SOCIO-LEGAL ASPECT OF CRIME MANAGEMENT IN JAPAN

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CERTIFICATE

Certified that the dissertation entitled "SOCIO-LEGAL ASPECT OF CRIME

MANAGEMENT IN JAPAN", submitted by Mr. Sankirtan Badhei, in partial

fulfilment of **Master of Philosophy** degree of this university, is his original work. The

dissertation has not been submitted for any degree to any other University.

We recommend that this dissertation be placed before the examiners for evaluation.

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(Supervisor)

PROF. R.R. KRISHNAN
(Chairman)

.... to my niece Aliena

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PREFACE

Japan is one of the safest countries in the world. Foreigners living in Japan are not too much worried about their safety for it is not often that they are cheated, robbed or assaulted. However, this is not to say that Japan is crime free. Crime rate in Japan compared to other countries is much lower.

Some scholars attribute low rate of crime to its being a homogenous and a well organized society, others emphasize on the high level of education in the country. It is also true that confucian social values and behaviour existent since the pre-Meiji period still to some extent continue to dominate Japanese people's behaviour in the society.

The social aspect is one reason as why there is less crime in Japan. The other important aspect is the Judicial system. The effectiveness of law enforcement and criminal justice in Japan is commendable. The legal system functions on the basis of harmony, consensus and compromise rather than legally binding rights and duties. Comparatively speaking, unlike Japanese legal system American legal system is unnecessarily formal and complex, costly and time consuming. American society is exclusively dependent on legal solutions to social problems in an adversarial process

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that frequently loses sight of substantive justice in its obsession with procedural fairness.

In Japan, in recent years, however, there is much more concern about increase in crime among the youth, the involvement of Yakuza (underworld gangs) in drugs and prostitution and the nexus between the politicians and the underworld. Security of the common man was threatened by the poisonous gas leakage allegedly by the Aum Shinrikyo. The focus of my study will be to find out why comparatively speaking there is less crime in Japan, and why in recent years there seems to be an increase in the crime rate.

The study has been divided into four chapters. It begins with an exposition of the nature and type of crimes existing in Japan after second world war. The second chapter deals with the community crime control initiative since the Meiji period with its new confucianist ideological background. The third chapter encapsulates the informal legal system of the Japanese Society and fourth one is in a way very much an extension of the legal system, to demystify the working of the police system. The last section sums up the conclusion of this study.

CHAPTER - I

CRIME IN POST-WAR JAPAN

Tokyo is said to be the safest city in the world and Japan is proud of its low rate of crime. However, this is not to say Japan is crime free. In Japan, in recent years, there is great concern about increase in crimes among the youth and in the involvement of underworld gangs in drugs and prostitution and in the nexus between the politicians and the underworld gangs. Nevertheless, the over all crime rate in Japan compared to other countries is still lower as is clear from the figure below.

Crime Rates in Developed Countries

(No. of crimes per 100,000 people)

70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94

* *White Paper on the National Lifestyle 1996, Economic Planning Agency; White Paper on Crime, Ministry of Justice*
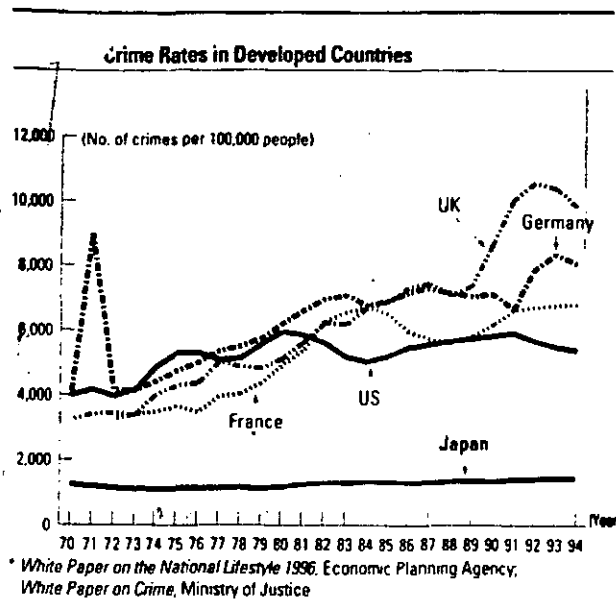
(Japan, 1988 , International Comparison, Keizoi Koho Centre, Japan Institute for Social and Economic Affairs, p.107).

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If we study the statistical trends of crime in Japan since 1948 it is surprising to find that with slight fluctuations it is almost the same throughout the period. In the years immediately after world war II when Japan's economy was devastated, poverty and unemployment rate was too high at that time, and according to Japanese Police records the crime committed (in 1948) was 1.6 million. After 1950 as country's economy recovered and the society became more stable the crime rate declined. In 1973, registered offenses was only 1.2 million. However, in 1981 the number of crimes committed had again increased to 1.5 million.

The 1994 statistics, indicate that less than 2,000 people out of 100,000 committed crime. The graph published by Ministry of Justice in the white Paper' on Crime shows U.K. at the highest position committing maximum rate of crime. In 1994, in U.K., nearly about 10,000 people have committed crime per 100,000 people. However, according to Ministry of Justice, Hanzai hakusho (White Paper on Crime), 1996, in U.S., homicide rate is 9 times, and theft rate is 4 times more than Japan.

Some of the important reasons for the comparatively low crime rate in Japan is due to some of the unique features of Japanese society and the legal system. For example in Japan possession of fire arms and swords is severely restricted.

Though in 1996 inspite of the strict laws, 1,549 handguns were confiscated 33.2% of which were taken from ordinary citizens. This indicates a growing feeling of insecurity among people not involved with criminal gangs. The arrest rate in 1992 was just 36.5%, the lowest figure since world war-II, but the rate stayed above 40% for the following three years, hitting 42.2% in 1995.

Number of Crimes and Arrests

	1960	1970	1980	1990	1995
Crimes reported (1,000)	1,496	1,932	1,813	2,218	2,436
Excluding trafic offenses	1,376	1,280	1,357	1,637	1,783
Persons arrested (1,000)	561	1,073	870	900	970
Excluding trafic offenses	443	381	392	293	293
Crimes per 100,000 population[a]	1,476	1,234	1,160	1,324	1,420

[a] excluding trafic offenses

Crime and Arrest Rates by country, 1994

	Crimes per 100,000 population		Arrest rate(%)	
	Homicide	Theft	Homicide	Theft
Japan[a]	1.0	1,246	95.8	37.7
U.K.[b]	2.7	7,322	89.2	21.8
Germany	4.6	4,753	87.2	26.4
France	4.7	3,449	72.6	13.2
USA	9.0	4,658	64.4	17.7

Source : Ministry of Justice, *Hanzai hakusho* (White Paper on Crime), 1996.
a. Figures for homicide are for 1995.
b. England and Wales only.

Sentences Passed on Persons Charged

					Not guilty	Acquittals	Total
	Guilty						
	Imprisonment						
	Death	Life	Term	Fine			
1989	5	49	61,742	1,202,947	131	1,123	1,265,997
1990	6	32	58,503	1,211,905	107	842	1,271,395
1991	5	24	54,488	1,153,542	197	622	1,208,878
1992	5	29	54,512	1,174,787	91	610	1,230,034
1993	7	27	56,373	1,142,2411	124	782	1,199,554
1994	3	35	58,144	1,081,499	58	614	1,140,353
1995	3	35	59,157	971,918	52	551	1,031,716

Source : Ministry of Justice, Hanzai hakusho (White Paper on Crime), 1996.

(Facts and Figures of Japan, Foreign Press Centre, Japan, 1997, p.83.)

DELINQUENCIZATION

As mentioned earlier the major concern of the government and the parents is the increase in the crime rate among the youth. Juvenile delinquency in Japan has reached it's peak three times since the world war II. The first high tide came in 1950-1951 when the nations postwar reconstruction got under way. The second, in the middle of 1960's, when the "high growth" period of the Japanese economy introduced market changes to Japanese society. And the third, greater than the previous two, started around 1974 reaching its highest level ever in 1978 and still continuing to swell today.

In 1995, 196,825 juvenile delinquent were arrested, ie. of 12.2 delinquents for every 1,000 youths. This represents a 38.0% decrease from a peak in 1983 or 5 fewer delinquents per 1,000 youths. The table below gives a clear picture of crime committed by the youths.

Arrests for Criminal Offenses

	Juveniles		Adults		Share of juveniles in total (%)
	Number of Arrests	Per 1,000 population	Number of arrests	per 1,000 population	
1950	158,426	9.2	458,297	10.1	25.7
1955	121,753	6.7	437,104	8.6	21.8
1960	196,682	9.7	413,565	7.4	32.3
1965	234,959	11.7	515,963	8.3	20.3
1970	224,943	13.1	883,254	12.6	22.8
1975	196,974	12.1	668,802	8.7	29.2
1980	269,769	15.7	653,958	8.1	29.6
1985	304,088	16.0	722,296	8.4	26.6
1990	244,122	13.3	683,688	7.5	26.5
1993	211,376	12.4	772,267	8.2	21.5
1994	201,837	12.2	796,132	8.3	20.2
1995	196,825	12.2	817,829	8.4	19.4

Source :   Ministry of Justice, Hanzai hakusho (White paper on Crime), 1996.

Note :   Juveniles are persons aged between 10 and 19 years; adults are persons aged 20 years and over.

(Facts and Figures of Japan, Foreign Press Centre, Japan, 1997, p.85)

Trend of Ratio to Population of Persons Taken into Custody for Penal Code Offenses (1956–1979)
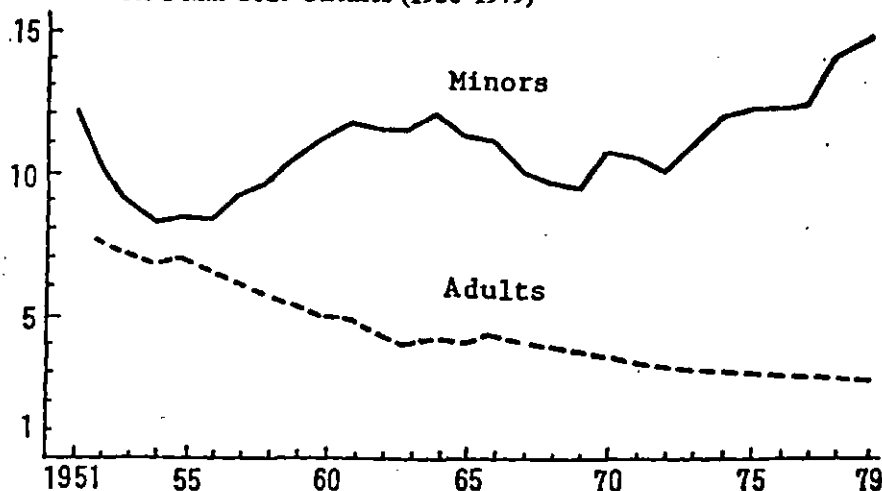
Notes: 1. Negligent manslaughter and injury in cases of traffic and other negligible offenses are excluded.
2. The ratio is per thousand of each age group.

Source: White Paper on Crimes, edited by the Research & Training Institute of the Ministry of Justice, 1980, p. 227

(Tokoro Kuruhiko, Japan Quarterly, Vol XXVIII, No.3, July-Sept. 1981, p.363.)

The table above also indicates that throughout the same period the adult crime rate declined almost without interruption. By 1979 the adult crime rate had gradually declined to about only 1/3 the 1951 level, while the ratio for minors, after some ups and downs, rose to about 1.2 fold.

Violence in school has been a major problem in Japan. The country is becoming more and more sensitive to this sort of violence in every day life. In the U.S. most school violence occurs in high schools, whereas in Japan, it is predominantly a middle school problem.

Trends in Police Guidance in Cases of School Violence
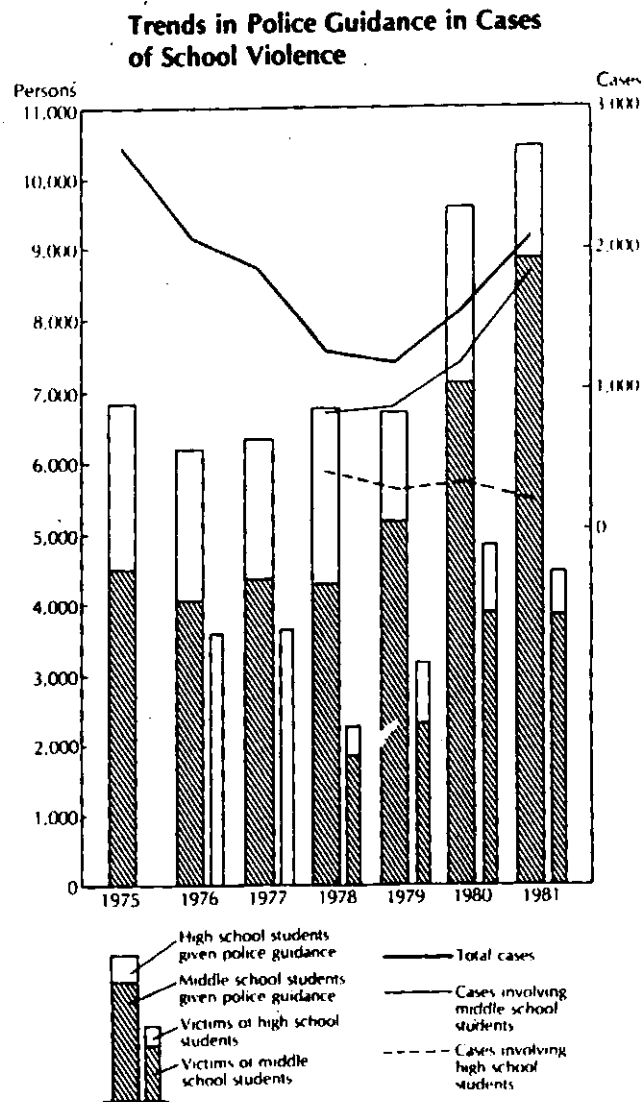
(Soeda Yoshiya, Japan Echo, Vol.X, No.3, 1983, p.10)

The above figure shows the trends in school violence in which students were put under police guidance from 1975 through 1981. For 1981, it indicates a total of 2,085 incidents affecting 4,444 victims and resulting in police guidance for 10,468 students. Out of this total middle school students committed 1,842 crimes or 88.3%. If we take the period between 1975 and 1981 there is a decline in the 1977-79 period but a rapid rise in violence in 1980-81 period.

Looking at trends in Police guidance in cases of violence toward teachers there were 772 incidents involving student violence against teachers. Middle school students accounted for the highest number of incidents with a total of 738 students put under police guidance. A total of 943 teachers were targets. We see the overall trend is one of a very gradual increase - both in the number of incidents and the number of students involved - that accelerated sharply in 1980 and 1981.

**Trends in Police Guidance in Cases
of Violence Toward Teachers**

Persons

Cases

High school students
given police guidance

Middle school students
given police guidance

Victims of high school
students

Victims of middle
school students

——— Total cases

——— Cases involving
middle school
students

----- Cases involving
high school
students
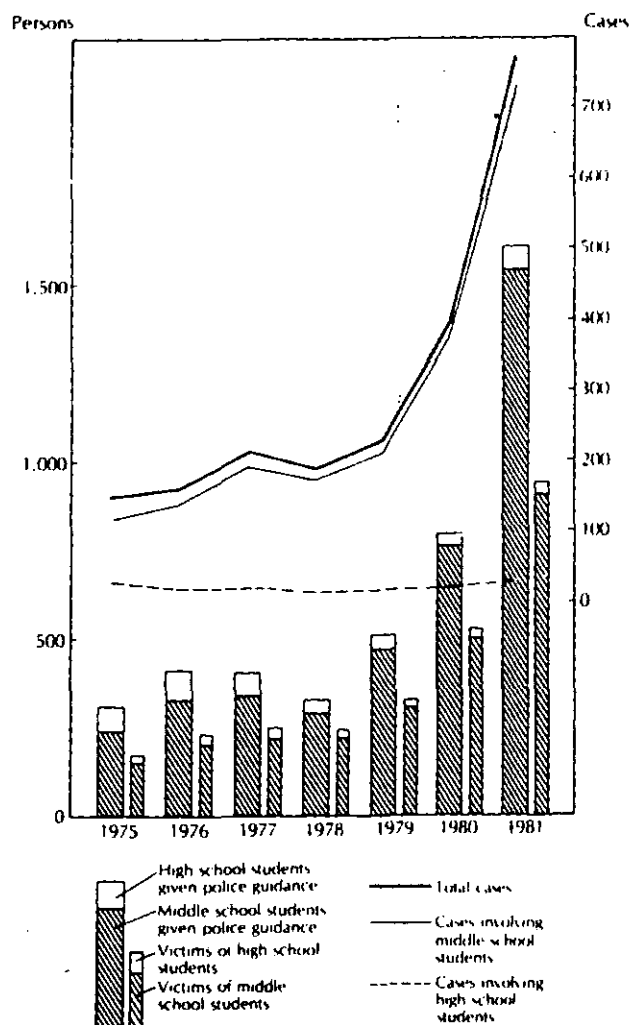
(Soeda Yoshiya, Japan Echo, Vol.X. No.3, 1983, p.11)

An important observation of Fujimoto Setsuya[1] was that, in 1955, about half of Japans juvenile offenders were from poor or dysfunctional families. By 1989, however, more than 70% of young offenders lived with both parents and in approximately 9 out of 10 cases, the family were middle class.

As Japanese have become richer, they have become spiritually poorer. The youngsters indulgence in violence is

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[1]   Fijimoto Setsuya, a professor of Criminology at Chuo University and a leading authority in Juvenile Crime.

often only to seek nothing more than the approval and acceptance of their peers.

Japan is probably the only country in the world where the term domestic violence usually involves children striking their parents. In a society of coufucinist roots this sort of behaviour is totally incomprehensible.

Something has changed in Japan. These changes suggest a breakdown of communication in the home, estrangement of youth people from their parents and siblings, and a pronounced tendency to show contempt for accepted social standards. More children try to escape parental and academic pressure to excel at their studies by resorting to promiscuity and drugs etc.[2] It is also disturbing to note that the age at which the crime is committed is getting lower.

DRUGS DEALING AND ORGANISED CRIME

Contemporary problems associated with Japanese drug abuse is traceable to the 15th century. It is since then that the Official drug control policy is in existence. Japanese outhorities were aware of harm that is caused by opium addiction. The example was right next door, China.

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[2]   Mark Schreiber, "Juvenile Crime in the 1990" in Japan
      Quarterly, April-June, 1997, p.79.

Japan withnessed the effect of opium on China's economic, political and social structure.

The import, possession and use of narcotics and stimulant drugs is forbidden in Japan except under a doctor's supervision. Earlier it was mainly members of gangs that engaged in drug smuggling and accounted for more than half of drug related arrests, but now ordinary citizens indulging in drug related crimes are on the increase.

Number of People Arrested for Drug Offenses

	Stimulant drugs	Marijuana	Narcotics	Opium
1955	32,140	52	1,753	181
1960	476	10	1,987	315
1965	735	259	1,090	902
1970	1,682	733	245	230
1975	8,422	909	232	140
1980	20,200	1,433	158	264
1985	23,344	1,273	138	443
1990	15,267	1,620	240	111
1993	15,495	2,055	353	132
1994	14,896	2,103	343	222
1995	17,364	1,555	334	172

Source : Ministry of Justice, *Hanzai hakusho* (White paper on Crime), 1996.[3]

Japanese criminal organisations, like their counterpart in the US, earn a large portion of their income from drug

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[3]   Facts and Figures of Japan, Foreign Press Centre, Japan, 1997, p.85.

trafficking. The boryokudan are responsible for most of stimulant trafficking in Japan, and stimulant smuggling is their largest illegal enterprise. From 1971 to 1980 the Koiki boryokudan have expanded their operations into stimulant drug trafficking. Boryokudan-based groups in Hawaii also send stimulants and other drugs into Japan under the cover of legitimate trade with the US China and Taiwan are other sources from where drugs are smuggled into Japan.

Fujikake Akira[4] says that earlier the drugs were used to be supplied by the gangsters but today, they are easily available from foreigners. The problem of drugs abuse with the youngsters stem from the high expectations placed on them by their adults.

Concern over drugs use by teenagers has become the focus of attention since 1996, when the Ministry of Health and Welfare released a white Paper on drugs. It stated noted that 17,364 cases of stimulant drug users were persecuted during 1995. Of the total 1,083 cases involved minors. The increase was by an astonishing 30.2%.[5]

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[4]   Fujikake Akira, a Psychologist at the juvenile
       Classification Home, Tokyo. (Source: Mark Schreiber,
       Japan Quarterly, April-June, 1997, p.84).

[5]   Mark Schlreiber, 'Juvenile Crime in the 1990s' in Japan
       Quarterly, April-June, 1997, p.84.

SEX-RELATED CRIME

Much of the sex related crimes can be attributed to changing social values and economic compulsions. Today, many unemployed people of the developing Asian countries are eager to learn from Japan or earn in Japan. Consequently, the number of women from developing Asian countries are incited or trapped into coming to Japan and then inducted into Japan's sex industry. More than 100,000 Asian women are to work in Japan's sex industry of which maximum numbers are from Indonesia, Malayesia and Thailand. Yakuza is to a large extent involved in human traficking into Japan from these countries. More recently there is a shift in Yakuza's drugs, banking and real estate business to the business of human flesh. Other factors contributing to sex related crimes is the presence of western military bases in the country. This leads to a considerable increase in prostitution.

The 1956 Anti-prostitution law has been unable to curb prostitution for it provides for punishment only against prostitutes walking on the street. Consequently, the law does not fit the reality of today's varied and diversified forms of prostitution. Again, the child welfare law which deals with juvenile prostitution, is also problematic in terms of how it views sex equality. The juvenile prostitution broker is punished and the girl is taken under

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protection, but there is no punishment against the man who pays. Thus, there are many flaws in the laws dealing with sex related crimes.

The 'enjo koshai' arrangement and 'compensated dating' are two postwar phenomena dealing with prostitution by young school girls. Young girls indulge in sex and sex related activities with older men to earn an extra buck.

National Police Agency statistics for 1995 shows that 5,481 female minors under age 20 were taken into protective custody in the course of telephone club liaisons or other sex related activities, for what is euphemestically termed "overstepping the bounds". One fourth of these were still in junior high school. The figure marked a 16.2% increase over the previous year.

Sex related business has been proliferating from 900 in 1992 to 2,164 in 1995. The 1996 Police white Paper states that more young women are making themselves available for sex business. Changing social values amongst the youngsters is a cause of serious concerns. Decline in moral standards and rise in violence is the result of collapse in interpersonal relations and as the society becoming more materialistic.[6]

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[6]   Hans Joachim Schneider, 'Victimisation in Schools' in
       ICPR, 456, 1996, p.29.

CHAPTER - II

JAPANESE SOCIETY AND CRIME CONTROL

Japan is a society in which the social control is pervasive with its both formal and informal arrangements. The present arrangements have deep historical roots and the continuity has been preserved and legitimised by deliberate government policy and the community involvement.

Groupism is one of the important characteristics of Japanese behaviour. Collective action and goals are placed above the individuals. Groupism can be traced to the days where agriculture was the mainstay of Japanese economy.[1] In the wet paddy fields, harmonious group work was needed over specialised division of labour. The samurai believed that the group was supreme and the individual's welfare was relatively unimportant. The confucianist ideology consideration gave a legitimacy to the state intervention and collective responsibility. The values of duty, benevolence and tolerance created in the samurai class were transformed into the idea of sacrificing individual needs

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[1]   C.Kanfman, Tokyo; One city where Crime Doesn't Pay, The Citizen's Crime Commission of Philadelphia, Philadelphia, 1975.

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for the sake of the state.[2] In the Japanese way of life

the basic idea of groupism is 'ie' or 'mura'. 'Ie' refers to

'household' or 'family' while 'mura' means a 'wider

community'. The idea of 'ie' or 'mura' moulded the Japanese

society as a concentric circle. In the core of this circle

is the family a basic 'ie', then the group, a larger 'ie'

which may be a school, class, a university, an employing

company, or a political party, and finally, the nation the

largest 'ie'.

Japan is embedded with unique cultural tradition quite

different from that of the west. Implicit control

mechanisms, consensual decision making, a shared

responsibility, and holistic concern are the hall-marks of

Japanese group behaviour that maintain order in the society.

FEUDAL JAPAN AND ITS INFLUENCES

Established in feudal Japan the crime control

management techniques continue to guide Japanese behaviour

even today. This arrangement incorporates citizen

involvement in crime control, mutual surveillance,

collective responsibility and family responsibility.

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[2]   S. Hayashi, Culture and Management in Japan, University
of Tokyo Press, Tokyo, 1990.

In Japan, during the period between 1603 and 1867, the Tokugawa Shogunate had a formative influence on Japanese society. In early period, Japan was divided into some 245 feudal domains, the shogun, being in overall control. The well ordered system of social relationship was based on confucian principles that had been imported from China. The society of the Tokugawa period was more hierarchical, with an elaborate system of social obligations that were used as an indirect but nonetheless powerful means of suppression.

Neo-confucianism was able to become the mainstay of Tokugawa orthdoxy because it offered a perspective for an authoritarian regime. According to it, both the social and the natural order are in concord with unchanging principles of nature. Chinese Confucianism were turned upside-down by making loyalty to the ruler, instead of filial piety, the overriding moral command.

Neo-confucianism was put to use by Tokugawa Ieyasu as a bakufu ideology. This ideology displayed its most conspicuously binding force in the realm of political legitimacy. It effected a social agreement, in thought and action, to view a ystem of government as legitimate and just. In Tokugawa Japan, the preservation of the dominant position of certain warrior class over other warrior houses

and commoners became possible by force of arms and especially through the neo-confucianist ideology.

Japan's supreme rulers, from Oda Nobunaga through Tokugawa Iemitsu, consciously deployed signifying strategies by mythologising their images and positions. They transformed their military power into sacred authority, their rule into an embodiment of the way of heaven. Nobunaga and Hideyoshi confronted other warlords and the commoners as their rivals for power and their personal gain. Interestingly, the emperor was still a resource that could be used in their struggle against these rivals. He was more the object of political maneuveres than of symbolic manipulations.

The final annihilation of peasant resistance by force of arms had eliminated the commoners as challengers of Tokugawa power through a legitimising effort by the Tokugawa rulers. All the daimyo and housemen, and now the emperor, formed the Ieyashu cult. The selective suppression of the society took place through a neo-confucianist state ideology in early Tokugawa Japan.

Neo-confucianism occupied in Japanese society a position although not precisely identical but nevertheless closely analogous to the one it held in China as an officially sponsored state ideology. Order in the society

was always established through political struggles, a successful exercise in power.

Tokugawa Shogunate never claimed for its officers the near monopoly of responsibility for public order and the suppression of crime established by governments in Western Europe. Citizen participation in crime control was required of all social classes. In the country side farmer's extended families were grouped into 'five family units' (go-nin-gumi), held responsible for the good behaviour of all their members, and collectively punished should an individual member transgress the laws of feudal obedience, for instance by escaping from the district.

Under the go-nin gumi system, each family had every reason to exercise close surveillance over the behaviour of its immediate neighbours. In fact, Tokugawa society was a society in which surveillance was conducted at various levels. The shogunal government monitored the behaviour of the feudal lords through a network of trained spies. The samurai magistrate who acted as police chief, prosecutor and judge in each district did not sharply distinguish crime control from political control, and employed semi-official detectives (often outcastes or reprieved criminals) to gather information on groups considered to menace the

government.[3] Surveillance was also conducted in distant region of the country [4] The emphasis on a common code of conduct which was adhered to due to fear of ostracism by the community. The roll of the offender's close family in present day Japan is probably due to tradition set centuries back. An offence is commonly taken to be a family responsibility, and the offender's family will pay informal financial compensation to the victim before the final judgement. To arrive at a decision whether or not to prosecute, the prosecutor makes an assessment of the sincerity of the offender and his or her willingness to conform to rules in future. But the prosecutar does this not only through his own assessment of the offender's attitude but also indirectly, through his estimation of the adequateness of the level of the informal compensation which has been paid to the victim. Plea-bargaining is forbidden, but prosecutors interpret broadly article 248 of the criminal code which lists the factor which may guide their decisions, to claim that they are legally entitled to take into account the level of the informal compensation already paid when deciding whether to prosecute and what sentence to

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[3]   W.L. Ames, Police and Community in Japan, University of California Press, Berkeley, 1981.

[4]   M. Kawada, The origin of Ethnography in Japan: Yanagita Kunio and his Times, Kegan Paul, 1993.

request of the judge. Thus, the process of synthesization is undertaken, the formal system of crime control reinforcing and supporting the informal system.

In Japan, the concept of 'reintegrative shaming' (providing the deviant to accept public pressure to conform and make appropriate apologies) is extensively desired by the public prosecutor rather than 'stigmatising shaming' (attempt to control deviants by shunning and isolating them) which is more rampant in western individualistic society. On the other hand, 'stigmatising shaming' tends to be criminogenic by driving them into interaction with similar other, and generates the systematic blocking of legitimate opportunities. However, where the offence is sufficiently serious the offender must suffer more than a keenly felt social disgrace. Sanctions reinforce the incentives to the desired behaviour.[5]

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MEIJI PERIOD: Traditional Social Values Retained

Following the principle of isolation, the Tokugawa Shogunate had kept Japan isolated from foreign influences. The opening of Japan to the outside world in 1853 was followed by internal dissension which led within five years

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[5] J. Braithwaite, Crime, Shame and Reintegration, Cambridge University Press, 1989.

to the replacement of the shogunate by a modern imperial government. Feudal privileges were terminated, hereditary occupational castes abolished and concerns thrown open to talent, and no distinction was to be made on the basis of sex, caste or creed. The process of modernising Japan from all aspects - economic, political and social had started. However, while introducing far-reaching social changes the government was conscious of the need to maintain some traditional social values and institutions necessary for controlling society. Institutions inbuilt in the society the government was keen to retain so as to enforce norms of behaviour from within the group.

The emergence of Cho-Nai-Kai (CNK) called 'local self-government associations' was a new dimension to community crime control initiative. In the country side, the CNK were standardised versions of the former village councils made up of heads of families. But the newly industrialising cities were divided into districts of some 400 families which were also obliged to form a CNK. Membership of the CNK was compulsory. Each CNK is served by a very small police station and members are duty bound to report to the local officer or the CNK committee about the presence of a stranger in the locality or any suspicious behaviour on the

part of the neighbours. The CNK acted as the eyes and ears of the police.

Community orientation and group behaviour in Japanese way of life has a tremendous impact on it. The peasants migrating to cities to work in factories did not necessarily change their pattern of behaviour. Industrialisation did not lead to widespread increase in crime and social upheaval.

The process and working of CNK prevented the spread of privacy, democratic diversity and individualism. Japanese and western observers are at one in the view that the CNK had few if any democratic functions but were a principal channel through which the government could control the population. In police instructions, the CNK mobilised the population for recurrent public health work such as clearing drainage ditches. CNK were also giving a detailed account of grounds for various groups of nationally organised volunteers formed into local branches. Their duty was to support government instructions & policies without expecting any reward.

The formal system of crime control was also imbued with traditional values of hierarchy occupational castes. It had enabled many younger sons of merchants to become officers in the new model army, displacing the samurai, the former military and administrative caste, whom the government

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regarded as less reliable politically. The peasant recruits replaced the outcastes who had comprised much of the feudal soldiery. Many impoverished samurai sought employment in the newly established national police force which recruited personnel of good education and considerable administrative experiance. And as artistic achievement had been considered important in validating the exercise of power in feudal Japan, the new police possessed prestigious expertise in the traditional arts, as they do today. The police are institutional culture carriers of the values of the old feudal Japan, often characterised as a world of perfect order, and of absolute loyalty to the organisation and to one's superior, often till death.

In preworld war II period, as in other countries, the police had formal responsibility for crime prevention, the arrest of offenders and maintaining the peace. But in addition, they also acted as the main organ of local administration. They regulated public health, factories, construction, and businesses, and exercised surveillance over intellectuals. They retained the power to issue ordinances in respect of these mandated powers. They could summarily prosecute and adjudicate a category of offenses concerning public morality and everyday behaviour and impose sentences of not more than 30 days' detention or fines up to

a certain limit. Juvenile cases were disposed by the police rather than the a court. The formidable powers were complemented by the police service functions. The officers in each police box were legally obliged to visit every household twice yearly to make a thorough investigation of the occupation and the activities of each habitant. These visits were yet another instrument of surveillance and an opportunity for the police to guide household members. But, they also made the police a repository of local information of all kinds, which together with their position as representatives of the local administration made them an invaluable resource for the population. In rural areas, the police officer ranked with the Buddhist priest and the school master as the best educated local inhabitants and were the most frequently approached for guidance. In the absence of a more powerful person, police officers acted as reconciliators in civil disputes.[6] The period of reversion to military rule before and during world war second saw police responsibilities at their height. They helped in the regulated economic activities for the war effort, mobilise labour, control transport etc. At times trained in media

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[6]   T. Kawashima, "Dispute Resolution in contemporary Japan" in von Mehren (ed) Law in Japan, Harvard University Press, 1963.

police regulated the media.[7] The CNK became channels for the expression of patriotic sentiment and self-sacrifice. They also had responsibility for the distribution of food rations, which itself a potent instrument of social control. The volunteer probation officers supervised those suspected of subversive activities. Thought crime was a class of offence almost wholly dealt with by the conversion and reintegration of the offender.[8]

POST WAR PERIOD

During the occupation period, the CNK was banned because it supported the military government activities. But the groups of volunteers were not disbanded. A system of elected local government was established, with a professional bureaucracy to carry out many functions which were formerly the responsibility of the police. Income support became a local government responsibility and the extended family was abolished as a legal entity. Juvenile courts were established, set in a legislative framework oriented towards welfare, and serviced by psychologists and a corps of professionally trained social workers, the

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[7] W.L. Ames, Police and Community in Japan, University of California Press, Berkeley, 1981.

[8] Richard H. Mitchell, Thought Control in Prewar Japan, Cornell University Press, Ithaca and London, 1976.

juvenile court liaison officers. The volunteer probation officers now deal mainly with adult defaulters.

In 1951, the CNK was revived by the Japanese government. The membership is no more compulsory, though it would be more advantageous to be associated with it. The CNK now constitute the local administrations' main channel of communication with the population. Membership of the 'guiding committee' of the CNK, is generally comprised of elders and subcommittees of middle aged women to carry out the work. The major formal functions of the CNK are to organise the annual festivals at the local shinto shrine and Buddhist temple. But the CNK's real importance is it's role as an organised voluntary action group concerned with various aspects of social control.

The involvement of volunteers as 'min-sei-iin' with important duties are given importance and power and they become the members of the local administration's social welfare council. They also influence the local authority's funds for voluntary action. Selected min-sei-iin at times deal with children's welfare guidance. Volunteers 'jido-fukushishi' whose task is to provider guidance to parents or those with delinquent children under ten years old. They also bring to the notice of the local administration the

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problems confronting thse children and their parent.[9] There
is another group of voluntary activitists the "guiding
committee" in each CNK which is generally a branch of a
national voluntary association which has discussions with
the police officers on different matter. It becomes a branch
of the National Traffic Safety Association to organise
volunteers to dress in bright sashes and stand in groups at
intersections during the annual traffic safety campaign. The
CNK also becomes a branch of the National Fire Prevention
Association and participates and supports bi-annual Fire
Prevention Campaigns. As a branch of the National Crime
Prevention Association it mobilises its members for the
annual week-long Crime Prevention campaign. Funded by the
Justice Ministry and public contribution, the crime
prevention volunteers give advice to the public on security
measures to be adopted to protect life and property. They
distribute literature on these matters outside railway
stations, in banking halls and similar crowded places.
Illustrations in the leaflets show motor cyclists snatching
a grand mother's handbag, or group of burglars breaking in
house's and point out its vulnerable points. It also directs
attention to parental duties with slogan such as 'Listen to

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[9] K. Steiner, Local Government in Japan, Stanford
University Press, London, 1965.

your child' and illustrates early warning signs of the risk of delinquency, which are indications that the parents should seek guidance from the police or volunteers.

Crime prevention activists may have a badge on their houses designating them a 'crime prevention check point', a centre for the collection of information of interest to the police. All forms of untoward occurrances is reported to the CNK, which then decides whether, the matter should be taken up with the family or the school if a juvenile is involved. The CNK finds decisions very difficult as it tries to avoid direct conflict with the family.

The CNK acts as a recruiting-ground for more specialised groups of volunteers. Drug After-Care Volunteers provide guidance to drug dependent people for one year following their release from hospital or prison. Juvenile street Guidance volunteers deter bad behaviour where it may otherwise occur. They patrol entertainment districts where juveniles may evade the surveillance in their own neighbourhoods. Volunteers offer 'guidance to juveniles who are under the influence of alcohol or violate regulations of the National Police Agency.

Juveniles apprehended by volunteers generally have to report to the police the next day. Legislation aimed at reducing police power oblige them to refer all juvenile

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cases, including those who are on the verge of becoming delinquents to the juvenile courts. The police have also created a category of pre-pre-delinquents and employ psychologists and specially trained officers to guide them and co-ordinate the volunteers. The police continue to visit each household twice in a year to enquire into the occupation of each inhabitant, though answering their questions is no longer compulsory legally. They also continue to act as reconciliators.

Voluntary probation officers (hogoshi) constitute professional people who are tied to the locality such as doctors, dentists and Buddhist priest. Police routinly visit hogoshi to collect information. The hogoshi association has its own annual campaign, 'The Campaign for a Brighter Society'. Hogoshi is a post war phenomenon which encourage the population to provide employment to former offenders and the emphasis is now on to counselling parent teacher organisations. A parallel organisation has also been come up to support the hogoshi from the spouses of the hogoshi member itself.

COMMUNITY POLICING

Law enforcement programmes are increasingly working in partnership with the community to identify increasing crime

problems and implement solutions. Homelessness, poverty, lack of positive adult role models, and poor health care community assistance, mentors and in-school or community clinics all call for concerted action.

Under community crime control programme the Japanese government emphasises upon the following initiatives-

- Commitment to positive reinforcement through community and school-based, on-going media campaigns.

- Promoting conflict resolution among peers through mandatory educational programmes for students, parents, teachers, counsellors, administrators, media and community campaign.

- Encouraging monitoring of all children in response to their needs and temperament.

- Enlisting youth to perform services to the community to enhance their involvement in society.

- Developing community-oriented proactive policing programmes that begin with a philosophy of prevention. Examples of prevention programmes include midnight basketball leagues, police-youth athletic leagues, neighbourhood housing project sub-stations and foot patrols.

- Initiating ethical and cultural awareness programmes in cooperation with the family, school, media, civil,

business and other community groups. These programmes emphasise on finding common ground on basic values, such as respect, responsibility and restraint.

- Youth opportunity programmes are designed to provide every child the chance to realize their potential, regardless of circumstances. Such programmes could be run through school, business and community centres that provide for child care, career counselling and training, scholarships.

- Setting peer counselling hot lines to help youth help each other through the trying times of adolescence.

Many other community policing initiatives need to be taken in the future such as birth control, health monitoring and treatment, behavioral control in extreme cases, computer-assisted brain and educational implants. However, these measures should only be considered after reaching consensus concerning ethical issues.

Bayley[10] labelled community oriented policing efforts with the acronym CAMPS which stands for consultation, adaptation, mobilization and problem solving. In terms of its application to community policing consultation and mobilization of the community individual responsibility lies

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[10]   D.H. Bayley, Police for the future, Oxford University Press, New York, 1994, p.105.

with both the officer and the community to return to the concept of neighbourhood ownership and pride. Officers at every level in the department must genuinely accept the idea that crime prevention and service functions are just as important as law enforcement. Community member must realize the importance of their role in crime prevention.

Many police department publicly report that they are 'doing community policing' but the organizational structure and mission remains unchanged. It is ironic that the National Police Agency in Japan is more decentralized than most smaller, local level departments in the USA. To a large extent there is no consensus in what community policing is (is not) in the USA, nor have any systematic efforts been conduced to evaluate police effectiveness using community policy tactics. Although the Japanese police are known for their crime prevention efforts in their relationship with the community, Japanese cops are not engaged in a formal process of problem-solving inherent in many community oriented philosophies". The reason for this, is the formal institutionalization in community policing in Japan privileging over the cultural context.[11]

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[11] D.H. Bayley, Police for the Future, Oxford University Press, New York, 1994, pp.105-14.

CHAPTER - III

JAPANESE LEGAL SYSTEM

In most accounts of post war Japan, social life is portrayed as virtually conflict-free, the result of a society where the confucian ideals of social harmony and antipathy toward law have been internalized by a loyal and cooperative population.[1] Japanese law have been dealt primarily with - low rate of litigation, the small number of lawyers and the prevalence of mediation and conciliation. Interestingly, a low legal consciousness and strong traditional values that predispose the Japanese to compromise.

Japan's legal system has been influenced at various times by the traditions and philosophies of other culture, most notably, by chinese ideas in the fifth and sixth centuries and by western European concepts in the 19th and 20th centuries. But foreign influences have been strong only at times when the indigenous political order was on the decline and as the indigenous order has reasserted itself, the imported institutions have declined in turn.

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[1]   Frank K. Upham, Law and Social Change in Post war Japan, Harvard University Press, London, 1987. p.1.

The Meiji emperor and his government had the difficult task in rapidly modernizing a nation that had been in seclusion for centuries. The apparatus of the feudal empire was dismantled and a programme of modernization was begun by the new government. Moreover, the changes were in a big way brought about to improve upon the treaties that had been foisted upon the Japanese by western governments. Westerners had refused to permit their own people to be prosecuted under native law for criminal offenses but insisted instead on administering their own justice. To alleviate this situation and provide Japan with a legal system acceptable to Westerners, codes of criminal law were adopted, first on the French model and later on the German.[2] The Penal Code of 1980 and the criminal procedure code of 1890, reflected influence from the French system.

JUDICIAL SYSTEM AND ITS STRUCTURE

Asis shown in the chart (page no.36), the judicial system of the nation is composed of five kinds of courts : the supreme court at its top; High courts under the supreme court; District Courts and Family Courts under the High

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[2]   L. Craig Parker, Jr., The Japanese Police System Today, An American Perspective, Kodansha International, Tokyo and New York, 1984, p.31.

Court System of Japan

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                    ┌─────────────────────────┐ # $
                    │      Supreme Court      │
                    │         (Tokyo)         │
                    └─────────────────────────┘
                                 │
                                 │
          ┌──────────────────────────────┐ # $
          │        High Courts           │───────────────┐
          │           (8)                │               │
          └──────────────────────────────┘               │
                         │                    ┌─────────────────────────┐
                         │                    │  Branches of High Courts │
                         │                    │           (6)            │
                         │                    └─────────────────────────┘
              ┌──────────┴──────────────────────────┐
    x  ┌──────────────────┐         ┌──────────────────────────┐ # $
       │   Family Courts  │         │      District Courts     │
       │       (50)       │         │           (50)           │
       └──────────────────┘         └──────────────────────────┘
         │                             │                      │
         │                             │                      │
┌──────────────────────────┐          │          ┌──────────────────────────┐
│ Branches of Family Courts │         │          │ Branches of District Courts│
│           (240)           │         │          │           (240)            │
└──────────────────────────┘         │          └──────────────────────────┘
                            ┌──────────────────────────┐ # $
                            │      Summary Courts      │
                            │          (570)           │
                            └──────────────────────────┘
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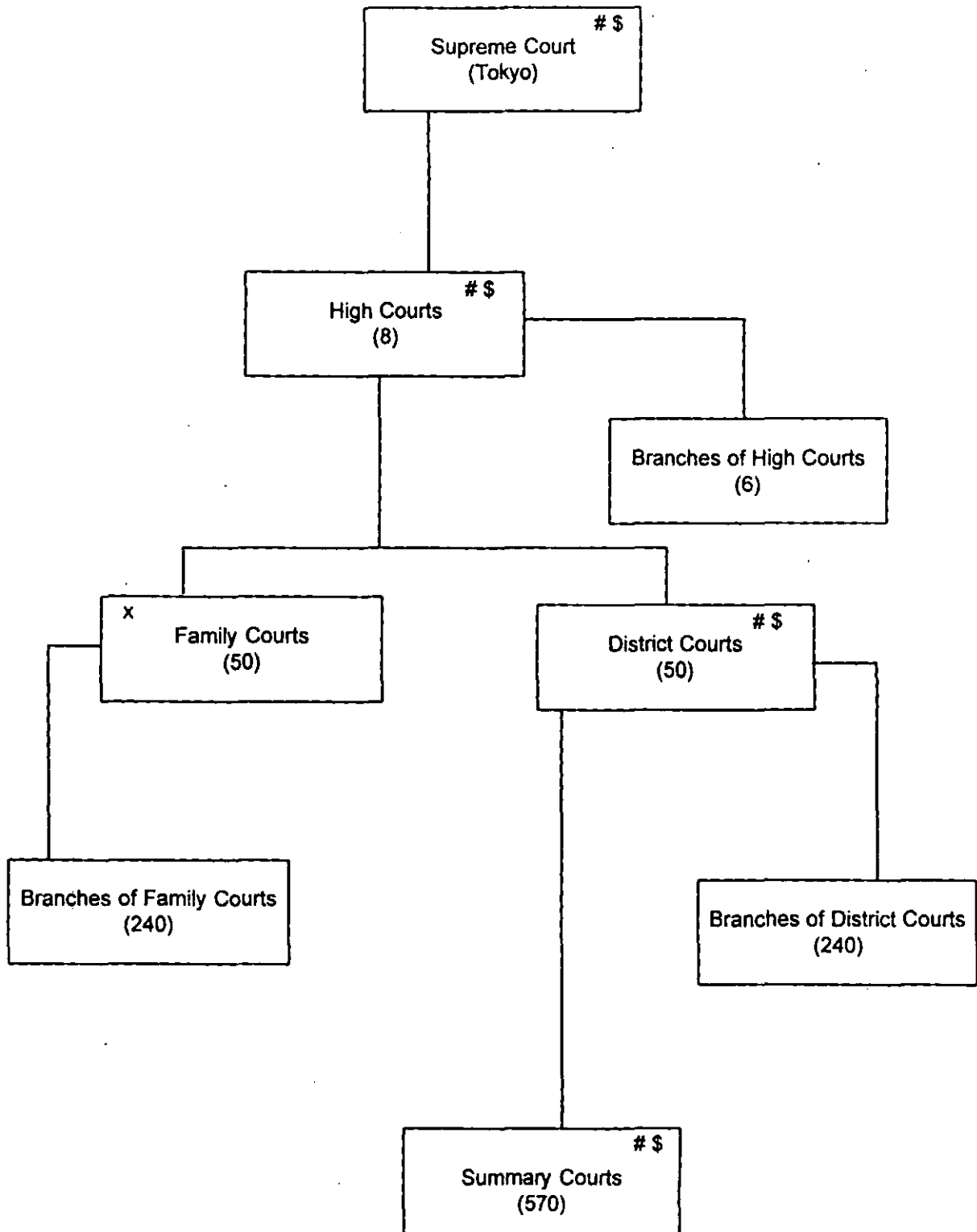
- Criminal Cases
x - Domestic relations and juvenile cases
$ - Civil cases

Source : Justice in Japan, Edited and Published by the Gneral Secretariat, the Supreme Court of Japan, 1987. As of April, 1994.

Courts; Summary Courts at the bottom. The respective courts have exclusive jurisdiction as fixed by statutes.

In the field of criminal procedure, a new code of criminal Procedure patterned after that of the Anglo-American Law was enacted in 1948. The code has brought about great changes in the proceedings of investigation and institutions of prosecution as well as in the rules of evidence for securing the guarantee of human rights, and has strengthened the adversary nature of the trial structure. The supreme court is located in Tokyo and its territorial jurisdiction covers all over Japan. The supreme court exercises appellate jurisdiction of jokuku appeal and Kokuku appeal as provided especially in the codes of procedure. Appellate proceedings in the Supreme court commence with the filing of a notice of appeal written by a party dissatisfied with the judgement below, normally of the High courts.

The High courts are located in 8 major cities in Japan, namely, Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Each High court has its own territorial jurisdiction over one of the eight parts of Japan. Some courts have branch offices. There are six branch offices throughout Japan. As a rule, a High court has jurisdiction over appeals filed against judgments rendered by District courts or Family courts. In criminal cases

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originating in Summary courts, however, appeals come directly to High courts.

There are 50 District courts having territorial jurisdiction over their respective judicial districts, the area of which is the same as that of each prefacture, except Hokkaido which is divided into four judicial districts. The District courts have branch offices. The District courts are primarily the court of general original jurisdiction, and they handle all cases in the first instance except those specifically comming under exclusive jurisdiction of other types of courts.

The Family courts and their branch offices are established at the same places where the District courts and their branch offices are located. In addition, local offices of Family courts are located in areas as necessary. The Family courts, established *on* January 1, 1949, are specialized courts dealing comprehensively with family affairs and juvenile delinquency cases.

There are 570 Summary courts in cities, towns and villages throughout the nation. The Summary Courts have the original jurisdiction over civil cases involving claims not exceeding 900,000 yen and criminal cases relating to offenses punishable by fine or lighter punishment and other minor

offenses such as theft and embezzlement. Each case in a Summary court is handled by a single summary court judge.

JAPANESE LEGAL CULTURE AND PUNISHMENT

A legal culture includes attitudes and values about the nature of people including people who are wrongdoers. An actor may be perceived by himself and others as an individual whose identity and sense of self stand apart from the group or community, the person is an individual actor. On the other hand, an actor may be perceived as a social participant whose identity is, in substantial part, defined by social relationship, the person is a contextual actor. In Japan, the person tends to be perceived as a contextual actor while in the US the person is perceived as an individual actor.

Attitudes and values we hold about what it is to be responsible and what sanctions should be administered to those found responsible for wrong doing are built on these perceptions. The perceptions are at the core of a society's legal culture and they affect the proposed punishments. Japanese do attend more to role relationship in attributing

responsibility and do propose more restorative sanctions than Americans.[3]

The concept of high and low solidarity existing in the society always determine the degree and nature of punishment. High solidarity refers to strong ties of personal closeness and identification, embodies long standing and enduring connections, and taps the multiple and non-commensurate ways which individuals may relate to one another. In contrast, low solidarity encompasses ties that are potentially fleeting and short, even one time interaction, an absence of closeness between autonomous individuals, and undimensional and closely monitored exchanges. American solidarity of ties tends to be low, whereas Japanese solidarity tends to be high.

In Japan, the presence of a relatively large proportion of high solidarity relationship helps to create and sustain citizen's attitudes, values and judgements about whether it is appropriate to take disputes to law, how to conceptualise a dispute and how disputes are to be settled. This ties are more likely to make punishment an occasion for reintegrative shaming, whereby the offender is taught to "shape up". The

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[3]   V. Lee Hamilton and Joseph Sanders, 'Punishment and the Individual in the United States and Japan', Law and Society Review, Vol.22, No.2, 1988.

alternative stigmatising shaming which upholds the total rejection of the offender becomes almost nonexistent.

Inga Markovits (1989) has recently argued that at least with respect to disputes between state and citizen, as long as, the society retains socialist values we should not expect to observe an increase in the use of formal courts and formal rules. Interestingly, the arguments she advances to justify her prediction are similar to those advanced to explain the relatively low use of law in Japan. Ideally, socialist law is not autonomous, and both the capitalist idea of legal autonomy and the rule of law have been thought to be ideological mystification.

Underlying the informal and non-individualistic tendencies of socialist legal culture it has been the fundamental vision of the law as an institution for defining and maintaining the ties between the individual and the state (Markovits, 1982 : 528). This view of legal sanctions is congruent with a larger cultural perspective that places importance on the relationship between the individual and the state as the representative of the group.[4] Japan is a communal, contextual society in part because every

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[4]   Joseph Sanders, Legal Culture and Punishment Repertories in Japan, Russia and the United States, Law and Society Review, Vol.22, No.2, 1990.

relationship, even economic ties, is thought of as a familial tie. The informalist and non individualistic strains in socialist legal culture are attributes shared with Japanese contextualism.

Cross cultural differences reflect the extent to which the individual is treated as an individual or as a member of a community. In cultures where network consequences of punishment are relatively more important, norms of sanction tend to focus on the network of relationships, whereas in cultures in which individuals are central, sanctions focus upon the isolated individual. In this view, Japanese tend to act not as isolated individuals but as part of a context, a network of roles and group memberships. Thus, across everyday life situations the modal response of the Japanese is a form of relationship restoration.

If the individual is seen as an isolated entity, a consistent mode of punishment is to isolate rather than reintegrate the offender. A consistent effort is to seek retribution of a relationship. But if the individual is seen as operating in networks and contexts, it is appropriate to restore the network and attempt reintegration. A network concept of self does not mean that the individual is not responsible in a normal sense. Instead, sanctions for wrongdoing are influenced by individuals in roles. A network

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concept of self also does not mean that punishment is necessarily more lenient, but simply its focus differs.

The Japanese view of punishment appears very different whether looked at in the family or in practices of incarceration. It appears that to be isolated or separated from others is a severe punishment. The Japanese reluctance to incarcerate offenders may rest in part upon a low crime rate and a healthy society.[5] However, it is also consistent with a network view of individuals. Such an image has the strong potential to be self-fulfilling. When both criminal and everyday wrongdoing occurs in Japan, apology has an important function, punishment is reduced or eliminated accordingly. The Japanese seem to assume that there are bonds to be restored between offender and victim, as if the individual exists in a network of interlocked others. From these general perspectives, we may expect that across a variety of punishment decisions, American will advocate sanctions that then to isolate the offender or exact retribution or both, while Japanese will emphasize restitution and reintegration.

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[5]   David H. Bayley, Forces of Order: Police Behaviour in Japan and the United States, Berkeley: University of California Press, 1976.

Japan is often seen as taking a broadly rehabilitative and reintegrative approach to those who break the criminal law. In japan, we see, the use of prison as a last resort; relatively short sentences; extensive use of suspended sentences and of probation; and very wide discretion, vested in the police and public prosecutors, whether or not to prosecute for offences or whether to suspend prosecution. Factors considered in the exercise of this discretion included: the seriousness of the offence or offences; the age, character and background of the alleged offender; and events after the offence, such as repentance, apology and payment of compensation to the victim.

QUESTION OF DEATH PENALTY

Japan's post-war domestic policies were influenced by international opinion. Japan still retains capital punishment. No executions took place for a period of over three years from November, 1989. However, during 1993, seven people were hanged. This was the largest number since 1976 when 12 persons were executed.

The Japanese criminal code of Law provides death penalty for offences like : treason; murder, death or wounding in the course of robbery, and rape in the course of robbery. In practice, over the last 30 years, the death

penalty has been restricted basically in cases of murder. In murder cases too death penalty is given only when the murder is brutal, calculated or it is multiple murders, in which little or no remorse has been shown by the murderer towards his victims.

In response to the movement against death penalty in 1948, the supreme court of Japan gave a ruling that the death penalty was not contrary to the new postwar constitution which states, 'The infliction of torture by any public officer and cruel punishments are absolutely forbidden' (art. 36). Public prosecutors exercise their wide powers of discretion and suspend prosecution. Instead of giving death penalty the judges try to find alternative punishment like life sentences etc.

At times it is also difficult to carry out the death sentence even though the criminal code states that death sentence should be carried out within six months of the final verdict. Sometimes the convict has to wait for many years before the verdict is carried out. Delay may be due to several reasons for example ministry of Justice may decline to sign the execution orders or resist signing for as long as possible. The, reasons for this, may be personal, religious belief, political considerations, or fear of major public uproar etc.

Secrecy surrounding executions in Japan contrasts with the publicity and official announcements accompanying executions in the US and other countries. In Japan, the Justice Ministry's policy is one of secrecy. Executions are not announced or confirmed. Names are never officially released. The Ministry says this is partly to spare the relatives of the person executed and those of his victims further pain. Executions are only publicly acknowledged in the Annual Report of the Justice Ministry.

The United nations Human Rights Committee has called upon Japan to revise its laws governing length of detention before trial and its laws prohibiting access to lawyers during interrogation.

The United nations Committee on Human rights and Amnesty International have also already urged Japan to abolish the death Sentence. However, it will take time to abolish it due to certain political and culture specific reasons.

JAPANESE MODEL ON LAW AND BUREAUCRATIC INFORMALISM

Bureaucratic informalism means bureaucratic leadership exercised through informal processes, which Frank Upham Considers the basic characteristic of the Japanese way of dispute processing and social management. Bureaucratic

informalism was not spontaneously generated, instead, it is a product of the elites' attempt to retain some measure of control over the processes of social conflict and change.[6]

The bureaucracy stands above segmented private interests and manages social conflict on the basis of its understanding of what is beneficial to the society and not necessarily guided by public opinion. The relationship between the private actions and bureaucracy is always vertical.

The Japanese bureaucratic elite has been eager to discourage western models of legality. In western model a conflict and the direction of social change is clarified either through legislation or through litigation. Since these models imply the minimization of bureaucratic control the bureaucracy is not keen on it. The main method the bureaucratic elite employs to retain control is the manipulation of the legal framework within which social change and its harbinger, social conflict occur.

The bureaucracy always reconstructs its informal consultative process by involving different sections and thereby eliminates the possibility of continuous judicial intervention in policy making and policy implementation.

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[6]   Frank K. Upham, Law and social Change in Post War
        Japan, Harvard University Press, London, 1987, p.17.

The Japanese are not inclined to go to the court of law
for resolving their problems. A large number of them try to
handle their dispute through informal processes within the
bureaucratic apparatus. Upham argues that the apparently
harmonious nature of Japanese society, which has been
regarded as the manifestation of deep rooted Japanese
cultural values is a result of successful suppression of
pervasive disputes and conflicts through the creation and
maintenance of bureaucratic informalism.

TRIAL AND PROSECUTION

The prosecutore play a major supervisory and policy
making role when the most part of the inveestigation of
crime is conducted by the police officers. The present day
prosecutor have a substantial amount of power. In addition
he also has a broad range of situations and opportunities
throughout the judicial process in which to exercise it.
Each prosecutor is authorized to decide on the appropriate
scope of investigation. Whether to prosecute at all and if
so, to what extent is his decision.

For the West, Justice is a matter of principle whereas
in Japan principle needs to be adjusted to take account of
special circumstances. Discretion becemes necessary. A
public prosecutor in Japan may suspend prosecution at his

own discretion, if he feels it is in the interest of the society and the offender.

The investigation and disposition of the matter are carried out by the prosecutor in closed chambers. Again, the identity of the offender against whom prosecution is declined is rarely disclosed to the public. Consequently, the offender can continue in the community as a good citizen rather than with the stigma of a criminal. This system contributed so much to the rehabilitation and re-entry of the offender into society.

Eighty-six percent of all cases that go to trial include a confession. Of a total of 80,792 defendants whose cases have been tried by the court of first instance, 69,524 defendants made confessions in court in 1977. When we take the number of summary orders into account, the rate of confession at the investigation stage may be more than ninety percent (T. Fujiwara, 1980).[7]

The biggest advantage enjoyed by law enforcement authorities in Japan is that they can hold a suspect without bail for up to twenty three days before the prosecutor decides whether or not he has enough evidence for

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[7]   L. Craig Parker. Jr., The Japanese Police System Today: An American Perspective, Kodansha International, Tokyo, 1984, p.110.

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indictment. If the investigation indicates that continued detention is necessary, control over the suspect must be tranferred to the public prosecutor's office within fortyeight hours of the arrest. However, in a highly unusual case involving serious crimes against the interest of the nation, the detention period may be extended by five days.

Parker provides a outline description of the arrest stage:

Arrest

(A)   Ordinary arrest (Art. 199)- arrest with warrant issued by a judge.

1)   reasonable cause enough to suspect that an offense has been committed by the suspect.

2)   necessity for arrest

    i)   danger of escape

    ii)   danger of destruction of evidence

(B)   Emergency arrest (Art. 210)

1)   an offense punishable by three years imprisonment or heavier punishment.

2)   because of great urgency, a warrant of arrest can not be obtained beforehand .

3)   a warrant of arrest issued by a judge after the arrest. If a warrant of arrest is not issued, the suspect must be released immediately.'

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(C)   Flagrant arrest (Art. 212, 213)

1)   flagrant offender

2)   any person may arrest a flagrant offender without warrant.

Both Japan and America legally endorse the right to a speedy trial. Despite these laws, the pre-trial detention for America's accused is long. In Japan, a speedy trial is achieved in the majority of cases. It has been found eighty to ninety percent of criminal cases are disposed of within six months.

CHAPTER - IV

JAPANESE POLICE SYSTEM

Analysts differ in their opinion about whether low crime rate and successful crime prevention endeavours by Japanese police are due to management technique within the National police organisation iteself or to the cultural factor in society. David H. Bayely[1] holds the view that crime is well under control in Japan and the police agency is the main responsible factor. Walter L. Ames concludes that "the Japanese have long believed that the primary responsibility for social control lies with the community and that citizens must discipline themselves to maintain order. Japanese society places emphasis on intertwining bonds of human relation to maintain the social fabric and to prevent crime and disorder"[2]. Parker's experience is that "Japan's success in crime control is due primarily to the type of society it is rather than its police force".[3]

Japan's emergence as a world economic leader is largely

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[1] David H. Bayley, Forces of Order: Police Behaviour in Japan and the United States, Berkeley: University of California Press, 1976.

[2] Walter L. Ames, Police and Cimmunity in Japan, Berkeley' Univ. of California Press, 1981, p.228.

[3] L.C. Parker, Japanese Police System Today: An American Perspective, Tokyo: Kodansha International 1984, p.209.

due to Japanse way of management practices and law enforcement. The idea of Japanese management involves-life time employment, slow evaluation and promotion, implicit control mechanism, collective decision making, collective responsibility, and holistic concern. Japanese management is more concerned with team effort, respect for authority, self development, group appraisal, nepotism, long term employment than any other country's management practices. The concept of Japanese management is whether an adaptation of American ideals or it evolves from Japanese historical experience, which is central to the crime control practices in Japan. Japanese police system strongly reflect the social context and culture management in which it operates.

JAPANESE POLICE STRUCTURE

Under the Ministry of Home Affairs the first Japanese police Bureau was established in 1874. The early organisational structure of 1974 closely resembled the early German Police System. Like the Germans, Japanese police were reportedly oppressive and even instituted a 'thought control' operation to blot out any thinking contrary to overt support of the regime in power.[4] After the second

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[4]   Richard H. Mitchell, Thought Control in Prewar Japan, London: Cornell University Press, 1976.

World War, and in line with the occupation policies of the Allied Forces, Japan built its police system as a decentralized democratic entity headed by the National Public safety Commission. The reorganisation reduced police efficiency so significantly that by 1954, Japan enacted a Police Law to restructure the police appropriate to cultural needs.[5]

The Japanese police Law began to use Japanese management practices in its policing endeavour. The National Public Safety Commission supervised the National Police Agency. Regional Bureaus supervised the Prefectural police. As of July 1996, there were a total of 220,000 police officers (3% female) and 30,000 civilian employees (43% female) working for the prefectural police.[6] The prefectural Police and Metropolitan Police Department in Tokyo are divided into District Police Stations. At the bottom level, there are police boxes. As of April 1995, 1,261 district police stations supervised a total of 6,498 Urban Koban and 8,379 rural chuzaisho police boxes throughout the country.[7] Thus Japan's police system

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[5]   G.Kanfman, Tokyo: One city where crime Doesn't Pay, The Citizens Crime Commission of Philadelphia, Philadelphia, 1975.

[6]   National Police Agency,, 1996, p.10.

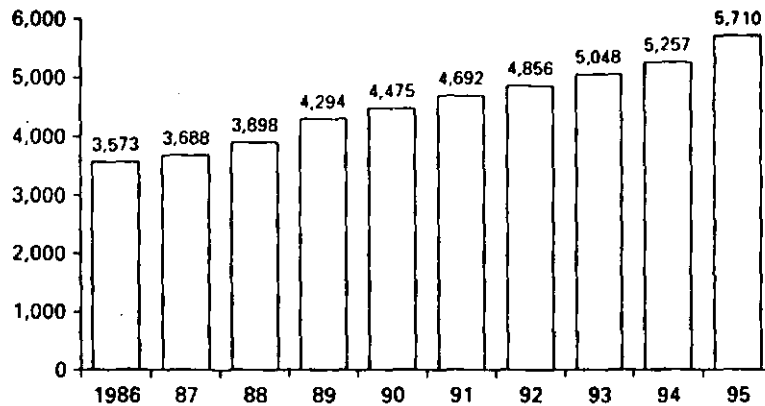[7]   National Police Agency, 1996, p.5.

consists of separate prefectural forces where the guidance and coordination work is chiefly performed by the National Police Agency. Prefectural Police forces undertake the daily functions of law enforcement under the careful administration of Prefectural Public Safety Commissions. The National Police Agency, which operates under the administration of the National Public Safety Commission, supervises police training programmes, procures equipment, compiles crime statistics and provides criminal identification services on a nation wide basis.

The ratio of citizens to police in Japan is high compared to that of most industrial nations and law enforcement is aided by an extensive network of neighbourhood 'police boxes' (Koban). There are currently about 6,500 Koban in Japan and as a rule at least three police officers are assigned to each one. While each officer is assigned to an area and patrols are continuous, patrol cars may also be stationed in some large areas. In the event of crime, there is a quick transfer of authority to the koban that will act. This activated koban is highly useful in the initial investigation of a crime. According to Police White Paper, it said, that out of 7,103 suspects the police arrested 2,500 for major crimes in 1994 with the aid of police at a Koban. In 1995 it took the police an average of

5 minutes 45 seconds to reach the scene of a crime after

receiving an emergency call. This quick response is a major

reason for Japan's relatively high arrest rate.

Number of Emergency Calls Made to the Police

(1,000 cases)

Response Time to Emergency Calls and Arrests, 1995

	Police dispatches	On-site arrests[a]	Arrests/ dispatches (%)
Under 3 min.	13,674	2,168	15.9
3-5 min.	40,136	4,729	11.8
5-10 min.	56,561	6,139	10.9

a. Arrests made near the scene of a crime immediately following the crime.

(Facts and Figures of Japan, 1997 (edt), Foreign Press
Center, Japan, p.84.)

Archambeault and Fenwick[8] succinctly encapsulate the contribution of management practices to the Japanese law enforcement structure as a whole. Japanese management technique provides the consistency in structure and management processes which allows a national police force to be decentralised into a semi-autonomous neighbourhood centred system of fixed posts.

COLLECTIVE CONCERN AND THE KOBAN

The Koban and chuzaisho system dominates the centeralised police system of Japan. Adhereing to the concept of groupism, urban police boxes play an important role carrying out police affairs as a team. Officers residing in the rural police box (chuzaisho) with their families are assuming duties similar to Koban officers. Although chuzaishos greately outnumber Kobans, urban Kobans are more busy because nearly 4/5 of the Japanese population is concentrated in the city. As a result of urbanisation there is an increase in the number of Kobans, while chuzaishos are dwindling.

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8   Archambeault, E.G. and Fenwick, C.R., "Differential Effects of Police Organisational Management in a Cultural Context. Comparative Analysis of South Korean, Japanese and American Law Enforcement, Police Studies, Vol.8, pp.1-12.

Japanese police officers always try to make out problems associated with crime and changing neighbourhood dynamics. Besides emergency response, they also give directions and mediate in domestic disputes. Bayley[9] observes that community oriented policing as a philosophy in the USA is wholly institutionalized in Japan.

In Japan, the career of a police officer is life time commitment for both the officer and his family. Like all other occupations in Japan, the job itself dominates all other aspects of public and private life. Most urban police boxes operate on a three shift system where officers are paid for a 44 hour weekly rotating schedule. Officers frequently volunteer to work more hours without payment to demonstrate loyalty to the organisation. These extra hours worked may help explain why Japanese police have higher clearance rates than American police for most offenses.

The promotional system pertaining to the Japanese police officers is based on seniority rather than a merit. Moreover, to make the police system more effective and in order to decrease the social distance between officers of different ranks, Japanese superiors make themselves more accessible to subordinates. Thus, in Japan there are some

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[9]   D.H.Bayley, Forces of Order: Policing Modern Japan, University of California Press, Berkeley, 1991.

common characteristics between police box operations and Japanese Corporations. Collective concern induces high Commitment and frequent overtime work without extra pay is an indication of company loyalty.

JAPANESE POLICE BEHAVIOUR

In Japan, one of the most notable features among police officers is the high level of professionalism. So, the police organizational, operational and professional system has been suitably modified in the country to permit the police to develop closeness with the people. In Japan, professionalism implies an individual commitment to duty, adhereing to a code of ethics, using ones discretion in decision making and assuming responsibility for decisions and developing policy responsibility for decisions and developing policy capacity for contributing to a better quality of life.

During the Meiji period, in Japan, encouraging professionalism was a means of reducing turnover in the force and of improving police standards of performance without a marked increase in expenditures. It facilitated the standardisation of police practice throughout the country. It increased the autonomy of the police force. However, it reduced its responsiveness to its social

environment and it reinforced the social distance between the policeman and the public.

The Japanese police culture presumably stems from a set of assumptions about police work that is widely shared among officers, and it includes a code to which they are expected to adhere. Officers internalises the code to an extent that the police culture shapes their attitudes, and carefully abide by the code. There are specific fixed approach of the police officers during routine visits, on etiquette, conversational plays and a variety of "dos" and "dont's".[10]

I)   Etiquette

1.   Dress properly and neatly.

2.   Knock on the door or ring doorbell before entering.

3.   Do not peep in windows or touch articles such as decorations at the entrance.

4.   When offered a chair or cushion, sit down and greet the person properly.

5.   If a woman receives you, keep the door open unless she asks you to close it.

II)   Communication

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[10]   L.C. Parker, Jr, The Japanese Police System Today: An American Perspective, Kodansha International Tokyo, 1984, p.55.

1. Offer appropriate greetings, indicating why you have come. If you are visiting the house for the first time, introduce yourself. For those who are not familiar with routine visits, explain and ask for their cooperation.

2. Select appropriate words. Make your speech clear with a choice of language appropriate to the person you are addressing. You may use the local dialect if there is one in your area.

III) Note the Occasion

1. Avoid the ceremonial occasions, when there are guest or when people are occupied with work.

2. When there is no one at home and contact is difficult, ask the neighbours when the family might be at home in order to carry out the routine visit.

3. Note the content of the conversation

   a) Speak of familiar, interesting matters and make the conversation easy to understand.

   b) Do not say things that may hurt the feelings of the residents.

   c) Avoid rumours concerning neighbours and political topics.

Interestingly, these routine visits are not authorized by law but sustained by tradition.

The following instructions are directed to the police

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officers to follow-

- To have good contact with people and show understanding to get the confidence of people.

- Don't take firearm out of the holster, don't put your finger on the trigger, don't point it at people.

- Try hard to stay in good condition mentally and physically.

- Try your best to be responsible and maintain a sense of duty.

- Try actively and constructively to question people on the street in order to prevent crime and make arrest

- Be alert and be nimble interms of organizing your activities in order to solve each case as quickly as possible.

- Work properly, correctly and with dignity. Be fully alert in preventing any crime or accident.

Moreover, generally patrol police in Japan keep a low profile and engage in minimum muscle flexing with the people. There are rarely any officer who has ever used his gun, unless an emergency situation arise.

There is widespread trust in and respect for the police. However, citizens avoid being in close proximity

with them.[11] Japanese police concentrate more on political activities like demonstrations by students, citizens movements. The police in the koban are friendly, but the riot police are too jealous while controlling demonstrators. In a democratic society there is freedom of thought and expression, but in the Japanese police organization individuals are asked to be faithful and loyal to the police agency. If any police officer is sympathetic to socialism or the communist party, he will have to resign from police work. Freedom of expression is impossible within the police organization.[12]

The strong hierarchical structure of imperial prewar Japan has changed under the new constitution but the roots of authoritarianism continue to exist. Thus Miyazawa in his study says that in Japan, "more emphasis to be placed on the police having broad-based education with emphasis on human rights than on the techniques of policing and acquisition of appropriate equipment."[13] In Japan about 60 per cent of te police personnel are college graducates. The others, are high school graduates. Japan's National Police Academy

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[11]   Ibid, p.183.

[12]   Ibid, p. 185.

[13]   Nobugoshi Araki, 'The Police in Japanese Society', Law and Society Review, vol.22, No.5, 1988, p.1035.

provides advance training for official. This enables them to educate themselves further and compete for further promotion.

DEMOCRATIC POLICING

Scholars differ in their analysis of the problems of police and crime patterns. Their views at times seem to be determined by their social conditions and experiences in their own country. The Israeli scholar's perspective is that the police is militaristic, armed and a coercive instrument of control at the disposal of the government. They should be utilized for policing democracies but they could not be democratic. In Israel the police are heavily armed and engaged mainly in security and protection roles and little in service tasks. The Hungarian and Austrian concept of democratic policing is that, the police who work for the welfare of the community should be democratic. Democratic police not only work to protection of people but also seek their thus involvement in crime prevention and control.

In this age of radical political changes, unprecedented disturbances including the ethnic conflicts and great econimic upheavals, migration which included illegal immigrants have posed multifaceted challenge to the police even in the established democracies. In Japan, at times

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there is tension due demonstrations etc. held by the minority classes like, Koreans, Chinese etc. However, the problems emanating from the minorities are not so acute in Japan as in other countries like US, India etc.

New laws are enacted to give the police more authority and ligitimacy to act effectively and improve their working conditions. There is an ongoing debate in the country on whether the police powers should be increased. Criminal procedures are being modified by law inorder to bring them to conform to western standards and to the culture of the country as well. A new law is being enacted for the purpose of dealing with organised crimes and racketeering. But the scholar like R. Delfs is critical about this law which is unlikely to check Yakuza activities.[14]

In a democratic society the media could be an important ally as well as an adversary of the police in reaching out to the people with new plans, programmes and ideas. Sometimes, the police try to manipulate the media with their monopoly over crime news. The police also expect help from the media in their task of managing crime.

Japanese crime management continues to attract World

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[14] R. Delfs, New Laws Unlikely to Curb Yakuza: Legal Conduct, Far Eastern Economic Review, 154:47, 1991, pp.34-5.

Wide attention because of its success, efficiency and humanistic quality. Miyazawa[15] interprets Japanese management as control tactics within police organizations. Ironically, contemporary Japan is not without its problems. Recent urbanization and increased congestion has had a negative impact on police community relations.[16] Among other urban related problems is difficulty in acquiring land for new police boxes in the city. Besides the expense involved in erecting new police boxes there is shortage of personnel.[17] Satellite Kobans and mobile Kobans are also planned to grapple with the increasing crime rate.

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[15] S.Miyazawa, Policing in Japan: A Study on Making, Crime, State University of New York Press, New York, 1992.

[16] L.C. Parker, The Japanese Police System Today : An American Perspective, Kodansha International, New York, 1984.

[17] D.H. Bayley, Forces of Order: Policing Modern Japan University of California Press, Berkeley, 1991.

CONCLUSION

Number of crime committed in Japan as per statistics is significantly less compared to other developed countries like UK, Germany, France and USA. The rate of crime throughout the post-war period is almost the same. The reason lies mainly in the social and legal system prevalent in Japan.

This study finds the crime control endeavour very much in the type of society existing in Japan. Japan is a homogenous and a well organised society with the confucian social values and behaviour existent since the Tokugawa period. During the Tokugawa period a well stratified and hierarchical society was established based on the principles of confucian obedience and loyalty. These confucianist values continue to determine values of the Japanese society though to some extent they are being eroded. Thus there are some characteristics which are unique to Japan to contribute immensely to the low crime rate in Japan.

Firstly Japan is a homogeneous society which is an important factor in applying controls on those who go against the established social norms of behaviours. In Japan there are a very few minority groups the biggest being the Koreans which number about 700,000.

Another important feature of the Japanese society is the existence of a large network of both formal and informal groups. Membership to one of these groups and one's role in it is more important than concern for ones own interest. This factor is to a great extent responsible for the low crime rate in Japan. The culture of group life helps Japanese to solve interpersonal conflict and as far as possible maintain an environment of harmony and consensus. The tendency of Japanese to help each other through informal assistance and intervention is often evident.

Japanese also refrain from being different from others. Despite westernization since second World War the pressure to conform is still very strong. This sort of conformity also leads to reduction in crime.

This study also reveals that in Japan there is considerably less litigation compared to other industrialized nation. The attempt first is to settle the disputes between the adversaries rather than approach the lawyer. Compared to many other countries the Japanese have much greater respect for legal and governmental institution. This attitude helps the police and other authorities to operate more effectively.

Japanese people adhere to group life and utmost emphasis is given to collective action and goals. Consensual

decision making, a shared responsibility and holistic concern are the hallmarks of the society to maintain order in the society. Confucianist ideology prevalent in the society provides a legitimacy to the state intervention. Duties are given importance whereas rights occupies a subordinate place.

Under the community crime control initiative citizen's involvement, family responsibility are given more importance. Their roles in it are such that without them crime control is just impossible. The function of CNK in Japan is praiseworthy. Crime prevention campaign by the volunteers group indicates a common man's awareness and interest in controlling crime.

In Japan, the effort of the various authorities is not to isolate the offender but to help him to be a responsible member of the community. This attitude helps the offender to live in the society and prevents criminogenic behaviour. In Japan both the informal system of crime control pervasive in the society and the formal system of crime control together play a role in combating crime. In Japanese way of life, synthesization always takes place followed by innovation and improved ideas and thoughts.

The way Japanese society engage in crime prevention effort is culturally constructed. The Japanese have a highly

developed system of organic solidarity based on well developed system of restitutive law. The low litigation rates and slow growth of the legal system is due to the presence of confucian values of harmony which restricts the growth of law business.

The increasing rate of juvenile delinquency is linked to the economic affluence and its impact on the young : educational pressures, lack of parental responsibility, the growth of individualism and the degradation of traditional family values. The traditional values, especially those of cooperation and group action are being threatened by growing individuality in Japan. The greater the degree to which a society respects individual freedom, the less the power of groups to control individual behaviour.

To a great extent delinquency is linked to the education system. In a hierarchical society like Japan the pressure on the students to enter the best institution is so much that failure leads problems amongst the youth. Individuality is the outcome of the conflict between tradition, inherent customs and existing authority. In order to teach individuality, the country must initially teach tradition and authority which will in turn foster individuality and common values.

Among other things, police is largely responsible for the control crime in Japan. Relatively good community relations, a highly organised system of benefits and promotion, and less violence in Japanese society render the police work a desirable profession. However, while Japanese police agencies make major contribution to crime prevention much of the work is done by volunteers at the community level. One of the important reasons for the low crime rate in Japan is the strict gun control laws. Only a small percentage of crimes committed are with guns.

Due to traditional social controls which seem to be weakening, the National Police Agency plans to reevaluate and strengthen its organizational network. The Japanese police function within cultural limits and constraints as well economic realities. However, even if the crime rate as a whole is low, in the recent year, the crime committed by the youth and school children has been on the rise. Today, the problem of juvenile delinquency, organised crime and sex crime has increased alarmingly in Japan.

On account of crime management both socially and legally, the people of Japan have made an enormous investment. To enjoy the status of low crime rate is the consequence of this investment.

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