

SETHNA

SOCIETY
AND THE
CRIMINAL

FOURTH EDITION BY
J. M. J. SETHNA

TRIPATHI

SETHNA'S
SOCIETY AND
THE CRIMINAL

(With Special Reference to the Problems of Crime and
Its Prevention, the Personality of the Criminal, the
Treatment of the Criminal, Prison Reform and Juvenile
Delinquency in India)

FOURTH EDITION

by

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BOMBAY
N. M. TRIPATHI PRIVATE LIMITED

1980

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(*Fourth Revised Edition* 1980)

PRINTED IN INDIA

BY BRO. LEO AT ST. FRANCIS ITI, BORIVLI, BOMBAY 400 092 AND PUBLISHED
BY A. S. PANDYA FOR N. M. TRIPATHI PRIVATE LIMITED, 164 SAMALDAS
GANDHI MARG, BOMBAY 400 002.

FOREWORD TO THE FIRST EDITION

BY

P. N. BANERJEE, M.A., D.LITT., LL.D., P.R.S.

OF THE LINCOLN'S INN, BARRISTER-AT-LAW

For some time Minister of Law and Justice, Government of Bengal; Vice-Chancellor, Calcutta University, 1946-49; Member, Executive Council of the Universities of the Commonwealth and the British Empire; Former Principal, University Law College, Calcutta.

IN his monumental work: *Society and the Criminal*, Dr. M. J. Sethna has dealt with the nature, the object and the end of law. He realises fully that the criminal is an anti-social and maladjusted being who needs cure, help, rehabilitation. The learned author deals in his work more with the criminal mind rather than with the problem of crime. He would therefore treat the criminal by diagnosing his offence. He appeals for co-operation between Law and Science, between Judges and Lawyers, police-officers and probation-officers, between medical men, psychiatrists and psychologists. He has given the reader the accumulated wisdom of ages. He does not merely focus his attention on either the imperative view of law or the theories of punishment. The learned author therefore has approached Theology, Ethics, Psychology, on the one hand, and History, Politics, Economics, on the other. He has not left out of account art or music, the sciences of medicine and genetics.

Dr. Sethna's approximation of Law and Ethics will require the concentrated attention of the legislators, the statesmen, sociologists and the law reformers in India.

Dr. Sethna's work dives deep into the problem of crime. It suggests theories and methods of both dealing with the delinquent and preventing delinquency itself. In a world dominated by materialism, science indeed travels faster than morals. The learned author devotes full attention to the problem of prevention of crime. He lays due stress on cultural education as also on indeterminate compulsory moral education. His advice to

young independent India, now a secular state, does not come a day too soon. Cultural education, the learned author quite clearly regards as the backbone of an ideal educational system. The advice to the Universities in India to establish a close link between legal research and Social Studies may sound novel. The learned author's appraisal of a healthy home-life in India, of proper training of children and of their parents, the institution of the system of visiting teachers, opens out the vista of the bygone days of the glorious period of the history of the great Monk Emperor of India—Ashoka. The elimination of greed, of avarice and envy from the human mind will surely eradicate crime from society. Envy, today, as in the days of Socrates nearly three thousand years ago, is "the daughter of pride, the author of murder and revenge, the perpetual tormentor of virtue. It is indeed the filthy slime of the soul." Dr. Sethna's analytical study of the criminal mind and his responsibilities to organised society leads him to a consideration of the century-old debated doctrine of the freedom of will. One is almost tempted to ask the learned author about the doctrine of predestination or of *karmaphala*. The validity and the acceptance of the doctrine in the domain of crimes may make crime a disease like lunacy today. Dr. Sethna's study of the factors in the causation of crimes will, I hope, be studied by the Judiciary, the Legislature and the Executive in India with absorbing interest. Faulty theories of punishment, a defective prison system, lack of aftercare of the criminal and the want of organisation for dealing with the problem of unemployment, aggravate the situation in India. Dr. Sethna's comparative study of the prison system as also the prison systems of advanced countries in the world like England, the United States of America and Russia will amply repay perusal. The negligent scythe of a straggling gleaner in the field of the social worker, may be rewarded with a sheaf or two. Juvenile delinquency and the rehabilitation of the criminal tribes of India should be subjects of perennial interest to the Social Reformer in India. The resurrection of four millions of human souls would constitute one of the greatest services to humanity. Our written constitution—the longest written constitution in the world—has a dim perception of this one of the greatest problems of the age.

To condemn four millions of human souls to hereditary criminality would be an offence against humanity. Dr. Sethna's *Society and the Criminal*, would afford food for thought; it may give to harassed India one short step to divinity. The learned author himself does not ask to see the distant scene.

P. N. BANERJEE

Calcutta,
Senate House,
4th May, 1951.

PREFACE TO THE FOURTH EDITION

THIS Edition has been revised in the light of modern developments in the field of criminology. A Four-Point Formula, regarding the correction of the offender, is found in Chapter VI. Chapter VII deals with War Crimes and Their Prevention. Many additions and alterations have been made.

Infra-red and ultra-violet methods of photography in the detection and investigation of crime have been explained, by reference to Dr. M. J. Sethna's book on Photography.

Every effort has been made to render the book up-to-date and comprehensive in all aspects of criminology.

The Bibliography and the Index have been enlarged and made more comprehensive, so as to be very useful to research scholars.

My thanks are due to Dr. Mrs. Katie J. Sethna, M.B., B.S., D.P.M., for having revised Chapter VI, and to Mrs. Khorshed M. J. Sethna, M.A., B.T., H.M.M., for having made several valuable suggestions.

I thank the publishers and the press for every facility afforded in the bringing out of this edition.

JEHANGIR M. J. SETHNA

26th July, 1980.

The need for preventive measures is stressed, for prevention is more desirable than punishment.

The first Part of this book deals with society, the state, the law, the individual, and the personality of the criminal. In the second Part, the problems of crime, its causes and prevention, are discussed; there is also a discussion concerning the problems of punishment and prison reform. The third Part is concerned with juvenile delinquency.

The Introduction shows how Criminology involves a study of all the relevant principles of the Social Sciences in so far as they have a bearing directly or indirectly on the problems of crime, the personality of the criminal and the methods of treatment and prevention. Chapter I emphasizes the necessity for adjusting the individual to the community and the importance of living in co-operation and fellowship. Chapter II shows that the State is not a mere police force, not a mere punishing agency, but is concerned with the creation of such environment as is unfavourable to crime. Chapter III shows how bad laws cause conflict and crime, and that law should be capable of promoting ethical values. In Chapter IV it is shown how a criminal is, in a sense, a defective. Chapter IV stresses the desirability of individual treatment and determination of the antecedents of the offender before dealing with him. In Chapter V the definition of crime is considered, and mention is made of the volume of crime in India. Chapter VI gives the causes of crime, and shows how education, the practice of the rules of genetics, the provision of social security, are good preventives. My new remedy of indeterminate compulsory education is fully explained, and the alternative plan is delineated. In Chapter VII the theories of punishment are dealt with, and the theory of Compensation is emphasized. The abolition of useless punishments is advocated. If punishment is to be made desirable, it must be useful. Chapter VIII gives the history of the development of the prison system, and emphasizes the necessity for individualized treatment in prisons. As in a hospital each patient must be treated according to the disease from which he suffers, so in a house of correction there must be proper segregation and a proper dealing with each offender after thoroughly diagnosing the causes that led to his

crime. A prison should not be a place of comfort so as to attract offenders there; but at the same time it must be a hygienic place where education is provided for the reformation of its inmates, and for training them, according to their aptitudes, to an honest living. There should be hard work, subject to sufficient recreation, of an ameliorating type. Chapter IX shows how important it is to handle criminality in its initial stages by a proper treatment of the young delinquent so as to prevent him from becoming a formidable offender. In that Chapter the advisability of moral education and the needs for the existence of visiting teachers and child guidance clinics are emphasized. Chapter X deals with legislation for prevention of juvenile delinquency; the great advantage resulting from the giving of juvenile courts exclusive jurisdiction in the matter of handling the cases of juveniles cannot be over-emphasized. In Chapter XI an account is given of Children's Homes and Schools; and the need for public support of these institutions is expressed.

In the Appendix a statement of the study of actual cases tracing the factors in the causation of crime is rendered. From an examination of over 507 cases of homicide it was found that 73.72 per cent of the cases showed unpremeditated attacks, while only 26.28 per cent of the cases showed deliberate assaults.

For the kind appreciation of this work by Prof. N. A. Thoothi, D.Phil. (Oxon.), I thank him very much. And my best thanks are due to Prof. P. N. Banerjee, M.A., LL.D., D.Litt., for having so kindly written a Foreword to this work. My thanks are due to Mr. N. K. Petigara, B.A., LL.B., Attorney-at-Law, at that time Public Prosecutor, Bombay, for the help so kindly rendered by him in supplying me the records and briefs of over 406 cases of homicide. My thanks are also due to British India Press, Bombay, and to the publishers, for a speedy, efficient and neat execution of this work.

M. J. SETHNA

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INTRODUCTION

SOCIETY, CRIME, THE CRIMINAL, AND THE SOCIAL STUDIES

Society and the Individual

MAN is a social being; apart from society it would not be possible for him to live. It is society that makes living possible, and helps the fulfilments of the aspirations and longings of his being as a whole. Man is a member of society; he himself is an essential thread in the 'reticulated fabric' of the community, and linked with the interests of the community are his own interests. Born, bred and educated in society, it is in the interests of society that his activities of life should best be directed.

Interdependence and Mutuality

The existence of man is linked up by some golden thread in the web of society. Human life and behaviour necessarily imply interdependence and mutuality of dealings; living is not convenient without division of labour. Human behaviour is conditioned by group relations and contacts, and all human culture has been the result of accumulations of ages and the researches of generations of men. From the primitive times to the present day man has lived in association, in groups, and not in isolation. There have always been some forms of society or community and division of labour to make living possible and convenient; and group life involves interaction between the individuals forming the group. Right from the moment of birth, dependence and co-operation begin. The child would be helpless without the mother and the nurse. The immediate group round the child at birth is the one on which the child depends for existence.

Group Life

Group life involves solidarity and unity which arises from factors that tend to identify the individual members with the group. The most important of these factors are: common objective or interests, common culture and mutual co-operation. Group life obviously involves consensus of ideals, and necessitates a declaration of rules of behaviour to be followed by the members

of the group. The rules, traditions, beliefs, ideas and ideals of the group—the customs and conventions—may be like the law of the group, prescribing for its members the rules of behaviour and censorship for breaches of the same. In a well-formed social group, conflict of ideals can be avoided by co-operation and voluntary agreements and compromises by the members of the group. The rules of the group would be the rules made by the members themselves, and therefore there would be less likelihood of breaches of those rules. Healthy consensus thus prevents conflict, promotes harmony, and maintains regard for the law. There is collective feeling bespeaking of genuine enthusiasm for the preservation and improvement of the collective work. And the consensus may be developed, moulded and modified from time to time. The individual members of the group accept the 'morale' represented by the collective will. In a well-organized group life with a healthy consensus, chances of breaches, seeking for personal gratification, and conflict, would be meagre. Nevertheless it would not be practicable to have complete harmony of ideals; individuals differ in their ideas and ideals, and it is only to bring about some actual working arrangement that compromises are entered into, and new interests created from time to time whenever necessary for the preservation of the group.

Then there is also the question of conflict between different groups, leading to rivalry and lack of harmony of relations. Conflicts, e.g., between capital and labour, traders and consumers, landlords and tenants, can best be avoided by healthy and benevolent intervention of the Government, for example, protection of labour from exploitation (wherever found) by capitalists, enforcing of good labour laws like Workmen's Compensation Act, the Factories Act—prevention of child labour, ideal labour conditions for women in factories and industrial houses, and not only good conditions of labour, but also the provision of decent wages, social insurance, industrial arbitration, adult education, and by arranging for meetings between members of the rival groups with a view to arriving at a compromise involving a mutual adjustment of interests (removing the element of rivalry or following the policy of broadminded tolerance and mutual respect for views and ideals), and social arbitration of an impartial type beneficial to both the disputants, based on the policy of mutual give and take, and reciprocity of good-will, co-operation and justity.

The Utility of Social Institutions

The wants of man are to be satisfied; man is to be facilitated in the art and the science of living. It is to facilitate the relations between men in society that social institutions have been esta-