as well as, in many jurisdictions, being used as a tool of the prosecution. For all participants, process is always paramount. Wholly restorative processes are designed to provide fair and just process, one that responds to local values, human rights and fair treatment of others in and around their community. Ideally, they should reflect local practices, ensure fair and just treatment that takes note of grassroots values, and provide conversations around human rights and protection of both victim and perpetrator.

It is now more than a decade into the new millennium and throughout the world a great many people are calling upon their governments to deliver justice in a more transparent, fair and just way, through a process that recognizes their human rights. They demand a cultural change from their local police services, courts, parole boards and community justice agents. This is particularly true from minority communities and the most marginalized people. In a regional sense, as Morris (2002:598) contends, "restorative justice also emphasizes human rights and the need to recognize the impact of social or substantive injustice and in small ways address these rather than simply provide offenders with legal and formal justice and victims with no justice at all". Although many of these discussions can be applied today within the broad social movement of restorative justice and penal reform, the conversation often relies heavily upon the Western perspective, leaving out many of the Asia Pacific peoples who are able to supply a wealth of experience in settling local disputes by community means. People within the region have witnessed change where national disputes have often fuelled vicious oppression by brute force and violence. Reclaiming "old and wise ways" has always had a place among people within the region where wisdom, age, and harmony are valued conditions that lend themselves to resilience.

Any focus on the treatment and rehabilitation of people ought always to consider the use of a broader lens, embracing both victims and offenders. A combination of therapeutic and restorative practice can provide an opportunity for offenders and victims to feel satisfied with both process and outcomes. A major thread in the fabric of responsibility taking amongst offenders is the challenge to decrease "neutralization" (Sykes and Matza 1957:664) a practice central to the therapeutic process. Neutralization is defined as a denial of personal responsibility. In their work with juveniles, Sykes and Matza recognized a variety of strategies whereby offenders deny their responsibility for a criminal activity; denial of responsibility, denial of injury, denial of victim, condemnation of the condemners, and appeal to higher loyalties.

That said, Cunneen (1999a, b) mentions that there is often a degree of neutralization that can be found amongst First Nation communities where there is a level of resentment and disregard for what is often perceived as an unjust colonial authority. This provides an opportunity for people to neutralize behaviour by what Sykes and Matza (1957:664) view as "condemn the condemners". Further to this, and in line with other underpinning practices which identify positive lifestyle opportunities for offenders, Maruna and Immarigeon (2004;6) contend that "the major correlates of desistance from crime identified in research…involve ongoing, interactive relationships that can take up most of an individuals waking life". Farrall (1995:23) also found that, in general terms, "…desistance occurs away from the criminal justice system". In short, social relationships are seen to be central to restoring justice, both for victims and offenders especially when crime is viewed as a fracture of relationships within a community. Further to this, Braithwaite (1989) argues that re-integrative shaming is most effective when used in the presence of "relatives, friends or a personally relevant collectivity" largely because "repute in the eyes of close acquaintances matters more to people than the opinions or actions of criminal justice officials". Tyler (2006:307) also provides support to the argument that close family and friends, the crucial supportive network, provide a benefit, not just in terms of human resources but also as a mechanism of improving self-image and compliance:

> The restorative justice conference seeks to motivate such immediate and future behaviour by separating the "good" person from their "bad" conduct. The conferences then seek to both deal with the consequences of the bad conduct and, separately, to connect the good person to their motivation to behave in ways that win respect from their family, friends, and community. It is this connection with one's favourable self-image that motivates compliance in the future.

Most restorative justice processes that are practiced today, regardless of region or culture, have a level of shaming, generally enough to highlight dissatisfaction with the offender's behaviour, whilst giving positive regard to the person. This forms the underpinning philosophy of restorative justice, that of re-integrative shaming (as opposed to "disintegrative or stigmatic" shaming) of offenders in an environment of safety and support. As Braithwaite (1989:55) contends:

Re-integrative shaming means that expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of reacceptance into the community of law-abiding citizens. These gestures of reacceptance will vary from a simple smile expressing forgiveness and love to quite formal ceremonies to decertify the offender as deviant. Disintegrative shaming (stigmatization), in contrast, divides the community by creating a class of outcasts.

Combined, the above transformative and restorative constructs encourage a sense of challenge to offenders' neutralisations, and provide them with an opportunity to feel satisfied with both the process and outcomes. This last point meets Tyler's (1990:172) notion that fair process is crucial to the legitimacy of the criminal justice process, for as he indicates, being "unfairly treated" disrupts "the relationship of legitimacy to compliance" even more than "receiving poor outcomes". Victims and offenders, together with supporters, can benefit from such processes for, as previous research has indicated, they provide all parties greater satisfaction with process and outcome (Beven et al. 2005).

The following comments from Western Australian Chief Stipendiary Magistrate Heath[1] suggest that the restorative process used within a community group conference model of restorative justice trialled in his court was a valuable resource for the court as well as being beneficial to offender, victim and community. He claimed that:

> The restorative and transformative justice pilot has provided a rare opportunity to receive an independent report of the interaction between the victim, the offender and their families or friends after the offence. In that way it goes beyond the matters that

[1] Written statement by Chief Stipendiary Magistrate Steven Heath (2002) upon completion of the pilot restorative and transformative justice project carried out by Goulding & Steels in Court 37 Central Law Courts, Perth Western Australia; the Court over which he regularly presided.

> might be contained in an outline of the facts, a victim impact statement or a plea in mitigation. It provides the Court with valuable information, particularly in determining whether there are matters which will make a sentence other than one of imprisonment appropriate. It is a valuable tool in the context of therapeutic jurisprudence in forcing offenders to confront problems with their families and peers and has on occasion uncovered issues not otherwise apparent to those dealing with the offender.

Court based restorative processes are often strengthened in their objectives when combined with transformative or therapeutic processes as in the aforementioned pilot study. These combined processes provided the offender with encouragement and support through relevant therapeutic interventions and personal healing. In this way the victim was able to regain feelings of personal safety together with the support necessary to meaningfully engage in the process and not just respond as a tool of the prosecution. It is often difficult to recognize that throughout these constructs, victims and offenders can experience the court as a place that is able to assist with their personal healing and well-being. As Winick (2003:26) claims, "…therapeutic jurisprudence suggests that law should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law, should attempt to bring about healing and wellness". These restorative and transformative processes constitute a paradigm shift from the traditional view of the presiding court officer as a punishing law enforcer to that of one who, with adequately resourced supports, finds solutions to problems and tries to make right and fair that which has been seen to be wrong. This is a process that addresses the common good, collaborating and utilizing the many cultural and traditional ways in which people experience justice.

25.5 Personal Journeys and Reflections

The aim here is to draw attention to and, an awareness of, the wealth and diversity of Asian and Pacific regional processes that influence personal and group harmony and adherence to the social contract. As previously mentioned, there are many links between the personal beliefs and social values that are in tune with a more Asian Pacific view of restorative practices. It is from this perspective that we hope to expand the wealth of practices that are seen to be fair, just and equitable, recognizing victims' and offenders' rights to dignity and support. We argue that it is incumbent upon regional practitioners and academics, community groups, governments, non-government organizations and not-for-profit organizations to engage together via various networks, in order to explore the wealth of locally based practices that bring about fairness and justice to people.

The ability to reflect rationally upon our actions and those of others is often the starting point after we have caused harm or experienced being harmed by another. It is a crucial time to be able to have the space to review our lifestyle, to think of cause and effect, to think of what has occurred and to go over in our head those often catastrophic and defining moments. As Sykes and Matza (1957) found, it is at this point that many offenders attempt to neutralize their behaviour, shifting blame and responsibility to others, including the victim. Reflection on our criminal and anti-social behaviour, our relationships and our lifestyle can lead us towards personal transformation and positive personal growth. For those who have experienced being victimized by another, it is often a period of anger, of questioning, of feelings of being let down, anxiety, and a need for answers. Reflection itself often becomes a traumatic experience, one that may require support of family and/or friends. It often comes as a revelation to people as they recount the consequence of their actions and engage with their feelings, that they may be seen in a less favourable light by others than they would wish. However, as Tyler (2006:307) states:

> The restorative justice approach focuses on engaging people's feelings of responsibility to their family and community. It argues that when people feel that they have damaged their image in the eyes of others, this has destructive consequences for themselves.

Indeed, as Ahmed and Braithwaite et al. (2006) claim, "the effectiveness of restorative justice,

however, largely depends on the degree to which some key relational parameters can be altered, specifically acknowledgment of wrongdoing, awareness of harm done". For some of us, revelation comes about as we discuss our problems with others, as we read from our books of faith and from our personal encounters among family and friends. We may find as we recount past events that have brought us harm, that we have good people around us who are there for us, and in this revelation that we are not to blame for whatever has happened to us, and that we can be empowered by these thoughts that lead us to react positively to ourselves once again.

Being resentful is understandable whilst we are in the space that follows being harmed by others, or even harming others, feeling or showing indignation and displeasure with ourselves or with another. We may even be resentful towards the way in which we have acted. In most circumstances it takes courage to let go of this emotion that often prevents us from healing regardless of whether we are the victim or offender. Being resentful towards other people who have hurt us or who still bring harm to us is common. However, this emotion can become debilitating and can impact negatively on positive mental health outcomes but it clearly demonstrates how crime impacts upon both one's self and our social networks. Rejecting some of our past ways and considering the thoughts of others may well contribute to an ability to move on and transform our lives. Rejection of past negative practices can afford us the ability to find more a more harmonious way of being and a greater understanding of ourselves in relation to others. The desire to reform ourselves is a critical point for us all. It comes about as we tip the balance of the scales and understand that the past ways are unhelpful and that there is another way, perhaps a better way to engage with others and to do things in a more positive light.

Taking responsibility for one's actions is central to the process of restorative justice. As Braithwaite (1996:13) notes, taking responsibility for one's actions works towards "restoring victims, a more victim-centred criminal justice system, as well as restoring offenders and restoring community". Once we can say "yes, I am sorry for my actions that have harmed others", we are on our personal path to restore harmony into our life and hopefully restore harmony among others. It is in this seeking to bring about personal peace and harmony that gives us direction. As Zehr (1990:24) points out:

> Crime is in essence a violation: a violation of the self, a desecration of who we are, of what we believe, of our private space. Crime is devastating because it upsets two fundamental assumptions on which we base our lives: our belief that the world is an orderly, meaningful place, and our belief in personal autonomy. Both assumptions are essential for wholeness.

Forgiveness comes to the individual by both internal and external means. That is, we have the power to forgive or to withhold forgiveness. As offenders we rely upon outside sources to enter into the state of being forgiven. Repentance, on the other hand, directs us to a change of direction. Within the spiritual context it can often mean doing what is required for us to turn back to the spiritual path that we may have left as an offender or as a victim of crime. Repentance is more akin to a change of heart or a change of mind that sets us back on track, an ability to reflect and transform our ways. It often begins with a regret. For some of us this could mean placing flowers at a shrine, saying sorry to those we have harmed, going along to the mosque or temple to acknowledge the existence of a higher being, or going to ask pardon from our ancestors for the shame that we have brought upon them. Some form of personal confession to loved ones usually precedes this.

Within restorative justice, respect comes about as we engage with others, present the truth and seek a way to make things right. Respect comes in many packages. It comes as a way of thinking about ourselves, ensuring that we do things that help us to become or remain respected. It comes as we think of the way others have treated us respectfully and how with think respectfully of them. We can receive, give and earn respect. Others often see respect as a product of doing the right thing. Respect moves beyond admiration. Respect for the self is seen as essential in many philosophies. Apology and reparation in one

form or another are also essential components of restorative processes. This is often about putting things right, repairing damage, and attempting to make amends. These are all parts of apology and reparation. Reparation can also be applied to work done to make up for the harm caused. Restitution is often closely related to making a financial settlement to assist a victim of crime, or their family. It can also be a way in which a person or company covers the cost to the community following a personal or corporate crime or harmful action. Justice cannot be restored or fairness experienced if there is no effort made to provide apology, reparation and restitution.

Rehabilitation and a welcoming back to family and/or community are essential elements in the final step of restoring social harmony. The notion behind rehabilitating a person, corporation or environment is usually meant to convey a return to good ways, better health and well-being, or to provide assistance to a person who has been removed from their family or community. Within the context of restorative justice it may apply to a person who has experienced guilt or equally it may apply to a person who has experienced feelings of being unsafe following harm done to them. Both are in need of support to re-engage positively with their everyday lives. Reconnecting with their spiritual path or doing good works as a part of their re-commitment to their community are all part of personal rehabilitation, transformation and renewal.

Reconciliation can be defined in several ways. At one level it is a process by which individuals have an understanding or agreement with another. Within another perspective it is a place where people are in harmony with themselves, their belief systems and their environment. Tyler (2006) maintains that "by seeking to separate out and repair the damaged self while condemning the destructive action, the restorative conference has the goal of building positive connections to one's family, friends, and community". In addition, Ahmed and Braithwaite (2006) suggest that stigmatization and the concern that a person is likely to re-offend, may be countered by notions of forgiveness and reconciliation. Ahmed and Braithwaite go on to claim that an absence of forgiveness and reconciliation "destroys the chance to build the emotional scaffolding that is needed to boost self-regulation". They note that practitioners of restorative processes, working within the formal institutional structures, ought to focus on "conditions that enable forgiveness, reconciliation, and adaptive shame management to take place".

25.6 Conclusion

The personal and professional journeys towards restorative justice being undertaken throughout the region provide an opportunity for local and regional restorative justice practices to grow and become entrenched as a central component of mainstream criminal justice systems. The influence of a restorative ethos on retributive criminal justice systems would effectively produce fairer, more equitable and just policies and practices, delivering positive and supportive services to those who wish to participate.

It is fitting to conclude with the wise words of the architect of South Africa's Truth and Reconciliation Council, a fervent supporter of restorative processes and the healing powers of forgiveness, Archbishop Desmond Tutu (cited in Stern 2006:153):

> A criminal offence has caused a breach in relationship and the purpose of the penal process is to heal the breach, to restore good relationships and to redress the balance. Thus it is that we set out to work for reconciliation between the victim and the perpetrator. There may be sanctions such as fine or short exile but the fundamental purpose of the entire exercise is to heal. In the retributive justice process the victim is forgotten in what can be a very cold and impersonal way of doing things. In restorative justice both the victim and the offender play central roles. Restorative Justice is singularly hopeful…

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Evolution of Restorative Justice Practices for Juvenile Offenders in the People's Republic of China

26

Dennis Sing-wing Wong and Louis Wai-yin Mok

26.1 Introduction

Restorative justice (RJ) has developed and grown rapidly in recent decades with the emergence of principles, standards, and new intervention practices for criminal justice and school initiatives (Braithwaite and Mugford 1994; Bazemore 2001; Bazemore and Umbreit 2001; Bazemore and Schiff 2005; Johnstone 2002; Maxwell 2007; Morris and Maxwell 2001; Newell 2007; Van Ness 2003; Vides Saade 2008; Walgrave 2002; Wong 2008; Zehr 1990; 2002). Over the past 20 years, various restorative practices have been developed to help offenders, particularly juvenile offenders, take responsibility for their crimes and make appropriate reparation for what they have done to their victims and communities (Harris 2008; Johnstone and Van Ness 2007; Lo, Maxwell and Wong 2006; Marshall 1995; Maxwell and Morris 1993; McCold and Wachtel 2002; Van Wormer 2008). Though many countries are pursuing RJ practices as new initiatives for dealing with youth offenders, little documentation exists on the use of RJ in the People's Republic of China (PRC). This article begins by describing the current juvenile justice system. It then highlights how RJ was conceived and its role in juvenile justice intervention. The article also analyzes the evolution of restorative practices by referring to journal articles from an academic PRC database and examines the factors conducive to the emergence of restorative practices in the PRC. Finally, the trends in RJ development are discussed.

26.2 Changing Juvenile Justice in the PRC

Article 17 of the PRC's Criminal Law establishes 14 as the minimum age of criminal responsibility and 18 as the age of full legal accountability. A juvenile under 14 bears no criminal responsibility. Juveniles between 14 and 16 are liable only when they have committed 8 types of serious crimes, including homicide, aggravated assault, robbery, rape, arson, drug trafficking, bombing, or poisoning. A person over 16 bears full criminal responsibility but is exempt from the death penalty if under 18. Essentially, anybody 16 or older who commits a crime bears full criminal responsibility.

The PRC's principle of "Education, Reform, and Rescue" has been a guiding principle in the treatment of deviant juveniles and youth offenders. Education is generally recognized as the primary means of delinquency prevention, while punishments such as "reform and rescue" are regarded as a complement to education. The

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concept of "double protection" is highly valued: this practice protects social order while also emphasizing the protection of juveniles. The PRC's Criminal Code lays down two important legal principles—leniency and the inapplicability of the death penalty to juvenile offenders. The PRC's criminal justice system endeavors to uphold juvenile delinquents' accountability for what they have done while giving them a chance to be rehabilitated and reintegrated into society (Zhao 2001).

Over the past few decades, English-language studies on the PRC's juvenile justice and delinquency law reform have been rather limited. Hindered by tight state control of information sharing, the PRC's scholars and governmental officials seldom presented papers at international conferences before the 2000s. With the PRC's increased political openness, scholars can access useful information more easily. English-language literature discussing the PRC's legal, criminological, and juvenile justice matters have become more common since the early 1990s (Biddulph 1993; Clark 1989; Curran and Cook 1993; He 1991; Kuan and Brosseau 1992; Jolley 1994; Leng and Chiu 1985; Macbean 1995; Ogden 1992; Rojek 1989; Tanner 1999; Troyer 1989; Wong 1999). A review of this literature suggests that the Chinese communist leaders relied heavily on the police and neighborhood public security organs and did not trust their formal judicial system between the 1950s and 1970s. After the founding of the PRC in 1949, the Communist Party of China (CPC) adhered to Marxist-Leninist doctrine; the police and local security committees worked hand in hand to control residents' freedom and combat crime. Both public security organs are generally seen as important instruments of the state that served the ruling class by controlling and oppressing antagonistic classes in the early 1960s.

Wong (2004) argues that, until the 1979 reforms, the legal profession and courts were inactive. Until the PRC committed itself to economic reform in the early 1980s, policy makers, by default, had to uphold an unshakeable conviction that the socialist state is a perfect society. While admittedly only a transitional phase in the construction of communism, the preliminary stage of socialism is, by definition, already free of the characteristics that inevitably generate criminal behavior under capitalism. In such a condition, laws are generally geared to the construction of a collective and responsible society; the technicalities of criminal procedures and related enforcement rules are not clearly defined. In the late 1970s, a more sophisticated modern Chinese legal system came into being along with the economic reform. At the same time, a number of laws and legal resolutions related to the protection of juveniles were promulgated by the National People's Congress and its standing committee beginning in 1979. They include the Marriage Law, Labor Law, Law of Compulsory Education, Criminal Law, and Criminal Procedure Law. These laws set up principles and measures guaranteeing the rights and interests of juveniles with respect to the litigation process and the social and education protection of juveniles. In particular, the Juvenile Protection Law 1991 (JPL) and the Preventing Juvenile Delinquency Law 1999 (PJDL) strongly relate to juvenile protection and delinquency prevention (see Standing Committee of the National People's Congress 1991; 1999).

The JPL defines the duties, responsibilities, and authority parents or guardians of a juvenile have in relation to juvenile welfare, right of education, and other legal rights. This law insists on the Criminal Law's guiding principle of using education as the primary means and punishment as the auxiliary means of handling juveniles who commit crimes (Qin and Huang 2010). The PJDL stipulates that a juvenile who needs stricter control may be detained and rehabilitated in a juvenile detention center (commonly referred to as "Re-education through Labor") pursuant to the Criminal Law and the JPL. Scholars (Zhao 2001; Wong 2005) have asserted that the PJDL can be seen as a special law formulated to tackle the "unhealthy behavior" (i.e., minor delinquency) and "serious unhealthy behavior" (i.e., serious delinquency) of juveniles who are not yet convicted offenders.

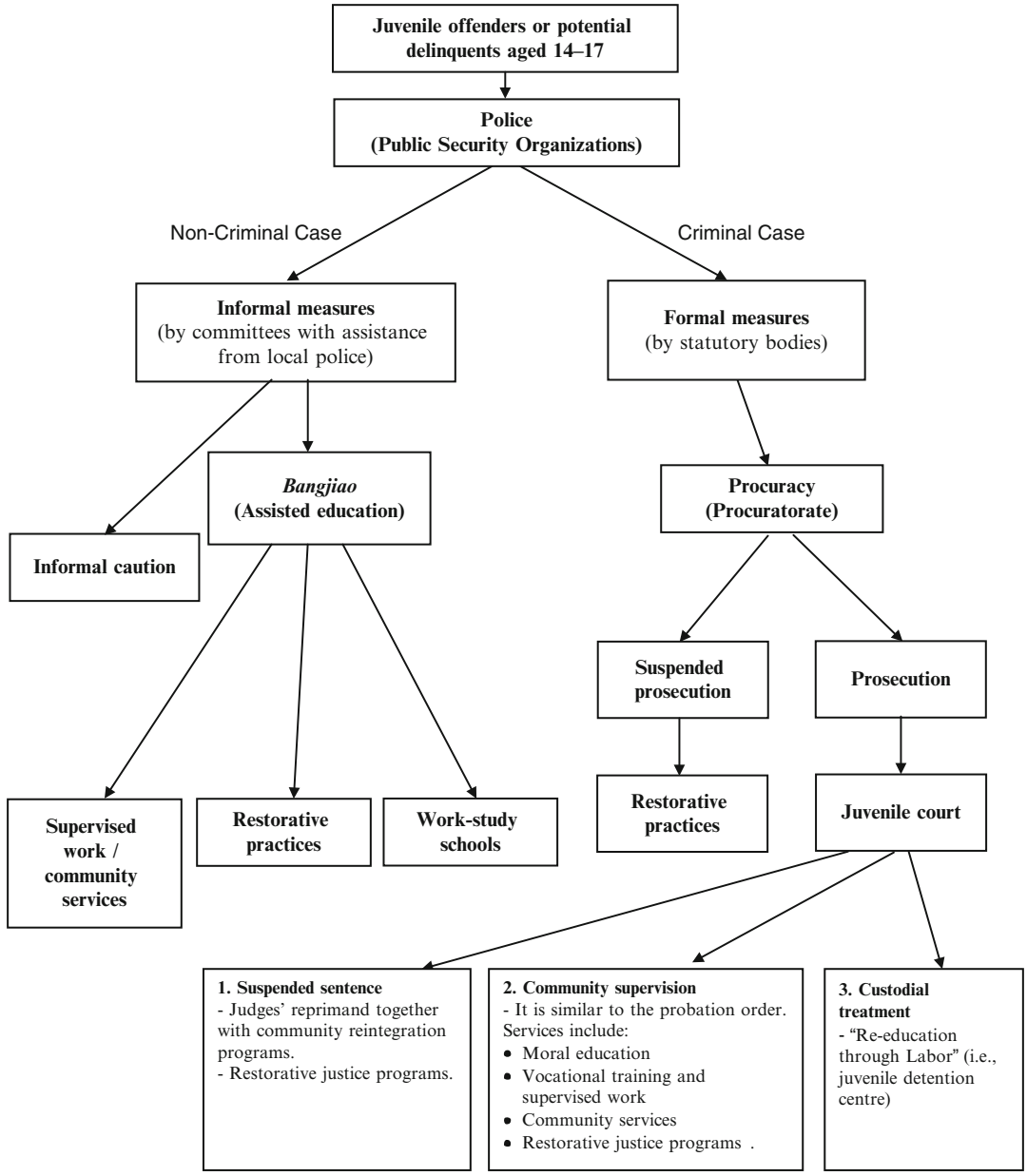

Fig. 26.1 Juvenile Justice and Restorative Justice (RJ) in China

26.3 Restorative Justice Practices and Their Link to Juvenile Justice in the PRC

As shown in Fig. 26.1, juvenile delinquency control occurs with the help of both informal and formal measures. There are at least two types of informal measures, including informal cautioning and *bangjiao* (assisted education). In informal cautioning, the neighborhood district's public security organization cautions a juvenile who has committed a minor delinquency, who is then referred back to his or her school, parents, or guardians for follow-up. In *bangjiao*, noncriminal

cases of delinquency that do not need continuous attention may be referred to the units under the administration of the Education Bureau or the local neighborhood committees for follow-up. *Bangjiao* may be arranged by members of the local population acting either separately or along with local groups such as neighborhood committee members, neighborhood police, teachers, and private company bosses. Adolescents and their parents are usually reprimanded by the authorities, with some asked to compensate their victims; they are then closely guarded and supervised by a group of "respectable" community elders or adult volunteers. Juveniles may also be referred for study at residential work-study schools, which are similar to boarding schools or delinquent homes (Lui 1991; Wong 1999; 2001).

For formal measures, the police, the People's Procuracy, and the courts are the state organs responsible for investigation, prosecution, and all trial proceedings. The roles and social functions performed by the police and courts likely need no further explanation. The People's Procuracy is a state organization with the statutory power to oversee the administration of justice in its role as the investigative and supervisory branch of the judicial system. In criminal affairs, it is responsible not only for prosecutions but also for supervising the legality of the entire criminal process, from the police investigation and preliminary hearing, through the ruling of the court, down to the execution of the sentence. The People's Procuracy possesses the discretionary power to divert juvenile offenders away from prosecution by applying a measure called "suspended prosecution." This discretionary power not to prosecute juvenile offenders has constituted the favorable conditions from which RJ has emerged over the past few years (Wong 2005; Wong and Mok 2011).

As shown in Fig. 26.1, there are three main options for dealing with convicted juvenile offenders—suspended sentence, community supervision, and custodial treatment. In a suspended sentence, juveniles do not receive formal sentencing but are given a chance to join community reintegration programs. They are normally reprimanded by a judge and sent back to their own neighborhood to receive care from community supervision teams. RJ programs may be used in conjunction with this sentencing option. Community supervision is normally used along with neighborhood *bangjiao* or community correction programs. *Bangjiao*, run by neighborhood committees together with local police, is not new. However, community correction is rather novel and unique to the PRC. Chinese community correction teams employ "justice social workers" to supervise and provide counseling services to juvenile offenders during the supervision period. Community correction is applied not just to juveniles but can be used as a community-based treatment for any offender given a suspended sentence or for ex-inmates on parole after serving a minimum portion of their sentence as prescribed by a judge. It is thus a kind of probation or after-care service order. Interestingly, before community correction programs formally emerged, *bangjiao* was the most common form of community-based treatment program for delinquents (Wong and Mok 2011). For custodial treatment, "Re-education through labor" is the formal correctional program tailor-made to incarcerate and rehabilitate juvenile offenders in contemporary China. Convicted juvenile offenders are sent to an institution for between 1 and 3 years by a juvenile court. The institution uses both work and education as methods of reform though it places more emphasis on (political and moral) education and mandatory labor than do similar institutions in Hong Kong and the UK (Wong 2001).

RJ practices can be linked to informal measures under *bangjiao* arrangements and formal measures under suspended prosecutions and suspended sentences. As a formal measure, restorative practices are used in connection with "suspended prosecutions" when the procuracy decides not to formally prosecute the juvenile. Wong and Mok (2011) have described some of the PRC's current RJ practices. They have found that provincial and district procuracies in many parts of China have been actively experimenting with RJ for juvenile offender cases since 2004.

In recent years, 10 provinces and cities (including Beijing, Shanghai, Jianzu, Shangdong, Hunan, and Guangdong) have begun pioneer RJ projects within their juvenile justice systems (Dong 2012). For instance, some district procuracies in Chongqing, Liaoning, and Suzhou are running pilot programs for delinquents who have received suspended prosecutions, and district procuracies in Nanjian, Xuzhou, and Hebei have implemented restorative projects together with community supervision for juvenile offenders (Yao 2007). The feedback and evaluations have been very encouraging. For example, the Procuratorate of Dadukou in Chongqing, the Procuratorate of Suzhou Industrial Park, and the People's Court of Gulou in Nanjing used restorative practices for 20 juveniles in 2004, 107 juveniles in 2007, and 66 juveniles in 2009; the juvenile offenders all showed progress in correcting their delinquent acts after the restorative programs (People's Procuratorate of Jiangsu 2008; Xin Hua Net 2007, Zhou 2010). Furthermore, RJ practices are also commonly applied to offenders who have received a suspended sentence issued by a judge. As more judges become aware of the potential benefits of RJ for juvenile offenders (Shen and Zou 2010), more juveniles guilty of less serious offences (such as assaults, property crimes, and traffic offences) are being given a suspended sentence with the condition that they make reparation to the victims or the community. RJ appears to be not an independent sentence option but an additional condition of a suspended sentence.

It is worth noting that RJ is not equivalent to the services run by the PRC's People's Mediation Committees. The Chinese preference for mediation is deeply rooted in Confucian philosophy, which sees social conflict as disruptive of the natural order of life (Wong 1999; 2005). The PRC's People Mediation Committees are responsible for handling a wide variety of disputes and minor offences as well as for granting divorces. However, they seldom deal with criminal cases even though their enabling ordinance does not clearly forbid them from doing so. Until the People's Mediation Committee Organizational Regulation was issued by the State Council in 1989, no criminal cases, even minor ones, were dealt with by the People's Mediation Committee; thus, Chinese scholars did not link People's Mediation cases with RJ cases, since the former dealt only with civil cases (Q.T. Li 2010).

Before the recognition given to Western RJ approaches such as the family group conferencing model by some English-speaking countries in the 1990s, criminal reconciliation or mediation had long been used as an informal measure for dealing with community conflicts and disputes in the PRC. For juvenile and youth criminal cases, district authorities in some Chinese provinces have tried to integrate values and models based on reconciliation justice into the criminal justice systems; however, no standardized practice has yet been developed. Judicial and legal personnel involved in community committees, public security organizations, procuracies, judiciaries, and prisons have only recently started to try the Western RJ approach to helping juvenile offenders. For example, a local committee in Shandong province, a public security organization in Shanghai, some procuracies in Hunan and Yuennan provinces, a court in Beijing and Xuzhou, and a prison in Foshan have started to investigate and run pilot RJ programs for juvenile offenders (Xiao 2011; Yao 2007; Ye 2010; Zhao 2010).

Among the RJ practices so far adopted, criminal reconciliation (*xingshi hejie*) seems to be the Chinese RJ practice that shares values and a practice model with the Western RJ approach. Criminal reconciliation is designed for offenders who have committed minor criminal acts but who have shown some degree of remorse during the investigation and prosecution processes (Leng 2011; Li 2011; Song et al. 2009). Criminal acts such as common assault, theft, deception, and traffic offences are commonly handled through the reconciliation method (Song 2010). Some procuracies, like the ones in Zhejiang province and Taiyuen city, have already developed legal documentation to guide criminal reconciliation practices (R.S. Li 2010). Although criminal

Table 26.1 Themes appearing in the publications

	Frequently, *n* (%)	Occasionally, *n* (%)	Never, *n* (%)	Total, *n* (%)
1.1 Discussing how RJ can be used to help victims	32 (12.7%)	106 (42.1%)	114 (45.2%)	252 (100%)
1.2 Discussing how RJ can be integrated into the current criminal justice system	85 (33.7%)	45 (17.9%)	122 (48.4%)	252 (100%)
1.3 Discussing how RJ can be integrated into the juvenile justice system	38 (15.1%)	19 (7.5%)	195 (77.4%)	252 (100%)
1.4 Discussing whether RJ can be integrated with Chinese philosophies and politics	58 (23.0%)	76 (30.2%)	118 (46.8%)	252 (100%)
1.5 Discussing the emergence of RJ in the West	39 (15.5%)	157 (62.3%)	56 (22.2%)	252 (100%)

reconciliation shares basic principles with RJ, it is not equivalent to the Western practice. The former approach emphasizes repairing the harm done and restoring relationships, whereas the latter focuses on seeking material compensation for victims (Chen 2009; Zhao 2008). A substantial number of PRC scholars have devoted much time and effort to identifying the similarities and differences between RJ and the PRC's criminal reconciliation (Di and Cha 2007; Li 2009; Zhao and Zhang 2012). More than 24 provinces, self-administrative regions, and municipalities have either pioneered or established a criminal reconciliation approach since 2003 (Su and Ma 2009), though only a portion of minor criminal cases are being handled this way. For example, the official statistics from the local procuracies of Beijing City show that only 667 (14.5%) of their 4,607 minor criminal cases were handled through criminal reconciliation in 2003 (Xiao 2011) and that 194 cases were handled through criminal reconciliation at Changde City in Hunan province in 2010 (Tan 2011). Overall, criminal reconciliation is not yet regarded as the primary means of handling juvenile criminal cases. Nevertheless, as stated in the 2010 PRC Yearbook, the Supreme People's Procuratorate has indicated that such a model will definitely be developed in the near future (Cao 2010).

26.4 Evolution of Restorative Justice in the PRC

In order to understand whether RJ is growing rapidly in the PRC, a literature review of Chinese academic journal articles published over the past 5 years was conducted. The review searched all scholarly print journals using the keywords *huifuxing sifa* ("restorative justice") in the China Academic Journals Full-text Database for the period between January 1, 2006 and December 31, 2010. It was found that 261 Chinese academic journal articles contained the keywords; however, 9 cannot be accessed from the Internet database. Thus, only 252 articles were printed for further content analysis. These were obtained from 164 different academic journals, including the renowned *Legal System and Society*, *Legal Forum*, *Youth Studies*, and *Law and Social Development in the PRC*.

Table 26.1 presents statistics on the themes appearing in the articles. The research team classified the concepts relating to the themes according to three levels—"frequently," "occasionally," and "never." For the concept of "victimology," 12.7% talked about how RJ can be used to help victims frequently, 42.1% talked about this occasionally, and 45.2% did not talk about it at all (see item 1.1). Concerning how RJ can be integrated into the current criminal justice system, 33.7% talked about it frequently, 17.9%

Table 26.2 Distribution of key themes in the publications

Key themes appearing in the publications	*n*	%
Theme 1: RJ and Victimology	32	12.7%
Theme 2: RJ and Criminal Justice (excluding juvenile justice) in the PRC	85	33.7%
Theme 3: RJ and Juvenile Justice in the PRC	38	15.1%
Theme 4: RJ and Chinese Philosophy and Politics	58	23.0%
Theme 5: Development of RJ in the West	39	15.5%
Total	252	100%

Table 26.3 Quoting other scholars' scientific research findings, by key themes

Major themes	Never quoted scientific research findings, *n* (%)	Quoted scientific research findings, *n* (%)
Theme 1: RJ and Victimology	26 (12.1%)	6 (16.2%)
Theme 2: RJ and Criminal Justice (excluding juvenile justice) in the PRC	72 (33.5%)	13 (35.1%)
Theme 3: RJ and Juvenile Justice in the PRC	26 (12.1%)	12 (32.4%)
Theme 4: RJ and Chinese Philosophy and Politics	56 (26.0%)	2 (5.4%)
Theme 5: Development of RJ in the West	35 (16.3%)	4 (10.8%)
Total	215 (100%)	37 (100%)

occasionally, and 48.4% did not talk about it at all (see item 1.2). Concerning how RJ can be integrated into the juvenile justice system, 15.1% talked about it frequently, 7.5% occasionally, and 77.4% did not talk about it at all (see item 1.3). Concerning whether RJ can be integrated with Chinese philosophies and politics, 23.0% talked about it frequently, 30.2% occasionally, and 46.8% did not talk about it at all (see item 1.4). Finally, concerning the emergence of RJ in the West, 15.5% talked about it frequently, 62.3% occasionally, and 22.2% did not talk about it at all (see item 1.5).

Table 26.2 summarizes the distribution of the key themes. The most commonly mentioned theme was "RJ and Criminal Justice in the PRC," which accounted for 33.7%. The second most common theme was "RJ and Chinese Philosophy and Politics," which accounted for 23.0%. In decreasing order, 15.5% focused on "Development of RJ in the West," 15.1% on "RJ and Juvenile Justice in the PRC," and 12.7% on "RJ and Victimology."

The study also examined whether scientific research findings, real-world examples of RJ, and international references were quoted. Of 252 articles, 85.3% never quoted any scientific findings to support their arguments (see Table 26.3), 92.9% never quoted any real-world examples of RJ as illustration (see Table 26.4), and 85.3% failed to cite five or more international references (see Table 26.5). However, the concept of "building a harmonious society" pronounced by Hu Jintao, President of the PRC, was frequently quoted. Of the 252 articles, 31.3% quoted this concept to support arguments in favor of using RJ in China (see Table 26.6).

The above results clearly suggest that most RJ journal authors in the PRC do not link their arguments to the most recent development of RJ practices around the world and that few are fully aware of the evolution and current practices of RJ in other PRC provinces and districts. The content analysis revealed that only 37 journal papers quoted scientific research findings as evidence in support of their arguments (see Table 26.3); only 18 journal papers cited real-world examples of RJ in either the PRC or in other countries (see Table 26.4), and only 37 papers quoted 5 or more international references (see Table 26.5).

Table 26.4 Quoting real-world examples of restorative practices, by key themes

Major themes	Never quoted, *n* (%)	Quoted, *n* (%)
Theme 1: RJ and Victimology	29 (12.4%)	3 (16.7%)
Theme 2: RJ and Criminal Justice (excluding juvenile justice) in the PRC	77 (32.9%)	8 (44.4%)
Theme 3: RJ and Juvenile Justice in the PRC	35 (15.0%)	3 (16.7%)
Theme 4: RJ and Chinese Philosophy and Politics	54 (23.1%)	4 (22.2%)
Theme 5: Development of RJ in the West	39 (16.7%)	0 (0.0%)
Total	234 (100%)	18 (100%)

Table 26.5 Quoting international references, by key themes

Major themes	Never quoted, *n* (%)	Quoted 1–4, *n* (%)	Quoted 5 or more, *n* (%)
Theme 1: RJ and Victimology	6 (6.3%)	24 (20.0%)	2 (5.4%)
Theme 2: RJ and Criminal Justice (excluding juvenile justice) in the PRC	41 (43.2%)	34 (28.3%)	10 (27.0%)
Theme 3: RJ and Juvenile Justice in the PRC	19 (20.0%)	13 (10.8%)	6 (16.2%)
Theme 4: RJ and Chinese Philosophy and Politics	21 (22.1%)	30 (25.0%)	7 (18.9%)
Theme 5: Development of RJ in the West	8 (8.4%)	19 (15.8%)	12 (32.4%)
Total	95 (100%)	120 (100%)	37 (100%)

Table 26.6 Quoting the concept of "building a harmonious society" pronounced by Hu Jintao, by key themes

Key themes appearing in the publications	Never quoted the concept of "building a harmonious society," *n* (%)	Quoted the concept of "building a harmonious society," *n* (%)
Theme 1: RJ and Victimology	26 (15.0%)	6 (7.6%)
Theme 2: RJ and Criminal Justice (excluding juvenile justice) in the PRC	53 (30.6%)	32 (40.5%)
Theme 3: RJ and Juvenile Justice in the PRC	29 (16.8%)	9 (11.4%)
Theme 4: RJ and Chinese Philosophy and Politics	36 (20.8%)	22 (27.8%)
Theme 5: Development of RJ in the West	29 (16.8%)	10 (12.7%)
Total	173 (100%)	79 (100%)

Moreover, the journals' key themes focused on how RJ can be integrated into the criminal justice system and the relationships between RJ and Chinese philosophy and PRC politics. Interestingly, in introducing or discussing the concepts of RJ and its current uses, most authors seemed to rely on just a few Chinese sources (Di 2005; Wang 2005; 2006; Wu 2002). As most papers were not based on original ideas, with some just repeating the arguments of others without conducting a thorough literature review or scientific study, few papers reached an acceptable international academic standard.

To be fair, though, most of the articles have been valuable in raising the awareness of RJ within the PRC's academic, social work, and legal fields. Some of the articles were exceptionally well written and included sophisticated

reviews of the PRC's criminal justice practices and discussions of the compatibility of RJ with traditional Chinese philosophies, including Confucianism. Some of the papers pointed out the incompatibility of values between the existing punitive social control model and Western RJ practices. Others pointed out the relationship between the immaturity of the current legal system and the integration of RJ into different levels of the criminal justice process.

Some of the articles dealt effectively with the relationship between RJ and juvenile justice as well. These articles observed that the use of RJ to treat juvenile offender cases is in line with the PRC's current use of the integrated management approach to tackle juvenile delinquency: RJ administers justice through the participation of juvenile offenders, victims, and other concerned stakeholders and emphasizes the repair of the harm done to those affected by crimes and the simultaneous restoration of social relationships and social order. Thus, RJ seems to conform to the national juvenile crime prevention principle of "joint participation and integrated management" and can also help reduce the cost of formal justice programs.

Unfortunately, most of the articles are academically superficial, as the authors fail to reflect in depth on the sociopolitical conditions behind RJ's success overseas. Many authors fail to acknowledge that RJ's overseas success has been dependent on a fair, open, and democratic sociopolitical system. They fail to point out that local PRC police and committees are under the leadership of the municipal government and that the administrative staff may thus be politically biased. The surveyed authors rarely criticize the corrupt sociopolitical culture of the PRC.

Moreover, debates about how real justice could be achieved in the PRC were seldom encountered. China's mediation processes are particularly susceptible to the influence of personal power and persuasion. Outcomes thus often favor those with close ties to the Communist Party or who hold a powerful position in the administration (Wong 2001). However, some proponents of RJ in the PRC think that RJ fits well into the conflict-resolution system commonly adopted by local authorities. They assert that RJ could help local authorities save money and resources, since formal measures for resolving conflicts are rather expensive. Their arguments miss the key fact that injustices may occur if attention is not paid to power imbalances among conflicting parties. As the PRC's justice system is not based on the presumption of innocence, the police or procuracy may urge an offender to confess in order to solve the case as quickly as possible. Decisions may be influenced by personal or political considerations rather than the nature of the offence and the offender's situation. It is a pity that so few RJ proponents in the PRC understand that RJ is essentially about empowerment, public participation, reintegration, and restoration.

26.5 Factors Conducive to the Development of Restorative Justice in the PRC

Most of the publications reviewed were in favor of RJ. As Table 26.7 shows, 54.4% were strongly in favor of the development of RJ in the PRC, 41.6% moderately in favor, and only 4% not in favor. The papers did not just advocate the future use of RJ but also documented current RJ practices in the PRC. Undeniably, RJ has flourished over the past 5 years in the PRC. Certain factors may have been especially conducive to this rapid development.

First, RJ shares the traditional Chinese aim of being "against the crime" while wanting to "protect the person" and advocates lenient treatment of juvenile offenders in order to maximize their future potential. It encourages public participation, by which conflicts can be settled through negotiation and communication between the offender and the victim. Apology and financial compensation are used to remedy the harm done by the offender, and more constructive means (such as community service) replace the traditional punishments that deprive offenders of their freedom. Accordingly, RJ is in line with the guiding principles of Chinese juvenile justice, which focuses on "education, reform, and rescue," the

Table 26.7 In favor of the development of RJ in the PRC

	n	%
7.1 Strongly in favor of RJ implementation in China	137	54.4%
7.2 Moderately in favor of RJ implementation in China, with reservations	105	41.6%
7.3 Not in favor of RJ implementation in China	10	4.0%
Total	252	100%

formula endorsed by the Communist Central Party of China. Restorative practices are also in line with the principle of "double protection," in which the protection of both community safety and delinquents is respected (Qin and Huang 2010; Shen and Zou 2010).

Second, despite the recent shift in Chinese juvenile justice from an informal "societal" to a formal "juridical" approach (Wong 2001), the Chinese preference for mediation and interpersonal harmony seems to be deeply rooted in Confucian philosophy, which sees social conflict as disruptive of the natural order. In parallel with the recent development of RJ around the world, the continued use of bangjiao programs, suspended prosecution, and suspended sentences to treat juvenile delinquents is definitely conducive to the evolution of restorative practices. These practices are rooted in both Confucian philosophy and the indigenous Chinese justice practices that emphasize the harmony among human relationships (Wong 2004; Wong and Mok 2011).

Third, the restorative model of delinquency control is also compatible with the mass line ideology, which welcomes the involvement of indigenous community leaders. The PRC's ruling Chinese Communist Party believes the mass line ideology to be non-refutable, and it underlies all kinds of social security practices (Zhong 2009). Criminal justice organizations such as the police, courts, and procuracies, all following orthodox Marxism, believe that social control is fruitless without mass involvement. Therefore, substantial emphasis is placed on mass grassroots participation. Crime, delinquency, and social conflicts are matters to be tackled by government officials acting together with indigenous community leaders for the ultimate purpose of building a utopia.

Fourth, RJ focuses on the repair of harm done to the victim and the community. It thus fits in well with the recent "building a harmonious society" slogan pronounced by the President of the PRC. To build this harmonious society, Communist Party members, government officials, scholars, and neighborhood committee members have to work hand in hand to promote this concept throughout the whole nation, including finding ways to subsume administrative and criminal justice practices under the slogan. The restorative model of delinquency control therefore fits perfectly into the mass line ideology, showing support for both the president's political slogan and the goal of maintaining social stability.

26.6 Restorative Justice: The Way Ahead

The number of news items and journal articles relating to PRC RJ found in the China Core Newspapers Full-text Database and the China Academic Journals Full-text Database increased gradually from 122 pieces in 2006 to 204 pieces in 2010. Obviously, an increasing number of researchers, practitioners, and reporters have recently been writing articles exploring and discussing RJ. These have facilitated the rapid evolution and development of RJ in the PRC. The ideas and practices of RJ are likely to continue to develop in both the academic and professional sectors. The conclusions listed below can be drawn from recent RJ developments.

First, a national legal framework and standardized set of regulations for the proper use of restorative practices should be developed to foster the

wider application of RJ. According to the China Yearbook Full-text Database, the term "restorative justice" had never appeared in any of the central government's yearbooks but appeared 47 times in the yearbooks of regional governments. For lack of a central legal framework, district authorities employ their own models of restorative practices while handling criminal cases, with practices varying across cities and provinces. Restorative practices are sometimes misused in some areas. For example, we have seen people treat RJ as a way to buy a shortened sentence. If RJ is not firmly linked to the current criminal justice system, many potentially effective RJ practices might remain the objects of academic debate or experimentation, outside the mainstream criminal justice system.

Second, in addition to a clear and legal restorative practice foundation, local communities' practical experience and wisdom concerning the promotion of RJ are equally important. The active involvement of all the stakeholders involved in the conflicts or crimes at issue is a critical factor in the success of RJ programs. Increasing numbers of regional and district PRC governments have recently started to develop a variety of community correction programs in neighborhoods, schools, universities, and companies. These programs aim to create a social support network for rehabilitating and reintegrating juvenile offenders into the community at the aftercare stage (Sang 2010; Zhao 2011). An increasing number of procuracies are becoming involved in developing RJ practices for juvenile offenders (Zhao and Zhang 2012). These procuracies are working closely with local community leaders, who are active in community supervision. With the increasing number of successful community supervision cases, the ideas of RJ will likely be further promoted in different areas throughout the PRC (Zhao 2010).

26.7 Concluding Remarks

The above examination of the evolution of RJ and its practices in the PRC provides readers with precious insights into how RJ and related practices are conceived and whether Western RJ models should be incorporated into the current criminal justice system without altering them.

This chapter has examined the current juvenile justice system, the emerging restorative practices, and related issues in the PRC. Obviously, the PRC's RJ movement is only at the initial stage. RJ practices should be carefully developed and implemented on a trial basis and then reviewed as they evolve. Thus, while RJ has developed rapidly over the past decades, scholars and PRC policy makers must devote more energy to formulating a just and fair mechanism that can allow RJ to flourish and be healthily integrated into both the formal and informal social control systems for the benefit of juvenile offenders and the broader community.

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The Retrospect and Prospect of China's Victimology

27

Wang Dawei and Tan Longfei

Victimology: China's scholars define Victimology as a branch of science that studies the phenomena of victimization, victims, the key factors of victimization, the restitution of victimization, and the prevention of victimization. Before the foundation of the People's Republic of China in 1949, Yan Jingyao, a China's well-known criminological expert, had referred to the issue of victims in his criminological research. China's Victimology has developed for more than 30 years. The development of Victimology comes with the development of Criminology and is in the process of internationalization. Since 1979, when China began the economic reform and opening up to the outside world, in the course of pursuing fairness and justice and strengthening the work in guaranteeing human rights, the Chinese society has paid attention to a growing number of groups of people, including such a special group of people as the victims in crimes who are focused gradually. The protection of victims' rights and interests has been put on the agenda by legislative and law enforcement agencies and social organizations successively. Relative laws, law enforcement, and social activities bring about realistic demands for the research on Victimology. Thus, many scholars made further academic explorations in Victimology theories and its practical applications, and worked up to subject construction. From this it is obvious that the development of Victimology has its historical inevitability in China. This paper briefs the summary of the present situation of Victimology that has developed in China for more than 30 years, summing up the existing research and looking forward to the direction of its development.

27.1 Brief History of the Origin and Development of Victimology in China

27.1.1 Origin of Victimology in China

Compared with the beginning of the studies of Victimology around the world, which sprang up in the middle of the twentieth century, it started relatively late in China. China's Victimology began in the early 1980th and had a short history of studying. Influenced by the "cultural revolution" in the middle of 1960s, the crime rate in the late 1970s reached its peak for the third time. The study on crime problems only about offenders and crime countermeasures lost its effectiveness on controlling crimes, so scholars began to pay attention to the numerous victims hidden behind crimes. "Victims take a large portion of the total population in all the countries. The accumulated number of victims around the world in 10 years may be close to the total population." As the world's most populous nation that makes up one fifth of the global population, China has large numbers of victims. Thus, the development of the

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study of Victimology in China is promoted by objective requirements including solving the existing problems of victims, maintaining a good social public order, and protecting the rights and interests of victims.

27.1.2 Development Process of Victimology in China

1. Victimology in its early stage of development Victimology (from the middle of the 1980s to the late of the 1980s).

   Before the middle of the 1980s, the study on Victimology in China was a blank for a long period. Although a few papers could be seen in newspapers and magazines, they were just the preliminary introduction of the results of foreign research. Victimology with Chinese characteristics was to be explored. During this period the studies of victims are mainly translations and introductions about relative foreign results of research. Some scholars concentrated their studies on the litigant positions and the rights and interests of victims in criminal suit. In this period the studies of criminal laws and regulations were the key of Victimology research. In the late of 1980s, basic theories of victims were developed. Studies in this period laid foundations for the research on following problems: the phenomena of victimization, the structure and tendencies of victimization, the causes of victimization and the way some person become victim, the victim–offender relationship, personal characteristics of victims and their social environment, the classification of victims, the predication of victims, the prevention of victimization, and the compensation legislation for victims.

   As for the research projects about Victimology, in the project "*The Research on the Index and the Appraisal of the Public Security Perception*," scholars made active efforts in surveying and studying the following problems concerned with victims: the comprehensive evaluation of the security of society, the evaluation of the fairness of law enforcement, the evaluation of the satisfaction with the public security work, the proportion of daring to be witnesses, and the proportion of daring to walk at night. Based on the surveys, scholars compiled "*Do You Have A Feeling of Public Security?—the Basic Theories and Survey Methods of Public Security Perception*." In addition, some scholars also did special research on victims and beginning research on victim issue and Psychology in Chinese society cases.

   In the aspect of education and train men for profession, faculties of law of some colleges and universities and some public security colleges offered special lectures and made active efforts in exploring popular issues about victims.

   In relevant practice, as a series of laws and regulations passed at the end of the 1970s set the legal system construction in China on a normal road, since beginning period of 1980s, they has been developing and becoming more perfecting in the law enforce field, people began to pay attention to the issues concerned with the rights and interests of victims and the system construction.

   In international communications, Chinese People's Public Security University invited Hans Schneider, the top expert of the World Society of Victimology to give a special lecture of Victimology in 1987. The introduction of relative information of International Symposium of the World Society of Victimology and the research courses about victims triggered Chinese scholars' great interests. Moreover, many scholars of Criminology came to China from England and America for academic exchange, and they introduced knowledge of Victimology in every aspects and their pioneering research to Chinese scholars.

   During this period, although there were more studies of the introduction of foreign research material, but less pioneering research; more decentralized research but less systematic research; more studies that combined in relative subjects, but less self-contained studies; more personal research, but less collaborative research, Chinese scholars began to pay attention to the rights and interests of victims

and their special problems and accumulated experience for the future studies.

2. The first stage of the development of Victimology (in the 1990s).

This period is the first stage of the development of Victimology in China. In this period, the works of Criminology and textbooks all began to have special chapters discussing the problems of victims. Although a fair proportion of the academic papers during this period focused on the litigant positions and the rights and interests of victims in criminal suit, they had began to emphasize studies of victims in part of crimes. The studies included analysis in victim Psychology, victims' impact on criminal behavior, and the important part that victims played in preventing crimes.

In the study of basic theories, the range of victims was specified. Many research methods and a scientific research system were also formulated in this period. Chinese scholars also began to try to make investigations of victimization. In 1994, with the technological assistance from a project launched by the United Nations and Canada, Chinese Ministry of Justice carried out the first criminal victim survey (2,000 samples) in Beijing, China, laying foundations for the future criminal victim survey.

On the research projects about Victimology, in addition to the investigation project by the United Nations mentioned above, the Sociology of Chinese Academy of Social Sciences directed a significant project on Chinese People's social psychological research in the period of China's social transition. In this project, some scholars conducted a special investigation of public security perception in different cities. In the meanwhile, the book "*The Research on Crime Causes in China*" (1998), as the result of the important fund project of social science for Chinese crime prevention directed by Wei Pingxiong and Wang Shunan, had a chapter of "Factors of victimization in crimes" wrote by Wang Dawei. It gave a systematic and in-depth elaboration on the basic concept, factors, and situations of victimization.

In teaching and train men for profession, many Colleges of Politics and Law set up courses of criminal Victimology. For example, China's University of Political Science and Law, Southwest University of Political Science and Law, and Chinese People's Public Security University respectively set up relative courses in both undergraduate and graduate courses. Many monographs by scholars such as Guo Jianan were also used in teaching. Special chapters and sections about Victimology were designed in relative Criminology textbooks. Some postgraduates and doctoral candidates also wrote master's theses and doctoral dissertations concerning Victimology.

In relative practice, the research on the litigant rights and interests of victims and their positions found that the revised "*Code of Criminal Procedure*" still had problems in the perfection of victim protection. In criminal legislation and law enforcement, people often attached importance to cracking down on crimes, but did not pay adequate attention to the causes of crimes. The results which led to measures on legislation and law enforcement were confined to "valuing the fight against crimes but belittling the protection of victims." In this period, law practice was greatly improved. For instance, some of the rules about the litigant rights and interests of victims were adopted in the revised "*Code of Criminal Procedure*" in 1996. The promulgation of "*The Law on the Protection of Minors*" in 1991, "*Administrative Punishment Law*" in 1996, "*Elder Rights Protection Law*" in 1996 and other rules and regulations lay legal grounds for the protections for different victims.

In international communications, the investigation results about victims in Beijing were issued in the "*Criminal Victimisation in the Developing World*" published by United Nations Interregional Crime and Justice Research Institute. Wang Dawei gave a speech about juvenile victims in China at the 8th international Victimology conference convened at Adelaide in Australia. Kang Shuhua attended the 9th international Victimology

conference in 1997. In 1998, Wang Dawei attended the 12th international Criminology conference in Seoul, Korea and made a keynote speech of "*Comparative Study of Victimization between China and the Other Eleven Developing Countries*." Six scholars from the Chinese Society of Criminology attended the International Society of Criminology and made academic connections with foreign researchers and research institutes that study Victimology.

The developmental characteristics in this period showed that the subject construction of Victimology had made preliminary progress, embodied in the construction of basic theories, the research on the issues, and breakthroughs in research methods, research contents and the study of major projects. Relative laws were also formulated. People not only began to pay attention to victims who abuse of power, but also made extensive explorations in relative victims of other types appeared in social issues in China. All these promote the development of Victimology.

3. The period of multidirectional development in Victimology (since the twenty-first century).

In this period, the study of Victimology was further expanded and deepened in both breadth and depth. Special academic study societies were also established. At the Chinese Society of Criminology Annual Conference convened at Haikou, China, in 2011, Chinese Victimology Association was established as a branch of Chinese Society of Criminology. The Association appointed Zhang Ling as chairman, Zhao Guoling, Wang Dawei and Liu Zhiyuan as deputy directors, Zhao Ke as consultant. Praiseworthy progress made in multidisciplinary explorations in Victimology and trials of different levels in researching on comparative study among different countries brought new characteristics to the era of Victimology research. In deepening explorations, some scholars began to narrow down to a certain type of the study of victims, such as victims of sexual crimes, juvenile victims, victims of family violence, victims of traffic accidents, victims of terrorism crimes, etc. At the same time, scholars began to study the interactions between victims and offenders. Especially, the studies of the transformation of victims into offenders and crimes resulted from victims' delinquency were increased notably. The research on relief system for victims, problems of restorative justice, the protection for rights and interests of victims was further developed. The studies are mainly concerned with crime punishment and crime prevention in recent years, emphasizing how to deal with crime problems and crime phenomena from victims' angle. Scholars began to put unprecedented emphasis on the methods of empirical study.

As for research subjects about Victimology, there were the project "The Measurement and Appraisal of the Social Composite Indicator of Guangzhou City" launched by Wang Dawei, the long-term research on the subject of victims by Guo Jianan, the pilot project of state aid for criminal victims launched by the Supreme Judicial Court, the topic about the establishment of the relief system for victims of criminal cases in Hainan Province. All these were the active efforts made in the academic studies on Victimology in China during this period. New breakthroughs were also made in the study of Victimology teaching, such as Wang Dawei was awarded the national excellent course in 2007 for his special chapters expounding problems of Victimology in the Criminology project and the construction of relative Web site. To construct better relative courses, Li Wei especially composed the textbook "*Criminal Victimology*". The book elaborately introduces the history of Victimology, victims and victimization phenomena, the relationship between victims and offenders, victimization and victim prevention, theory of Criminal Victimology, victims of criminal justice system, compensation for victims and victim restitution, victim assistance, etc., having a positive significance to the understanding of the development of Victimology in recent years."Crime Victims: An Introduction to Victimology" by Andrew Karmen was trans-

lated by China's some scholars. In addition, since the 1990s, the National Bureau of Census and Statistics in China has gradually set up an annual investigation system of security perception of the Chinese people and an information release system, providing data reference for the study of Victimology by the annual reports on the situation nationwide.

In teaching and train men for profession, there was new development in the courses in Victimology offered by some Chinese politics and law colleges and universities and public security colleges. The contents of victims were often involved in t he explorations and discussion about criminal problems. Since 2000, many young scholars have had interests in researching on victim problems in their undergraduate theses, Master's theses and doctoral dissertations, and complete their relative explorations by degree papers. Also some students go abroad to continue their study of Victimology after graduation, and they are the future generation who will carry forward the studies of Victimology.

In relative practice, the *Law of the People's Republic of China on the Protection of the Rights and Interests of Women (*2005), the *Law of the People's Republic of China on the Protection of Minors* (2006), the *Law of the People's Republic of China on State Compensation* (2010), and the *Criminal Procedure Law of the People's Republic of China* (2012) were revised in the aspect during this period, and thus, the rights and the interests of victims were further protected. To attain international standards, efforts were made in the legal construction of both legislative and law enforcement agenies. With respect for international Conventions and Treaties, they developed their legal systems in a scientific and modern way. For example, the spirit of "*The Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power*" was manifested in the process of legislation and law-enforcement.

In international communications, Chinese scholars actively attended the International Symposiums of Victimology and discussed and explored relative topics. Chinese scholars Zhao Ke and Wang Dawei respectively attended the 11th and the 13th International Symposiums of Victimology held in Canada and Japan. In 2003, Wang Dawei presented the paper of juvenile self-protection and social protection, entitled by "*If*…," at the 11th International Symposiums of Victimology in Montreal. In 2009, Wang Dawei made speeches on both "*On the Comparative Study of Victimization between China's Guangzhou and Other Developing Countries' Cities*" and "*On the Prevention Street Robbery through Situational Mock Training* " at the 13th International Symposium of Victimology in Mito, and he was elected as the Co-opted Member of Executive Committee of the World Society of Victimology.

In this period, as China opened wider to the outside world and expanded its foreign exchanges, it organized academic activities with both Japan and Korea, promoting the international exchanges in Victimology and the development of Victimology in China. China held several Sino-Japanese seminars of Criminology that involved corresponding exploration of Victimology. The organization of academic exchanges such as the Seminar of the Protection for the Legitimate Rights and Interests of Victims in the Criminal Procedure, and the Sino-Korean Academic Exchanges of Criminal Victims was also the important development of the academic exchanges of Victimology in China.

In this period, the development of Victimology was embodied as followings: as a branch of learning, it was further expanded and deepened in both breadth and depth. It was researched and explored not only from Victimology itself, but also from the multidisciplinary angle. Scholars began to pay attention to comparative research in different countries. With its approach to the international level, China will improve its relative research contents in the future. Research subjects had new breakthroughs. The subjects began to have their own characteristics, and began to seek way to an overall consideration

about the balance between victims and offenders, between the rights and interests of victims and other social groups, presenting the developing orientation of localization.

In view of the three developmental stages of Victimology in China, the Victimology experienced a process of developing from scratch to, borrowing experience, exploring, researching and innovating. It has begun to show preliminary signs of becoming an independent branch of learning. Relevant research results include two great dictionaries: *Criminology, Prison Law, Criminology Dictionary on Gansu Press*, *Law Encyclopedia on Beijing University Press—Criminal Jurisprudence*, and over ten special works that introduce Victimology generally, near ten relative works concerning victimology and law, and over ten works concerning the detailed contents of Victimology. Chinese scholars and social workers have made remarkable contributions for a good social atmosphere for the further expansion and deepening of the research on Victimology, so that people from all social circles can listen to the voice of Victimology in a better way in the future to promote and improve Victimology.

27.2 Research Contents of Victimology

In the explorations of the contents of Victimology, according to what is generally regarded by both Chinese scholars and scholars worldwide as the problems of Victimology that should be discussed, the author of this paper includes ten relative items of contents to be discussed specially.

27.2.1 Victim

In the past three decades, monographs and research papers in China have defined victims from different angles. The names include criminal victim, victim of crime, victim, and aggrieved party. The definitions of the concept all share one thing in common, that is, the body that offends against the legitimate rights and interests of a subject is the crime behavior. The victim of crimes is defined as the natural person, the corporation, and the State[1] whose legitimate rights and interests are offended. As for the definitions of victims, different scholars have different opinions in the range of victims. Tang Xiaotian and Ren Keqin (1989), Dong Xin (1993), Guo Jian'an (1997), Zhang Zhihui, and Li Wei (2010) all have defined the type of victims. In the textbook "*Criminology*", co-compiled by Wang Dawei, five basic requirements are put forward as the constitution of a crime victim, and the book expounds the related concept of victims. In China's Dictionary of Criminology, it narrowly defines the victim of crime. Its definition is the natural person, the corporation, and the State whose legitimate rights and interests are directly offended by other people's crime behavior. There is also another explanation: victims are those who are directly offended by the crime behavior of the inflictive party.

In China, the scholars put more efforts on criminal justice in the study of the cognition of victims. Victims of disasters and other incidents are studied and explored partly, but it is a pity that the studies are not carried forward.

27.2.2 Main Contents of Victimology

Over the past 30 years of development, Victimology has been defined by many scholars at home, including Tang Xiaotian and Ren Keqin (1989), Zhao Ke (1989), Zhang Zhihu and Xu Mingjuan (1989), Dong Xin (1993), Kang Shuhua, Wang Dai and Feng Shuliang (1994), Wu Zongxian (1997), Guo Jian'an (1997), Wang Dawei (1997a, b), Ren Keqin (1997), Wang Shun'an (1998), Yang Zhengwan (2002), Mo Hongxian (2007), Zhao Guoling and Wang Haitao (2008), Ma Guo'an (2005), Zhang Hongwei (2007a, b, c), Ren Yufang (2007), and Li Wei (2010), based on their relevant studies. Today, the Chinese scholars generally agree to incorporate the broad understanding of Victimology and the previous narrow sense of Victimology.

The scholars at home have yet to form a complete theoretical structure of their own.

Their study thereof mostly borrows the relevant fundamental theories prevalent in the US and Japan, which mainly include.

27.2.2.1 Theory of Victimization

These theories cover such areas as personal factors of victimization, exposure of lifestyle, daily activities, homogeneous groups, and victimization. The above theories are mostly considered as provocative factors of offensive acts by relevant scholars. All these theories have not formed an independent and complete system of study, but can only act as factors of analytics for particular topics of research. Nonetheless, these theories are significant for the study of the criminal acts. The on-going study at home is limited to the understanding of specific acts of victimization and the rights of victims. It is evident that such study has downplayed the value of theoretical studies.

27.2.2.2 Theories of Victimization Prevention

Scholars at home have carried out studies and concluded with relevant results in a number of prevention theories, such as CPTED and defensive space theory, both based on environmental designs, and others including strategies on risk evasion and control (Fig. 27.1).

27.2.2.3 Theories of Victimization

These extend from the first time to the second and third times of victimization, thus encompassing all the processes of victimization, litigation, and possible transition from victims to criminals. Many of such studies at home actually dive deep into one of the above processes, such as the litigation status and rights of the large number of victims, or the transition from victims to criminals, or a myriad of victimized behaviors. The Victimology studies have made great headway in China.

27.2.2.4 Theories of Repeat Victim

The current debate on victimization is an important measure to mobilize the social forces for the prevention and control of criminal acts and the protection of victims' rights. The issue of victimization involves many aspects of control, such as that over contextual and social factors and the psychological and physical state of victims. The governmental act is all the more important as it becomes increasingly urgent for the government to effectively assume the basic responsibility for prevention and control, reform the judicial system, and put into place the relevant relief mechanisms. It is also necessary for the government to advocate and orient the societal approach to social values. The study on repeat victimization is of particular importance for the protection of rights and interests of victims and prevention of victimization. There are the theories, which have been studying by China's scholars, of repeat victim.

27.2.2.5 Theories of Victim Support

These theories can help check the tendency of punishment-based social control, and redirect the social policies toward preventive measures. Nonetheless, their core concept of social support still lacks a common index of measure. The Social Development theory by contrast is a macro-approach to the correlation and commonalities between the social context and the type, rate and geographical distribution of crimes in developing countries, thus has offered theoretical guidance in this regard.

China still lags behind in terms of the size of Victimology researchers, the width and depth of the relevant study, and the transition from the research results to the real-world applications. It seems that we have deviated from the international trend given the inertia of both Criminal Victimology study at home and the application of the study results to actual practice. The relevant results were given less credit than they deserve, and fail to effectively orient the practice, particularly on issues of how to promote more emphasis on self-defense, -disclosure, and -resistance of offense in addition to attention to crackdown of crimes, how to assist the law enforcement institutions to reverse the tide of crimes, how to gain more protection, and achieve better chances of recovery from the past physical and psychological traumas. All these require scholars at home to

further the theoretical study by focusing more on the real conditions in China, and to verify the extent of uncertainty and the practical value of relevant theories in the real-world practice, so as to better serve the end of cracking down on crimes and protecting the rights of victims.

27.2.3 Methodology of Victimology

As for the study of Victimological methodologies, relevant literature have been available in China, summarizing the results of explorative study by scholars like Zhang Zhihui and Xu Mingjuan (1989), Guo Jian'an, Wang Dawei (2003a, b), Zhang Hongwei (2007a, b, c), Lu Jianping, and Li Wei (2010). The current methodologies go beyond qualitative and quantitative studies, and extend to the methods of statistical study, survey of the victim and offender, and sampling-based victimization study. The qualitative methods include case study, study of summarizing literature, and direct observation. The quantitative methodologies of Victimology are also divided into methods of investigation, interview and content analysis. The criminal victim survey in 1994 plays a significant role of learning from the methods of international scholars, thus promoting the development of quantitative Victimology study in China. Unfortunately, so far there have been no nationwide victim surveys in the annual report launched on victims of crimes, and no institutions have been set up to support victim surveys in China.[2] Despite Zhang Hongwei's progress in this arena, the understanding of the relevant methodologies is mostly a narrow-down approach. The methodologies at home mostly borrow from the study results of foreign scholars, and have yet to develop their own features. The state of methodological study remains backward, leaving much room for further progress.

Generally, the Victimological methodologies at home stem from the foreign investigative methods, and have not been adapted to the real conditions in China. As a result, they have not given full play to the role of investigative research in the Victimology study. Given that China lacks annual statistical surveys on Chinese scholars still lag behind, and need to do more practice and exploration of empirical study and quantitative survey in the future.

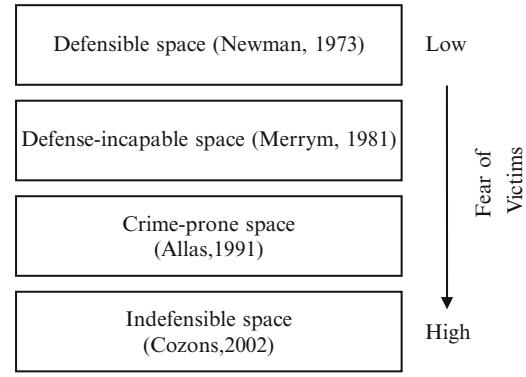

Fig. 27.1 Defensible space and changeable social dynamics study. *Data source*: Prepared by Wang Dawei in reference to relevant materials, 2009

27.2.4 Type of Victim

The victim categorization in China is different from that in the western study in light of its distinct history and social practice. Special arguments have been devoted to this topic by Tang Xiaotian and Ren Keqin (1989), Xu Zhangrun, Zhang Jianrong (1997), Wang Dawei (2003a, b), Kang Shuhua, etc. The typology of victim originates from the in-depth understanding of the prevalent victims, and insight of the common and distinct features of victims, as a result of both correlative and drill-down research. The types are concluded from systematic categorization on the basis of logical methods tailored to special purposes and norms. The scholars at home generally agree with the internationally recognized scholars on victim division. In the present practice, the victims are often divided into the following types: Actual or potential victims by actual occurrence of victimization or not; common or special victims by constraints of victims themselves; victims of violence, white-collar crimes, property crimes, etc. in accordance with criminological theories; victims of homicide, theft, rape,

traffic accidents, etc. in line with the definition of crimes by the criminal law.

The scholars consider the western standards of victim division as somewhat valuable to them. They have also developed other insights in this regard, which will not be detailed here. In the context of the actual conditions in China, the study on victim types should research more on victims of white-collar crimes, victims of abuse of power, political victims, occupational-hazard victims, victims of mental diseases, victims of depression, victims of terrorist attacks, victims of telecom fraud, victims of disasters, victims of public order events, etc.

27.2.5 Phenomena of Victimization

Relevant research has been underway from aspects of the concept and forms of victimological phenomena by scholars like Zhang Zhihui and Xu Mingjuan (1989), Zhao Ke (1989), Guo Jian'an (1997), Wang Dawei (1997a, b), Xu Zhangrun (2004), Zhao Guoling (2009), and Li Wei (2010).

Over the past few decades, the phenomena of victimization have taken the form of victim types. The views on these phenomena differ. One regards these phenomena as of social nature, or social phenomena composed of different facts under specific temporal and spatial conditions. Another view considers these phenomena as the external form of the victim and victimization event, and their relation to the related crime under specific temporal and spatial conditions. The above process of the present focus of China's scholars include the statistical understanding of victims and offensive acts, and the real experience of the victimized that may reflect the true nature of victimization. Furthermore, other scholars have expressed different views on all of phenomena of victimization. Therefore, deeper study is needed on the interactive process and correlations under certain temporal and spatial conditions of the victimization.

In light of the distinct social reality and the criminal judicial system, as well as other actual conditions of China, the study on victimization's phenomena should be placed in the context of social transition.

27.2.6 Factor of Victimization

Some China's scholars have propounded definition of victimization and differentiated victimization contents in the course of relevant research. These scholars include Zhang Zhihui and Xu Mingjuan (1989), Zhao Ke (1989), Guo Jian'an (1997), Wu Zongxian, Wang Dawei (1997a, b), Li Wei (2010), etc.

The prevalent study in China focuses on the factor of the propensity of the targeting of the victim by the offender, the factor inducing the offense, and the conditions and other relevant factors of victimization. The victimization factors are approached from three levels of pre-, during-, and post-victimization, with the emphasis placed on the relationship between victimization and the causal system of crimes. The victimization study has had profound impact on the actual social conditions of the country, helping all kinds of parties concerned gain better understanding of criminal factors, detect and handle criminal cases, and prevent crimes and victimization in the right manner. Other scholars of the country have also probed into the victimization (factors) study from aspects of nature of key-factor of victimization, factors of victimization, conditions of victimization, environment of victimization, inducement of victimization, experience of victim, goods of victim, potential victimization, compliance with victimization, and degrees of victim–offender relationship. There is still much room for further study on issues of victimization and other factors.

Given the impact of "9–11" Event and other incidents posing serious threats to the public order, and the progress in risk control and other relevant fields, the victimization study has gradually shifted the focus to risk management, thus resulting in a new approach to victimization factors from aspects of victimization risk perspective.

27.2.7 Relationship Between Victim and Offender

China's Scholars, such as, Zhang Zhihui and Xu Zhangrun (1989), Wang Dawei (1996), Wu Zongxian, Zhang Jianrong (1997), etc. have

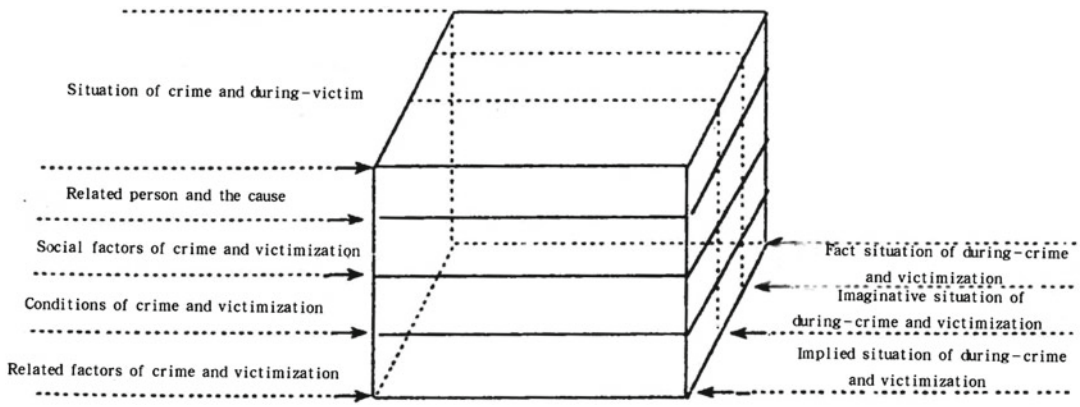

Fig. 27.2 The circumstances figure of crime and victim. *Data source*: Prepared by Wang Dawei in according with the relevant materials, the year of 2012

conducted relevant research about situation of victimization in the early researches.

In the paper of Research about Victims in Financial Fraud, written by Wang Dawei, he discussed four interaction processes between perpetrators and victims, which are utilization-available patterns of fraud formed between fraud offenders and victims not involved, pushing patterns of fraud formed between fraud offenders and victims involved, model of victim translocation, and Stockholm model. Regarding the study of environment of victimization from Chinese scholars, crime and victimization situations can be classified as crime and pre-victim situation, crime and during-victim situation, and the post-victim situation from the perspective of time evolution. If in chronological sequence, which can be divided into the implied situation of during-crime and victimization, the imaginative situation of during-crime and victimization, and the fact situation of during-crime and victimization; Chinese scholars have implemented relevant research and exploration to the crime opportunities and victim interactions in the pre-context implied, medium-term imaginary as well as the lately real situations. There are various complex forms in the way of combinations after the victim situations are connected with their specific criminal forms (Fig. 27.2).

27.2.8 Victimization Prevention

Some China's Scholars, Shi Huanzhang, Zhang Jianrong (1997), Tang Xiaotian, Wang Dawei (1997a, b), Zhang Zisheng, Shi Guoping, Wang Jianmin, Song Haobo (2004a, b), Liwei, etc. all proposed the concept of "victimization prevention" and carried out the relevant researches. In Criminology, Wang Dawei, who participated in the redacting of this book in 1999, has made the relevant researches on the relations between prevention of victimization and crime from three aspects, namely, the interrelation, differences, and interaction between victimization prevention and crime prevention.

Chinese scholars believe that the overall objectives and the fundamental purposes of the victimization prevention are similar to the crime prevention. Whether victimization prevention or crime prevention, the overall objectives and the fundamental purposes are to effectively prevent and reduce the incidence of crime and victim, to maintain social public order and protect public order. Before broad crime prevention includes the victimization prevention; crime prevention and victimization prevention are different in prevention object, direct purpose, measures, methods, and means; but victimization prevention and crime prevention can be mutually affected and

Fig. 27.3 Cognition framework. *Data source*: Prepared by Wang Dawei in according with the relevant materials, the year of 2009

transformed. Based on binary crime prevention theory, the study for the victimization prevention by Chinese scholars also includes three levels of social prevention, group prevention, individual prevention, three stages of before-victim, during-victim, and after-victim, the relations between victimization prevention and crime prevention, and other contents. The research also divides the victimization prevention types to explore in three different states of potential state, present state, and post-victim state. The related researches on victimization prevention in China undoubtedly contribute to the constitution of multifaceted, multilevel, different staged, and comprehensive measures with social public order comprehensive governance system (Fig. 27.3).

In the aspects of "victimization prevention," some scholars have formed their own views and opinions through being combined with the contents of China's public order comprehensive management and binary crime prevention theory.

27.2.9 International Comparison of Victimization

Affected by the international related study of Victimology, Chinese scholars have carried out research about victim's issues both locally and abroad. In addition to the related translations, the scholars of Zhang Zhihui and Xu Mingjuan (1989), Zhao Ke (1989), Xu Zhangrun, Wu Zongxian, Guo Jianan (1997), Wang Dawei, Li Wei (2010) among others have also begun to view said issues from the international perspective.

We can divide this into three main areas: research of Victimology, right of victim, law system of victim from different countries and areas, victim statistical systems and survey systems, theoretical study and comparative study on phenomena of victimization. Chen Jianjun published a thesis on the *comparative study of Mainland and Hong Kong, Macao and Taiwan Victim Right and Security Issues*. Li Bolin

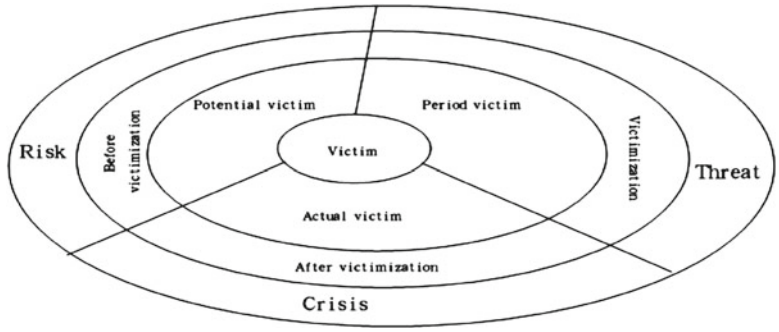

Fig. 27.4 Crime and victim diagram. *Data source*: Prepared by Wang Dawei in according with the relevant materials, year of 2009

published a thesis on the *Comparison of Litigation Status and Rights of Criminal Victims in China and Australia*. Sun Caihong published a thesis on *the Asia Crime Victims Compensation Legal Comparative Study International Murdered Comparison* and carried out the relevant research. In Wang Dawei's papers, *The Comparative Research of Victimization between China and the Other Eleven Developing Countries* and *A Comparative Study of Victimization between China's Guangzhou and Other Developing Countries' Cities,* the author described and explained the number of victimization, the victimization rates, the reporting rate, reasons for not reporting crime, the degree of satisfaction with police, criminal, family security preventive measures, the views on different typical penalties of comparison between China and other developing countries, common and special problems, especially the point of view that the victims in China will gradually developing situation with the more international characteristics.

In related comparative study, the research of Chinese scholars has developed from a general view into deeper analysis and comparative study—in the period of imitation selectively.

27.2.10 Victim Evaluation

As to the Victim Evaluation, Zhang Honge, Wang Dawei (2009a, b, c), Li Wei (2010), etc. have all carried out the relevant researches. Wang Dawei has made the systematic introduction from the theory to the concrete evaluation systems, and has given a special lecture of victim evaluation in the undergraduate course of *Introductory Theory of Crime Evaluation*.

Chinese scholars believe that the evaluation of crime victim can be divided into four parts: demographic factors, pre-victimization factors, during-victimization factors, and post-victimization factors; this is the basic framework and system of victim evaluation. In particular the evaluation of juvenile crime and victimization from a risk perspective, starting from the risks associated with theory of perception of the murder and factors of victimization in the induction and mutual influence of factors of victimization, the phenomenon of the murder, the evaluation of the potential victim protection measures. Beyond that, it also relates to the victim evaluation of the victim of violence, victim of suicide [how does one asses a person who has committed suicide?], victim of network crime, and victim of property crime and so on (Fig. 27.4).

In the practice of crime and victim evaluating operation, the emphasis is from the choice of index to the foundation statistic analysis, and thus the complete crime and victim index system is constructed. In the research of Guangzhou public order indexes evaluating system, Wang Dawei made a systematic design of the victim index in accordance with the experience of international victim survey, which was a good attempt of overall victim evaluation. Victim evaluation has become an important area associated with other disciplines; it needs the deeper exploration by Chinese scholars.

Chinese scholars' exploration of Victimology contents is not only from the related realistic issues of victim, but also from the sublimation of international Victimology development situations, their own exploration and research. These researches and explorations are the foundation and core contents of Chinese Victimology development, which is worth further exploration in order to improve Chinese scientific understanding of Victimology by Chinese scholars.

27.3 Other Subjects Exploration in the Victimological Localization

The study to Victimology is not limited to the exploration of Victimology alone, but Chinese scholars also make a positive exploration of Victimology as it pertains to the study of law, Sociology, Psychology, science of public administration, etc. These explorations remain to be integrated into the research on Victimology so as to make the study for victimization issues in China a more comprehensive one integrating more aspects and present the tendency of localization.

27.3.1 Victimological Issues from the Law Perspective

As many of the scholars who carried out the early exploration of Victimology in China had their academic background in Law, such as Tang Xiaotian, Xu Zhangrun, Zhang Zhihui, Zhang Weiguo, etc. these studies are mostly from the perspective of Law including the roles**,** rights, victim–offender mediation, support systems, system of national compensation as well as restitution, etc. The Criminal Procedure Protection of Victims written by Fang Baoguo addressed the discussion in distinct chapters to the theoretical basis of victim proceeding with criminal actions, from "Three Parties structure" to "Four Parties structure"—reform of victim and criminal procedure model, criminal procedure law relation under the "Four Parties structure," victim rights protection in the case of public prosecution, private prosecution programmed protection of victim, the self-examination in victim criminal damages compensation system, national compensation and relief to victim and restitution and victim protection; basically covers various aspects on victim and criminal procedure with a certain characteristics. The following is just an introduction in the aspects of victim rights, status, legal aid, compensation system, and restitution system contained in relevant research.

27.3.1.1 Victim Rights

On the basis of fully respecting the victim's rights regarding personal rights, right of access to impartial judgment, freedom of religious belief, right to know, participation rights, right to expression, right of supervision, etc. Wang Jianmin, Liu Genju, Yang Zhengwan (2002), Fang Baoguo (2007), Dong Shitan (2006), and other scholars made an in-depth research on the rights of victims. They carried out a discussion on Criminal Procedure Law in 1996 which gives victims the position of litigants. Some scholars highly praise it, some criticize it, and some suggest improving the related regulations of the law on the basis of affirmation. Some scholars criticize that the law gives the victims the position of litigants mainly because victims have some important rights including the right to apply for withdrawal, right of entrusting the agent, direct right to institute a criminal litigation, right to request a protest, right to apply for supplementary verification or another verification for expert conclusion. The litigant position of the victim still has a some limits; victim cannot enjoy completely equal rights as with the defendant. Furthermore, in order to protect the victim rights in the Criminal Justice System of China, many scholars raise suggest some modifications and improvements, such as improving the victim right to investigation and discovery, victim's right to know; enhancing the system of victim entrusting agents; perfecting the statement right of victims in the stage of review and prosecution; giving the victims the right to institute an incidental civil action independently, the right to an independent appeal and final declaring; building the right to claim compensation for emotional

damages and the right to legal aid; setting up some systems of national compensation and restitution for victims as well as establishing the social public order system for the protection of victim rights.

27.3.1.2 Role of Victim

Some Chinese scholars, Pei Cangling, Wei Tong, Xu Yongqiang (2003), Lei Tang, Liu Donggen, and other scholars, have conducted research on the issues of the role of victim. Since China enacted the first Criminal Procedure Law in 1979, the academic circles have different views on the criminal proceeding in relation to victims. Embodied in this law are four main proposals: first, propose for the victim the same role as witness. Second, that the role of victim be a contesting party standing beside the public prosecutor. Third, that victim in the indefinite position is similar to but different from the witness. Fourth, that victim will be an independent litigator with independent role. In 1996, China made a modification to "*Criminal Procedure Law*," giving the victim the role of litigant in the law, and giving the victim some of the same rights as litigants. These rights are of vital significance and highlight the litigant role of the victim. This modification to the law causes much discussion in the academic circles, where scholars offer some modifications and propose improvements. It is expected that the role of criminal victim in China will be furthered in the future.

27.3.1.3 Assistance and Restitution for Victims

In China, Guo Jian'an (1997), Luo Dahua (1983), Ma Guo'an (2002), Mo Hongxian (2007), and Zhang Hongwei (2007a, b, c) have studied victim assistance and restitution, and consider that China's assistance to victims mainly concentrates in two aspects: first, victim assistance provided by trade unions, women's federations, Communist Youth League, civil affairs department and other social organizations; second, legal assistance for victims as per the specifications of "*Regulations on Legal Aid*" (enacted in 2003). Victim assistance mainly includes intervention assistance, litigation assistance, financial assistance, medical assistance, psychological assistance, public education, etc. Victim compensation is given by the government to the victims. It is applicable when the criminal is punished and cannot restitute the victim's damage. Although there are some countermeasures of restitution, China has not yet established a victim restitution system by now, which is, to a certain extent, detrimental to the protection of the rights of victims. In the future, China should increase legislative support for victim assistance and restitution, and set up the relevant law system of providing victim assistance and restitution.

Chinese scholars have conducted in-depth studies on criminal reconciliation, restitution, victim fault, and judicial rights protection of various types of victims, which has accelerated amendments to "*Criminal Law of the People's Republic of China*," "*Law of the People's Republic of China on State Restitution*" and other laws, and highlighted the protection of relevant rights of citizens. The practice of some new judicial reforms in China will help scholars acquire some experience. Other relevant systems will be further developed and improved with the reform of China's judicial system.

27.3.2 Victimological Issues from the Sociological Perspective

The development of Victimology is inseparable from social development and relevant hot social issues. Using the experience derived from Sociology, and applying the sociological research perspective will broaden the research area of Victimology, and promote its development. Some China's scholars have conducted research on Victimology in terms of vulnerable groups, network society, urbanization, and other social issues.

27.3.2.1 Relevant Vulnerable Groups

Kang Shuhua, Wang Dawei (1997a, b), Xiao Jianguo and Yao Jianlong (2002), Ji Hongguang (2004), Lu Shizhen, Ma Guo'an (2005), Qi Yanping, Lu Deping, and Lu Yulin have studied vulnerable victims groups, and put forward their

views on victim prevention. Issues of vulnerable groups are usually caused by social transformation. With imbalanced social structures, China is still a developing country and there are vulnerable groups different from those in other countries. In the study of vulnerable groups, social support, social security, and social control mode are closely related to the study of Victimology.

China is currently experiencing fundamental changes of economic construction, reallocation of social resources, and historic innovation of social control modes. Multidimensional social hierarchy is bound to widen the social gap between the rich and the poor. Although social public order legislation has achieved significant progress in the protection of the rights of female victims, juvenile victims, the elderly victims, victims with disabilities, and migrant worker victims, there is still a lack of a solid theoretical system and institutional framework to protect the rights of vulnerable group victims. In the Seminar on "Protection of the Rights of Social Vulnerable Groups" in 2005, participants discussed "*Harmonious Society and Constitutional Protection for Vulnerable Groups in Society*" and "*Legal Basis for the Protection of the Rights of Vulnerable Groups in Society*," which is undoubtedly playing a positive role in promoting the research on vulnerable group victims.

The number of vulnerable groups in China is huge. In the whole process, Sociology will better protect vulnerable groups, safeguard their legitimate rights and interests, and have a positive influence in the development of Victimology.

27.3.2.2 Victims of the Network Society

Jin Wulun, Qi Gong, Deng Xinmin, Xie Zemin, Zhao Shuizhong, Lu Hanlong, and Wang Ding (2010) have conducted researches on the network society and related victims.

The number of Chinese Internet users ranks first position in the world. Chinese scholars have studied various fields and industries in the network society, analyzed characteristics of networks, as a tool for social control, and summed up the four characteristics of network society making it different from social reality: network society is featured by its unique structure and self-administration, high degree of openness and interactivity, space virtuality and crossing national boundaries, and quick information transfer. The development of the network society has brought about various problems, such as moral conflict, information pollution, and intellectual property issues of network information, and brought new challenges to the study of victims, but also provided new ideas and new directions for the research of Victimology. The hot spots of problems about the network society: network interpersonal dependency, privacy protection, and adverse incitement will expand the area of Victimology research. The study of victims in network group events in the network society, network fraud, network organized crime, and crime caused by network interpersonal dependency are the focus of many scholars.

There have been studies and explorations on victims of the network society, but further expansion and research is still needed.

27.3.2.3 Relevant Victimization in Urbanization

In China, Wang Fazeng, Chen Fengyun, Wang Dawei (2004), Zheng Yefu, and Xia Jianzhong have carried out various researches related to urban Sociology.

After its founding in 1949, China has witnessed a rapid development of urbanization. Victimization and distribution in urban environments have their own characteristics. Referring to the existing studies of the Chicago School in the United States and other scholars, Chinese scholars began to focus on the relationship between crime and space environment in urban areas based on the characteristics of China's urbanization development. Wang Fazeng introduced the geographical study of crime and victimization in foreign cities as early as 1988, and then successively studied the impact of urban space environment on urban crime and victimization, the integrated view on reasons for urban crime and victimization, the blind spots of nonpublic space, public space, and marginal space in urban crime and victimization, and comprehensive treatment, and the relationship between urban development and urban crime, and in 2003 published the book titled "*Urban Crime Analysis and Spatial*

Prevention and Control." Chen Fengyun et al. studied the environmental impact of crime and victimization in urban fringe areas from the point of view of environmental behavior studies. Du Debin et al. studied the location choice via the mathematical simulation of urban crime and foreign urban crime prevention and prevention of victimization. Weng Li et al. preliminarily discussed the theory of crime prevention and control in urban planning. Xu Leiqing reviewed the study and practice of "*Crime Prevention through Environmental Design*" over the past 30 years.

It should be noted that China is currently experiencing a social transition period. The speed of urbanization is accelerating with the associated risks changing accordingly. The strengthening of urban social public order should be closely connected with relevant studies on urban Sociology.

27.3.3 Victimological Issues from the Perspective of Study Public Administration

Since social transformation started in China, much importance has been attached to Public Administration, and relevant research has focused on the management of governmental organizations. It has also covered the management of general social public organizations, public welfare organizations, nongovernment organizations (NGO), and nonprofit organizations (NPO). The research also focused on many constructions beneficial to victims. Public management service concerning victims has also changed. Chinese scholars have conducted research projects in terms of social development strategies, social emergency mechanisms and social evaluation. These are important issues of Public Administration and promote the development of Victimology in China.

27.3.3.1 Development Strategies of Social Management

Dai Junliang, Hou Yan, Ding Yuanzhu, Cao Jianguang, He Zengke, and Li Wei (2010) have conducted research related to Victimology from the perspective of social management development strategies.

Chinese scholars have studied the following eight aspects: the reform of social management system, reform of social public order management system, reform of social service system, reform of social work system, reform of social security system, reform of social emergency system, reform of community management system, and the reform of social management leadership system and working mechanism. In relation to emergency mechanism reform, adopt uniform dispatching and provide services for victims from the aspects of social early warning and social mobilization, etc. For community system reform, encourage victims to take an active part in community management, so as to enhance their community participation; the reform of leadership system and working mechanism to guarantee the implementation of protecting victims' rights in terms of relevant system reformation. Accordingly, the reform of social management system realizes the transformation from the management of the only subject—the Country into the management of multiple subjects—the government, social organizations, community organizations and the public. Scholars will conduct more in-depth exploration on how to better protect victims' rights and interests in terms of social management systems.

All the scholars' discussions will greatly promote the role of victim protection and assistance system in China's social construction and facilitate the development of Victimology.

27.3.3.2 Emergency System of Social Management

Zhang Chengfu, Dong Keyong, Xue Yuan, Hong Dayong, and Guo Taisheng (2006) have studied the emergency system of China's social management and achieved certain results.

In the early twenty-first century, China has experienced various major social events, such as Beijing Olympics, Shanghai World Expo, Guangzhou Asian Games, etc. China's crisis management and emergency response mechanism have been constantly improved. Promoted by many scholars' academic research, the Chinese

government has formulated a series of laws and emergency plans involving major critical areas, and put forward special emergency plans for public events, which play a significant role in standardizing emergency response, protecting victims' life and property, and safeguarding national security, public safety, environmental safety, social public order, etc., while protecting the rights and interests of victims of terrorism, and victims of major riots and other social events.

In China, although the construction of emergency response system and mechanism has made great progress, the country is still facing a grim situation in the area of social emergency response resulting in some emergency problems not being adequately solved. Hence, scholars of public management and other disciplines (including Victimology) should carry out more collaborative research on the protection of victims' rights and social stability, promoting the study of Victimology.

27.3.3.3 Social Evaluation

Yan Yaojun, Wang Dawei (2004), Qin Liqiang, Wang Guang, and Wang Ding (2010) have carried out researches on social evaluation.

Over the past 100 years, various agencies and academic organizations have explored the evaluation of social and public management and the continuous improvement of social public order management evaluation system. Chinese scholars believe that the development of public order management evaluation can be broadly divided into five stages: the stage of adopting relevant statistics for evaluation (1829-the beginning of the twentieth century), the stage of evaluation based on crime types (the early twentieth century—1930s), the stage of evaluation based on multiple objective indicators (1930–1970s), the stage of separate evaluation of subjective and objective indicators (1970s, 1990s), and the stage of comprehensive evaluation of subjective and objective indicators (1990s to present).

Since the early 1990s, China started to emphasize the study and implementation of public order management evaluation by relevant Chinese departments, and special groups have been established by the central and local governments for relevant research. For example, in March 1994, experts from China's National Planning Commission (current National Development and Reform Commission), China's National Bureau of Statistics, China's Renmin University, and Chinese People's Public Security University formed the research group for social public order evaluation; the Department of Sociology of Tsinghua University organized the "Social Public order" Research Group to specifically study the social public order and social situation in Beijing; the Shanghai Municipal Government constructed a basic data platform for social public order management in 2007, to analyze the social public order situation through 52 quantitative indicators. Scientific and standardized public order management evaluation has a key role in improving the overall image of the region, evaluating social public order decision-making, and evaluating social public order performance. Currently, the annual public security feelings report is available for reference. As per domestic and foreign literature, although there are still many inadequacies, the development of public order management evaluation has shown the following four trends: the combination of official evaluation and social evaluation, the combination of subjective indicators and objective indicators, the combination of process and result, and the combination of collaboration and technology.

The research on social evaluation is an important measure for higher scientific level and democratization level, and will have a positive effect on the decision-making of public order management in China. In addition, the publication of relevant scientific methods, scientific research procedures and victims related issues will promote the study of Victimology.

27.3.4 Victimological Issues from the Psychological Perspective

In the early 1980s, Chinese scholars already had some explorations on the issue of victims from the psychological perspective, and published a number of professional articles and academic papers as well. The book titled "Psychology of

Victims," published by Ren Keqin in 1997, conducted a systematic and complete interpretation on psychological problems of victim, deepened such psychological viewpoints as victims' different types of psychological phenomena, psychological phenomena in the developing process of victim behavior, victim psychological issues of different nature, comprehensive problems of victim Psychology, and supported the development and improvement of Victimology. Currently, domestic Victimology mainly analyzed victims' mental activity, psychological behavior in the course of criminal legal proceedings, psychological reactions and characteristics during the process of victimization, psychological motivation of transforming from victims into offenders, offenders' punishment and restitution, redemption for victim psychological comfort, etc. Some scholars in China also explored and researched such as related to victims, public security feelings surveys, psychological problems of disasters and accidents, and victim psychological intervention involved in many well known cases with a certain degree of innovation.

27.3.4.1 Victims Involved in Serious and Major Cases

Some scholars like Luo Dahua (1983), Ren Keqin (1997), Wu Boxin, Li Meijin, and Zhao Guifen carried out relevant studies on psychological aspects of victims.

During the law enforcement agencies undertaking the policy of cracking down crime period, Chinese society made great efforts to control various criminal activities in the severest way. In these cases, a considerable number of offenders (recidivism, recidivists) in notorious and well known cases had been victims themselves before committing their delinquent acts. The psychological changes of victims and psychological process of transforming victims into offenders after the incident had been given much attention and researched by relevant scholars. The professors, in psychological field, like Li Meijin in her research project, made a detailed study on offender psychological condition involved in some serial killers. They analyzed offender psychological transformation affected by the occurrence of victim before the criminal behavior in serial crimes. Moreover, the transforming process from victim to offender was also studied. This helps promote the protection of victims' rights and helps to better control and prevent additional crimes, especially, where the offending party may have previously been a victim himself.

In psychological researches, some scholars focused on typical victims such as serial crimes, victim psychological characteristics after the injurious act, and typical victims in large-scale domestic events and activities. Their psychological features, causes, as well as attitudes were specially valued. They not only stressed on the persistence and diffusion of victims' state of mind and their weak mentality, analyzed the reasons why such situations occurred but also studied their social cognition and attitudes after the injurious act. Such methods as observation, investigation, tests and experiments were applied in serial murder cases to study influencing social factors, Psychology and motivation accounting for offenders' transformation from a victim into an offender. In this way, one may find and discover the transforming process between victims and offenders, towards pick-uping the rights of potential victims, and can make greater efforts in upgrading the roles of victims. The case of Yao Jiaxin in 2011 was quite an opportunity for exploration for China's scholars in the research of victim Psychology in major cases. They also carried out research and exploration on posttraumatic stress disorder of victims (post-traumatic stress disorder; PTSD), which had a close relationship with the development of Victimology.

Research in this aspect had an active effect on finding out psychological problems of recidivism and recidivists and protecting the rights of victims.

27.3.4.2 Public Security Feelings Survey

To public security feelings, as a psychological phenomenon, is also an important subject in Psychology in China. Scholars including Wu Zongxian, Zhang Pan Shi, Wei Wang, and Juju Wang performed relevant researches in this area. A wide view of all the definitions of public security at home and abroad, they generally involved the following four aspects: subjective concerns

about existing crimes; subjective preservation towards threats of crimes in one's own environment, evaluation for victimization; a series of behaviors and impact caused by the situation of public security feelings.

In 1983, the Communist Party of China (CPC) Central Committee, State Council and the National People's Congress (NPC) Standing Committee released documents concerned with the decision to carry out activities aimed at fiercely cracking down on serious criminal offenders. They proposed for the first time that granting the public with a greater sense of public security would be one of the hallmarks to present a fundamental improvement in public order. China's study on public security feelings began in the mid-1980s, among which the most influential study was Indicators and Evaluation of Public Security Feelings chaired by the Institute of Public Security of P.R.C. Public Security Ministry. In the course of building a system of public order and indicators of public security feelings, the subject considered indicators and evaluation of public security feelings as one of its three sub-topics. It adopted a self-designed questionnaire on public security feelings and common indicators used in evaluating fear of crime, set the coefficients of public security feelings, and investigated the factors affecting public security feelings and conducted statistical analysis. From the very beginning, studies on public security feelings in China had very significant practicality in that they provided beneficial data for social and national decisions. During the process of social comprehensive control and constructing safe and civilized quarters in some districts, public security feelings was noticed in different points, which improved the sense of public security. However, researches in public security feelings mainly focused on social object and objective environmental effects on people, while ignored the problems of their psychological qualities and personalities (Table 27.1).

In recent years, some Chinese scholars have done plenty of research on victims' public security feelings to reveal the functions of factors of victimization. These studies aimed at making up previous deficiencies from the perspective of victims' and even the whole society's public security feelings, in order to form a comprehensively subjective and objective evaluation system. Now, while there are relevant statistics for national investigation on public security feelings in the National Bureau of Statistics in China, at present theoretical exploration and practical situation is still needed to be improved and deepened both in width and depth.

China's investigations on public security feelings demonstrated four developing trends: combination of official evaluation and social evaluation, combination of subjective indicators and objective indicators, combination of process and result, combination of collaboration and technology. Projects of evaluation also started to reflect in such objects of evaluation as well-being-indicators, exploration of "Evaluation of Happy City Index," exploration of "Evaluation of Safe City Index," and exploration of "Evaluation of Safe Community Index."

27.3.4.3 Disasters, Accidents and Victims' Psychological Intervention

Some scholars, Wang Dawei, Guo Taisheng (2006), Zhang Peibin, and Zhu Zonghan, have conducted researches in the aspects of disasters, accidents, and victims' psychological intervention.

Chinese scholars did evaluating research for victims in disasters, accidents and for influences on victims based on severity of their psychological hurt, emotional state, degree of physical injury, suicide risk, and damage of the social foundation. They also assessed the process of impact upon victims before, during and after the disaster, in addition to evaluation on victim results and social impacts. The study set up basic principles and intervention methods and means in the aspects of victim intervention. The most important relief for victims was a distinction among three stages of pre-disaster, disaster, disaster relief, and to propose ways to improve psychological intervention of Chinese victims and assistance: improvement of corresponding management system, strengthening social advocacy and basic knowledge, cultivating a professional organization and personnel for psychological intervention. China is a disaster-prone area, so relevant researches and explorations in this field are being gradually carried out.

Table 27.1 Investigation on public security feelings in Beijing, Shanghai, and Guangzhou

Investigation name	Investigation date	Investigation place	Investigation contractor	Investigation method
Investigation on Beijing citizens' public security feelings	2002.06	Chaoyang District, Xicheng District, Shunyi District	Studying team of *Beijing comprehensive evaluation system of synthesis governs*	Selected streets and community neighborhood committees in different categories, select citizen sample in neighborhood committees by random sampling, complete 440 effective questionnaires in total with response rate over 90%
Public security feelings in Shanghai	2004–2008	Shanghai	Zero corporation consigned by Shanghai synthesis governs office	Selected 500 citizens to accept interviews, apply data level multi-angle measurement in questionnaires to interview Shanghai citizens with different backgrounds, discover certain information about public security by using many years' data
Public evaluation investigation on public order management in Guangzhou	2002–2008	Guangzhou	Guangzhou public opinion center of social situation	Telephone interviews, use geometric method of population to randomly Selected residents' phone numbers from each district, interviewers go from one house to another according to the numbers, investigate and visit people of different ages, occupations, public income level in Guangzhou districts, complete about 1,200 effective questionnaires each time

Data sources: Compiled by Wang Dawei according to relevant data, 2009

In China, study of law, Sociology, study of Public Administration and Psychology are commonly recognized normative social sciences. Researches in these fields have significant effects, and can play a very positive part in promoting the development of other disciplines. During the search of development, China's Victimologists ought to make an active combination with Chinese national conditions and to absorb the research results of advantage disciplines, construct the victimological discipline system, form researching character with the developing country. This will eventually lead to the formation of their own methods of researching core issues and the integration of many disciplines in order to promote the localization development of Victimology in China.

27.4 Developing Prospective of Victimology in China

China, with its long history, is the world's largest developing country. It is currently in the period of developing transition, uneven development among regions, with social justice mechanism needing to be strengthened, a gradual increase of serious crime trends, etc., and thereby demonstrates many relevant characteristics which are as follows: not only traditional types of crime continued to abundantly exist, but there also has seen an increase in more intelligent modern crimes. As a result, the situation of victims and the victimological studies is bound to have the same features as other developing countries in Asia and its own social characteristics under the influence of international community.

27.4.1 Prominent Issues of the Victims During the Recent Period

Now victim issues in China have some obviously different convex points and order. Such problems were given more attention as agriculture, laid-off workers, population and ecology, education crisis, moral standard and norms anomie, marital and family discord, violence in schools, youth abuse, corruption, family violence, network, telecom fraud victims and intellectual property. These issues strikingly showed China's situation as a developing country in Asia. The research and development of victim in China had a close relationship with these

social issues, and brought out victims problems with unique Chinese characteristics, including labor claims of migrant workers, juvenile victims, women victims, elderly victims, courageous victims, victims of violent crime in schools, network victims, telecom fraud victims, robbery and snatch victims, overseas victims and victims of intellectual property rights. These problems embodied some similar aspects among victims in Chinese society and international community, and highlighted the unique nature of Chinese society and other developing-country societies.

27.4.2 Localization of China's Victimology

The problem of victim in China was affected by the historical conditions and cultural traditions and undeveloped levels, thus Victimology has its own development track in China. China is a Socialist society which sprung from both a semi-colonial and semifeudal society. It overlooked the cognition development stage by paying no attention to the victim, abusing the rights of the victim in Western capitalistic stage. Three schools are produced with international development of Victimology, including the Positive School, Radical School and Critical School, which have certain influence on the development of Victimology in China, but lacking unique theories suitable for solving the victim problem in China. The development of Victimology in China and its becoming of a subject without controversy will be a long-term process. First, Chinese scholars will develop constructions for the subject of Victimology itself in depth during that process, such as the basic category, theory and system. Second, they will further probe into various victim problems in relevant types of victim research along with the emergence of victim in Chinese society. Third, with the further development of relevant social sciences, China's Victimology will also integrate the knowledge of other subjects for use, such as Sociology, Psychology, etc., so that the subject itself will have certain absorbing power and tension, and it shall make progress in synthesis and application in the development path of subject. The researcher group of Victimology in China needs to be strengthened and perfected, and corresponding academic research organization shall be established, so as to finish the construction of a foundation platform for the research and development of Victimology.

27.4.3 Development and Perfection of the Relevant Social System

The application of Victimology is always stressed in the Victimology research in China, and that will have important promoting effect for the construction of various systems. Mature system for protecting the rights and interests of victim needs to be built in the development of Victimology in China, corresponding legislation and law enforcement system needs to be established and perfected, and other corresponding system shall be constructed for forming a complete set, so as to practically protect the rights and interests of victim. In the process of system construction, China will first be aimed at all-round development and perfection of rule of law, so as to promote the development and perfection of the social system for Victimology. Second, in the system for concrete criminal victim, criminal law and code of criminal procedure as well as other laws will be further revised. For the legal status of victim, there shall be more profound and explicit stipulations in the judicial procedure on the indemnity and restitution to victim as well as the concrete right and obligation of victim. The construction of judicial system and the practice of law enforcement will be increasingly developed, and they will become more sound and perfect, and greater development will be achieved it relevant aspects involved in it that are beneficial for the victim rights, such as the organization of judiciary, standard and regulation for law enforcement as well as guarantee of relevant procedure, etc. Third, construction of other systems in Chinese society will also be further developed, and they shall be constructed in an all-round way in the comprehensive decision-making and implementation mechanism for social development, appraisal mechanism for social influence, network mechanism for social safety, and management mechanism for social risk, so as to enhance the protection

to rights of victim, and promote the development of relevant subjects pertaining to Victimology.

27.4.4 Construction of Victim Support Mechanism

From the beginning of the 21st century, Chinese scholars began to perform large-scale systematic research on the construction of victim support mechanisms, and there is still a great shortage in theoretical research and practical application. In "Certain Idea about Developing the Work of Criminal Victim Support" (2011), China shall stipulate the condition, standard and procedure for criminal victim support, and shall try to strengthen protection to the rights of criminal victims in support mechanisms. With the further development of the working mechanism of criminal victim support, and future research on mechanism of victim support, Chinese scholars will put forward more proposals with greater operability combined with the national conditions of China, perfect special legal and institutional systems for victim support, establish and perfect the organizational system for social support for victim. In particular, in the concrete operation horizon of victim support, we shall promote the development of victim support practices, such as the setting up of support organizations, selection of support modes, support funds, support for special types of victim, etc., so that social development will be more stable and harmonious, and the Victimological values of social equality and justice shall be amply embodied.

27.4.5 Internationalization of China's Victimology

Victimology has a development history of decades in Chinese academic circles, and while some scholars actively attend international exchange and cooperation events, current international exchange is still not sufficiently extensive and deep, especially in regards to adjacent Asian countries which is still insufficient. At present, on the basis of establishing special committees for victims, China will actively draw on the experience from countries more advanced in Victimology research, such as Japan and Republic of Korea in Asia, and establish a national research platform. In addition, China shall periodically host international seminars on Victimology in order to actively attract relevant foreign scholars to participate in these activities in China. In addition, Chinese scholars shall actively go abroad to foreign countries to further their knowledge, participate in ground breaking research and shall draw valuable experience from such opportunities. They will attend international conferences meet with victims, and doctors. This will encourage more scholars to pursue advanced studies abroad; and by strengthening international exchanges, China's scholar shall reap the benefits from the more experienced scholars on Victimology which in turn will help promote the further development of Victimology in China.

The development of Victimology in China is not only the product of its greater demand in China but also the crystallization of wisdom under relevant academic influence of international Victimology. In such a historical course, we can see many experiences and lessons worth deep thinking and analysis in the knowledge and origin of Victimology in China. China's scholars are inspired to learn from the countries and scholars in the front lines of research in the world. Only so can the experience of China be expected to further develop itself, not only for the benefit of the Chinese people but also to better contribute and even benefit Asian society and even the International Community.

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ERRATUM

Violence Against Women in Singapore: Initial Data from the International Violence Against Women Survey

Wing-Cheong Chan[1]

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In Chapter 21 (Under heading 21.3.4 "Respondents Who Experienced Violence in the Last 12 Months") on page 334, the number of respondents was incorrectly noted in the sentence "The profile of 53 respondents who have experienced physical or sexual violence in the last 12 months is shown below as compared to the profile of all respondents in survey (see Table 21.2)." There were 22 respondents, not 53.

Corrections to Chapter 21 Violence Against Women in Singapore: Initial Data from the International Violence Against Women Survey published in Handbook of Asian Criminology (Springer, 2013)

The calculation of violence in the last 12 months was wrongly based on incidence of violence rather than the prevalence of violence (ie multiple incidents were counted even though some victims were victimised repeatedly). This led to the wrong figure of 53 respondents being reported when it should be 22 unique victims only who experienced violence in the last 12 months. This error has an impact on some of the data that was reported. The final report of the survey can be found at: http://www.ncss.org.sg/documents/Singapore%20IVAWS%20(final%20report).pdf.

Under "21.3.2 Experience of Violence in the Last 12 Months" on page 332, right column, it should read:

"The respondents in the Singapore survey reported the lowest rate of 1-year violence victimisation (1.1%) as compared to the other IVAWS participating countries (see Fig. 21.3). Singapore, together with Switzerland, had the lowest rate of 1-year physical violence victimisation (1.0%). Singapore also had the lowest rate of 1-year sexual violence victimisation (0.3%) as compared to the other IVAWS participating countries (see Fig. 21.4)."

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The online version of the original chapter can be found at http://dx.doi.org/10.1007/978-1-4614-5218-8_21

Under "21.3.3 Repeat victimisation" on page 333, left and right columns; page 334, left column), it should read:

"A total of 67.6% of victims experienced repeated victimisation in Singapore. This comprised 32.9% who experienced violence two to four times; 15.2% who experienced violence five to nine times; and 19.5% who experienced violence ten times or more.

Repeated victimisation was higher for those who experienced physical violence (75.2% of victims of physical violence experienced repeated victimisation) as compared to victims of sexual violence (42.6% of victims of sexual violence experienced repeated victimisation)."

"The profile of 22 respondents who have experienced…"

Table 21.5: Reasons for not reporting incident to police (on page 336)

Table 21.5 Reasons for not reporting incident to police

	Percentage of respondents who experienced intimate partner victimisation	Percentage of respondents who experienced non-intimate partner victimisation
Dealt with it myself/involved a friend or a family member	60.8%	43.8%
Too minor/not serious enough	32.4%	42.5%
Did not want anyone to know	17.6%	18.8%
Did not want offender arrested/in trouble with the police	13.5%	6.3%
Shame/embarrassment/thought it was her fault	9.5%	12.5%
Did not think the police could do anything	6.8%	16.3%
Fear of offender/fear of reprisals	5.4%	8.8%
Did not think the police would do anything	2.7%	10.0%

Table 21.6: Actions taken by the police (on page 337)

Table 21.6 Actions taken by the police

	Percentage of respondents who experienced intimate partner victimisation	Percentage of respondents who experienced non-intimate partner victimisation
Took a report	91.7%	81.0%
Gave a warning	44.0%	13.6%
Suggested services	21.3%	18.2%
Followed through with the court procedures	10.3%	9.1%
Arrested the man	12.0%	18.2%
Police did nothing	0%	6.3%
Brought charges against man	12.0%	18.2%

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